

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 14, 2024 at 10:30 a.m.

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- | | | |
|---|---|--|
| 1. 23-23620-E-11
GEL-1 | ROBERT P. OBREGON DDS
INC.
Gabriel Liberman | CONTINUED MOTION TO USE CASH
COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION , CHAPTER
11 FIRST DAY MOTION
10-13-23 [9] |
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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.

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Office of the United States Trustee and all creditors and parties in interest on October 13, 2023. By the court’s calculation, 4 days’ notice was provided. The court set the hearing for October 17, 2023. Dckt. 15.

The Motion to Use Cash Collateral and Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, 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. .

<p>The Motion for Authority to Use Cash Collateral is granted, and the hearing is continued to xxx x.m. on xxxx, 2024.</p>
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March 14, 2024 Hearing

On February 29, 2024, Robert P. Obregon, DDS, Inc., the Debtor/Debtor in Possession filed a Supplemental Document (Docket 111) and updated proposed cash collateral budget (Exhibit A, Docket 112) for the months of April, 2024 through August, 2024. Debtor informs that court that “[t]he DIP Budget contemplates expenditures generally in line with the prior cash collateral Budget, with the exception of the reduction of the principal’s officer salary from \$18,000 down to \$14,000.00/month.” Docket 111, ps. 2:24-3:2. The updated proposed cash collateral budget is as follows:

	Interim Budget				
	Apr-24	May-24	Jun-24	Jul-24	Aug-24
Ordinary Income/Expense					
Income					
5010 · Income	\$ 85,000.00	\$ 85,500.00	\$ 86,000.00	\$ 86,500.00	\$ 87,000.00
5200 · Refunds	\$ (463.87)	\$ (463.87)	\$ (463.87)	\$ (463.87)	\$ (463.87)
5300 · Interest Income	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.01
Total Income	\$ 84,536.14	\$ 85,036.14	\$ 85,536.14	\$ 86,036.14	\$ 86,536.14
Expense					
7510 · Officer Salary	\$ 14,000.00	\$ 14,000.00	\$ 14,000.00	\$ 14,000.00	\$ 14,000.00
7550 · Salaries & Wages	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89
7650 · Bank Charges/Merchant Fees	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68
7780 · Dues-Building Association	\$ 647.34	\$ 647.34	\$ 647.34	\$ 647.34	\$ 647.34
7790 · Dues & Subscriptions	\$ 149.83	\$ 149.83	\$ 149.83	\$ 149.83	\$ 149.83
7850 · Finance Charges	\$ 174.90	\$ 174.90	\$ 174.90	\$ 174.90	\$ 174.90
7900 · Insurance	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17
7910 · Insurance - Medical	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00
7970 · Adequate Protection Payments	\$ -	\$ -	\$ -	\$ -	\$ -
7971 · First Montana Bank	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85
7973 · Wells Fargo	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23
7974 · Community Bank	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
7976 · Five Star Bank	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
7978 · Bankers Sharegroup/2022	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
SBA EIDL Loan	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
Total Adequate Protection Payments	9,211.08	9,211.08	9,211.08	9,211.08	9,211.08
Ascentium Capital - Equipment Loan	\$ 315.82	\$ 315.82	\$ 315.82	\$ 315.82	\$ 315.82
8020 · Legal & Accounting	\$ 183.59	\$ 183.59	\$ 183.59	\$ 183.59	\$ 183.59
8030 · Janitorial	\$ 637.50	\$ 637.50	\$ 637.50	\$ 637.50	\$ 637.50
8050 · Laboratory Fees	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60
8100 · Office Supplies	\$ 561.77	\$ 561.77	\$ 561.77	\$ 561.77	\$ 561.77
8125 · Payroll Taxes	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00
8126 · Payroll Fees	\$ 547.26	\$ 547.26	\$ 547.26	\$ 547.26	\$ 547.26
8130 · Pension Expense					
8190 · Postage	\$ 119.30	\$ 119.30	\$ 119.30	\$ 119.30	\$ 119.30
	Apr-24	May-24	Jun-24	Jul-24	Aug-24
8305 · Security	\$ 91.27	\$ 91.27	\$ 91.27	\$ 91.27	\$ 91.27
8310 · Supplies - Dental	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89
8460 · Taxes & Licenses	\$ 289.38	\$ 289.38	\$ 289.38	\$ 289.38	\$ 289.38
8550 · Telephone	\$ 283.80	\$ 283.80	\$ 283.80	\$ 283.80	\$ 283.80
8600 · Utilities	\$ 883.83	\$ 883.83	\$ 883.83	\$ 883.83	\$ 883.83
Total Expense	74,969.87	74,969.87	74,969.87	74,969.87	74,969.87
Net Ordinary Income	9,566.28	10,066.28	10,566.28	11,066.28	11,566.28
Net Income	9,566.28	10,066.28	10,566.28	11,066.28	11,566.28

Review of the Motion

Robert P. Obregon, DDS, Inc., the Debtor/Debtor in Possession, moves for an order approving the use of cash collateral in the form of bank deposits, account receivables and proceeds received from the disposition of sales in the ordinary course of business. Debtor/Debtor in Possession requests the use of cash collateral to operate its daily business, including to pay employees and vendors, and to meet other daily obligations. Declaration, Dckt. 12.

10/09/23
Cash Basis

ROBERT OBREGON, DDS, INC.
Profit & Loss
Interim Budget

	Interim Use	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24
Ordinary Income/Expense						
Income						
5010 · Income	\$ 106,162.00	\$ 106,162.00	\$ 107,162.00	\$ 108,162.00	\$ 109,162.00	\$ 110,162.00
5200 · Refunds	\$ (463.87)	\$ (463.87)	\$ (463.87)	\$ (463.87)	\$ (463.87)	\$ (463.87)
5300 · Interest Income	0.01	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.01
Total Income	\$ 105,698.14	\$ 105,698.14	\$ 106,698.14	\$ 107,698.14	\$ 108,698.14	\$ 109,698.14
Expense						
7510 · Officer Salary	\$ -	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00
7550 · Salaries & Wages	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89	\$ 28,032.89
7650 · Bank Charges/Merchant Fees	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68	\$ 1,330.68
7780 · Dues-Building Association	\$ 647.34	\$ 647.34	\$ 647.34	\$ 647.34	\$ 647.34	\$ 647.34
7790 · Dues & Subscriptions	\$ 149.83	\$ 149.83	\$ 149.83	\$ 149.83	\$ 149.83	\$ 149.83
7850 · Finance Charges	\$ 174.90	\$ 174.90	\$ 174.90	\$ 174.90	\$ 174.90	\$ 174.90
7900 · Insurance	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17	\$ 1,266.17
7910 · Insurance - Medical	\$ 4,901.94	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00
7970 · Adequate Protection Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7971 · First Montana Bank	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85
7973 · Wells Fargo	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23
7974 · Community Bank	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
7976 · Five Star Bank	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
7978 · Bankers Sharegroup/2022	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
SBA EIDL Loan	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
Total Adequate Protection Payments	9,211.08	9,211.08	9,211.08	9,211.08	9,211.08	9,211.08
Ascentium Capital - Equipment Loan	\$ 315.82	\$ 315.82	\$ 315.82	\$ 315.82	\$ 315.82	\$ 315.82
8020 · Legal & Accounting	\$ 183.59	\$ 183.59	\$ 183.59	\$ 183.59	\$ 183.59	\$ 183.59
8030 · Janitorial	\$ 637.50	\$ 637.50	\$ 637.50	\$ 637.50	\$ 637.50	\$ 637.50
8050 · Laboratory Fees	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60	\$ 3,522.60
8100 · Office Supplies	\$ 561.77	\$ 561.77	\$ 561.77	\$ 561.77	\$ 561.77	\$ 561.77
8125 · Payroll Taxes	\$ 3,506.84	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00
8126 · Payroll Fees	\$ 547.26	\$ 547.26	\$ 547.26	\$ 547.26	\$ 547.26	\$ 547.26
8130 · Pension Expense	\$ 2,381.64					
8190 · Postage	\$ 119.30	\$ 119.30	\$ 119.30	\$ 119.30	\$ 119.30	\$ 119.30
8305 · Security	\$ 91.27	\$ 91.27	\$ 91.27	\$ 91.27	\$ 91.27	\$ 91.27
8310 · Supplies - Dental	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89	\$ 2,820.89
8460 · Taxes & Licenses	\$ 289.38	\$ 289.38	\$ 289.38	\$ 289.38	\$ 289.38	\$ 289.38
8550 · Telephone	\$ 283.80	\$ 283.80	\$ 283.80	\$ 283.80	\$ 283.80	\$ 283.80
8600 · Utilities	\$ 883.83	\$ 883.83	\$ 883.83	\$ 883.83	\$ 883.83	\$ 883.83
Total Expense	61,860.28	78,969.87	78,969.87	78,969.87	78,969.87	78,969.87
Net Ordinary Income	43,837.86	26,728.28	27,728.28	28,728.28	29,728.28	30,728.28
Net Income	43,837.86	26,728.28	27,728.28	28,728.28	29,728.28	30,728.28

Debtor/Debtor in Possession proposes to use cash collateral for the following expenses:

Debtor/Debtor in Possession proposes that the cash collateral be approved with a 15% variance in each category and that remaining funds be retained by Debtor/Debtor in Possession. Dckt. 9.

The Debtor/Debtor in Possession identifies the following creditors having claims for which they assert a lien against the cash collateral which Debtor/Debtor in Possession seeks to use:

Date UCC Financing Statement Filed	Creditor	Estimated Claim
8/18/2015	Wells Fargo Bank, N.A. (Additional Collateral 8035 Madison Ave #G1 Property)	(\$604,961)
12/13/2017	First Montana Bank (Additional Collateral, all of Debtor's personal property business assets)	(\$40,646)
12/17/2018	Community Bank and Trust Company (Additional Collateral, all of Debtor's personal property business assets)	(\$85,576)
12/3/2019	Five Star Bank (Additional Collateral, all of Debtor's personal property business assets)	(\$224,235)
5/5/2020	Small Business Administration (EIDL) (Additional Collateral, all of Debtor's personal property business assets)	(\$499,000)
5/18/2022	Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C (Additional Collateral, all of Debtor's personal property business assets)	(\$309,628)
		=====
	Total Claims Secured By The Cash Collateral	(\$1,764,046)

In the Motion, Debtor/Debtor in Possession does not identify how much cash collateral exists as of the filing of this Bankruptcy Case and what accounts receivable exist as of the filing of this Bankruptcy Case for which the proceeds thereof would be cash collateral.

Debtor has filed Schedules in this Bankruptcy Case identifying its assets. Dckt. 1. The information provided therein as relates to the present Motion is:

- A. Schedule A/B, Part 9 - Real Property; Dckt. 1 at 14.
 - 1. 8035 Madison Ave, Suite #G1.....\$650,000
 - 2. On Schedule D, Wells Fargo Bank, N.A. is listed as the only Creditor, with the above (\$604,000) claim, as having a lien on this real property.

- B. Schedule A/B, Real Property; *Id.* at 11
 - 1. Wells Fargo Bank Account, Checking.....\$ 10,000
 - 2. Accounts Receivable, Collectable.....\$ 8,137
 - 3. An additional \$3,599 of accounts receivable are stated to be “doubtful or uncollectible.”
 - 4. Office Supplies.....\$1,000
 - 5. Dental Supply Inventory.....\$ 8,000
 - 6. Office Furniture and Equipment
 - a. Furniture.....\$ 5,000
 - b. Office Lights.....\$ 500
 - c. Computers, Software, Printer, Scanner.....\$15,000
 - d. Dental Scanner Equipment.....\$15,000

Reviewing the above, it appears that the Cash Collateral at issue is the \$10,000 in the checking account and the \$8,137 in accounts receivable as those monies are collected. The Bankruptcy Code defines “cash collateral” to be:

§ 363. Use, sale, or lease of property

(a) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a). Congress provides in 11 U.S.C. § 522 the post-petition effect of a pre-petition lien granted to a creditor.

§ 552. Postpetition effect of security interest

(a) Except as provided in subsection (b) of this section, **property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.**

(b)

(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then **such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law**, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 522 (emphasis added). See 5 Collier on Bankruptcy ¶ 522.02 for discussion of newly acquired property post-petition not being encumbered by pre-petition lien (unless they constitute proceeds, products, offspring, or profits of pre-petition collateral).

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

This Bankruptcy Case was filed on October 13, 2023, and the present Motion is an emergency “First Day Motion” to obtain the authorization to use cash collateral on little notice so that the business of the bankruptcy estate can continue to operate pending a regularly notice hearing.

Debtor/Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use allows Debtor/Debtor in Possession to run its business in the ordinary course.

The amount of the cash collateral to be used is, based on Debtor’s Schedules, to approximately \$26,000 (including the \$8,000 for dental supplies that may be used to generate post-petition receipts and receivables).

The Motion proposes to make substantial payments of \$9,211 monthly to the creditors having an interest in the possible \$26,000 in cash collateral. It appears that in less than three months these creditors would be paid the full value of any cash collateral.

At the hearing, the court addressed these initial issues with the counsel for the dip, the Subchapter V Trustee, and counsel for the U.S. Trustee. The court authorizes the use of the cash collateral for the interim period shown on the cash collateral budget, and gives the creditors having liens in the cash collateral used during that period replacement lien in post-petition cash, accounts receivable, and other newly acquired property of the bankruptcy estate of the kind provided for in their respective security agreements for the diminution in their pre-petition cash collateral through the authorized use of cash collateral during the interim period.

The hearing on this Motion is continued to 10:30 a.m. on November 8, 2023, for further hearing. On or before November 2, 2023, written opposition to the Motion shall be filed and served. Responses to any opposition may be presented orally at the hearing.

November 8, 2023 Hearing

Debtor in Possession lodged with the court its interim Order, which the court approved, on October 20, 2023. Interim Order, Dckt. 25. A review of the Docket on November 3, 2023 reveals that no written opposition to Debtor in Possession's Motion has been filed.

At the hearing, no opposition was presented and the Subchapter V Trustee concurred with the request for the use of cash collateral.

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 Authority to Use Cash Collateral filed by Robert Obregon, DDS, Inc. ("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 is granted, pursuant to this order, for the period March 24, 2024, through August 24, 2024, and the cash collateral may be used to pay expenses set forth in the Interim Budget (Addendum A attached hereto and filed as Exhibit A, Dckt. 112), granting Debtor in Possession a variance of 15% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget.

IT IS FURTHER ORDERED 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.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xxx x.m. on xxx, 2024**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 2024**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and

notice of the Notice of the xxxx, 2024 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

Addendum A

	Interim Budget				
	Apr-24	May-24	Jun-24	Jul-24	Aug-24
Ordinary Income/Expense					
Income					
5010 · Income	\$ 85,000.00	\$ 85,500.00	\$ 86,000.00	\$ 86,500.00	\$ 87,000.00
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7971 · First Montana Bank	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85	\$ 2,102.85
7973 · Wells Fargo	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23	\$ 5,108.23
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Total Expense	74,969.87	74,969.87	74,969.87	74,969.87	74,969.87
Net Ordinary Income	9,566.28	10,066.28	10,566.28	11,066.28	11,566.28
Net Income	9,566.28	10,066.28	10,566.28	11,066.28	11,566.28

2. [23-21899-E-12](#)
[WF-11](#)

JAKOB/GLADYS WESTSTEYN
Daniel Egan

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WILKE FLEURY LLP
FOR DANIEL L. EGAN, DEBTORS
ATTORNEY(S)
2-16-24 [[180](#)]

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)(2) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the Bankruptcy Case, the Adversary Proceeding, or contested matter, and Office of the United States Trustee on February 16, 2024. By the court’s calculation, 27 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); LOCAL BANKR. R. 9014-1(f)(2)(B), requiring only fourteen days’ notice for oral opposition. Notice is sufficient as required by FED. R. BANKR. P. 2002(a)(6) in light of no written opposition being required by the Local Bankruptcy Rules. At the hearing, **XXXXXXX**

The Motion for Allowance of Professional Fees is granted.

Wilke Fleury, LLP, the Attorney (“Applicant”) for Jakob Gerritt Weststeyn and Gladys Yvonne Weststeyn, the Chapter 12 Debtor in Possession (“Client,” “Debtor in Possession”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Applicant submits the declaration of Daniel L. Egan to authenticate the facts in the motion. Declaration, Docket 182.

Fees are requested for the period June 9, 2023, through February 5, 2024. Exhibit B, Docket 183. The order of the court approving employment of Applicant was entered on June 30, 2023. Dckt. 32, p.1:23-24.

Applicant requests fees in the amount of \$101,708.50 and costs in the amount of \$2,070.73. Applicant states in their Motion that they currently hold a retainer in the amount of \$54,649.91. Docket 180 p. 8:8.

Applicant recognizes that while Section 2.01.1 of the Chapter 12 Plan states that administrative expenses such as professional fees are to be paid within 30 days after entry of an order approving the fees, Chapter 12 Trustee will not have sufficient funds to pay Applicant’s balance of allowed fees until Client makes their second plan payment. *Id.* at 8:13-17. This second plan payment is due on or before June 30, 2024.

Applicant thus requests that it be authorized to apply the funds in its retainer in the amount of \$54,649.91, and that the Chapter 12 Trustee is authorized to pay the remaining balance of fees and expenses owed in the amount of \$49,129.32 from the available funds of the estate on or before July 30, 2024. *Id.*

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 case administration, fee/employment applications, business operations, financing/cash collections, claims administration and objections, and preparing the Chapter 12 Plan and Disclosure Statement. Mtn., Docket 180 ps. 6:7-7:14. 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 29.4 hours in this category. Applicant represented Client in connection with administrative aspects of the case, including responding to creditor inquiries, reviewing monthly operating reports, and preparing and attending creditor meetings. *Id.* at p. 5:7-11.

Fee/Employment Applications: Applicant spent 1.4 hours in this category. Applicant prepared an application of its employment and coordinated the employment of Client’s accountant. Applicant also began preparing this fee application. *Id.* at p. 5:12-16.

Business Operations: Applicant spent 17.6 hours in this category. Applicant conferred with counsel for TA Energy XXXIV LLC (“Tritec”), a company that had constructed a solar energy array on property owned by the Irrevocable Trust. Tritec asserted claims against Client, and expressed interest in selling energy to Client postpetition. Applicant also conferred with the manager of the Irrevocable Trust with respect to obtaining an extension of the loan secured by the real property. *Id.* at p. 5:17-24.

Financing/Cash Collections: Applicant spent 22.3 hours in this category. Applicant represented Client in obtaining Court approval of postpetition financing from the Irrevocable Trust. Applicant also prepared and prosecuted a motion for authority to use cash collateral. *Id.* at ps. 5:25-6:1.

Claims Administration and Objections: Applicant spent 32.1 hours in this category. Applicant advised and represented Client in objections to the claims of the Franchise Tax Board, Greg Hawes, and

Greg Hawes Farms. Applicant was able to reach a settlement with the Franchise Tax Board, and the remaining claims objections are ongoing. Applicant also advised and represented Client in evaluating claims of Farm Credit. *Id.* at p. 6:2-8.

Plan and Disclosure Statement: Applicant spent 105.7 hours in this category. Applicant advised and represented Client in connection with preparation and prosecution of their Chapter 12 plan. Applicant prepared the plan, responded to objections and attended numerous confirmation hearings. Despite five objections to the initial plan, ultimately Client was able to confirm a consensual plan of reorganization. *Id.* at p. 6:9-14.

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	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel L. Egan	182.1	\$495.00 (2023 rate)	\$90,139.50
Daniel L. Egan	10.5	\$545.00 (2024 rate)	\$5,722.50
Jason G. Eldred	12.0	\$360.00 (2023 rate)	\$4,320.00
Jason G. Eldred	3.3	\$395.00 (2024 rate)	\$1,303.50
Shur Erdenekhuu	0.2	\$215.00 (2023 rate)	\$43.00
Steven J. Williamson	0.4	\$450.00 (2023 rate)	\$180.00
Total Fees for Period of Application			\$101,708.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,070.73 pursuant to this application. Exhibit B, Docket 183 ps. 19-20.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Attorney Services	-----	\$328.25

Credit Counseling Fees	\$49.88	\$49.88
Bankruptcy Court Filing Fees	-----	\$278.00
Postage	-----	\$638.40
Photocopies	\$0.10	\$776.20
Total Costs Requested in Application		\$2,070.73

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 Interim Fees in the amount of \$101,708.50 are approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330. Applicant is authorized to apply the retainer of \$54,649.91 with the rest of the requested fee of \$47,058.59 to be paid by Lilian Tsang, the Chapter 12 Trustee from the available funds of the Estate on or before July 30, 2024.

Costs & Expenses

First Interim Costs in the amount of \$2,070.73 are approved pursuant to 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330, and are authorized to be paid by Lilian Tsang, the Chapter 12 Trustee from the available funds of the Estate on or before July 30, 2024.

Applicant is allowed, and Lilian Tsang, the Chapter 12 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$101,708.50
Costs and Expenses	\$2,070.73

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 First Interim Fees and Expenses filed by Wilke Fleury, LLP (“Applicant”), Attorney for Jakob Gerritt Weststeyn and Gladys Yvonne Weststeyn, the Chapter 12 Debtor in Possession, (“Client,” “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 Wilke Fleury, LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke Fleury, LLP, Professional employed by the Chapter 12 Debtor in Possession

Fees in the amount of \$101,708.50
Expenses in the amount of \$2,070.73,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that as part of this fee award, Applicant is authorized to apply the retainer of \$54,649.91, with the remainder of the requested fees of \$47,058.59 to be paid by Lilian Tsang, the Chapter 12 Trustee, from the available Estate Funds on or before July 30, 2024.

FINAL RULINGS

3. [18-27974-E-7](#)
[BHS-5](#)

JEROD KENOYER
Nikki Farris

**MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)**
1-22-24 [\[91\]](#)

Final Ruling: No appearance at the March 14, 2024 Hearing is required.

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, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 22, 2024. By the court’s calculation, 52 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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 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 granted.

The Law Office of Barry H. Spitzer, the Attorney (“Applicant”) for Kimberly J. Husted, 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 February 11, 2022 through January 22, 2024. Decl., Docket 95 ¶ 5. The order of the court approving employment of Applicant was entered on February 16, 2022. Dckt. 39. Applicant requests fees in the amount of \$10,370 and costs in the amount of \$\$182.05. Mtn., Docket 91 p. 4:21-24.

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 reviewing the court file and documents related to the PG&E wildfire case, communicating with Client and Debtor’s attorney in the PG&E wildfire case, court appearances, and preparing employment and fee-related documents for Applicant and other special counsel. Mtn., Docket 91 p. 3:7-15. The Estate has \$220,614.66 of unencumbered monies to be administered as of the filing of the application. Husted Decl., Docket 94 ¶ 4. 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.

- A. General Case Administration
- B. Efforts to Assess and Recover Property of the Estate.
- C. Fee and Employment Applications

Exhibit A, Docket 93 ps. 1-3.

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
Barry H. Spitzer, Attorney	24.4	\$425.00	\$10,370.00
Total Fees for Period of Application			\$10,370.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$182.05 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	-----	\$72.60
Copying	-----	\$105.45
Parking for court hearing	-----	\$4.00
Total Costs Requested in Application		\$182.05

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly 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 \$10,370.00 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 \$182.05 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	\$10,370.00
Costs and Expenses	\$182.05

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 Law Office of Barry H. Spitzer, the Attorney (“Applicant”) for Kimberly J. Husted, 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 Law Office of Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

Law Office of Barry H. Spitzer, Professional employed by the Chapter7 Trustee

Fees in the amount of \$10,370.00

Expenses in the amount of \$182.05,

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