

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

April 11, 2024 at 10:30 a.m.

1. 19-90110-E-7 ICE-1	CAMPBELL WINGS, INC. Reno Fernandez	MOTION FOR COMPENSATION FOR IRMA EDMONDS, CHAPTER 7 TRUSTEE(S) 3-8-24 [183]
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**NO APPEARANCE OF THE TRUSTEE IS REQUIRED
IF THERE IS NO TRUSTEE OPPOSITION TO ALLOWING
THE TRUSTEE'S FEES AND COSTS IN THEIR FULL AMOUNT
(which will then be subject to being paid pro rata given that the
bankruptcy estate is administratively insolvent)**

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, Debtor's Attorney, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 34 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). Movant is one day late of the required notice. The court shortens the time to the Notice given, it being of no prejudice to any party in interest.

The Motion for Allowance of Trustee 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Trustee Fees is granted.

Irma Edmonds, the Chapter 7 Trustee, (“Applicant”) for the Estate of Campbell Wings, Inc. (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 6, 2019, through March 7, 2024. Although the compensation in fees totals \$5,631.16 and costs incurred totals \$2,404.73, Applicant requests a reduced amount of \$1,006.24 for fees and \$429.71 for costs. Mtn. Docket 183 ¶ 7.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still 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). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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 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 administering the Chapter 7 Bankruptcy estate and distributing assets to the claimants in this case. *See* Final Report, Exhibit B, Docket 185 ps. 4-5. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,381.16
5% of the next \$950,000.00	\$0
3% of the balance	\$0
Calculated Total Compensation	\$5,631.16
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$1,006.24 (reduced)

Exhibit A, Docket 185 p. 2.

Application Requesting Reduced Allowed Fees and Costs

As noted above, based upon the statutory fee commission formula established by Congress in 11 U.S.C. § 326 provides for Trustee fees in the amount of \$5,631.16. The Trustee has reports having expenses of \$2,404.73.

The Application scantily requests reduced fees of \$1,006.24 and reduced costs in the amount of \$429.71. Application; Dckt. 183. Exhibit B provided by Applicant shows that this Case is administratively insolvent, there being only \$21,697.71 to pay (\$121,462.85) in allowed administrative expenses. This provides for a pro rata distribution of only 17.8% (rounded up by the court) distribution on each allowed administrative expense.

It appears that the Trustee has requested the discounted fees and expenses be allowed, based on her computation of what the percentage distribution would be due to the administratively insolvent estate. However, if the court were to do that, then the discounted fees and expenses allowed would then only be paid a further discounted amount.

The court allows the Trustee compensation in the amount of \$5,631.16, not merely the ultimate reduced amount actually received due to the case being administratively insolvent.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses at a reduced rate in the amount of \$429.71 pursuant to this application.

The costs incurred in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
OTHER	\$539.00	\$539.00
OTHER	\$1,235.00	\$1,235.00
COPIES	\$0.20	\$72.00
DISTRIBUTION CHECKS	\$1.00	\$14.00
DISTRIBUTION POSTAGE	\$1.26	\$2.52
DISTRIBUTION POSTAGE	\$0.63	\$2.52
DISTRIBUTION COPIES	\$0.20	\$12.40
POSTAGE	\$10.51	\$10.51
TRAVEL	\$0.58	\$516.78
Total Costs Incurred in Application		\$2,404.73
Total Costs Requested in Application		\$429.71

Exhibit A, Docket 185 p. 2. Applicant does not explain what “other” costs refers to, nor which costs are actually requested at the reduced rate. From reviewing the file in this case and the extensive litigation with the landlord, the court notes that the Trustee was having to secure the leased property (formerly a Hooter’s Restaurant) and personal property,

FEES & COSTS ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Reduced Fees in the amount of \$1,006.24 are approved pursuant to 11 U.S.C. § 330 are 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.

First and Final of Reduced Costs in the amount of \$2,404.73 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.

In this case, the Chapter 7 Trustee currently has \$21,697.71 of unencumbered monies to be administered. Exhibit B, Docket 185 p. 3. Applicant’s efforts have resulted in a realized gross of \$48,811.63 recovered for the estate. Exhibit A, Docket 185 p. 2.

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

Fees	\$5,631.16
Costs and Expenses	\$2,404.73

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 Irma Edmonds, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Irma Edmonds is allowed the following fees and expenses as trustee of the Estate:

Irma Edmonds, the Chapter 7 Trustee

Fees in the amount of \$5,631.16
Expenses in the amount of \$2,404.73.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees 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.

2. [22-90160-E-11](#) **EAGLE LEDGE FOUNDATION,** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **INC.** **VOLUNTARY PETITION**
2 thru 5 **5-18-22 [1]**

Debtor's Atty: Dennis D. Miller; Kathleen L. DiSanto

Notes:

Continued from 1/25/24 to be conducted in conjunction with the hearing on the Motion to Confirm the Chapter 11 Plan in this case.

Operating Reports filed: 2/12/24, 3/14/24

The Status Conference is ~~XXXXXXX~~

APRIL 11, 2024 STATUS CONFERENCE

On April 11, 2024 the court conducted the hearing on the Motion to Confirm the Debtor in Possession Chapter 11 Plan. At that hearing, ~~XXXXXXX~~

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’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2024. By the court’s calculation, 71 days’ notice was provided. 42 days’ notice is required.

Debtor in Possession served the Declaration and Ballot Tabulation Summary in support of Confirmation on Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on March 25, 2024.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). 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). If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is granted.

Background: Debtor in Possession is a California not-for-profit religious corporation. Debtor in Possession launched a loan fund focused on serving the small local church. Debtor in Possession issued bond certificates to individuals who made contributions. Certificate holders are the largest class of creditors in this case, accounting for almost all the debt now owed. Debtor in Possession initiated this bankruptcy case as a result of foreclosure proceedings and an inability to generate sufficient cash flow. On September 15, 2022, Debtor in Possession filed an initial Plan and Disclosure Statement. Dckts. 138, 140. This court denied approving the original Plan and Disclosure statement by Order on October 31, 2022. Dckt. 166. The creditors and their claims and classification are as follows:

Creditor/Class	Treatment
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Unclassified: Ordinary Course Administrative Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
	Not entitled to vote.	
Unclassified: Professional Compensation and Expense Reimbursement	Claim Amount	\$185,000.00 (estimated)
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date.	
Unclassified: United States Trustee Fees	Claim Amount	\$0.00
	Impairment	Unimpaired
	Not entitled to vote. Debtor in Possession is, and will continue to be, current on U.S. Trustee's fees.	
Unclassified: Priority Tax Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date or in regular installment payments over a period not exceeding five years from the Petition Date.	
Class 1: Priority Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date. The scheduled priority claims of Chester Reid and Thomas Fontana were paid and satisfied pursuant to the Final Order Granting Debtor's Emergency Motion for Authority to Pay Affiliate Officers' Salaries, Compensation, and Benefits (Dckt. 99).	
Class 2: General Unsecured Claims	Claim Amount	\$4,125,251.27
	Impairment	Impaired
	Entitled to vote. Pro Rata distributions of \$350,000.00 on the Effective Date, followed by annual distributions of Available Cash to commence on April 1, 2025 and continue for four consecutive years. Final distribution of all remaining Cash shall be made April 1, 2028, and distributed Pro Rata as soon practicable thereafter.	

Plan, Dckt. 305 p. 2-3.

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1: Priority Claims (Unimpaired)	For: 0 Against: 0	No claims in this class.	-----
Class 2: General Unsecured Creditors (Impaired)	For: 17 Against: 0	100%	100%

Tabulation of Ballots, Docket 377 p. 2.

The Declaration of Chester Reid (Docket 378) filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Docket 378 ps. 5:2-6:2.

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Docket 378 at p. 6:3-24.

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Docket 378 at ps. 6:25-7:7.

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Docket 378 at p. 7:7-11.

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Docket 378 at p. 7:12-26.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Docket 378 at p. 8:1-2.

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an amount of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Docket 378 at p. 8:3-10.

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Docket 378 at p. 8:11-19.

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Docket 378 at p. 8:20-26.

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Docket 378 at p. 9:1-3.

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Docket 378 at p. 9:4-7.

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Docket 378 at p. 9:7-17.

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Docket 378 at ps. 9:18-10:9.

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Docket 378 at ps. 10:10-11:4.

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Docket 378 at p. 11:5-7.

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence: Docket 378 at p. 8:14-19.

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

The court determines the provisions of this Subsection have been complied with because there are no classes of secured claims in this case.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

The court determines the provisions of this Subsection have been complied with in this case because there are no holders of claims in any junior class who will receive or retain property under the plan on account of such junior claim. *See Plan, Docket 305 ps. 2:6-3:14.*

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

The court determines the provisions of this Subsection have been complied with in this case because there is no class of interests.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may

determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Debtor in Possession indicates it will make the following amendments to the Plan at the Confirmation Hearing to address the U.S. Trustee's concerns in this case:

a. The following sentence will be added to Section 2.30 of the Amended Plan: "The Reorganized Debtor shall file a notice of the Effective Date within three business days of the occurrence of the Effective Date."

b. Section 4.02 will be deleted and replaced in its entirety with the following: "Until the Effective Date, the Debtor in Possession shall timely pay, in full in Cash, any U.S. Trustee Fees (including interest under 31 U.S.C. § 3717, (if applicable) that are due and owing on or before the Effective Date. Notwithstanding anything to the contrary in the Plan, U.S. Trustee Fees are not subject to an allowance procedure under 11 U.S.C. § 503(b), nor is the U.S. Trustee required to file a request for payment of such fees. Upon the Effective Date, the Reorganized Debtor shall timely pay the U.S. Trustee all U.S. Trustee Fees (including interest under 31 U.S.C. § 3717, if applicable) until the earlier of: (1) the entry of a final decree with respect to the Reorganized Debtor's case; (2) the conversion of the Reorganized Debtor's case to a case under another chapter; or (3) the dismissal of the Reorganized Debtor's case. For the avoidance of doubt, U.S. Trustee Fees shall be assessed and payable if the case is reopened. Post confirmation, the Debtor in Possession shall continue to file the UST Form 11-MOR, Monthly Operating Report through the Effective Date. After the Effective Date, the Reorganized Debtor shall file the UST Form 11-PCR, Post confirmation Report every calendar quarter."

c. Section 9.03 of the Amended Plan will be amended by adding "gross negligence" before "bad faith or willful misconduct."

d. Section 9.05 will be deleted and replaced in its entirety with the following: "Except as set forth herein, on or after the Confirmation Date, every holder of a claim or interest against ELF or the Debtor in Possession shall be precluded and permanently enjoined from asserting against ELF, the Debtor in Possession, the Reorganized Debtor, its officers, directors, professionals, agents, and their respective assets or properties, any further claim arising between the Petition Date and the Effective Date based on any document, instrument, judgment, award, order, act, omission, transaction, or other activity of any kind or nature, except those resulting from gross negligence, bad faith, or willful misconduct. Notwithstanding the foregoing, holders of claims and interests shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order."

Decl., Docket 378 p. 4:4-26.

The original version of Section 9.05 states, in which the court shows the added text by blue underlined font and the deletions by ~~red strikeout~~ font for the proposed amended version of Section 9.05:

9.05 Post-Confirmation Injunction.

Except as set forth herein, on or after the Confirmation Date, every holder of a claim or interest against ELF or the Debtor in Possession shall be precluded and permanently enjoined from asserting against ELF, the Debtor in Possession, the Reorganized Debtor, its officers, directors, professionals, agents, and their respective assets or properties, any further claim arising between the Petition Date and the Effective Date based on any document, instrument, judgment, award, order, act, omission, transaction, or other activity of any kind or nature ~~that occurred prior to the Confirmation Date~~, except those resulting from gross negligence, bad faith or willful misconduct. Notwithstanding the foregoing, holders of claims and interests shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order."

Amended Plan; Dckt. 305 at 18.

With these changes, the confirmed Plan protects the Debtor, reorganized Debtor, and its fiduciary representative of the estate in prosecuting this case from fights relating to issues involving “mere” negligence, inadvertence, and the like. Additionally, the revised language protects the rights to creditors and the Bankruptcy Estate from intentional and other willful or gross bad acts of the Debtor and its representatives. The additional last sentence makes it clear that such injunction does not alter or limit creditor’s rights and claims pursuant to the term of the Plan or the Confirmation Order.

The Amended Plan; *Id.*, ¶ 8.01 expressly provides for the retention of post-confirmation jurisdiction over this Bankruptcy Case and related proceedings after the effective date (that section providing a non-exclusive list of such jurisdictional matters). The court’s non-exclusive listing of retained jurisdiction as provided in ¶ 8.01(i) is stated to include:

- (i) resolve any cases, controversies, suits, or disputes with respect to the releases, injunction, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunction, and other provisions;

That retention of jurisdiction includes any claims, assertion of rights, or other matters related to alleged gross negligence, bad faith, or willful misconduct of the persons listed in the revised § 9.05 of the Plan.

At the hearing, ~~xxxxxxx~~

~~No creditor has objected to the Plan of Reorganization, and Debtor in Possession has presented evidence in support of confirmation. The Plan of Reorganization is confirmed.~~

~~————— Counsel for the Debtor in Possession shall prepare a proposed confirmation order consistent with the above ruling, which order states the revisions and replacement provisions for the Amended Plan, and to which a copy of the Amended Plan is attached. —————~~

4. [22-90160-E-11](#) **EAGLE LEDGE FOUNDATION,** **CONTINUED MOTION TO USE CASH**
[DDM-5](#) **INC.** **COLLATERAL AND/OR MOTION TO**
Kathleen DiSanto **GRANT REPLACEMENT LIENS ,**
MOTION FOR ADEQUATE PROTECTION,
MOTION/APPLICATION TO APPROVE
DIP BUDGET
6-1-22 [35]

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve DIP Budget O.S.T. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). 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.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve Debtor in Possession Budget is **XXXXXXX.**

APRIL 11, 2024 CONTINUED HEARING
(The Civil Minutes for all prior hearings can be reviewed
as part of the Civil Minutes for the September 28, 2023
Hearing; Dckt.27)

The court continued this Hearing from March 28, 2024 to April 11, 2024 to be heard in conjunction with the Confirmation of Plan Hearing. A review of the Docket on April 8, 2024 reveals that nothing new has been uploaded with this court relating to this Motion. At the hearing, **XXXXXXX**

Thursday, April 11, 2024 at 10:30 a.m.
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REVIEW OF THE MOTION

Eagle Ledge Foundation, Inc., as the Debtor in Possession seeks to use cash collateral, provide adequate protection, grant replacement liens, and get an operating budget approved.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves in the place of a bankruptcy trustee as the fiduciary to the bankruptcy estate 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

The Bankruptcy Estate includes the Debtor's pre-petition business and property. Debtor states that there are currently five active loans which total in the aggregate \$719,394.36. Motion, p. 4:14-15; Dckt. 35.

Upon receiving payments on these loans, the monies are deposited in interest bearing accounts, after deducting servicing fees, "for the benefit of the Debtor." *Id.*, p. 4:16-22.

Not more than two times per month, Debtor can request disbursements from the accounts. The Motion then states:

16. The Debtor believes the funds held by TMI and that will be collected on a postpetition basis by TMI may constitute cash collateral, and that the Collateral Agent may assert an interest in such funds for the benefit of the Certificate Holders, as such amounts represent proceeds of the mortgages held by the Debtor and the notes payable to the Debtor.

Id., ¶ 16. In a footnote, Debtor states that it does not admit any lien or secured claim. However, on the Schedules Debtor states that the Certificate Holders have claims secured by all of Debtor's assets, excluding the real property.

It is then further asserted that only the Collateral Agent is a person who can assert an interest in the property constituting cash collateral. It appears that this "Collateral Agent" is asserting the liens of the Certificate Holders.

Adequate Protection

In the Motion Debtor states having \$761,165.00 in its Operating Account. Debtor does not believe that these monies are subject to Creditor liens. The source of these monies is not identified in the Motion. However, on Schedule D, it is stated that the Collateral Agent for the Certificate Holders has a lien in all "cash, liquid security, and mortgage loan investments" of the Debtor.

To provide adequate protection for the Certificate Holders having claims (as stated on Schedule F for which it's Collateral Agent has a lien to secure their claims) totaling (\$4,043,001) (computed by deleting out the non Certificate creditors listed on Schedule F), Debtor states in the Motion:

24. As adequate protection of any interest the Collateral Agent may have in the loan proceeds collected on a post-petition basis, the Debtor proposes provide the Collateral Agent with monthly written reporting as to the status of collections and disbursements, in addition to complying with the reporting requirements under the Bankruptcy Code and Bankruptcy Rules (such as monthly operating reports).

25. To provide further adequate protection of the interests of any secured creditor, the Debtor proposes to open a third debtor-in-possession account (the "Collateral Account") and to the extent the balance of the Cash Proceeds in the Servicing Account exceeds \$75,000.00 on the last business day of the month, the Debtor, on

or before the tenth day of next month, will direct TMI to transfer the funds in excess of \$75,000.00 to the Collateral Account.

However, it appears that the “adequate protection” is to merely a report of the status of the collateral and to transfer some of the existing collateral to the Collateral Agent.

Looking at Debtor’s non-real property assets, it appears that the (\$4,043,001) is secured by personal property having a value, as stated by Debtor, of \$1,402,423. The purported adequate protection is to just hold part of the existing collateral as the collateral is reduced. Summary of Assets, Part 1; Dckt. 24.

March 28, 2024 Hearing

(The Civil Minutes for all prior hearings can be reviewed as part of the Civil Minutes for the September 28, 2023 Hearing; Dckt.27)

The court previously scheduled a hearing for March 21, 2024, to coincide with the hearing on confirmation of the Chapter 11 Plan to consider the relief requested in this Cash Collateral Motion on a final basis. On January 9, 2024, the court rescheduled the hearing to March 28, 2024 at 10:30 a.m. Docket 343.

On January 11, 2024, the court entered an Order authorizing the use of Cash Collateral on an interim basis continuing through April 30, 2024. Order, Docket 345, p. 2:16-18. This Order is effective retroactively to September 28, 2023 on an interim basis as set forth in the Order. *Id.* at 2:13-15.

On March 15, 2024 Debtor in Possession filed a Supplement to Debtor’s Cash Collateral Motion, requesting the entry of an order (a) granting the Cash Collateral Motion; (b) authorizing the Debtor’s continued use of Cash Collateral, granting the replacement liens and adequate protection, and approving the DIP budget on an interim basis; (c) scheduling a final hearing to coincide with the hearing on confirmation of the Chapter 11 Plan to consider the relief requested in this Cash Collateral Motion on a final basis; and (d) for such other and further relief the Court deems appropriate. Docket 375 ps. 2:26-3:5. The proposed budget is as follows:

	Apr 2024	May 2024	June 2024	July 2024	Aug 2024	Sept 2024	Oct 2024	TOTAL
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6		
Beginning Balance ¹	520,000.00	510,751.32	471,753.32	460,954.64	451,705.96	442,707.28	433,708.60	680,866.00
Cash Receipts ²	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	10,500.00
Rental Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL SOURCES	521,500.00	512,251.32	473,253.32	462,454.64	453,205.96	444,207.28	435,208.60	691,366.00
Expenses								
Bank Fees	10.00	10.00	10.00	10.00	10.00	10.00	10.00	70.00
Copies/Postage	50.00	50.00	50.00	50.00	50.00	50.00	50.00	350.00
Insurance - Professional Liability ³	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Insurance - Property Insurance ⁴	0.00	30,000.00	0.00	0.00	0.00	0.00	0.00	30,000.00
Officer Salaries/ Payroll Taxes	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	43,015.00
Office Supplies ⁵	25.00	25.00	1,825.00	25.00	25.00	25.00	25.00	1,975.00
Phone/Internet/Software Subscriptions	218.68	218.00	218.68	218.68	218.68	218.68	218.68	1,530.08
Property Management Fees/Costs	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	10,500.00
TMI Loan Servicing and Escrow Fees	950.00	950.00	950.00	950.00	950.00	950.00	950.00	6,650.00
TMI Collateral Agent Monitoring Fees	600.00	600.00	600.00	600.00	600.00	600.00	600.00	4,200.00
U.S. Trustee Fees	250.00	0.00	0.00	250.00	0.00	0.00	250.00	750.00
Legal ⁶	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Accounting Fees	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	7,000.00
Indiana Avenue Property ⁷	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL USES	10,748.68	40,498.00	12,298.68	10,748.68	10,498.68	10,498.68	10,748.68	106,040.08
ENDING BALANCE	510,751.32	471,753.32	460,954.64	451,705.96	442,707.28	433,708.60	424,459.92	585,325.92
NET CASH FLOW								-95,540.08

No opposition having been asserted, the court grants the Motion on an interim basis, and continues the hearing to be conducted in conjunction with the Motion to Confirm the Chapter 11 Plan in this case.

The hearing on this Motion is continued to 10:30 a.m. on April 11, 2024, to be conducted in conjunction with the Confirmation Hearing for the proposed Chapter 11 Plan.

5. [22-90160-E-11](#)
[UST-1](#)

**EAGLE LEDGE FOUNDATION,
INC.**
Dennis Miller

**CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO CONVERT
CASE FROM CHAPTER 11 TO
CHAPTER 7**
7-25-23 [[241](#)]

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, Debtor's Attorney, creditors, parties requesting special notice on July 25, 2023. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is denied without prejudice.

APRIL 11, 2024 HEARING

The court continued this Hearing to be heard in conjunction with the Confirmation of Plan Hearing. A review of the Docket on April 8, 2024 reveals that nothing new has been unloaded with this court relating to this Motion. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Eagle Ledge Foundation, Inc. ("Debtor") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor's failure to expeditiously prosecute the case.

- B. Debtor's failure to provide insurance information reasonably requested by Movant.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 24, 2023. Dckt. 250. Debtor states that:

1. Debtor's failure to expeditiously prosecute the case is excusable because the delay is due to circumstances outside of Debtor's control, such as Debtor's inability to gain possession and control over its real property. Furthermore, once Debtor was able to gain possession and control over its property, it was forced to spend time curing the state of disrepair.
2. Debtor complied with Movant's requests regarding proof of insurance, showing that Debtor had Worker's Compensation and General Liability coverage at all relevant times.

U.S. TRUSTEE'S RESPONSE

U.S. Trustee filed a Response on August 28, 2023. Dckt. 257. U.S. Trustee states and reiterates that:

1. Regardless of any proffered excuses, Debtor has inexcusably failed to expeditiously prosecute its case.
2. Debtor has obtained professional liability insurance coverage through May 25, 2024. Debtor has also obtained property insurance; however, the named insured is TMI Trust Company, not Debtor.
3. Debtor's general liability insurance is only limited to claims arising at the Indiana Avenue Property, and again, the named insured is TMI Trust Company.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

Delay of Confirmation

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's disclosure statement and prior plan on October 31, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1112(b)(1). 7 Collier on Bankruptcy ¶ 1112.04 (16th ed. 2023).

At the hearing, the parties agreed to a continuance to 10:30 a.m. on September 28, 2023, to afford the Debtor in Possession and creditors to move forward with the prosecution of this Case.

Failure to Provide Proof of Insurance

Furthermore, because the record shows that insurance has not been properly maintained on the property, the court finds dismissal to be appropriate. 11 U.S.C. § 1112(b)(4)(C) and (H).

At the hearing the U.S. Trustee reported that evidence of insurance has been provided, and this appears to address this point.

The hearing is continued to allow the Debtor in Possession and creditors to work further on the prosecution of this Case.

SEPTEMBER 28, 2023 HEARING

At the hearing, the Parties agreed to continue the hearing on the Motion to Dismiss or Convert to 2:00 p.m. on January 25, 2024.

January 25, 2024 Hearing

A review of the Docket on January 18, 2024 reveals that no new docents have been filed with the court regarding this Motion. In light of the court having approved the proposed Disclosure Statement Movant U.S. Trustee and counsel for the Debtor in Possession, with no opposition stated by any other person appearing at the January 25, 2024 opposed the continuance.

The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is continued to 10:30 a.m. on April 11, 2024, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion to Confirm the Chapter 11 Plan 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 to Convert the Chapter 11 case filed by Tracy Hope Davis, the U.S. 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 to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is denied without prejudice.