

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

August 29, 2024 at 10:30 a.m.

1. [22-90415](#)-E-7
[GG-13](#)

JOHN MENDOZA
Peter Macaluso

**CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF GOLDEN GOODRICH LLP FOR
JEFFREY I. GOLDEN, SPECIAL
COUNSEL(S)
6-6-24 [349]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

At the hearing held on June 27, 2024, Opposition was stated by the Debtor.

The Motion for Allowanced of Fees and Expenses is xxxxxxx.

August 29, 2024 at 10:30 a.m.

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August 29, 2024 Hearing

As opposition was stated at the previous hearing, the court set the following briefing schedule:

The hearing on the Motion for Allowanced of Fees and Expenses is continued to 10:30 a.m. on August 29, 2024. Opposition Pleadings shall be filed and served on or before July 19, 2024, and Reply Pleadings, if any, shall be filed and served on or before August 16, 2024.

Order, Docket 388. The parties complied with their respective time lines.

DEBTOR'S OPPOSITION

On July 18, 2024 Debtor filed an Opposition and Statement of Disputed Facts. Dockets 398, 399. Debtor states:

1. Fees in Bankruptcy must be commensurate with the cost of comparable services. Opp'n 1:25-26, Docket 398.
2. The court should consider the six facts listed in 11 U.S.C. § 330(a)(3) in making its determination on reasonableness of fees. *Id.* at 2:16-19.
3. The court is not confined to these factors. The Fourth Circuit also considers the novelty and difficulty of the questions raised, the skill required to properly perform the legal services rendered, the attorney's opportunity costs in pressing the instant litigation, the attorney's expectations at the outset of the litigation, the time limitations imposed by the client or circumstances, the undesirability of the case within the legal community in which the suit arose, the nature and length of the professional relationship between attorney and client, and attorneys' fees awards in similar cases. *Id.* at 3:11-4:8.

The court notes that Debtor cites these additional considerations as the *Johnson* factors but provides no case citation.

4. The court should consider the return to creditors when assessing the reasonableness of fees. *Id.* at 4:9-10.
5. No assets have been recovered in this case. The only "Litigation" has been the Objection to Exemptions, i.e. a Motion, and the court has already awarded \$55,427.41 in total fees to Golden Goodrich LLP, the Special Counsel, Applicant. *Id.* at 4:18-20.
6. Applicant has asserted it expended 78.3 hours in asset analysis and recovery, but no assets have been recovered and Applicant has not provided a list of: "(1) What Date, (2) What was completed, and (3) time spent in doing to support this additional 221.30 hours." *Id.* at 5:9-11.

7. These services performed have not rendered any benefit to the Estate, resulting in the “demise of the Debtor and his family.” *Id.* at 5:13-16.
8. Debtor provides the following statements of what he claims to be the non-disputed and disputed material facts:

Non-Disputed Material Facts

1. There has been no determination as to the value of each individual property, the equity held after cost of sale, and tax consequences.
2. Application for fees in the amount of: (1) \$13,860.00 on the 1st Application for fees, (2) \$28,240.00 in the 2nd Application
3. A 3rd Application for another \$117,811.70, or 221.3 hours for work pending is on Application.
4. The Motion fails to state what the benefit projected to the estate, from the sale of ANY of these (3) three properties listed.
5. Not one Appraisal has been submitted in Support the Trustee’s Demand to abandon any of the Properties.
6. The Debtor did not vacate Property #3 by June 24, 2024

Opp’n 5:23-6:10, Docket 398.

Disputed Material Facts

1. The Sale of the Twain Harte Property is of NO consequential benefit to the estate AFTER Sale, Commission, Cost of Sale, Property Taxes, Wildcard Exemption, and Federal Taxes. (\$900,000 -\$727,914 -\$76,000 -\$31,925 = 64,161)
2. The Sale of 1027 Merced Property is of No consequential benefit to the estate after Sale, Commission, Cost of Sale, Property Taxes, and Federal Taxes. (\$150,000 -\$105,026 -\$12,000 = \$ 32,974)
3. The Sale of 1035 Merced Property is of No consequential benefit to the estate after Sale, Commission, Cost of Sale, Property Taxes, and Federal Taxes. (\$135,000 - \$99,527 -\$10,800 = \$ 24,673)
4. Does the Amount of Attorneys Fees and Reimbursement of Fees Exceed the amount obtained in this Liquidation of Real Property.

Opp’n 6:11-27, Docket 398.

APPLICANT’S REPLY

On August 16, 2024, Applicant submitted its Reply pleadings, including a Declaration and Exhibits in support. Docket 419-21. Applicant states:

1. As a part of this fee Application, Applicant investigated numerous assets that were undisclosed by the Debtor and/or intentionally hidden through a systematic and methodical scheme of transferring dozens of properties to a company, La Estrella Enterprises, LLC (“La Estrella”), which was set up in the name of the Debtor’s daughter (while being controlled by the Debtor). The Trustee has filed a complaint, case number 9:24-ap-09004 alleging dozens of fraudulent transfers, through which Applicant and Trustee expect to recover numerous properties, sufficient to make a full distribution to all creditors of the Debtor’s Estate (“Fraudulent Transfer Action”). Reply 2:1-11, Docket 419.
2. The court should discount the Statement of Disputed Facts as it is unsigned and there is no evidence presented in support. The court discounted Debtor’s Statement of Disputed Facts in the related Motion to Compel matter for similar reasons. *Id.* at 3:1-7.
3. The Opposition introduces very little law or authority and instead argues that the Application should be denied because the amount of fees being requested exceeds the amount in dispute. The entire basis for this argument relies upon the Debtor’s calculus relating to the equity in the three properties referenced in the Motion to Compel. This argument was repeated by the Debtor nearly verbatim in his opposition to the Motion to Compel. *Id.* at 3:8-13.
4. Debtor’s “evidence” as to valuation is based entirely upon representations made by counsel in argument in pleadings with no reference to any declarations whatsoever. Meanwhile, the Trustee has investigated and made an attempt to value these properties with the help of a broker. Specifically, Bob Brazeal, the real estate broker hired by the Trustee, submitted a declaration in support of the Motion to Compel with valuations of the properties. The Court should find that the Opposition provides no basis to deny the Application. *Id.* at 3:14-24.
5. Because there will likely be a full recovery to all creditors of the Estate resulting from prosecuting the Fraudulent Transfer Action, the Application requests reasonable fees and the Court should grant the Application in its entirety.
6. In responding to Debtor’s arguments, first, Debtor has provided no evidence or authority as to why assets must have been recovered already for the Court to approve the Application. However, Trustee has adequately shown that property of the Debtor (which was improperly withheld from being turned over to the Trustee along with the Debtor apparently improperly withholding rental income) has value to the Estate. *Id.* at 5:17-18.

7. It is inexplicable, and frankly unbelievable, that the Debtor argues that the Trustee has failed to recover assets while at the same time refusing to turnover those very same assets to the Trustee. Such behavior is, however, exactly in line with the Trustee's understanding of the Debtor's belief that this bankruptcy proceeding is about hiding his assets from creditors. *Id.* at 5:21-25.
8. Second, the Trustee's Fraudulent Transfer Action was filed on March 28, 2024, nearly six months prior to the Opposition. Litigation has been ongoing. *Id.* at 5:26-27.
9. Third, the Debtor once again fails to provide any evidence or authority as to why the amount of fees already paid is improper or not reasonable, instead resorting to innuendo where no argument can be made. *Id.* at 6:4-6.
10. The Opposition argues that the Application should be denied because "the amount of Attorneys fees, before liquidation exceeds the amount estimated to be obtained by this case." To be clear, the Trustee believes that this case will result in a 100% distribution to creditors of the Debtor's Estate. Putting aside the properties improperly not turned over by the Debtor, and putting aside the rents improperly withheld by the Debtor, the Trustee's action to recover dozens of properties that were fraudulently transferred by the Debtor to La Estrella will likely result in a 100% distribution to creditors of the Estate. *Id.* at 6:7-13.

Jeffrey Golden, special counsel here, submits his Declaration in support. Decl., Docket 420. Mr. Golden testifies as to the facts alleged in the Reply. Mr. Golden authenticates the Exhibits. Exhibit 1 is a true and correct copy of the transcript of the Debtor's 2004 examination on January 15, 2024, and Exhibit 2 is a true and correct copy of the 2022 loan summary sheet prepared by Rubicon Mortgage Fund, LLC. Exs., Docket 421. The loan summary sheet prepared by Rubicon Mortgage Fund, LLC states, "Borrower is a sole member LLC Managed by Jenae Mendoza. Jenae's Dad, John Pierre Mendoza is VERY involved. It seems that John Pierre runs the company but that it is in Jenae's name." Ex. 2 at 135, Docket 421.

Discussion

The detailed billing records of Applicant have been filed in support of the Motion. Exhibit 1; Dckt. 352. In reviewing the line by line entries, while the total is very substantial, it does not appear that there is duplicative billing, "group meeting or conference" billing by multiple attorneys, or billing entries that for which the time spent appears excessive.

The billing record is not divided into separate records for each adversary proceeding, discrete contested matters, or administrative services.

One of Debtor's opposition grounds is that the efforts have not yet produced monetary recovery for the Bankruptcy Estate. That is true. But that is true in many bankruptcy cases.

There are two Adversary Proceeding that are pending. Adv. 23-09020, in which the Chapter 7 Trustee (represented by Special Council) is seeking the denial of the discharge for Debtor.

The second Adversary Proceeding, 24-09004, in which the Trustee (represented by Special Counsel) is seeking to recover transferred assets asserted to have been made to several entities, which are stated to be controlled by several family members.

In the Bankruptcy Case the Chapter 7 Trustee (represented by his General Bankruptcy Counsel) recently filed a Motion to compel the Debtor to turnover possession and control of three specific pieces of real property over to the Trustee. Motion; Dckt. 390.

As addressed by the court in the ruling on the Motion for Turnover, the Debtor's opposition was little more than he disagreed with the Trustee's decision to administer the properties, he (the Debtor) concluded that the Trustee was administering the Property, and the Debtor sought it unfair to have to turn property of the Bankruptcy Estate to the Bankruptcy Trustee. Additionally, it was discussed that the Debtor was collecting post-petition rents from the property of the Bankruptcy Estate. The court's Ruling includes:

As counsel for Movant pointed out, she had written Debtor's counsel on multiple occasions for the turnover of the Properties, but Debtor's counsel failed to respond to those communications. See Exhibits B-D; Dckt. 393, which document communications from Movant's counsel to Debtor's counsel on June 10, 2024, June 10, 2024, and June 28, 2024 (after the turnover deadline of June 24, 2024 had expired). Debtor's counsel admitted that he failed to respond to the communications or engage in any discussions concerning the turnover of the Properties or Debtor being able to reside in one of the Properties until it was sold. Debtor's counsel's response was that he just thought or assumed that it would work out.

It was further discussed how the Debtor purported to not have any keys to the two rental properties in Merced and just felt he could not do anything in response to the turnover demands.

It was also disclosed that Debtor has been receiving post-conversion rent monies for the two Merced Properties, retaining the monies which are property of the Bankruptcy Estate, and instead choosing to pay creditors with the secured claims.

As the court expressed on the record, this demonstrates that counsel and the Debtor are not following federal law, not complying with duties and obligations arising under the Bankruptcy Code, and are electing to operate as they see fit without regard to the law.

...

Moreover, Debtor makes his argument without citing to any law in support. Debtor gives the court no legal basis why it should conclude that his argument has merit. Debtor makes the arguments that, because Debtor has determined there is no value for the estate, the Motion should be denied. No where in 11 U.S.C. §§ 541 or 542 does the court have a legal basis to deny this Motion based on the Debtor's opinion that there is no equity for the benefit of creditors. Rather, 11 U.S.C. § 542(a) states the Property shall be turned over, "unless such property is of inconsequential value of benefit to the estate." The court determines here that the Property is not of inconsequential value to the estate, Movant filing evidence showing that there is value in the Property for the benefit of creditors.

In the Opposition, the Debtor does not state what would be the economic consequences, if any, on him if Applicant is paid the legal fees. Rather, Debtor fears that if the Applicant's efforts are successful and the Trustee is able to administer and sell properties of the Bankruptcy Estate, Debtor would not be able to continue to live in the property of the Bankruptcy Estate in which he currently resides. In substance, the Debtor's "beef" appears to be with Congress, which enacted the Bankruptcy Code, and the State of California for the substantive law relating to the Debtor's debts that must be paid through the Bankruptcy Case.

The Debtor's opposition boils down to asserting that he doesn't believe that substantial fees should be incurred by the Bankruptcy Estate in the Trustee's efforts to recover assets that have not been disclosed or recover assets that were transferred to other persons. With respect to these legal efforts to recover transferred property, the actions are not against the Debtor but third-parties. These third-parties can defend their rights and interests, and they will pay their expenses to protect their rights and interests in the properties that are the subject of avoidance actions. The Debtor has no financial obligations, or gains, in any such litigation.

In substance, the Debtor's opposition is that the Applicant (and the Trustee) is on a fools errand, there can never be monies recovered to pay the fees (or repay the creditor providing funding for legal services) and the funding of these legal services is in itself a "bankrupt folly."

While not stating an opposition to deny all of the fees requested, Debtor does highlight a basic legal principle with respect to fees that the court has regularly applied in complex Chapter 11 or 12 cases with respect to counsel for the Trustee or counsel for the Debtor in Possession.

First, interim fees approved are subject to a final review, and interim approval is not a "final pre-final" order. Second, while the court may provide interim approval, the Trustee will be authorized to pay only a percentage of the interim approved fees. This brings a focus on the legal services being provided, provides for a fair interim payment, and keeps the attorneys' eyes focused on the goal. While there is nothing with respect to Applicant, other attorneys for the Estate, or the Trustee which would indicate such, we can all recall attorneys, and in some cases trustees, who saw the "value" in keeping the case going and not bring the litigation to resolution or a bankruptcy plan to confirmation.

While this is a Chapter 7 Case, there is substantial, "non-normal" Chapter 7 litigation going on. Balancing that, there is a very active Debtor with oppositions and failures to comply with the Bankruptcy Code, requiring that the legal services be more extensive.

As noted above, the billings records for the major tasks, including multiple adversary proceedings, are combined. In the Motion, the billing task areas are broken out, with the following information:

1. 727 Complaint.

For the 727 Complaint, there are 70.30 hours billing, for fees totaling \$32,960.00 (blended rate of \$468.84/hr). For the tasks stated, it appears to be basic legal services and basic discovery.

2. Complaint for Fraudulent Transfer

For the Fraudulent Transfer Complaint, there are 104.60 hours billed, for fees totaling \$53,580.00 (blended rate of \$512.23/hr). The investigation for this Complaint results in there being twelve (12) parcels of property that the Trustee is now seeking to recover.

3. Employment/Fee Applications

For this period, there are 11.00 hours billed, for fees totaling \$2,785.00 (blended rate of \$253.18).

The Declaration in support includes testimony that the hourly rate for Jeffrey Golden (\$750 in 2023 and \$850 in 2024) and Christopher A. Minier (\$625 for 2023 and \$700 for 2024) is \$600 for each of these professionals for the legal services provided to the Trustee.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Golden Goodrich LLP, the Special Counsel (“Applicant”) for Gary Farrar, the Chapter 7 Trustee (“Client,” “Trustee”), makes a Third Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2023, through April 30, 2024. The order of the court approving employment of Applicant was entered on May 19, 2023. Dckt. 75. Applicant requests fees in the amount of \$110,485 and costs in the amount of \$7,326.70.

Trustee submitted a Declaration in support at Docket 361. Trustee states he has reviewed this Application and has no objection. *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 investigated potential undisclosed assets, (ii) conducted 2004 examinations, (iii) prosecuted a 727 action, (iv) prepared and filed a complaint for fraudulent transfer against the Debtor and related persons and entities, and (v) advised the Trustee on these matters. Mot. 2:4-7, Docket 349. 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.

Asset Analysis and Recovery: Applicant spent 35.40 hours in this category at a blended rate of \$597 per hour. Applicant reviewed valuations and comparables relating to the Debtor John Mendoza's ("Debtor") real properties. Applicant proceeded to subpoena the remaining Examinees even though it appeared several of them had been evading service from the process servers.

Applicant prepared for and appeared at the Debtor's depositions which were held on December 8, 2023 and March 7, 2024 Ms. Mendoza's examination was rescheduled to January 11, 2024 and to January 15, 2024. Applicant prepared for and appeared at Ms. Mendoza's deposition which was held on January 15, 2024. There have been multiple follow ups and conversations with her counsel regarding additional information and documents.

Applicant prepared for the examination of Lupe Martin; however, she failed to comply with the subpoena to appear. Applicant prepared correspondence to Ms. Martin regarding her failure to appear for examination and drafted a motion to compel her appearance. To date, Ms. Martin has not appeared for her deposition. Ms. Martin now has counsel and will be answering the complaint. Applicant spoke to Ms. Martin and her counsel and discussed various stipulations. Her deposition should be held in early June 2024. Applicant has prepared for her deposition as well. Mot. 9:6-11, Docket 349.

Litigation: Applicant spent 174.90 hours in this category at a blended rate of \$468.84. Applicant reviewed court-mandated conferences, calculated litigation deadlines, participated in a discovery conference, reviewed the Debtor's status report, prepared a joint status report, discovery plan and initial disclosures, researched additional parties, prepared responses to interrogatories, requests for admissions and production of documents.

Applicant prepared and served the Trustee's initial disclosures on December 28, 2023. Applicant conferred with Defendant's counsel, prepared the Scheduling Conference Statement and Discovery Plan which was filed on January 2, 2024 (Adv., Docket 18), and prepared for and appeared at the status conference held on January 4, 2024 at 2:00 p.m. Applicant reviewed the Scheduling Order (Adv. Docket 22) entered by the Court on January 9, 2024, which established a schedule for the Adversary Proceeding and set a pretrial conference for September 18, 2024 at 2:00 p.m. Applicant has been preparing for a summary judgment and trial in this matter as well as pre-trial motions and additional discovery. Mot. at 10:24-11:12, Docket 349.

In this category, Applicant also prepared Trustee's complaint for Fraudulent Transfer, Constructive Trust, Resulting Trust, Unjust Enrichment, Accounting and Declaratory Relief ("Fraudulent Transfer Complaint") which was filed against John Pierre Mendoza, La Estrella Enterprises, LLC, Lupe Martin and Jenae-Desiree Mendoza ("Defendants") on March 28, 2024, commencing adv. no. 9:24-ap-09004 ("Fraudulent Transfer Adversary Proceeding"). Based on Applicant's investigation, the Fraudulent Transfer Adversary Proceeding alleges that the Debtor transferred numerous properties either by fraudulent transfer and/or by transfer of mere legal title while retaining beneficial ownership and control over said properties. Mot. at 14:20-23, Docket 349.

Employment/Fee Applications: Applicant spent 11 hours in this category at a blended rate of \$253.18. Applicant finalized the Second Application and related filings and prepared for and appeared at the hearing held on February 22, 2024, at which time the Court approved the Second Application. The Firm also began preparing this Application. *Id.* at 14:17-20.

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
Jeffrey I. Golden, Attorney	89.0	\$600.00	\$53,400.00
Beth E. Gaschen, Attorney	19.60	\$600.00	\$11,760.00
Michael R. Adele, Attorney	50.50	\$600.00	\$30,300.00
Claudia M. Yoshonis, Paralegal	39.50	\$250.00	\$9,875.00
Cynthia B. Meeker, Paralegal	12.30	\$250.00	\$3,075.00
Gabrielle Roosevelt, Paralegal	8.30	\$250.00	\$2,075.00
Total Fees for Period of Application			\$110,485.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$13,860.00	\$13,860.00
Second Interim	\$28,240.00	\$28,240.00
Total Interim Fees Approved and Paid Pursuant to 11 U.S.C. §§ 330, 331	\$42,100.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$7,326.70 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$4,009.91.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing fees	-----	\$350.00
Federal Express	-----	\$49.60
Depositions and transcripts	-----	\$6,871.30
Online research, CourtDrive and PACER	-----	\$55.80
Total Costs Requested in Application		\$7,326.70

XXXXXXX

**Discussion of Fees Requested, Hourly Rates,
and Benefit for the Bankruptcy Estate**

In reviewing this Bankruptcy Case, there have been substantial legal fees incurred. In this latest Application, it appears that the legal services billing is being done by more senior partners in Special Counsel's law firm, with little associate or paralegal assistance.

Though the court recognizes the challenges created by Debtor pre-petition, the Trustee and his special counsel now have a very focused federal forum to diligently prosecute the Creditor's and the Estate's rights.

At the hearing, counsel for the Trustee addressed this cost-benefit question. Special Counsel provided further comments about the scope of work and the amounts of the billings. He further noted that he also serves as a bankruptcy trustee, and stated that the hourly rates reduce the hourly rates for Beth E. Gaschen, Esq., and Michael R. Adele, Esq., to \$500.00 an hour.

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 Golden Goodrich LLP("Applicant"), Special Counsel for Gary Farrar, the Chapter7 Trustee, ("Client")

having been presented to the court, and upon review of the pleadings, evidence, opposition stated by Debtor, and good cause appearing,

IT IS ORDERED that the Motion for Allowanced of Fees and Expenses is **XXXXXXX**.

2. [24-90418-E-11](#) **ART BUILDINGS LLC** **MOTION TO EMPLOY MICHAEL JAY**
[MJB-2](#) **Michael Berger** **BERGER AS ATTORNEY(S)**
8-14-24 [\[31\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest and Office of the United States Trustee on August 14, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Employ is granted.

Art Buildings LLC (“Debtor in Possession”) seeks to employ Michael Jay Berger (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327, 328(a) and 330 and Fed. Rule Bankr. P. 2014(a). Debtor in Possession seeks the employment of Counsel to generally represent it through this Chapter 11 proceeding.

Debtor in Possession argues that Counsel’s appointment and retention is necessary because of Applicant’s extensive experience representing both creditors and Debtors in Chapter 7, 11, and 13 bankruptcy proceedings. Mot. 2:11-14, Docket 31. Debtor in Possession states it would be unable to reorganize its business without the benefit of competent legal advice as it has no knowledge of bankruptcy

law and needs the assistance of an experienced bankruptcy attorney to effectively deal with claims against the estate and propose a plan of reorganization. *Id.* at 2:17-21.

Michael Jay Berger, proposed counsel, testifies that is an expert in the field of bankruptcy and will effectively represent Debtor in Possession. Decl ¶ 3, Docket 34. Mr. Berger testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 5.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Michael Jay Berger as Counsel for the Debtor in Possession on the terms and conditions set forth in the Client-Attorney Written Fee Agreement filed as Exhibit 3, Dckt. 35. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue 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 Employ filed by Art Buildings LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective July 19, 2024, and Debtor in Possession is authorized to employ Michael Jay Berger as Counsel for Debtor in Possession on the terms and conditions as set forth in the Client-Attorney Written Fee Agreement filed as Exhibit 3, Dckt. 35.

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

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

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

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

3. [10-94523-E-7](#)
[BSH-2](#)

ROGER/MARY PITTO
David Foyil

MOTION FOR COMPENSATION BY THE
MILLER LAW FIRM, LLC FOR TAYJES
SHAH, AND BY LAW OFFICE OF
BRADY FOR STEVEN J. BRADY AND
LAW OFFICE OF GATEWAY JUSTICE,
P.C. FOR CHRISTOPHER VAUGH
SPECIAL COUNSEL(S)
8-9-24 [\[99\]](#)

Item 3 thru 4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on August 8, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

The Motion for Allowance of Professional Fees is granted.

The Brady Law Group, The Miller Law Firm, LLC, and Gateway Justice, the Special Counsel ("Applicant" or "Special Counsel") for Gary Farrar, the Chapter 7 Trustee, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested related to prosecuting the claim for personal injuries and medical expenses Debtor Mr. Pitto incurred as a result of the use or exposure to Roundup/Glyphosate, including a diagnosis of Non-Hodgkin's Lymphoma ("Lawsuit").

The order of the court approving employment of Applicant by the Trustee was entered on January 3, 2022. Dckt. 54. That Order approving employment specifies, subject to 11 U.S.C. § 328, the following fees for Applicant:

2. Compensation will be 40% of all amounts collected from the Lawsuit and reimbursement of costs, only if there is a recovery. Under the Fee Agreement, Brady will received 45% of the legal fees collected, Miller will receive 45%, and Gateway will receive 10%. If there is no recovery, Special Counsel will not receive any fees or costs. Special Counsel has agreed to advance costs for which they would be reimbursed only from the gross amount of a judgment or settlement. If there is no recovery, Special Counsel will not receive any fees or costs. No hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

Order, p. 2:1-8; Dckt. 54.

The Motion does not specifically state the exact number of compensation that Special Counsel is seeking. What is stated in the Motion is that a \$237,000 recovery was secured, and the terms of employment provide for compensation based on a 40% contingent fee. Mtn., ¶¶ 2,3; Dckt. 99. It is further asserted that no circumstances have arisen that would render the terms of the compensation arrangement to be improvident in light of developments not capable of being anticipated at the time of the Court's approval of such terms. Mot. 2:9-12, Docket 99.

In the Points and Authorities filed in support of the Motion, it is stated that due to an oversight, when the settlement proceeds were received, Special Counsel erroneously disbursed \$72,993.47 in Bankruptcy Estate settlement proceeds to the Debtor. When the error was identified and demand was made on the Debtor to return the disbursement, the Trustee made demand for the entire \$237,000.00 to be turned over to the Trustee. P&A, ¶¶ 2, 3; Dckt. 102.

On or about March 7, 2024, Special Counsel complied with Trustee's demand to turnover \$237,000. *Id.*; ¶ 3. Without expressly stating it, it appears that Special Counsel used some of its own funds to comply with Trustee's demand for turnover, not being able to recover the \$72,993.47 erroneous disbursement from Debtor.

It is further stated in the Points and Authorities that in light of the Special Counsel having made the disbursement error, the Trustee asserted that Special Counsel should not be entitled to any fees for the services rendered. *Id.*; ¶ 4.

In the Points and Authorities, it is stated that Special Counsel made several disbursements to Debtor, which are identified as:

1. On December 12, 2022, Special Counsel disbursed \$44,122.28 to Debtor.
2. On November 19, 2023, Special Counsel disbursed \$28,871.19 to Debtor.

Id.; ¶¶ 18, 19. These two disbursement total the \$72,993.47 identified as the erroneous disbursement.

Economic Consequences of Special Counsel's Error

As Special Counsel has owned up to, an error was made when Special Counsel disbursed \$72,993.47 to the Debtors from the \$237,000.00 settlement. With that disbursement having been made, there was “only” \$164,006.53 in settlement proceeds remaining with Special Counsel.

However, on demand of the Trustee, Special Counsel has turnover \$237,000.00, the full dollar amount of the settlement proceeds, to the Trustee for the Bankruptcy Estate. On April 3, 2024, the Trustee filed his Report of Recovery, documenting the Trustee having received \$237,000.00. Dckt. 72.

The Trustee has received an amount equal to 100% of the settlement recovery on the claims that are property of the Bankruptcy Estate.

On June 6, 2024, the Chapter 7 Trustee filed his Final Report (to which a timely Objection has been filed). Dckt. 88. The Final Report does not provide for any distribution to Special Counsel. *Id.*; p. 10-12.

It appears that no provision is made for payment to Special Counsel because no Motion for Approval of Fees, as required by 11 U.S.C. § 330 had been filed following the April 2024 turnover of the full \$237,000.00 settlement recovery.

In the Final Report section titled “Major activities affecting closing which are not reflected above, and matters pending, date of hearing or sale, and other action,” the following information is included:

3/24/22 MONITORING FOR CASE SETTLEMENT

6/30/22 NO UPDATE ON ROUNDUP SETTLEMENTS

9/14/22 no status change for Round up issues

12-27-22 Again no contact from any party involved in case

4/4/23 roundup settlements seem to be moving forward. Trustee has requested counsel to follow up with class action parties

8/7/23 no info update so far

12/11/23 Settlements are happening. I have requested counsel follow up on this.

1/10/24 Special counsel confirms settlement in process

2/23/24 PROCEEDS TURNOVER IS IN PROCESS

3/21/24 Trustee requested counsel Suntag follow up with special counsel on December 11, 2023 as other Round Up cases were moving to settlement. Suntag pressed special counsel for a response in January after note having clear answers. What was discovered was that special counsel had settled and disbursed funds without trustee participation or Court approval. Their position was that they were advised to case was closed. Today trustee received the full gross settlement amount

from special counsel \$237,000. This appears to be a windfall recovery for the case creditors..and the debtors.

3/21/24 BASED ON SPECIAL COUNSEL'S COLLECTING OF THE SETTLEMENT FUNDS, PAYING THEMSELVES AND THE DEBTORS WITHOUT APPROVAL, THE TRUSTEE WILL REPORT THESE CLAIMS AS NOT VALID FOR DISTRIBUTION. CLAIMS 23-28 PER DISTRIBUTION.

Final Report; Dckt. 88 at 4.

In this Application, Special Counsel does not seek reimbursement for the \$72,993.47 erroneous disbursement; instead, Special Counsel seeks 40% of the \$237,000 recovery, pursuant to its fee arrangement, computing the 40% to be in the amount of \$94,800. Such fee award will only result in net compensation in the amount of \$21,806.53 after deducting \$72,993.47 for the monies counsel erroneously having disbursed to Debtor.

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 show Applicant’s services resulted in a recovery of \$237,000 from prosecuting the Lawsuit. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Debtor in litigation for personal injuries and medical expenses incurred as a result of the use or exposure to Roundup/Glyphosate, including a diagnosis of Non-Hodgkin's Lymphoma, for which Debtor agreed to a contingent fee of 40% of the gross award. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). \$237,000 of net monies (exclusive of these requested fees and costs) was recovered for Client.

The division of the recovery is as follows:

Names of Professionals	Percentage	Total Fees
Gateway Justice	10%	\$9,480.00
Miller Law Firm, LLC	45%	\$42,660.00
Brady Law Group	45%	\$42,660.00
Total Fees for Period of Application		\$94,800.00

Costs & Expenses

Applicant does not seek the reimbursement of any costs.

FEES ALLOWED

Trustee Not Providing For Payment of Special Counsel Fees

Applicant makes references to conversations following the erroneous payments to Debtor (who had no interest in the Settlement Recovery) with the Trustee in which the Trustee expressed a view that Special Counsel should not be allowed fees. However, the ultimate determination on whether a professional employed by a trustee is to be paid rests with the court.

This Bankruptcy Case was reopened on August 9, 2021. Applicant was authorized to be employed as Trustee's Special Counsel by order entered on January 3, 2022. Order; Dckt. 54. While it is not clear when the \$237,000.00 in settlement proceeds were received, Special Counsel made the erroneous (unauthorized) disbursements to Debtor on December 12, 2022, and November 19, 2023. No disbursement were made to the Trustee, until the full \$237,000.00 was turnover to the Trustee on March 21, 2024 - which appears to be more than two years after the \$237,000.00 of the Settlement Recovery was received by Special Counsel.

No information is provided as to why the Settlement Recovery was not paid to the Chapter 7 Trustee, Special Counsel's client since the January 2022 authorized employment.

However, what errors were made have not resulted in an economic loss for the Bankruptcy Estate. The Bankruptcy Estate has received the full \$237,000.00 Settlement Recovery, which monies are now to be administered by the Trustee.

It appears that, prior to the filing of this Motion, the Trustee had a basis for not paying any fees to Special Counsel – no authorization for payment of and allowance of such fees had been requested by Special Counsel or allowed by the court. While that error by Special Counsel led to the Trustee's Final Report, the present Motion seeks to correct that error.

At the hearing, **XXXXXXX**

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$94,800 pursuant to 11 U.S.C. § 330 for these services provided to Debtor by Applicant. The Chapter 7 Trustee is authorized to pay 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 these professionals in this case:~~

Gateway Justice	10%	\$9,480.00
Miller Law Firm, LLC	45%	\$42,660.00
Brady Law Group	45%	\$42,660.00

~~_____ Fees _____ \$94,800~~

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

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

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

The Motion for Allowance of Fees and Expenses filed by The Brady Law Group, The Miller Law Firm, LLC, and Gateway Justice, the Special Counsel (“Applicant”) for Roger R. Pitto and Mary Pitto (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that The Brady Law Group, The Miller Law Firm, LLC, and Gateway Justice are allowed the following fees and expenses as a professional of the Estate:

Gateway Justice	10%	\$9,480.00
Miller Law Firm, LLC	45%	\$42,660.00
Brady Law Group	45%	\$42,660.00

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

~~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.

4. [10-94523-E-7](#)

ROGER/MARY PITTO
David Foyil

TRUSTEE'S FINAL REPORT
6-10-24 [88]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Trustee's Final Report was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, and all parties in interest as stated on the Certificate of Service on June 10, 2024. The court computes that 80 days' notice has been provided.

The Objection to Trustee's Final Report is xxxxxxx.

The case was filed on November 18, 2020, and closed on March 18, 2011. Docket 35. The case was reopened on August 9, 2021 due to debtors Roger R Pitto and Mary Pitto ("Debtor") receiving funds from a mass tort settlement that implicated the Chapter 7 bankruptcy estate. The Chapter 7 Trustee, Gary Farrar ("Trustee") issued his Final Report on June 10, 2024. Docket 88. The clerk of the court issued the Order Fixing Deadline for Filing Objections to Trustee's Final Report ("TFR") on June 10, 2024. Docket 90. The original deadline to object to the TFR was July 1, 2024.

Special counsel Brady Law Group, the Miller Law Firm, LLC, and Gateway Justice was appointed in the case to deal with the mass tort claim. Order, Docket 54. On June 25, 2024, attorney Tayjes Shah, a member of the Special Counsel team at the Miller Law Firm ("Special Counsel"), filed an *Ex Parte* Motion for an Order Extending Deadline to Object to TFR. Docket 93. The court granted that Motion and set the deadline to object to the TFR for August 30, 2024. Docket 98.

THE OBJECTION

On August 15, 2024, Special Counsel filed an Objection to the TFR. Docket 106. Special Counsel states:

1. Special Counsel objects to the Chapter 7 Trustee's Final Report on the grounds that it inaccurately claims Special Counsel paid itself without Court authorization, fails to compensate Special Counsel pursuant to a retention order, does not reimburse Special Counsel for costs incurred, and does not

provide for payment for a statutory Medicare lien listed in the Final Report. Obj. 2:5-9, Docket 106.

2. Special Counsel represented Debtor prepetition. Upon discovering the bankruptcy, Special Counsel placed a “bankruptcy hold” on Debtor’s claim. The “bankruptcy hold” effectively placed a hold on the distribution of settlement funds until two conditions were met: (1) a release was signed by Debtor and (2) approval was obtained by the bankruptcy court or waived by the trustee. *Id.* at 2:24-28.
3. As part of the oversight and processing of the Round Up mass-tort claims, Special Counsel employed Archer Systems, LLC, a nationwide settlement administrator, as a third party to monitor “bankruptcy hold” statuses for various claims for which Special Counsel was responsible. *Id.* at 3:1-4.
4. On or about June 24, 2022, Archer Systems, LLC provided an update to the Miller Roundup BK Report, which indicated the “BK Status” of Debtor’s claim as “Assigned to Third Party – Cleared.” The column marked “Bankruptcy_Final” indicated “Yes” and the column titled “Bankruptcy_Final_Date” listed a date of “3/31/2022.” The June 24, 2022 Excel spreadsheet updated this particular Debtor’s “bankruptcy hold” status in the same manner it would have updated a claim as if the “bankruptcy hold” had actually been lifted. Special Counsel misinterpreted the updated Excel spreadsheet as if Debtor’s “bankruptcy hold” had actually been cleared, leading Special Counsel to erroneously believe it could authorize disbursements to Debtor. *Id.* at 3:6-28.
5. On December 12, 2022, Special Counsel authorized the first disbursement in the amount of \$44,122.28. On November 9, 2023, Special Counsel authorized the second disbursement in the amount of \$28,871.19. But for Special Counsel’s misinterpretation of the June 24, 2022, Miller Roundup BK Report, Special Counsel would not have authorized the disbursements. *Id.* at 4:5-9.
6. After some investigation, on January 30, 2024, Special Counsel sent a letter to the Chapter 7 Trustee’s counsel explaining how the erroneous disbursement occurred. *Id.* at 5:21-22.
7. On March 7, 2024, Special Counsel sent Debtor a letter requesting Debtor return the disbursed funds as property of the Bankruptcy Estate. *Id.* at 6:26-27.
8. On page 5 of the TFR, the Trustee provides:

BASED ON SPECIAL COUNSEL'S COLLECTING OF THE
SETTLEMENT FUNDS, PAYING THEMSELVES AND
THE DEBTORS WITHOUT APPROVAL, THE TRUSTEE

WILL REPORT THESE CLAIMS AS NOT VALID FOR
DISTRIBUTION. CLAIMS 23-28 PER DISTRIBUTION.

Special Counsel did not pay itself its fees, which are 40% of the \$237,000 recovery. *Id.* at 7:20-25.

9. Special Counsel did not pay the Medicare lien. *Id.* at 9:19. There is a \$66,618.81 Medicare lien which has not been paid and remains outstanding. *Id.* at 10:7.
10. Trustee's Final Report does not provide for the payment of Medicare's statutory lien, despite the fact that Medicare has made payments on behalf of the Debtor related to the injury or illness at issue. *Id.* at 10:19-21.
11. The court should:
 - a. Decline to approve the Chapter 7 Trustee's Final Report;
 - b. Determine and award the appropriate amount of fees and costs to be paid to the Trustee and his professionals;
 - c. Direct the Trustee to pay the Medicare lien.

Special Counsel files the Declaration of Tayjes Shah in support. Decl., Docket 108. Mr. Shah authenticates the facts alleged in the Objection. Mr. Shah testifies that on or about March 12, 2024, Trustee received the \$237,000 gross settlement amount. *Id.* at ¶ 5.

Special Counsel also submits Exhibits in support, providing copies of the documentation detailing the series of events and exchanges between the parties. Docket 109.

DISCUSSION

Special Counsel erroneously made distributions to Debtor, believing that the bankruptcy issues had been resolved in the case. However, Special Counsel remitted the full amount of the award to Trustee in the amount of \$237,000 on March 12, 2024, apparently using their own funds as Debtor had spent the initial disbursements.

Special Counsel argues it was not paid for its services related to representing Debtor outside of bankruptcy, contrary to what the TFR states. Special Counsel also argues the Medicare Lien has not been paid.

At the hearing, **XXXXXXX**

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 Objection to Trustee's Final Report filed by Tayjes Shah, a member of the Special Counsel team at the Miller Law Firm ("Special Counsel") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is **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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

At the hearing, opposition was stated by Creditor asserting the lien on the cash collateral that is to be used.

The Motion for Authority to Use Cash Collateral is XXXXXXX.

August 29, 2024 Hearing

The court granted interim authority to use cash collateral through September 6, 2024. Order, Docket 31. The court set the date of August 22, 2024, for any supplemental pleadings in support or opposition of the use of cash collateral. *Id.* Replies may be heard at the hearing.

On August 22, 2024, First Chatham Bank (“Creditor”) filed a Supplemental Brief to the Motion. Docket 42. Creditor states:

1. Creditor respectfully requests that the Court require the debtor to file updated, accurate versions of the bankruptcy schedules and the documents used to support the Motion to Use Cash Collateral and Grant Adequate Protection. The Meeting of Creditors revealed many problems with the Debtor’s prior filings – missing assets, missing debts, questions concerning cash flow – and these issues must be resolved before the Court allows the Debtor to engage in the long-term use of cash collateral, and to ensure that the protection provided is actually adequate. Reply 1:22-27, Docket 42.
2. The following issues were identified at the Meeting of Creditors:
 - a. Debtor’s schedules stated that the business had no accounts receivable when the petition was filed. However, Ms. Espinosa (one of the owners of the debtor company and the secretary/treasurer of the company) testified under oath that the schedules were incorrect and that the business did, in fact, have accounts receivable when the petition was filed. *Id.* at 2:5-9.
 - b. Ms. Espinoza recently submitted a declaration that stated that the business’ 2021 and 2022 taxes had not been filed. When asked about potential tax liabilities, Ms. Espinoza represented that she believed the tax liability to be modest. However, the IRS has since filed a proof of claim for just over \$250,000, consisting mostly of unpaid corporate taxes dating back to 2019, but also over \$40,000 in unpaid payroll taxes. *Id.* at 2:10-15.
 - c. The assets stated by the Debtor list did not list the property that secures the loan from First Chatham Bank. That property is worth nearly \$3,000,000. *Id.* at 2:16-17.

Creditor does not identify in the Opposition the property that secures its claim which is not listed on the Schedules. Creditor has not filed its Proof of Claim as of the court’s August 27, 2024 review of the Claims Register.

On July 29, 2024, the Debtor’s Schedules were filed. Dckt. 27. On Schedule A/B Debtor lists the following real property:

3925 W. Linwood Ave	Stated Value.....\$3,159,000
Turlock, California	

19.75 acre lot of industrial ground
with a modest single family residence with
three bedroom, two-half bath currently being
used as Debtor's office.

Debtor lists Creditor as having a secured claim in the amount of (\$2,994,338.41), which is secured by a Deed of Trust on the Linwood Ave Property and 65 pieces of equipment. Schedule D, ¶ 2.3; *Id.* at 13. Debtor states that the value of the real property is \$3,159,000 and personal property is \$956,000, which secures Creditor's claim.

- d. Claims are being made by a number of former employees of the Debtor. At the Meeting of Creditors, Ms. Espinoza testified that she is aware of seven (7) former employees who have not been paid all that is owed, that she was provided an amount owed (but that she did not know whether that amount included statutory penalties for late payment of wages). In addition, it appears from information obtained at the Meeting of Creditors that at least one former employee was injured at work in January 2024, at a time when the Debtor may not have had Workers' Compensation Insurance. *Id.* at 2:19-26.
3. Creditor is not currently adequately protected. *Id.* at 3:4-5. First, During the Meeting of Creditors, Ms. Espinoza admitted that the property that secures First Chatham Bank's loan to the Debtor is not insured as required under the loan agreement.

Second, the proposal in the Cash Collateral Motion would pay First Chatham Bank approximately 2/3 of the monthly principal and interest payments due under its loan agreement while the Debtor continues to use that property without limitation and without addressing the arrearage. *Id.* at 3:5-10.

4. Creditor requests the following:
 - a. The hearing on the Motion to Use Cash Collateral be continued to the earliest possible date after the continued Meeting of Creditors on September 10, 2024.
 - b. Debtor immediately obtain property insurance to cover the real estate that secures the First Chatham Bank loan to Debtor, as required by the loan agreement, and file proof of that insurance within 3 business days.
 - c. Debtor file complete and accurate amended versions of all previously filed financial documents within 5 business days.
 - d. Debtor file a statement under oath concerning the viability of the "interim budget" submitted with the Motion for Use of Cash Collateral, including whether the projected revenue targets were reached in the time since the document was filed and remain valid, whether the projected expenses proved accurate and remain valid,

and verify the Debtor's current liquid assets (bank accounts), as well as accounts receivable and payable.

Id. at 3:14-26.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Martinez Pallet Services, Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral from operating its business on the commercial property commonly known as 3925 W. Linwood Avenue, Turlock, California 95380 ("Property"). Debtor in Possession's business manufactures and sells wood pallets by buying new wood material and donated recycled wood it receives from various businesses. Mot. 2:13-14, Docket 15. Debtor in Possession's gross receipts from January 1- through June 27, 2024 was \$498,372.64 with a net profit of \$4,960.19. *Id.* at 3:1-2.

Debtor in Possession's business performed well during the Covid years when wood products were in high demand. However, the price of wood has since dropped by 50%. *Id.* at 3:17-18. Furthermore, the interest rate on the note secured by the Property has increased from 3.5% in 2022 to 8.5% today, increasing the mortgage payment. *Id.* at 3:13-16. Debtor in Possession requests the use of cash collateral to continue operating the business in the ordinary course from the Property and to make adequate protection payments.

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

Martinez Pallet Services, Inc.							
Income/Expense	Interim	Final Budget					
	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	
Income							
Sales- Pallet Sales	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	
Sales- Wood Shavings	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Sales- Pickup Services	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	
Total Income	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	
Cost of Goods Sold							
Raw Materials- Wood	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	
Raw Materials- Broken Pallets	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	
Raw Materials- Nails	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	
Total COGS	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	
Gross Profit	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	
Expense							
Bookkeeping & Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Fuel (Diesel, Gas, & Propane)	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	
Merchant Service Fee	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	
Office Supplies	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	
Salaries & Wages - 8 employees	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	
Shareholder Salaries & Wages - 3 employees	\$ -	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	
Meals & Entertainment	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Card and Bank Fees	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	
IT & Telcom Expense	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
Utilities	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	
Insurance - Liability	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	
Insurance - Auto	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	
Saw Blades - Replacements	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	
Auto Expense - Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Total Business Expense	\$ 38,898	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	
Net Operating Income	\$ 41,602	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	
Adequate Protection to secured creditors							
First Chatham Bank		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Balboa Capital		\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	
Total Adequate Protection Expense	\$ -	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	
Net Income	\$ 41,602	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	

Exhibit A, Docket 18. As seen in the chart, First Chatham Bank would be receiving adequate protection payments of \$20,000 per month, and Balboa Capital will be receiving adequate protection payments of \$1,000 per month.

First Chatham Bank holds a first priority security interest secured by a UCC-1 financing statement recorded on December 8, 2022 against all of Debtor in Possession's personal property assets utilized in the Debtor in Possession's business and a first priority Note secured by a deed of trust in the Property. Mot. 4:25-5:12. The Note is also personally guaranteed by Debtor in Possession's shareholders, Francisco J. Mora Martinez and Adela Espinoza Sanchez. Mr. Martinez testifies in his Declaration that "without cash collateral use Debtor would suffer irreparable harm to their business operations if not permitted immediate use of cash collateral." Decl. 6:13-14, Docket 17.

Debtor in Possession estimates the Property to be worth \$3,159,000 (Decl. 2:24-25, Docket 17), while First Chatham Bank's Claim is estimated to be \$3,000,000 (Decl. 4:20, Docket 17). Balboa Capital's claim is estimated to be in the amount of \$129,819.33. *Id.* at 4:21.

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

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the business and generating cash for adequate protection payments to secured creditors. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period July 24, 2024, through December 24, 2024, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

However, at the hearing counsel for First Chatham Bank stated an opposition to the use of cash collateral. Schedules are still to be filed (July 19, 2024, the extended deadline for such to be filed) and from the information provided, this Creditor cannot determine that the purported cash flow can be generated by the Debtor/Debtor in Possession.

The Parties agreed to authorize the use of cash collateral on the existing budget through and including September 6, 2024. The hearing is continued to 10:30 a.m. on August 29, 2024. Supplemental pleadings, in support of or in opposition to the use of cash collateral shall be filed and served on or before August 22, 2024. Replies may be presented orally at the continued hearing.

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 Martinez Pallet Services, 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 **XXXXXXX**