

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

September 20, 2018, at 10:30 a.m.

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1. [18-90029-E-11](#)      JEFFERY ARAMBEL      CONTINUED MOTION TO APPROVE  
[MF-22](#)                  Matthew Olson                  USE OF FUNDS PURSUANT TO BUDGET  
6-8-18 [\[404\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2018. By the court's calculation, 10 days' notice was provided. The court set the hearing for 10:30 a.m. on June 21, 2018. Dckt. 408.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----  
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**By Prior Order of the court, the Motion for Authority to Use Cash Collateral is continued to September 27, 2018, at 10:30.**

Jeffery Arambel (“Debtor in Possession”) filed this Motion to Approve Use of Funds Pursuant to Budget on June 8, 2018, seeking an order approving the use of cash collateral. Dckt. 404.

The court issued an Order granting the Motion on June 27, 2018, allowing the use of cash collateral to pay the following expenses for the period June 21, 2018, through September 21, 2018:

<b>Category</b>	<b>Monthly Expense</b>
Irrigation, including water, power, labor, fuel, and parts	\$10,000.00
Contract labor for Debtor in Possession’s office	\$1,120.00
Insurance, including health insurance, homeowner’s insurance, general liability insurance, and automobile insurance, together with a one-time payment of \$31,338 for past-due post-petition insurance premium payments	\$7,091.00 Plus one-time \$31,338 Post-Petition Insurance Arrearage Payment
Pharmacy expenses	\$300.00
Home maintenance and homeowner’s association assessments	\$400.00
Adequate protection payments to Wells Fargo Bank	\$6,100.00
Utilities	\$1,167.00
Food, clothing, and household expenses	\$1,000.00
Transportation, including gasoline	\$400.00
Office supplies	\$100.00
Miscellaneous	\$150.00
<b>Total</b>	<b>\$27,828.00</b> Monthly, Plus One-Time \$31,338 Insurance payment

Dckt. 451. The court further order (1) that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor’s secured claim.; (2) that Debtor in Possession shall make monthly adequate protection payments of \$6,100.00 to Wells Fargo Bank, as noted in the approved cash collateral budget; and (3) that the hearing on the Motion is continued to 10:30 a.m. on September 20, 2018, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

**ORDER GRANTING MOTION  
TO AMEND**

On July 9, 2018, the court granted Debtor in Possession’s *Ex Parte* Motion to Amend Order. Dckt. 495. The court issued an order amending its prior order (Dckt. 451) to authorize (1) the Debtor in Possession to use the aforesaid funds to make a \$15,000.00 payment on the previously approved Underwriting and Syndication Fee to business Debt Solutions, and (2) the Debtor in Possession to use aforesaid funds to fund post-petition retainers to the following court-approved professionals:

Braun International	\$7,500, and
Judith Callaway, CPA	\$5,000.

Dckt. 495.

**ORDER GRANTING EX PARTE  
MOTION TO CONTINUE HEARING**

On September 16, 2018, the court granted Debtor in Possession’s *Ex Parte* Motion to Continue the Hearing on Debtor in Possession’s Motion to Approve Use of Funds Pursuant to Budget to September 27, 2018, at 10:30 a.m. Dckt. 607.

**APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

By Prior Order of the court, the Motion for Authority to Use Cash Collateral is continued to September 27, 2018, at 10:30. Dckt. 607.

2. [16-27854-E-11](#) **GARY STEINGROOT**  
**Stephan Brown**

**CONTINUED STATUS CONFERENCE**  
**RE: VOLUNTARY PETITION**  
**11-29-16 [1]**

Debtor's Atty: Edward A. Smith; Stephan M. Brown

**The Status Conference is continued to 2:00 p.m. on November 14, 2018.**

Notes:

Continued from 8/16/18 to be conducted in conjunction with the final hearing on the Motion to Dismiss this case filed by Tracy Hope Davis, United States Trustee.

[TBG-12] Debtor in Possession's Motion for Approval of Final Distribution to Creditors filed 8/30/18 [Dckt 228], set for hearing 9/20/18 at 10:30 a.m.

[TBG-13] First and Final Application for Compensation and Reimbursement of Expenses of the Bankruptcy Group, P.C. filed 8/30/18 [Dckt 231], set for hearing 9/20/18 at 10:30 a.m.

[UST-1] Motion to Dismiss Chapter 11 Case And/Or Convert to Chapter 7 Case, continued from 8/16/18.

#### **SEPTEMBER 20, 2018 STATUS CONFERENCE**

The court having announced the ruling to grant the motion to dismiss this case, with the entry of the order delayed until the final reports filed and U.S. Trustee fees paid, the Status Conference is continued.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion for Approval of Final Distribution was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Motion for Approval of Final Distribution is granted.**

The Debtor in Possession, Gary Steingroot (the “DIP”), moves for approval of a final distribution to Cach, LLC, the Class 3 creditor with scheduled unsecured claim 4.3 (“Creditor”) pursuant to 11 U.S.C. § 363(b).

DIP states that after disposing of the main asset of the estate, real property commonly known as 1055 Hutley Way, Granite Bay, California, the following secured claims were provided for:

- a. SunTrust Mortgage, Inc., the Class 1 Secured Creditor with filed Proof of Claim 1 was paid in full out of the proceeds of the sale of the Property.
- b. Capital One, the Class 2 secured creditor with scheduled claim 2.1, refused payment through and after the close of escrow and recorded a total release of lien with Placer County Recorder on June 29, 2018. Dckt. 219. Further,

Capital One did not file an unsecured proof of claim before or after it provided the Total Release of Lien.

DIP notes that the Monthly Operating Report for the period ending July 31, 2018 shows that the estate has a cash balance of \$219,000. Dckt. 221. DIP asserts that Creditor's remaining claim is \$9,874.79 and seeks to pay that amount in full.

The DIP asserts that sufficient assets have been administered in this case to pay all creditors with allowed claims in full, with the balance of funds to be returned to the DIP after the case is dismissed. DIP also represents it will retain an ample reserve to cover projected administrative expenses after court approval.

## **RULING**

Based upon DIP demonstrating to the court that there are sufficient proceeds to make a final distribution and retain funds for administrative expenses, the court determines that a final distribution is in the best interest of the Estate. The DIP has structured a disbursement that mimics the distribution that would be done in a Chapter 7 case, not improperly favoring any creditor or class of claims over another. As discussed in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983-984, 197 L. Ed. 2d 398, 2017 U.S. LEXIS 2024 (2017):

“We turn to the basic question presented: Can a bankruptcy court approve a structured dismissal that provides for distributions that do not follow ordinary priority rules without the affected creditors’ consent? Our simple answer to this complicated question is “no.”

The Code’s priority system constitutes a basic underpinning of business bankruptcy law. Distributions of estate assets at the termination of a business bankruptcy normally take place through a Chapter 7 liquidation or a Chapter 11 plan, and both are governed by priority. In Chapter 7 liquidations, priority is an absolute command—lower priority creditors cannot receive anything until higher priority creditors have been paid in full. See 11 U.S.C. §§725, 726. Chapter 11 plans provide somewhat more flexibility, but a priority-violating plan still cannot be confirmed over the objection of an impaired class of creditors. See §1129(b).

The priority system applicable to those distributions has long been considered fundamental to the Bankruptcy Code’s operation. See H. R. Rep. No. 103-835, p. 33 (1994) (explaining that the Code is “designed to enforce a distribution of the debtor’s assets in an orderly manner . . . in accordance with established principles rather than on the basis of the inside influence or economic leverage of a particular creditor”); Roe & Tung, *Breaking Bankruptcy Priority: How Rent-Seeking Upends The Creditors’ Bargain*, 99 Va. L. Rev. 1235, 1243, 1236 (2013) (arguing that the first principle of bankruptcy is that “distribution conforms to predetermined statutory and contractual priorities,” and that priority is, “quite appropriately, bankruptcy’s most important and famous rule”); Markell, *Owners, Auctions, and*

Absolute Priority in Bankruptcy Reorganizations, 44 Stan. L. Rev. 69, 123 (1991) (stating that a fixed priority scheme is recognized as “the cornerstone of reorganization practice and theory”).

...

Insofar as the dismissal sections of Chapter 11 foresee any transfer of assets, they seek a restoration of the prepetition financial status quo. See §349(b)(1) (dismissal ordinarily reinstates a variety of avoided transfers and voided liens); §349(b)(2) (dismissal ordinarily vacates certain types of bankruptcy orders); §349(b)(3) (dismissal ordinarily “revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case”); see also H. R. Rep. No. 95-595, p. 338 (1977) (dismissal’s “basic purpose . . . is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case”).

Here, DIP and its counsel have worked diligently to present the present Motion that is structured not to violate the rights of any creditors and disburse the monies of the estate generated from the administration of those assets in the same priority as a Chapter 7. This decision has been made, with Debtor forgoing his discharge, to avoid further administrative costs and expenses if this case were converted.

The requested dismissal is consistent with the direction of the Supreme Court in *Jevic*, properly provides for the interests of creditors, and allows DIP to move on to a “fresh start” outside of bankruptcy.

The Motion is granted, and the DIP is authorized to make a final distribution of \$9,874.79 to Creditor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Approval of Distribution filed by the Debtor in Possession, Gary Steingroot (the “DIP”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion for Approval of Final Distribution is granted, and the DIP is authorized to distribute \$9,874.79 to Cach, LLC (“Creditor”).



4. [16-27854-E-11](#) **GARY STEINGROOT**  
[TBG-13](#) **Stephan Brown**

**MOTION FOR COMPENSATION BY  
THE LAW OFFICE OF THE  
BANKRUPTCY GROUP, P.C. FOR  
STEPHAN BROWN, DEBTOR'S  
ATTORNEY(S)  
8-30-18 [231]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Motion for Allowance of Professional Fees is granted.**

The Bankruptcy Group, P.C., counsel ("Applicant") for Gary Lee Steingroot, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period from counsel's court approved employment date February 3, 2017 (effective date presumed 30 days prior at January 4, 2017), through August 30, 2016, the date of the hearing on this Motion. Applicant requests fees in the amount of \$40,000.00 (reduced from \$65,160.00) and costs in the amount of \$501.95.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the [attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include work on general case administration, asset analysis, the initial Debtor interview and 341 hearing, applications to employ counsel and a broker, motions for relief of stay and approval of stipulation regarding creditor SunTrust’s claim, seeking a lien release of creditor Capital One’s claim, pursuing motions to use and sell property of the Estate, and performing work generally associated with a Chapter 11 case (disclosure statements, plans, status conferences and reports, and monthly operating reports). Applicant asserts its services performed were necessary and beneficial, in that (1) they allowed for payment in full to all secured and unsecured creditors entitled to payment, (2) they resulted in Capital One, a creditor with a perfected security interest, releasing their lien on 1055 Hutley Way for \$5,603 plus 10% interest per annum, (3) they provided for the sale of 1055 Hutley Way in excess of the scheduled price and avoided a foreclosure sale, and (4) they allowed Debtor in Possession to evaluate the validity and enforceability of over \$100,000 in unsecured debt. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 18.6 billable and 22.3 non-billable hours in this category. Applicant’s Motion states tasks in this category include communication with the client and third parties, researching and establishing the Debtor in Possession account, in-firm meetings, service of documents, research on case deadlines, docket maintenance, and preparing and filing a change of address.

Asset Analysis: Applicant spent 4.9 billable and 11.6 non-billable hours in this category. Applicant’s Motion states tasks in this category include preparing, filing, and serving the petition and attached schedules, researching the statute of limitations for unsecured creditors, and preparing, filing, and serving amended schedules.

Initial Debtor Interview and 341 Hearing: Applicant spent .2 billable and 18.2 non-billable hours in this category. Applicant's Motion states tasks in this category include preparing and submitting the Initial Debtor Interview documents provided by the United States Trustee's ("UST") checklist, communicating with the UST's counsel, and preparing and attending the Initial Debtor Interview and 341 Hearing.

Application to Employ The Bankruptcy Group: Applicant spent 1 billable and 3.6 non-billable hours in this category. Applicant's Motion states tasks in this category include researching applicable law, preparing, filing, and serving the application to employ TBG as counsel for Debtor in Possession, and attending the hearing.

Application to Employ Broker: Applicant spent 10.8 billable hours in this category. Applicant's Motion states tasks in this category include researching applicable law, preparing, filing, and serving the application to employ Better Homes & Gardens as a broker for Debtor in Possession, and attending the hearing.

Motion for Relief from Stay and Motion to Approve Stipulation: Applicant spent 11.8 billable hours in this category. Applicant's Motion states tasks in this category include communicating with counsel for the secured creditor SunTrust Mortgage, responding to the SunTrust motion for relief from stay, negotiating stipulated payments, attending the relevant hearings, and reviewing the original and amended proof of claim.

Lien and Release: Applicant spent .3 billable and .2 non-billable hours in this category. Applicant's Motion states tasks in this category include reviewing the public record for Capital One's lien, communicating with counsel for Capital One, and confirming the release of lien and no payment through escrow or expectation of future payment

Motion to Use Estate Property: Applicant spent 23.9 billable hours in this category. Applicant's Motion states tasks in this category include communicating with the client and broker on repairs to 1055 Hutley Way, researching applicable law for the motion to use estate funds and a motion for shortened notice, preparing, filing, and serving the motion, and attending the hearing.

Chapter 11 Disclosure Statement: Applicant spent 108.4 billable hours in this category. Applicant's Motion states tasks in this category include researching applicable law, preparing, filing, and serving a disclosure statement, responding to creditor SunTrust Mortgage's objection to the disclosure and appearing at the hearing, preparing, filing, and serving an original, first amended, and second amended plan, responding to creditor SunTrust Mortgage's objections to plan confirmation and attending the hearings, communicating with SunTrust Mortgage's counsel, and preparing supplemental pleadings in support of plan confirmation.

Sale of 1055 Hutley Way: Applicant spent 4.4 non-billable hours in this category. Applicant's Motion states tasks in this category include negotiating and clearing title with Mr. Chavez, communicating with the broker and client on status updates throughout the case, researching applicable law, preparing, filing and serving a joint motion to sell 1055 Hutley Way and to compensate the broker, and attending the hearing.

Attend Status Report Conferences: Applicant spent 9.3 billable and 3.5 non-billable hours in this category. Applicant's Motion states tasks in this category include preparing, filing, and serving status reports, and attending the status conferences throughout the case.

Monthly Operating Reports: Applicant spent 22 billable hours in this category, 15.4 hours at the reduced rate of \$90.00 per hour. Applicant's Motion states tasks in this category include preparing, filing, and serving the monthly operating reports, and communicating with the client and UST's counsel. All work performed in connection with the monthly operating reports, regardless of the staff member who performed the work, is being billed at the administrative rate of \$90 per hour.

Motion to Dismiss/Convert and Related Pleadings: Applicant spent 26.4 billable hours in this category. Applicant's Motion states tasks in this category include reviewing the UST's joint motion to dismiss or convert the case, researching applicable law, preparing, filing, and serving the opposition and supplemental pleadings responding to these motions, communicating with UST's counsel, and researching applicable law on a Chapter 11 structured dismissal.

Motion to Approve Final Distribution: Applicant spent 5 billable hours in this category. Applicant's Motion states tasks in this category include preparing, filing, and serving the motion to approve final distribution.

Motion for Professional Fees: Applicant spent 10.4 billable hours in this category. Applicant's Motion states tasks in this category include preparing, filing, and serving the first and final motion to approve professional fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Applicant notes in its Motion all work on monthly operating reports is defaulted to the administrative rate of \$90 per hour. The Declaration of Stephen Brown, partner at the law firm of The Bankruptcy Group, P.C., attests to the experience of Applicant's staff in support of their hourly rates, and authenticates Exhibit A, an invoice for services provided to Client. Declaration, Dckt. 233; Exhibit A, Dckt. 234. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Edward A. Smith Senior Attorney	2.7	\$400.00	\$1,080.00
Steven M. Brown Attorney	68.8	\$300.00	\$20,640.00
Steven M. Brown Attorney	7.1	\$90.00	\$639.00

Eric T. Welch Legal Administrator	3.4	\$240.00	\$816.00
Eric T. Welch Legal Administrator	5.8	\$90.00	\$522.00
Daniel J. Griffin Staff Attorney	138.8	\$240.00	\$33,312.00
Daniel J. Griffin Staff Attorney	0.5	\$90.00	\$45.00
Ellen M. Fawl Staff Attorney	20.5	\$240.00	\$4,920.00
Ellen M. Fawl Staff Attorney	2	\$90.00	\$180.00
Kelly Spamer Administrative Staff	4.7	\$90.00	\$423.00
Kristi LaRoche Administrative Assistant	4	\$90.00	\$360.00
Christina Lawton Administrative Assistant	17	\$90.00	\$1,530.00
Amie Lawton Administrative Assistant	7.7	\$90.00	\$693.00
<b>Total Fees for Period of Application Before Voluntary Reduction to \$40,000.00</b>			<b>\$65,160.00</b>

FN.1.

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 FN.1. Applicant includes a detailed task-specific analysis of billing by individual in its Motion. *See* Dckt. 231 at 5.  
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**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$501.95 pursuant to this application.

The costs requested in this Application are,

Postage	\$217.95
Fictitious Business Name	\$49.00
Court Filing and Copy Fees	\$212.00
Recording Fees	\$23.00
<b>Total Costs Requested in Application</b>	<b>\$501.95</b>

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$40,000.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

**Costs & Expenses**

Final Costs in the amount of \$501.95 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes Debtor in Possession to pay the fees and costs allowed by the court.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$40,000.00
Costs and Expenses	\$501.95

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by The Bankruptcy Group, P.C. (“Applicant”), counsel for Gary Steingroot, Debtor in Possession,



("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that The Bankruptcy Group, P.C. is allowed the following fees and expenses as a professional of the Estate:

The Bankruptcy Group, P.C., Professional employed by Debtor in Possession

Fees in the amount of \$40,000.00

Expenses in the amount of \$501.95,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

**IT IS FURTHER ORDERED** that Debtor in Possession is authorized to the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

5. [16-27854-E-11](#)      **GARY STEINGROOT**  
[UST-1](#)                      **Stephan Brown**

**CONTINUED MOTION TO CONVERT  
CASE TO CHAPTER 7 AND/OR MOTION  
DISMISS CASE  
6-1-18 [178]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, and parties requesting special notice on June 1, 2018. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Dismiss the Chapter 11 Bankruptcy Case is granted, and the case is dismissed.**

This Motion to Convert the Chapter 11 bankruptcy case of Gary Steingroot (“Debtor in Possession”) has been filed by the United States Trustee, Tracy Hope Davis (“Movant”). Movant asserts that the case should be dismissed or converted because Debtor in Possession is time-barred under 11 U.S.C. § 1129(e) from confirming the pending amended plan and because the automatic stay has been lifted as to Debtor in Possession’s real property.

Movant argues that September 25, 2017, was the three-hundredth day post-petition and was the last day that Debtor in Possession could file a plan and comply with 11 U.S.C. § 1121(e)(2). An Amended Plan was filed on September 14, 2017, and Movant concurs that the 300-day deadline was satisfied.

Movant argues, however, that October 30, 2017, was the forty-sixth day following filing of the Amended Plan and was the last day that Debtor in Possession could confirm the plan and comply with 11 U.S.C. § 1129(e) without obtaining an extension of the deadline.

The court entered an order on October 26, 2017, setting a confirmation hearing on December 19, 2017. Dckt. 119. Then, on December 21, 2017, the court entered an order continuing the hearing to 11:30 a.m. on January 17, 2018, which was amended by an order on December 27, 2017, setting the matter for hearing at 2:00 p.m. on January 17, 2018. Dckt. 163, 164.

Where Movant places the brunt of its argument is at what happened next in the case. Movant argues that after the January 17, 2018 hearing there is no conceivable order extending the confirmation deadline, merely civil minutes indicating a continued hearing. *See* Dckt. 167. Because of there being no order, Movant argues that Debtor in Possession cannot confirm a plan in line with 11 U.S.C. § 1129(e).

Additionally, Movant argues that cause exists to dismiss or convert this case because the court's order entered on December 11, 2017, stated that the automatic stay would be lifted for Citizens Bank, N.A. FKA RBS Citizens, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed recorded against Debtor in Possession's property effective July 1, 2018. *See* Dckt. 147.

In the Memorandum of Points and Authorities filed with the Motion, Movant indicates that conversion may be better for creditors in this case because there is over \$50,000.00 in cash to be distributed. Dckt. 180 at 5.

## **DEBTOR IN POSSESSION'S OPPOSITION**

Debtor in Possession filed an Opposition on July 5, 2018. Dckt. 199. Debtor in Possession argues that grounds have not been shown that favor converting or dismissing this case. Debtor in Possession stresses that Movant did not oppose the prior continuances of the confirmation hearing (in fact, did not even appear at the hearings).

Debtor in Possession also notes that the main and only piece of real property was authorized by the court to be sold on June 28, 2018, and the property was sold on June 29, 2018, with escrow closed. *Id.* at 2.

Debtor in Possession focuses on the lack of a written order continuing the confirmation hearing in January 2018 and argues that "entry of an order is not always necessary to effectuate it, particularly when the parties had notice of the oral order." *Id.* at 3–4 (quoting *Rodarte v. Estates at Monarch Cmty. Assoc. (In re Rodarte)*, No. CC-12-1276-HKiD, 2012 WL 6052046 (B.A.P. 9th Cir. Dec. 6, 2012) (citing *Noli v. Comm'r of Internal Revenue*, 860 F.2d 1521, 1525 (9th Cir. 1988); *Am. 's Servicing Co. v. Schwartz-Tallard*, 438 B.R. 313, 318 (D. Nev. 2010))). Debtor in Possession argues that the court's implicit oral order arising from the January 17, 2018 civil minutes is that the confirmation deadlines were extended.

Debtor in Possession argues that there is a reasonable likelihood of rehabilitation in this case because the court approved the sale of Debtor in Possession's real property, and that sale has closed,

preventing any diminution in value from the automatic stay being lifted. Debtor in Possession believes that the proposed amended plan can be confirmed on July 11, 2018.

### **JULY 19, 2018, HEARING**

At the July 19, 2018, hearing, the court continued the hearing on the Motion to August 16, 2018, at 10:30 a.m. to allow this Motion to be heard along with the Motion to Confirm Chapter 11 Plan. Dckt. 208.

### **DEBTOR IN POSSESSION'S SUPPLEMENTAL PLEADING IN RESPONSE TO MOTION FOR CONVERSION OR DISMISSAL**

Debtor in Possession filed a Response August 2, 2108, consenting to dismissal of the Chapter 11 case after it has been fully administered. Dckt. 213. Debtor in Possession's Response asserted the following grounds in support of dismissal:

- A. SunTrust Mortgage, Inc., the Class 1 secured creditor with filed Proof of Claim 1, was paid in full through the close of escrow. Thus, Debtor in Possession believes that SunTrust is not entitled to any further payment
- B. Capital One, the Class 2 unsecured creditor with scheduled claim 2.1, refused payment through and after the close of escrow, and recorded a total release of lien. This Total Release of Lien was recorded as Doc-2018-0046993-00. Exh. A. Thus, Debtor in Possession believes that Capital One is not impaired because 1) the Plan provides for payment in full, and/or 2) Capital One waived its claim by causing the total release of lien to be filed with the County through the close of escrow.
- C. Cach LLC, the Class 3 unsecured creditor with scheduled claim 4.3, is entitled to payment of \$9,874.79 through its counsel of record, Mandarich Law Group, LLP. Dckt. 25. Debtor in Possession proposes to send payment to that address from the proceeds of the sale in full satisfaction of Cach, LLC's scheduled claim.
- D. All other general unsecured creditors, scheduled as claims 4.1, 4.2, and 4.4 through 4.11, are not allowed claims because they are time-barred pursuant to California Code of Civil Procedure § 337. Dckt. 30, pp. 4–9. Thus, Debtor in Possession believes these claims are not entitled to payment.
- E. Debtor in Possession will file a motion for compensation to Debtor in Possession's counsel pursuant to 11 U.S.C. § 330.
- F. Debtor in Possession will file a final report and final account of the administration of the estate pursuant to 11 U.S.C. §§ 1106 and 704(a)(9).

- G. Debtor in Possession requests that the Court grant UST's motion to dismiss and the UST defer filing the order until the case is fully administered as follows: a) Cach, LLC is paid in full, b) the Court review Debtor in Possession's motion to compensate its counsel of record, and c) Debtor in Possession files a final report and final account for the case.

In the alternative, Debtor's Response opposes conversion of the Chapter 11 case to Chapter 7 because Debtor in Possession is in a position to fully administer the case.

## **AUGUST 16, 2018, HEARING**

At the August 16, 2018, hearing, the court dismissed without prejudice the proceeding for Confirmation of the Chapter 11 Plan on the grounds the Debtor in Possession and U.S. Trustee are both seeking dismissal of the Chapter 11 case. Dckt. 226. The court continued the hearing on the Motion to Dismiss And/Or Convert one final time to September 20, 2018, at 10:30 a.m. to allow the Debtor in Possession to diligently prosecute the necessary motions for the administration of the bankruptcy estate prior to dismissal. Dckt. 227.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

## **DISCUSSION**

DIP consents to Movant's Motion to Dismiss Chapter 11 Case on the basis that the case has been fully administered. The court notes that DIP's Motion for Approval of Final Distribution to Creditors scheduled to be heard the same day as this Motion has been tentatively granted.

As discussed in the Motion for Approval of Final Distribution, the DIP and its counsel have provided for all allowed claims and disbursed the monies of the Estate generated from the administration of Estate assets in the same priority as a Chapter 7. This decision has been made, with Debtor forgoing his

discharge, to avoid further administrative costs and expenses if this case were converted. The requested dismissal properly provides for the interests of creditors, and allows Debtor move on to a “fresh start” outside of bankruptcy.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

The court notes that final closing tasks, including the filing of the Final Report, the payment of amounts allowed as compensation to Debtor in Possession’s counsel in the concurrently filed application for fees, any amounts owing to the Office of the United States Trustee, and such other sums as may be necessary to conclude this case, may still be pending in this case. Therefore, the court is granting the Motion with the caveat that DIP prepare a proposed order, which upon Movant’s approval and DIP’s completion of its Final Report and other final closing tasks, shall be lodged with the court.

No further relief is granted.

**Counsel for the Debtor in Possession, upon the Debtor in Possession completing the final closing tasks, shall lodge with the court an order dismissing this case.**