

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**February 2, 2017, at 10:30 a.m.**

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1. <a href="#"><u>12-34203-E-7</u></a> HCS-8	WATSON VENTURES, LLC Pro Se	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE & SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S) 12-19-16 <a href="#"><u>[190]</u></a>
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**No Tentative Ruling:** The Motion Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees 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

**February 2, 2017, at 10:30 a.m.**

**- Page 1 of 16 -**

parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Allowance of Professional Fees is ~~XXXXXXXXXXXX~~.**

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Alan Fukushima, the Chapter 7 Trustee ("Client"), makes a Second Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2016, through February 2, 2017. *See* Exhibit A, Dckt. 194. The initial order of the court approving employment of Suntag, before merging with Herum and Crabtree, was entered on January 5, 2013. Dckt. 62. After merger, the order of the court approving employment of Applicant in its current form was entered on July 1, 2014. Dckt. 94. By order of April 15, 2016, the court awarded applicant \$27,500.00 inclusive of fees and final costs pursuant to its first and final application for compensation. Dckt. 147.

Applicant has not been re-employed by the court since that time. Applicant requests fees in the amount of \$4,808.00 and costs in the amount of \$136.61.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

A professional must be authorized to be employed by the trustee to be entitled to receive any compensation. 11 U.S.C. §§ 327, 330, 331; *Atkins v. Wain*, 69 F.3d 970, 973 (9th Cir. 1995). Here, the court authorized the Trustee to employ counsel. On March 16, 2016, Applicant filed a First and Final Application for Compensation for services provided to the Chapter 7 Trustee in this case. Dckt. 137. The court granted that Motion making a *final* award of professional fees in this case for Applicant serving as counsel for the Chapter 7 Trustee.

In the current Motion, Applicant styles this as "Second and Final Application for Compensation." Dckt. 190. Applicant does not provide an explanation as to how there are *two final* applications that can be made for fees pursuant to 11 U.S.C. § 330. Applicant does say that after the final fees were approved the Trustee requested that additional work be done.

Considering the "plain meaning" of the word final, the court considers the Merriam-Webster Dictionary, which include the following definitions:

- 1 a : not to be altered or undone <all sales are final>  
b : of or relating to a concluding court action or proceeding <final decree>
- 2 : coming at the end  
: being the last in a series, process, or progress <the final chapter> <final exams>

<https://www.merriam-webster.com/dictionary/final>.

Congress provides for a non *final* request for fees by a professional in 11 U.S.C. § 331—allowance of interim compensation. However, the prior fee application was not for interim compensation, but for *final* compensation. The significance of seeking interim compensation is that the judge may grant interim compensation, but such an order is not *final*, and the reasonableness and appropriateness of the total compensation for the professional employed by the trustee is considered at the time of the final application of fees.

In creating a Second Final Application, Applicant makes reference to certain facts that may warrant this court amending its prior final order for fees into an interim order or provide an order retroactively authorizing the employment by counsel to do further work for the Trustee. But such relief must be sought, and a professional must not merely “gut” the provisions of 11 U.S.C. § 331 and § 330 by making a series of *final* fee applications. FN.1.

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FN.1. To be clear, the court does not believe that Applicant was engaging in such a scheme or attempting to thwart the will of Congress as provided in 11 U.S.C. §§ 330 and 331. However, the rules and procedures apply equally to all professionals and must be enforced—even among the vast majority of professionals who work in good faith and deliver a cost-effective, beneficial product to trustees and bankruptcy estates.  
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Applicant makes reference in the Application to the Trustee requesting services of counsel to object to a claim filed by Greg Watson for administrative expenses. Proof of Claim No. 10. Objecting to that claim are the services to which the fees relate.

The court sustained the Objection to Claim. Dckt. 168. As noted in the Civil Minutes from the hearing on the Objection to Claim, the request for administrative expenses was not the proper basis for asserting a claim in this bankruptcy case. Dckt. 164. Notwithstanding the substantive issues concerning the expenses, the court sustained the objection without prejudice to allow Mr. Watson time for filing a motion for allowance of an administrative expense.

Mr. Watson came back and filed a Motion for Allowance of Administrative Expenses (Dckt. 159), for which Applicant filed an opposition for the Chapter 7 Trustee (Dckt. 170). Mr. Watson requested \$11,185.65 in administrative expenses. The court denied the Motion for Allowance of Administrative Expenses. Order, Dckt. 178. In denying that Motion, the court identified several deficiencies: (1) Mr. Watson’s failure to carry his burden of proof; (2) failure to provide evidence, and (3) failure to provide English translation of documents provided as exhibits. Civil Minutes, Dckt. 176. The court notes in the Civil Minutes prior conduct of Mr. Watson the court found “troubling,” including an attempted purchase of property of the estate from the Trustee.

### **Grounds for “Second” Final Fees**

At the hearing, Applicant addressed the issue of there being a final fee order in this case, stating,  
**XXXXXXXXXXXXXXXXXXXXXXX.**

## **Review of Statutory Grounds For Allowance of Fees For Professional Employed by Trustee**

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). 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.

The Supreme Court has held that 11 U.S.C. § 330 does not authorize compensation from bankruptcy estate funds unless a court has authorized employment according to 11 U.S.C. § 327. *Lamie v. United States Tr.*, 540 U.S. 526, 538–39 (2004).

## **Benefit to the Estate**

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery.” *Id.* at 958. 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including assisting Client in objecting to Greg Watson’s of Watson Ventures, LLC (“Debtor”) claim for administrative expenses by filing a motion opposing Debtor’s motion seeking approval of his alleged administrative expenses, and filing a successful motion to establish a claims bar date for administrative expenses. The Estate has \$31,853.03 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable. On April 25, 2016, this Court granted Applicant’s first and final application for compensation, in the reduced amount of \$27,500.00. Dckt. 147. This application is solely for the additional legal issues that arose requiring further legal services from Applicant.

## **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.

Objection to Claim for Administrative Expenses: Applicant spent 23.2 hours in this category. Applicant reviewed Debtor’s claim and assisted Client in preparing an Objection to Debtor filing for administrative expenses. Applicant also advised Client on matters regarding the procedural improprieties and legal insufficiency of the claim. Applicant assisted in preparing a motion to set the bar date for the filing of administrative claims. Debtor then filed a separate motion for administrative expenses, and Applicant

reviewed that motion and prepared an opposition. When Client failed to serve timely notice of the previous administrative expense claims bar date, Applicant filed a motion to re-establish the bar date.

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:

<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>
Dana Suntag, attorney	4.4	\$345.00	\$1,518.00
Benjamin Codog, attorney	18.8	\$175.00	\$3,290.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			<b>\$4,808.00</b>

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$136.61 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage		\$23.60
Copying	\$0.10	\$30.61
CourtCall		\$82.40
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$136.61</b>

## FEES AND COSTS & EXPENSES NOT ALLOWED

Applicant's first Motion for Allowance of Professional Fees clearly states that it is a "first and final fee application . . . of \$27,500.00 (all-inclusive of fees and costs)." Dckt. 137. The court granted that motion and entered its order on April 15, 2016. Dckt. 147. At that time, Applicant had been compensated for its work for the estate and was no longer employed in this case. Since then, Applicant has not sought court approval to be re-employed in this case. As the Supreme Court has stated, if an "attorney is to be paid from estate funds under § 330(a)(1) in a chapter 7 case, he must be employed by the trustee and approved by the court." *Lamie v. United States Tr.*, 540 U.S. 526, 538–39 (2004).

Second, Applicant has not provided the court with any authority for granting it a second award of final fees in this case. Applicant alleges that "additional legal issues arose" after being granted its first and final fees. Dckt. 190. Despite that allegation—and a declaration sworn under penalty of perjury that the Trustee does not object to another award of fees—Applicant has not presented the court with any grounds for such an additional award outside of the Bankruptcy Code's statutory scheme.

If Applicant's first application had been for an award of interim fees under 11 U.S.C. § 331, then this Motion could be for final fees under 11 U.S.C. § 330. Nevertheless, Applicant classified both applications as "final," which triggers the provisions of 11 U.S.C. § 330, despite Applicant not actually mentioning 11 U.S.C. § 330 in either motion. *Compare* Dckt. 137, *with* Dckt. 190.

Applicant has requested an inappropriate award of final fees because this court has awarded final fees to Applicant already. *See* Dckt. 147. Therefore, this Motion for final fees is denied.

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 Herum\Crabtree\Suntag ("Applicant"), Attorney for the 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 denied, the court having awarded final fees to Applicant already on April 15, 2016. Dckt. 147.

2.

[15-29147](#)-E-13  
RK-2

JOHN QUIROZ  
Richard Kwun

CONTINUED OBJECTION TO CLAIM OF  
PATRICIA COSTLEY, CLAIM NUMBER  
2  
2-20-16 [\[51\]](#)

**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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Court-Set Hearing Date—No Hearing Required.

Correct Notice Not Provided. At the November 17, 2016 hearing, the court set this matter for hearing at 10:30 a.m. on February 2, 2017. Dckt. 131. The court ordered Debtor to file and serve notice of the continued hearing on or before December 8, 2016. No notice has been filed and served.

The Objection to Proof of Claim was not properly set for hearing by the court's order of November 30, 2016. Dckt. 131. The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

**The Objection to Proof of Claim Number 2 of Patricia Costley is overruled as moot, said Proof of Claim having been withdrawn by Creditor.**

John Quiroz, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Patricia Costley ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case.

The court notes that Debtor failed to file and serve notice of this continued hearing as ordered by the court. Debtor did provide notice for a Continued Omnibus Objection to Claims (RK-3), but nothing has been provided relating to this Objection. Nevertheless, and fortunately for Debtor, a Notice of Withdrawal of Claim for the claim at issue was filed on October 2, 2016.

The Claim having been withdrawn, the Objection is overruled as moot.

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 Objection to Claim of Patricia Costley, Creditor filed in this case by John Quiroz, the Chapter 13 Debtor 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 Objection to Proof of Claim Number 2 of Patricia Costley is overruled as moot, the Claim having been withdrawn on October 2, 2016.

3.

**15-29147-E-13  
RK-3**

**JOHN QUIROZ  
Richard Kwun**

**CONTINUED OMNIBUS OBJECTION  
TO CLAIMS  
2-27-16 [66]**

**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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Court-Set Hearing Date—Hearing Required.

Correct Notice Not Provided. At the November 17, 2016 hearing, the court set this matter for hearing at 10:30 a.m. on February 2, 2017. Dckt. 131. The court ordered Debtor to file and serve notice of the continued hearing on or before December 8, 2016. Debtor served notice of the hearing to the Chapter 13 Trustee, Patricia Costley, and Sean Jones on December 7, 2016, but Debtor listed an incorrect hearing time of 3:00 p.m. Dckt. 183.

The Objection to Proof of Claim was not properly set for hearing by the court's order of November 30, 2016. Dckt. 131. The Debtor, Creditors, the 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.

**The Objection to Proof of Claim Number 3 of Connor Quiroz is overruled as moot.**

**The Objection to Proof of Claim Number 5 of Michael Quiroz is overruled as moot.**

**The Objection to Proof of Claim Number 4 of Sean Jones is sustained.**

John Quiroz, the Chapter 13 Debtor ("Objector") requests that the court disallow the claims of Connor Quiroz, Michael Quiroz, and Sean Jones ("Creditors"), Proofs of Claim Nos. 3–5 ("Claims"), Official Registry of Claims in this case. Each Claim is asserted to be priority unsecured in the amount of \$1,500.00.

On October 2, 2016, Notices of Withdrawal of Claim were filed for Claims 3 and 5. Accordingly, the Objection to those claims is overruled as moot, the claims having been withdrawn.

As to Claim 4, the remaining claim, Objector asserts that a stipulation in state court relinquished the claim and that the claim lacks sufficient documentation to be valid. Debtor presents evidence that a stipulation was entered in state court. *See* Dckt. 121. That stipulation was signed by the parties and the Superior Court judge.

Debtor argues that a claim is a right to payment under 11 U.S.C. § 101(5)(A) and that “[s]tate law determines whether a particular right, power or interest is ‘property’ and the nature and extent of the debtor’s interest therein.” Dckt. 135 (citing *Butner v. United States*, 440 U.S. 48, 54 (1979)). Debtor argues that Patricia Costley filed Claim 4 on behalf of Sean Jones when he was a minor, and therefore, she was able to withdraw the claim. In the state court-approved stipulation, Patricia Costley agreed to withdraw the claims in this bankruptcy case, and there is no mention of any remaining claim.

Debtor’s second ground for opposing Claim 4 is that it does not have any attached documentation. Debtor asserts that “[a] proof of claim filed without sufficient documentation lacks prima facie validity and will not survive objection absent an adequate response by the creditor.” Dckt. 135 (citing *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 432 (B.A.P. 9th Cir. 2005)).

As an addition to his second ground, Debtor also argues that the defense of laches applies because Sean Jones has not filed anything since filing an amended claim on January 15, 2016, a delay that Debtor asserts is unreasonable.

## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The Bankruptcy Appellate Panel has affirmed the following stance regarding a proof of claim’s validity:

[A] creditor who files a proof of claim that lacks sufficient support under [Federal Rule of Bankruptcy Procedure] 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor. Moreover, a creditor’s lack of adequate response to a debtor’s formal or informal inquiries “in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)’s grounds to disallow the claim.”

*Campbell*, 336 B.R. at 436 (citing *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

Federal Rule of Bankruptcy Procedure 3001(c) requires a copy of the underlying writing securing a claim to be filed with a proof of claim. Proof of Claim 4, as amended by Sean Jones, does not include any attached writing as support for the claim. The Proof of Claim states, though, that it is based on a “Final Divorce Judgement Dated 8/28/13 Order Confirmed in Tentative Rule & Proposed Statement of Decision 6/30/14.” The state court stipulation contains an agreement that the parties do not owe any money under those rulings, and “[a]ll claims and issues that either party may have against the other pursuant to the Tentative Ruling to Proposed Statement of Decision, Marital Settlement Agreement Filed Order dated 8/28/2013, and all RFO’s filed by either party since October 1, 2013, in the family law case will be dropped. No open issues and expenses exist as of the date of this signing.”

Sean Jones has not provided any support for Proof of Claim 4, and the state court stipulation discusses Claim 4’s underlying documents, stating that any issues under those documents have been resolved.

Based on the evidence before the court, the creditor’s Claim No. 4 is disallowed in its entirety. The Objection to the Proof of Claim No. 4 is sustained.

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 Omnibus Objection to Claims of Connor Quiroz, Michael Quiroz, and Sean Jones, Creditor filed in this case by John Quiroz, the Chapter 13 Debtor 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 Objection to Proof of Claim Number 3 of Connor Quiroz is overruled as moot, the claim having been withdrawn.

**IT IS ORDERED** that the Objection to Proof of Claim Number 5 of Michael Quiroz is overruled as moot, the claim having been withdrawn.

**IT IS ORDERED** that the Objection to Proof of Claim Number 4 of Sean Jones is sustained, and the claim is disallowed in its entirety.

**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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2016. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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, -----.

<p><b>The Motion to Employ is granted.</b></p>
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Gary Steingroot, the Debtor in Possession, seeks to employ Counsel The Bankruptcy Group, P.C., pursuant to Local Bankruptcy Rule 2014-1 and Bankruptcy Code Section 327(a). The Debtor in Possession seeks the employment of Counsel to assist the Debtor in Possession with legal services in this case.

The Debtor in Possession argues that Counsel's appointment and retention is necessary to enable Debtor in Possession to faithfully execute his duties and to implement the restructuring and reorganization of Debtor in Possession.

Stephan Brown, a shareholder of The Bankruptcy Group, P.C., testifies that he is representing that there is no conflict of interest and that the firm is a disinterested person. Stephan Brown testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ The Bankruptcy Group, P.C. as counsel for the Debtor in Possession on the terms and conditions set forth in the Stephan Brown declaration. *See* Dckt. 26. The approval of the hourly fees is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by the Debtor in Possession 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 to Employ is granted, and the Debtor in Possession is authorized to employ The Bankruptcy Group, P.C. as counsel for the Debtor in Possession on the terms and conditions as set forth in the Stephan Brown declaration. Dckt. 26.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

5. [14-29284-E-7](#) **CHARLES MILLS**  
**KJH-2** **Lucas Garcia**

**MOTION FOR ADMINISTRATIVE  
EXPENSES  
1-5-17 [465]**

**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.

Correct 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, parties requesting special notice, and Office of the United States Trustee on January 5, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Administrative Expense was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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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<b>The Motion for Approval of Administrative Expense is granted.</b>
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Kimberly Husted, the Chapter 7 Trustee, requests authorization to pay \$4,250.00 to the Internal Revenue Service for income taxes incurred by the estate that become due and owing post-petition. The Trustee reports that she is holding approximately \$145,000.00. The Trustee asserts that the amount owed is for the tax year that ended December 31, 2016.

## **DISCUSSION**

Section 503(b)(1) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . . .”

The Trustee having presented sufficient evidence of an administrative expense for income taxes from the calendar year ending December 31, 2016, and having requested allowance of the expense, the Motion 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 for Allowance of Administrative Expense filed by Chapter 7 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 Trustee is authorized to pay \$4,250.00 to the Internal Revenue Service for income taxes coming due for the calendar year ending December 31, 2016.