

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 28, 2021 at 10:30 a.m.

1.	<u>18-90666-E-7</u>	SHANNON JENKINS Brian Haddix	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 1-12-21 [88]
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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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors, and Chapter 7 Trustee as stated on the Certificate of Service on January 14, 2021. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$25.00 due on December 29, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$25.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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).

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, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2020. By the court's calculation, 30 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 7 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, -----.

The Motion for Allowance of Professional Fees is granted.
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Macdonald Fernandez LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 24, 2020, through July 17, 2020. The order of the court approving employment of Applicant was entered on February 2, 2020. Dckt. 20. Applicant requests fees in the amount of \$5,977.50 and costs in the amount of \$242.65.

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 transfer of real property from non-debtor spouse to both non-debtor and debtor and monetization of the estate's interest in the property. The estate received \$15,000.00 for payment of the property. 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 category.

Efforts to Assess Property of the Estate: Applicant spent 21.7 hours in this category. Applicant resolved an issue where real property was placed solely in the name of Debtor's spouse, a non-debtor, notwithstanding that it appeared to be community property. Applicant assisted Client in resolving the issue by arranging for the non-debtor spouse to quitclaim the property to himself and the Debtor. Applicant further assisted Client in monetizing the estate's interest in the property by negotiating a voluntary purchase of the estate's interest.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Reno Fernandez, Partner	0.6	\$390.00	\$234.00
Daniel E. Vankin, Associate	19.1	\$290.00	\$5,539.00

Samantha Gayle Brown, Paralegal	2	\$100.00	\$200.00
Total Fees for Period of Application			\$5,973.00

Applicant sought \$5,977.50 in fees, but upon review of Exhibit A, Applicant overcharged for the work provided on August 10, 2020. On this date, Applicant lists Daniel Vankin as the charging individual, but instead of charging the \$290.00 per hour rate as used for all other entries for this individual, \$335.00 per hour is charged. The description of work performed is a discussion between Daniel Vankin, Reno Fernandez, and Samantha Brown regarding the Motion to Approve Settlement, Dckt. 25. Seeing as how the firm is not seeking fees for time spent preparing and prosecuting the fee application, the increased rate of \$335.00 per hour on this date is understandable.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$242.65 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$1.50
Recording of Quitclaim Deed		\$115.00
Purchase copy of Quitclaim Deed		\$6.00
Postage and Outside Labor re Motion to Approve Compromise		\$120.15
Total Costs Requested in Application		\$242.65

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 \$5,977.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$242.62 are approved pursuant to 11 U.S.C. § 330 and

authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$5,977.50
Costs and Expenses	\$242.65

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 Macdonald Fernandez LLP (“Applicant”), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, (“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 Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$5,977.50
Expenses in the amount of \$242.65,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on January 1, 2021. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338.00 due on December 16, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$338.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Final Ruling: No appearance at the January 28, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on January 6, 2021. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$3.00 due on December 21, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the January 28, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on January 6, 2021. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$3.00 due on December 21, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

**MOTION APPROVE STIPULATION
GRANTING LEAVE, STANDING AND
AUTHORITY TO THE REORGANIZING
DEBTOR TO CONTINUE
PROSECUTION OF THE CLAIMS AND
CAUSES OF ACTION PENDING
AGAINST LBA RV-COMPANY XXVII,
LP IN ADVERSARY PROCEEDING
CASE NO. 20-9008
12-31-20 [\[1346\]](#)**

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.

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 (pro se), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation 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 is granted and Jeffrey Edward Arambel, the Reorganizing Debtor, is authorized to prosecute the claims and causes of action of the Plan Estate against LBA RV-COMPANY XXVII, LP, subject to the terms of the Stipulation Between Focus Management Group USA, Inc., the Plan Administrator and Jeffrey Edward Arambel.

The Plan Administrator, Focus Management Group USA, Inc. ("Movant") requests that the court approve a stipulation with Jeffrey Edward Arambel ("Debtor") which provides that Debtor has the leave, standing and authority to continue prosecution of claims and causes of action ("LBA Litigation") pending against LBA RV-COMPANY XXVII, LP ("Creditor-Defendant").

STIPULATION

Movant and Debtor stipulate to an order regarding the granting of leave, standing, and authority to the reorganizing debtor to continue prosecution of claims and causes of action pending against LBA RV-COMPANY XXVII, LP in adversary proceeding, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 1349):

- A. The Debtor shall be granted leave, standing, and authority as a fiduciary for the estate to continue to prosecute the LBA Litigation as Plaintiff on behalf of the estate, represented by St. James Law.
- B. Only the Plan Administrator has the authority to accept a settlement offer but acceptance is subject to a Rule 9019 motion, and the Debtor may oppose any such settlement.
- C. All communications between Debtor and Plan Administrator, documents, or evidence related to the litigation are protected by attorney client and work product privileges, and common interest privilege.
- D. All communications between Movant and Debtor and any documents relating to the LBA litigation shall be protected by attorney client, work product, and common interest privileges.
- E. Debtor shall be considered a representative of the estate for the purposes of Debtor's attorney client privilege and shall have the right to assert the attorney client privilege with respect to documents relating to the LBA litigation.
- F. The Court shall retain jurisdiction to hear and determine any matters and disputes arising from or related to this Stipulation.

Creditor-Defendant Opposition

Creditor-Defendant filed an Opposition on January 14, 2021. Dckt. 1353. Creditor opposes the stipulation alleging that allowing the Plan Administrator to reinstate Debtor as a fiduciary is improper after having removed Debtor for cause. Additionally, Creditor argues that the stipulation seeks approval of an impermissible determination regarding privilege over communications, documents, and/or evidence. Specifically, Creditor argues that whether something is privileged must first be validly asserted under a developed record and where the burden of proving privilege must be met. Thus, it is improper for the stipulation to include a preemptive privilege assertion.

DISCUSSION

Here, Movant stipulated that Debtor be granted leave, standing, and authority to continue prosecution of the claims and causes of action pending against LBA RV-COMPANY XXVII, LP. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 28 days' notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on the LBA Litigation that stems from a pre-petition sale in 2017 and concerns events and allegations in 2017 and early 2018 when the Debtor was solely in control of his business affairs as debtor and debtor-in-possession. The Plan expressly provided that the LBA Litigation would be prosecuted by the Debtor and the Debtor has been prosecuting that litigation since at least July 2020.

Creditor-Defendant expresses valid concerns. Debtor has been removed as a representative of the bankruptcy case. However, the Plan Administrator seeks to appoint Debtor for limited circumstances, in this case the adversary proceeding, and the Plan Administrator retains the decision making powers over the litigation. The stipulation specifically states that the Plan Administrator is the one with the power to accept any settlement offers, though Debtor may present his opposition.

The court finds that the Plan Administrator may appoint Debtor as the representative for purposes of the LBA Litigation and that such appointment is within the Plan Administrator's business judgment. Moreover, the plan specifically provides for Debtor to commence the adversary proceeding and resolve the claims. This motion having been served to the creditors in this case, an opportunity has been given for any of them to oppose Plan Administrator's request to keep Debtor as the representative in the LBA Litigation.

As to the stipulated term regarding privileged communications, the court makes clear that no determinations are being made over whether communications, documents, or evidence are subject to any of the privileges listed. While such terms are binding between the Plan Administrator and Debtor who is taking on this fiduciary responsibility to the Plan Estate, the court does not pre-determine the scope of the privilege if challenged by a party to the litigation at issue.

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 to Approve Stipulation filed by Focus Management Group USA, Inc., the Plan Administrator ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Jeffrey Edward Arambel, the Reorganizing Debtor, is authorized to act as representative for the Plan Estate under the Confirmed Chapter 11 Plan, for the Prosecution of the Claims and Causes of Action Pending Against LBA RV-Company XXVII, LP in Adversary Proceeding Case No. 20-09008 estate in the LBA Litigation, subject to the terms and conditions between the Plan Administrator and the Reorganizing Debtor stated in their Stipulation filed as Exhibit 1, Dckt. 1349, in support of the Motion.

IT IS FURTHER ORDERED, without any limitation thereto, that the court does not pre-determine any issues of privilege as may exist between the Plan Administrator, a fiduciary under the Confirmed Chapter 11 Plan, and the

Reorganizing Debtor in performing his duties as a fiduciary under the Confirmed Chapter 11 Plan in prosecuting the claims asserted in Adversary Proceeding 20-09008. All parties can be guided by their respective counsel with respect to privileges that may exist between co-fiduciaries in connection with Adversary Proceeding 20-09008.

7. [04-94131](#)-E-7 **UNIQUE HEALTHCARE** **MOTION TO ESTABLISH BAR DATE**
[FWP-19](#) **MANAGEMENT, INC.** **FOR FILING MOTIONS FOR**
David Johnston **ALLOWANCE OF CHAPTER 7**
ADMINISTRATIVE EXPENSE
12-29-20 [390]

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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on December 29, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Establish Bar Date for filing Motions for Allowance of Chapter 7 Administrative Claims 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion to establish a March 8, 2021, Bar Date for Filing Motions for Allowance of Chapter 7 Administrative Claims is granted.

The Chapter 7 Trustee, Jonathan E. Tesar (“Trustee”) for the bankruptcy estate of Jamie Unique Healthcare Management, Inc., (“Debtor”), requests an order establishing March 8, 2021, as the last date for any person to file a motion for allowance of a Chapter 7 administrative expense against the estate, except for the administrative expenses of the Trustee and his professionals (who anticipate doing additional work after the bar date in concluding administration of this estate) .

DISCUSSION

Trustee argues that the proposed bar date is necessary due the particular facts in this case.

After the instant case was converted from a Chapter 11 to a Chapter 7 case, the bankruptcy case remained open for years due to a large anticipated recovery from certain ongoing state court litigation. Although not a party to that litigation, the Trustee has a judgment lien in an amount not less than \$774,370.62 on the proceeds from that litigation for the benefit of the estate. The Trustee is entering into an agreement with certain parties involved in the state court litigation that will allow him to close this Chapter 7 case, while establishing a mechanism by which the administrative expenses will be fixed that will be paid from the proceeds of the state court litigation (if any).

The Trustee is aware of certain Chapter 7 administrative expenses that could potentially be asserted against the estate that must be paid before the Trustee can close this Chapter 7 case. This will also assist the Trustee in preparing final distribution lists to be provided under the Distribution Agreement to the parties involved in the state court litigation for an eventual final distribution to creditors. That Agreement will be the subject of a separate motion filed with the court.

Trustee proposes that he serves notice at least 30 days prior to the March 8, 2021 Administrative Expense Bar Date to the following persons and entities, or their counsel of record, if any:

- (a) all known creditors of this estate;
- (b) all potential chapter 7 administrative expense claimants reasonably known to the Trustee;
- (c) all professionals employed by the Trustee during the Administrative Claims Period pursuant to orders of the Bankruptcy Court;
- (d) those persons who have requested notice in this case;
- (e) the United States Trustee, and
- (f) such other persons or entities as this Court may direct.

Additionally, the Trustee further requests the court make the following determinations:

1. Any Chapter 7 Administrative Claim incurred, accrued, or otherwise arising in the chapter 7 case during the Administrative Claims Period (except for the claims of the Trustee and his professionals) shall be forever barred, and deemed fully and finally discharged and released to the fullest extent permitted unless a motion for payment and/or allowance of such Chapter 7 Administrative Claim is filed with the court on or before the bar date;
2. All persons are forever barred, enjoined and estopped from asserting any Chapter 7 Administrative Claim against the Debtor or the estate herein, or any of their respective successors, property or assets, to the extent incurred, accrued or otherwise arising during the Administrative Claim Period unless a motion has been timely filed;

3. Any such administrative expense claims for which a motion is not timely filed will be permitted to participate in any distribution in the within chapter 7 case on account of such Chapter 7 Administrative Claim or to receive further notices regarding such claim; and
4. A determination that the Chapter 7 Administrative Claims Bar Date service process is sufficient to satisfy due process requirements of all administrative claimants, known and unknown.

This bankruptcy case was converted to one under Chapter 7 on July 7, 2005. The Trustee is nearing the conclusion of this case and requests that the court set the deadline so that any remaining possible Chapter 7 administrative expenses are flushed out, to the extent that such administrative expenses are to be asserted.

Establishing Administrative Expense Bar Dates

The Bankruptcy Code provides in 11 U.S.C. § 503(a) that “(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.” Such presupposes that a deadline exists for the filing of such request. However, neither the Bankruptcy Code nor Federal Rules of Bankruptcy Procedure establish such a deadline.

This situation is discussed in Collier on Bankruptcy, ¶ 503.02[2] (16th Edition, 2020), which includes the following:

[2] Time for Filing a Request for Payment of an Administrative Expense

The use of the word “timely” in the introductory portion of section 503(a), along with the phrase “or may tardily file such a request if permitted by the court for cause,” provides courts with the statutory authority to set and enforce administrative claim bar dates. Neither the Bankruptcy Code nor the Bankruptcy Rules set forth a specific limitation period for the filing of administrative expense claims, so courts can exercise their discretion in setting bar dates according to the circumstances of each case.

An entity is permitted to “tardily” file a request for payment of an administrative expense “if permitted by the court for cause.” The term “cause” is not a defined term in either the Bankruptcy Code or the Bankruptcy Rules, so the kinds of “cause” sufficient to permit tardy filing of administrative expense claims is left to judicial discretion and development. In determining whether cause exists, cases construing the “for cause shown” standard of Bankruptcy Rules 3002(c)(1), 3003(c)(3) and 9006(b)(1) are relevant. For example, under those cases, defective or inadequate notice of a claims bar date is nearly always considered sufficient “cause” to permit the late filing of a proof of claim.¹⁰ Similarly, one court has ruled that because of defective notice of an administrative bar date in a chapter 11 plan, the bar date was not enforceable against the claimant.¹¹ Some courts have applied the excusable neglect standard of Bankruptcy Rule 9006(b)(1) in considering whether to allow a tardily filed request for payment of an

administrative expense.¹² Other courts have found the excusable neglect standard relevant but have analyzed cause for allowing tardy claims by considering several factors, including (1) prejudice to the claimant, (2) prejudice to other parties, in particular, the debtor, (3) the cause of the delay, (4) the length of the delay, (5) the reason for the delay and (6) whether the movant acted in good faith

Although section 503(a) does not expressly provide that tardily filed administrative expense requests are “disallowed,” the effect of not permitting the “filing” of a tardy request (except for cause) is that such expenses will not be approved for payment from the estate, because section 503(b) specifies that administrative expenses are allowed only after “notice and a hearing.” The “notice and hearing” requirement for allowance of administrative expenses is in contrast to the “deemed” allowance provision of section 502(a) respecting proofs of claim. . . .

[The court acknowledges that Colliers has melded the term Administrative Expense as provided in 11 U.S.C. § 503 with the statutory definition of a “claim” as provided in 11 U.S.C. § 101(10). However, that melding does not make the changing of a statutorily defined term into something that it is not correct. See discussion below.]

The *Fifth Circuit Court of Appeals in Hall Fin. Group v. DP Partners, Ltd. Pshp. (In re DP Partners, Ltd. Pshp.)*, 106 F.3d 667, 671 (5th Cir. 1997), citing back to the then above section in Collier, stated that since there is not a statutory or rule deadline for requesting the allowance of an administrative expense, “As a result, bankruptcy judges have, for some time, been accorded discretion in setting administrative-claim bar-dates.” The authority to set a bar date is included in the general power given to the bankruptcy judge in 11 U.S.C. § 105(a):

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The Trustee has established the need for an order setting a Chapter 7 administrative expense bar date. The Trustee knows the claims that have been filed, and now must have a definitive number for Chapter 7 administrative expenses in wrapping up this case by, presumably, liquidating the estate’s rights secured by the judgment lien.

Based on the evidence before the court, the court determines that the proposed deadline establishing a Chapter 7 Administrative Expense Bar Date is reasonable and necessary. A review of the creditors listed in this case shows almost 100 creditors. Due to the length of the administration of this case, it is logical and reasonable to provide setting such a bar date.

In addition to setting the Bar Date, Movant requests that the court issue prospective

determinations that administrative expenses requested by motion after the bar date are barred, discharged, and that the court issue prohibitory injunctions against anyone seeking relief after the bar date. No authority is provided for the issuance of such prospective adjudications or injunctions against unidentified persons.

The authorities clearly provide that while the request for an administrative request must be timely filed, statutory provision is made for a tardily filed request. 11 U.S.C. § 503(a). For the court to purport to order that the provision of 11 U.S.C. § 503(a) as they relate to a tardily filed request for an administrative expense appears to be consistent with “Carry[ing] out the provisions of this title.”

Proposed Notice of Deadline

The Trustee has proposed a Notice Form to be used in providing notice of the deadline. Exhibit A, Dckt. 393. The court notes a couple concerns with the form.

First, as in the Motion and supporting pleadings, reference is made to “Administrative Claims.” 11 U.S.C. § 503 provides for a person requesting and the court allowing an “Administrative Expense.” The references in the Notice form to “Administrative Claims” shall be changed to “Administrative Expense.”

Second, in the first paragraph it is stated that the bar date is for the allowance of an administrative expense “against Unique Healthcare Management, Inc. (the “Debtor”). The Administrative Expenses provided for in 11 U.S.C. § 503 are not obligations owed by or incurred against the Debtor, but are obligations of the bankruptcy estate. An attorney representing the Trustee in seeking the allowance of fees and expenses is not seeking to assert an obligation against the Debtor. The reference shall be changed to something like: “motion for approval of Chapter 7 Administrative Expense (as defined herein) in this Unique Healthcare Management, Inc. (the “Debtor”).”

In the paragraph following the names and addresses for counsel for the Trustee and the U.S. Trustee, it is stated that “FAILURE OF A CREDITOR WHO IS THE HOLDER OF A CHAPTER 7 ADMINISTRATIVE [EXPENSE] . . .” The term “Creditor” is statutorily defined by Congress in 11 U.S.C. § 101(10) to be: a person who holds:

- an obligation owed by the Debtor which arose at the time or prior to the bankruptcy case being commenced;
- an obligation arising after the filing of a Chapter 11, 12, or 13 case but prior to conversion of that case to Chapter 7, which would not be an administrative expense under 11 U.S.C. § 503 (11 U.S.C. § 348(d));
- an obligation arising in an involuntary case prior to the entry of the order for relief, arising from the rejection of a lease, executory contract, or specified securities agreements, the avoided transfer of property, and specified tax claims (11 U.S.C. §§ 502(g), (h), (i)).

The Motion seeks a Bar Date for Chapter 7 Administrative Expenses allowable under 11 U.S.C. § 503(b) and 507(a)(2), which are not “claims” held by “creditors,” but Administrative Expenses. The

term “Creditor” being used to describe a person seeking allowance of an Administrative Expense shall be changed to something like “Person asserting the right to a Chapter 7 Administrative Expense. . . .”

In the above paragraph and the next to last paragraph of the Notice it states that the [Person asserting the right to a Chapter 7 Administrative Expense] and their agents and attorneys have an obligation to “submit” the Chapter 7 Administrative Expense. They are not “submitting” an expense, such as when a creditor merely files a claim, but must file a motion and supporting evidence for the allowance of an Administrative Expense. The “submit” language is potentially confusing and inconsistent with the obligation to file a motion and supporting evidence.

Also, in the second to last paragraph of the Notice, it is stated that failure to meet the bar date will cause the Administrative Expense to be “FOREVER BARRED AND DISALLOWED” without further notice or hearing. As discussed in Collier, the 11 U.S.C. § 503 Administrative Expense process is for the timely allowance of the Administrative Expense, not the “disallowing” of the presumptively valid (as is a proof of claim) Administrative Expense. This reference to “FOREVER BARRED AND DISALLOWED” shall be deleted from the Notice form.

It may be that in tweaking the above language, rather than stating “FOREVER BARRED AND DISALLOWED,” a first draft of language more consistent with the Bankruptcy Code may be, “FAILURE TO TIMELY FILE AND SET FOR HEARING A MOTION FOR ALLOWANCE OF AN ADMINISTRATIVE EXPENSE WILL RESULT IN SUCH POSSIBLE ADMINISTERED EXPENSE NOT BEING PAID BY THE TRUSTEE IN THIS CASE.”

The Motion requesting the Chapter 7 Administrative Expense Bar Date of March 8, 2021 is granted. The Trustee shall provide notice of such at least thirty days prior to March 8, 2021.

Additionally, the court’s order shall expressly state that for any such Administrative Expense for which a motion is not timely filed, or as otherwise permitted pursuant to 11 U.S.C. § 503(a), will not be permitted to participate in any distribution in the within chapter 7 case on account of such Chapter 7 Administrative Expense.

No other relief is granted.

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 to set a Chapter 7 Administrative Expense bar date filed by Jonathan E. Tesar, the Chapter 11 Trustee 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 Motion is granted, and the last date for filing a motion for allowance of a Chapter 7 administrative expense in this case is March 8, 2021.

IT IS FURTHER ORDERED that the Trustee shall serve notice of the deadline on (a) all known creditors of this estate; (b) all persons with potential chapter 7 administrative expenses reasonably known to the Trustee; (c) all professionals employed by the Trustee during the Administrative Expense Period pursuant to orders of the Bankruptcy Court; (d) those persons who have requested notice in this case; and (e) the United States Trustee.

IT IS FURTHER ORDERED that any such Administrative Expense for which a motion is not timely filed, or as otherwise permitted by 11 U.S.C. § 503(a), will not be permitted to participate in any distribution in the within chapter 7 case on account of such Chapter 7 Administrative Expense.

No further relief is granted.