

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**December 7, 2023 at 10:30 a.m.**

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1. [23-90111-E-11](#)      MICHAEL HOFMANN      MOTION TO SELL  
[DL-3](#)                      Brian Haddix                      11-6-23 [171]

**SUBCHAPTER V**

**Item 1 thru 2**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors and parties in interest (Notice of Hearing only), Attorneys of record who have appeared in the Bankruptcy case, parties requesting special notice, and Office of the United States Trustee on November 7, 2023. By the court's calculation, 30 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 to Sell Property is granted.**

As ordered by the Court, pursuant to 11 U.S.C. § 1183(b)(5)(B), Walter R. Dahl, the Subchapter V Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Here, Movant proposes to sell two parcels of real property in this case. The first parcel of approximately 24 acres is commonly known as 13330 Valley Home Road, Oakdale, California 95361. Schedule A/B, Dckt. 32. The second parcel of approximately 17 acres is contiguous to the first parcel located at the same address. *Id.* (The two farm land parcels are collectively referred to as “Farmland”). The Bankruptcy Estate owns an undivided 8.33% interest in the Farmland. The remaining 91.66% interest belongs to several members of the Brichetto family, who are creditors that have filed claims in this case. *See* POC 6-1, 7-2.

The proposed purchaser of the Farmland is also the Brichetto family. The terms of the sale are listed in the Purchase and Sale Agreement, filed as Exhibit 1, Docket 174. A summary of the terms, provided by Movant, are as follows:

1. The sales price is \$80,000.00, which Trustee believes, based upon the opinion of value provided by Paul Boudier, Trustee’s real estate consultant, is a fair value for the Estate’s undivided 8.3333% interest in the Farmland.
2. The sales price is to be paid partially by way of a wire transfer to Trustee’s account in the amount of \$12,500.00, and the balance of \$67,500.00 by way of a partial offset against the Brichetto Family’s abstract of judgment recorded May 5, 2022 which encumbers the Estate’s interest in the Farmland. In addition, the Brichetto Family is also paying all costs and expenses of escrow.
3. Trustee has already received the initial deposit of \$12,500.00.
4. The parties obligations under the PSA are contingent upon court approval, which this motion seeks. The PSA provides that this motion shall not provide for overbidding.

Mtn., Dckt. 171 p. 2-3:16-28; 1. Movant’s Motion is supported by his own Declaration, who testifies to and authenticates the facts alleged in the Motion. Dec., Dckt. 173.

## **DISCUSSION**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate for the following reasons:

1. The sale is for fair market value of the Debtor in Possession’s minority interest.
2. The Brichettos are paying all costs of the sale.
3. The Farmland has no independent water source and contains walnut trees. Water from parcels owned wholly by the Brichettos is used to water the trees, meaning it would be almost impossible to sell the Farmland to an independent party.

4. The sale will resolve significant longstanding litigation between the Brichettos and Debtor in Possession.

Dec., Dckt. 173 ¶ 15.

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 Sell Property filed by Walter R. Dahl, the Subchapter V Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Walter R. Dahl, the Subchapter V Trustee, is authorized to sell, pursuant to 11 U.S.C. § 363(b), to creditors in this case the Brichetto family (“Buyer”), the Bankruptcy Estate’s 8.33% interest in two parcels of real property for the purchase price of \$80,000. The first parcel of approximately 24 acres is commonly known as 13330 Valley Home Road, Oakdale, California 95361. Schedule A/B, Dckt. 32. The second parcel of approximately 17 acres is contiguous to the first parcel located at the same address. *Id.* The sale shall be conducted on the terms set forth in the Purchase and Sale Agreement, filed as Exhibit 1, Docket 174.

SUBCHAPTER V

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 11 Trustee, all creditors and parties in interest (Notice of Hearing only), Attorneys of record who have appeared in the Bankruptcy case, parties requesting special notice, and Office of the United States Trustee on November 15, 2023. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Motion for Allowance of Professional Fees is granted.**

Walter R. Dahl, the Subchapter V Trustee (“Applicant”), makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of realtor Paul Boudier for his work in evaluating and marketing the Farmland in this case. Mr. Boudier’s fees are requested in the amount of \$1,593.75 in this case for four hours and fifteen minutes of work at \$375.00 per hour. Mr. Boudier is an authorized professional to work in this case pursuant to this court’s order entered on August 9, 2023. Order, Dckt. 133 (approving Mr. Boudier’s fee at \$375.00 per hour as listed in Docket 129). Applicant requests authorization to pay Mr. Boudier’s fee out of an initial \$12,500.00 down payment received resulting from the sale of the Farmland.

**APPLICABLE LAW**

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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 a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “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 evaluating the Farmland with the goal of determining whether the \$80,000.00 purchase price represented a fair value for the Estate’s 8.33% interest. Dec., Dckt. 180 ¶ 9. Mr. Boudier “searched the Farmland and comparable sales of farmland, orchards, and unimproved parcels suitable for agricultural use. . . [and] also reviewed the appraisal of the Farmland which had previously been obtained by the Bricchetto Family, and certain information regarding prices of in-shell walnuts for crop years 2021 and 2022, both of which had been provided to Trustee from the Bricchetto Family.” *Id.* at ¶ 10. Finally, Mr. Boudier prepared and provided Applicant with a Broker Price Opinion report as to the Farmland as a whole, assuming a 100% interest. *Id.* at ¶ 11. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **Costs & Expenses**

Applicant does not seek authorization to pay any costs related to this matter.

### **FEES ALLOWED**

#### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,593.75 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Applicant from the initial \$12,500.00 down payment received from the sale of the Farmland.

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 Walter R. Dahl, Subchapter V Trustee (“Applicant”), on behalf of professional and realtor Paul E. Boudier, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



Trustee also submits Exhibits A-G in support. Dckt. 195. Trustee objects to Debtor's claimed exemption on the following grounds:

1. The evidence shows that Debtor did not reside at this residence for the applicable term. Debtor had his mailing address listed as PO Box 3406, Merced, CA 95344, until just one month before filing bankruptcy. Further, billing statements linked to the Property for the years 2018 through 2021 were never in Debtor's name.
2. Mr. Farrar visited the Property on January 30, 2023. His visit revealed that the home was mostly empty and did not appear to be a permanent residence.
3. Mr. Farrar's special counsel, Mr. Jeffrey Golden, has been unable to achieve service on parties who he needs to examine, believing the parties are evading service.
4. Debtor must establish, by a preponderance of the evidence, that the Property is his residence in order to claim the exemption under Cal. Civ. P. § 704.730. Debtor has only testified that the Property is his residence and submitted utility bills in his name, which is not sufficient to show the Property is his residence.
5. The documents show that Debtor's residence is in Merced, California, where his daughter resides.
6. Debtor wishes to gain the advantage of the homestead exemption on valuable property of the estate to thwart his creditors' efforts to collect on their debts.

Objection, Dckt. 189.

### **Creditor's Supplemental Document in Support of Trustee's Objection**

Creditor filed with the court a "Supplement to Consolidated Objections to Homestead Exemption" on November 9, 2023. Dckt. 224. In its supplemental document, Creditor reiterates its original objections. Creditor bases its objections on the following:

1. California law imposes a residency requirement for an automatic homestead exemption. It applies to a judgment debtor's principal dwelling (1) in which the judgment debtor (or spouse) resided at the time the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor (or spouse) resided continuously until the court determines that the dwelling is a homestead in connection with a forced sale. *In re Bhangoo*, 634 B.R. 80, 85 (B.A.P. 9th Cir. 2021) (citing C.C.P. §§ 704.710(c), 703.100(b)(1)). Debtor has the burden of proof in establishing these residency requirements. C.C.P. § 703.580(b); *Bhangoo*, 634 B.R. at 85.
2. Debtor is not entitled to the homestead exemption because he did not reside at the Property on the date Creditor's lien attached and did not continuously reside at the Property thereafter. Creditor's lien attached on December 11, 2017, when

the Property was occupied by Frank and Maria Floyd, as evidenced by property records from Pacific Gas & Electric (“PG&E”) and Tuolumne Utilities District (“TUD”) bill payments.

3. Further, Debtor has not physically continuously resided at the Property. This is evidenced by the previous tenant’s testimony, Stephanie Smith (Dec., Dckt. 225), as well as more billing statements from PG&E and TUD.
4. Debtor’s bank statements reveal he does not spend money near the Property. Only 10% of his transactions were conducted in Twain Harte near the Property.
5. Debtor holds the Property out as a rental, with the Landlord being La Estrella Enterprises, which also owns dozens of other rental properties.

Dckt. 224. Creditor submits the Declarations of Stephanie Smith (Dckt. 225) and Victoria Burns (Dckt. 226) to testify to and authenticate the facts alleged in its supplemental document.

### **Debtor’s Response**

Debtor filed his Response on November 22, 2023. Dckt. 238. In his Response, Debtor states:

1. Debtor meets the intent of the legislation, that being to protect homeowners. Debtor’s principal residence is the Property.
2. Debtor requests the court move forward with the evidentiary hearing to determine disputed facts. Debtor offers a statement of disputed facts. Dckt. 239.

At the hearing, **XXXXXXXXXX**

### **A REVIEW OF THE OBJECTIONS IN THIS CASE**

Creditor WVJP 2021-4. LP in this case objects to debtor John Mendoza’s claimed exemptions under California law, arguing that Debtor has improperly claimed the homestead exemption for the property commonly known as 23955 Cedar Hill Lane, Twain Harte, California 95383. Specifically, Creditor alleges that Debtor’s primary residence is not the Property, and so Cal. Civ. Pro. Code § 704.710(c) does not allow Debtor to claim the homestead exemption in the Property. On October 5, 2023 Gary Farrar, the Chapter 7 Trustee (“Trustee”), filed a joinder pleading in this case, siding with Creditor. For reasons discussed further below, the Chapter 7 Trustee and Creditor’s Objections are sustained, and the claimed exemptions are disallowed.

### **CREDITOR’S OBJECTION**

Creditor filed its Objection to Debtor’s Claimed Homestead Exemption on June 16, 2023. Dckt. 81. In its Objection, Creditor states:

1. Debtor does not reside in the Property and has not continuously resided in the Property from the date Creditor’s judicial lien attached to the Property.

2. Debtor also did not reside at the Property on the petition date.
3. Instead of living at the Property, Debtor rents it out.
4. As such, Debtor may not claim the homestead exemption in the Property.

Dckt. 81.

Creditor's counsel provides his Declaration in support of the Objection. Dec.; Dckt. 83. In it, Creditor's counsel testimony, identified by the paragraph numbers used in the Declaration, includes:

3. He authenticates Exhibit B, which are portions of Debtor's tax returns he received from Debtor.
4. At the 341 Meeting of Creditors, Debtor testified that he was looking for tenants to live in the Property, and that he typically rents out 85% to 90% of the Property.

Declaration; Dckt. 83.

On October 5, 2023, the Chapter 7 Trustee filed a Joinder to the Objection to Claim of Exemption. The Trustee's pleading appears to be a statement in support of the Objection, much in the nature of a separate Objection for the Trustee. In this pleading, the Trustee states:

1. Debtor has failed to establish by a preponderance of the evidence that he is entitled to claim a homestead exemption in the Property.
2. Debtor's tax returns for 2019, 2020, and 2021 list the Property as a rental property, claiming zero days of personal use.
3. Debtor's bank statements for the years 2019, 2020, 2021, and 2022 state the Debtor's address as PO Box 3406, Merced, California 95344, only until October 2022, one month before filing this case.

Dckt. 166.

Trustee first provides his Declaration in which his testimony includes the following (identified by paragraph number used in the Declaration):

2. The Trustee has received copies of cover sheets and Schedules E for Debtor's 2019, 2020, and 2021 tax returns, which are filed as Exhibits A, B, and C.
3. The Trustee received from Debtor profit and loss statements showing Debtor had rental income from the Property of \$2,800.00 in September 2022, \$2,500.00 in October 2022, and \$1,500.00 in November 2022, with copies of such filed as Exhibit D.
4. The Trustee received from Debtor bank statements for the four years preceding the filing of this Bankruptcy Case, which show Debtor's address as P.O. Box 3406, Merced,

California, until the month of October 2022, which was one month prior to the filing of the present Bankruptcy Case. The cover pages for the bank statements are filed as Exhibit E.

Declaration; Dckt. 167.

The Declaration of Nora Bakken, a legal assistant at the Trustee's counsel's law firm, is filed, in which she testifies that she transcribed the audio recording of the 341 Meeting of Creditors and her transcription is filed as Exhibit F.

The Trustee's third Declaration is provided by his counsel, Loris Bakken, Esq. Dckt. 169. In it, her testimony, identified by the paragraph number in the Declaration, includes:

2. Counsel recovered from counsel for Creditor copies of billing statements and records that she heard Creditor's counsel say that Creditor obtained them by a subpoena. Copies of the billing statements that she heard Creditor's counsel say were obtained pursuant to a subpoena are filed as Exhibit G.

Neither Creditor nor Trustee asserts or provides evidence that Debtor lived at a different location than the Property.

#### **DEBTOR'S RESPONSE TO CREDITOR'S OBJECTION**

Debtor filed a Response to Creditor's Objection on July 22, 2023. Dckt. 131. In his Response, Debtor states:

1. Debtor's claim of the homestead exemption in the Property is proper because Debtor has continuously resided at the Property.
2. Evidence shows that Debtor's mailing address is at the Property.
3. Debtor only rents part of the house, which does not negate the homestead exemption.

Dckt. 131.

Debtor provides his Declaration in opposition to the Objection to Claim of Exemption, which testimony, identified by paragraph number used in the Declaration, includes:

2. Debtor completed construction on the home on the Property in 2003 and Debtor has resided at "my homes" (plural) since that time.
3. The Property is and has been Debtor's residence since 2003.
4. The Property does not have a "normal 'mailbox'" and Debtor must maintain a P.O. Box.
6. Since Debtor's daughters went off to college, Debtor has attempted to rent out part of the Property.

12. Notwithstanding renting out portions of the Property, Debtor has resided in it since 2003.
13. The Trustee has visited the Property.

### **CREDITOR'S REPLY TO DEBTOR'S RESPONSE**

Creditor filed a Reply to Debtor's Response on October 5, 2023. Dckt. 172. In its Reply, Creditor states:

1. Evidence shows that at the time Creditor's abstract of judgment attached to the Property, Debtor did not reside in the Property. Debtor did not reside in the Property at all from October 2017 through October 2018.
2. Debtor has not otherwise continuously lived at the Property since 2017.
3. Creditor is at least entitled to an evidentiary hearing on this matter.

Dckt. 172. In the Reply, Creditor does not clearly identify what "evidence shows" that Debtor did not reside in the Property.

### **DEBTOR'S OPPOSITION TO TRUSTEE'S JOINDER**

Debtor filed an Opposition to Trustee's Joinder on October 12, 2023. Dckt. 183. In his Opposition, Debtor states:

1. Trustee's joinder is not appropriate because Trustee has not requested the court's permission to join.
2. Any evidentiary hearing should be set as "Material Issues of Material Fact(s) Exist."

Dckt. 183.

### **DISCUSSION**

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Cal. Civ. Pro. Code § 704.710(c) defines the homestead dwelling for purposes of the homestead exemption under California law. It states in relevant part:

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

Cal. Civ. Pro. Code § 704.710(c).

In this case, the objecting parties, Creditor and Trustee, have presented enough evidence to rebut the presumption that Debtor's claimed homestead exemption is valid. The record shows that Debtor's own tax returns list the Property as a rental property in the years immediately preceding this bankruptcy case, and Debtor's bank statement's list his mailing PO box in Merced, California, not at the Twain Harte PO box near the Property. Exhibits A-C, Dckt. 170. Importantly, Debtor must fulfill both qualifiers in Cal. Civ. Pro. Code § 704.710(c) for the Property to be eligible for the homestead exemption. Creditor has shown that Debtor is unable to prove one or both elements. Creditor has presented evidence that its judgment lien attached to the Property during the time in which the Debtor did not reside in the Property, and Debtor has not lived continuously in the Property thereafter.

The Schedule E Tax Return Information filed by the Trustee as Exhibits A, B, and C, Dckt. 170, include the following information:

- A. 2019 Schedule E lists rental properties of 1027 W 18<sup>th</sup> Street, Merced, California; 1035 W 18<sup>th</sup> Street, Merced California; 125 W. Michigan Ave, Marshall, MI., 115 Greet St, East Marshall, MI, and 23955 Cedar Hill Ln, Twain Harte, CA (the Property at issue).
  - 1. For each of these the "Fair Rental Days" are stated to be 365, 365, 280, 365, and 365 days, respectively. The "Personal Use Days" for each are stated to be 0 days.
    - a. This includes stating that there were 0 personal use days for the Property.
  - 2. The same information, including stating that the Property has 366 and 365 "Fair Rental Days" and 0 "Personal Use Days" for the Property is included on the Schedules E for the 2020 and 2021 Tax Returns.

Exhibit A; Dckt. 170.

Several examples of addresses as shown on Exhibit E, the cover pages of the bank account first pages includes the following:

Wells Fargo Bank Account Statement for October 2022,  
Addressed to Debtor at

John P Mendoza  
DBA JPM Developments  
23955 Cedar Hill Lane  
Coinheart [sic] CA 95383

Dckt. 170 at 15.

Wells Fargo Bank Account Statements for September 2022 - August 2022

Addressed to Debtor at

John P. Mendoza  
DBA JPM Developments  
710 W 18<sup>th</sup> ST STE 6  
Merced, CA 95340-4629

*Id.* at 16 - 17.

Mechanics Bank Statements for January 2022 - April 2022

Addressed to Debtor at

John P. Mendoza  
Maria Ornlas  
P.O. Box 3406  
Merced, CA 95344-1406

*Id.* at 18 - 21

Mechanics Bank Statements for May 2022 - July 2022

Addressed to Debtor at

John P. Mendoza  
JPM Developments  
P.O. Box 3406  
Merced, CA 95344-1406

*Id.* at 22 - 24.

Mechanics Bank Statements for August 2022 - December 30, 2022

Addressed to Debtor at

John P. Mendoza  
JPM Developments  
710 W 18<sup>th</sup> ST Ste 6  
Merced, CA 95340-4629

*Id.* at 25 - 29. What is located at this street address has not been identified by the Parties.

Both the Debtor and Creditor have requested an evidentiary hearing on the Objection.

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 Claimed Exemptions filed by WVJP 2021-4. LP (“Creditor”) and The Chapter 7 Trustee, Gary Farrar (“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 Objections to Claim of Homestead Exemption filed by WVJP 2021-4 LP, DCN and Gary R. Farrar, the Chapter 7 Trustee, are **XXXXX**.

4. [23-90421-E-7](#)  
[BON-58](#)

MARK VALENCIA  
Gordon Bones

AMENDED MOTION TO CONVERT  
CASE FROM CHAPTER 7 TO CHAPTER  
13  
10-24-23 [20]

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, on October 31, 2023. By the court's calculation, 37 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice). Debtor did not serve the Chapter 7 Trustee or Office of the United States Trustee, not giving these parties any ability to respond. Service on these parties is required.

Further, Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on the Motion to Convert, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

While filed as a Motion, a debtor exercises the right to convert by filing a Notice of Conversion with the court.

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 to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is **XXXXX**.**

Mark Valencia (“Debtor”) seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). Debtor asserts that the case should be converted but does not submit any evidence or supporting declarations in support.

Here, Debtor’s case has not been converted previously, and Debtor qualifies for relief under Chapter 13. However, notice was not provided to the Chapter 7 Trustee or Office of the United States Trustee. The creditors who have been provided notice have not filed any opposition.

At the hearing, **XXXXXXXX**

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 filed by Mark Valencia (“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 Motion to Convert is **XXXXX**.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 4, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

**The Motion to Dismiss is ~~XXXXX~~.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Pamela Sue Morgan ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on December 21, 2023. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 20, 2023. Dckt. 23. Debtor informs the court of her maladies, including struggling financially on her own and suffering from many medical issues. She informs the court she did not attend the meeting of creditors because she did not understand the notice of the meeting or the meeting itself.

#### **DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, **XXXXXXXXXX**

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

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 Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("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 is **XXXXX**.

6. [22-90160-E-11](#)  
[DDM-25](#)

EAGLE LEDGE FOUNDATION,  
INC.  
Kathleen DiSanto

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LUBIN OLSON &  
NIEWIADOMSKI LLP FOR DENNIS D.  
MILLER, DEBTORS ATTORNEY(S)  
10-25-23 [286]

Item 6 thru 7

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, Attorneys of record who have appeared in the Bankruptcy Case, creditors holding the twenty largest unsecured claims, parties requesting special notice, all creditors and parties in interest (Notice of Hearing only), and Office of the United States Trustee on October 25, 2023. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted, with the Debtor in Possession authorized to pay 80% of the interim fees and 100% of the interim expenses allowed by the court pursuant to this Application.**

Lubin Olsen & Niewiadomski LLP, by Dennis D. Miller ("Applicant"), the local counsel for Eagle Ledge Foundation, Inc., the Debtor in Possession ("Client"), makes a Second Interim Request for the Allowance of Fees and Costs in this case.

Fees are requested for the period October 1, 2022, through September 30, 2023. The order of the court approving employment of Applicant was entered on June 7, 2022. Dckt. 58. Applicant requests fees in the amount of \$54,780.00 and costs in the amount of \$481.26. Mtn., Dckt. 286. Applicant is holding

a retainer in the amount of \$7,887.58 and requests it apply this retainer to the attorney's fees, and the outstanding balance is to be paid by Debtor in Possession.

### **United States Trustee's Opposition**

The United States Trustee, Tracy Hope Davis ("US Trustee"), filed an Opposition to this Motion on November 16, 2023. Dckt. 316. In her Opposition, US Trustee states:

1. Applicant is seeking fees for two separate attorneys, Applicant's Dennis Miller and Kathleen DiSanto from Bush Ross, P.A., appearing in courtroom on the same hearings on October 27, 2022, April 6, 2023, June 15, 2023, September 7, 2023, and September 28, 2023. These fees are unnecessarily duplicative and should be reduced by 50% absent any justification showing why two attorneys need be present at the hearings.

Dckt. 316 ¶ 1.

2. Debtor in Possession should be permitted to pay no more than 80% of the requested fees in this Motion. Debtor in Possession has not obtained approval of a disclosure statement or confirmation of a plan. Thus, it is too early to determine the extent to which Applicant's fees are necessary and reasonable.

*Id.* at ¶ 2.

### **Applicant's Reply**

Applicant filed a Reply to the US Trustee's Opposition on November 29, 2023. Dckt. 321. In its reply, Applicant states:

1. The services were not unnecessarily duplicative. Ms. DiSanto's appearance was necessary as the hearings covered complicated issues. Furthermore, Mr. Miller's appearance was necessary at all the hearings US Trustee mentions.
2. Applicant objects to the 20% holdback because success of a case does not determine reasonableness of fees. Fees are determined based on whether services are reasonably likely to benefit the estate. If the court finds a holdback is warranted, Applicant requests no more than a 10% holdback.

### **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)).

## DISCUSSION

In this Bankruptcy Case the Debtor in Possession is represented by three lawyers and law firms. One is an Illinois lawyer employed as special counsel to address issues arising from and relating to the Debtor in Possession foreclosing on property in Chicago and selling the property.

The other two attorneys are Dennis Miller, Esq., of Lubin Olson & Niewiadomski, LLP, who is the Local Counsel for the Debtor in Possession and Kathleen L. DiSanto, Esq., of Bush Ross, P.A. in Tampa, Florida, who is not a member of the California State Bar, but who this court has authorized to appear *Pro Hac Vice* in this case as counsel for the Debtor in Possession.

Reviewing the Billing Records for Local Counsel’s 2<sup>nd</sup> Interim Fee Application and *Pro Hac Vice*’s 1<sup>st</sup> Interim Application (Dckts. 290 and 298, respectively), the court notes that both Local Counsel and *Pro Hac Vice* Counsel are providing substantial legal services for the Debtor in Possession. Local Counsel’s role is not merely that of being the “local guy” who knows the “peculiar” Rules and Practices in the Eastern District of California.

This Bankruptcy Case was filed on May 18, 2022. Now, seventeen months later, no plan has been confirmed and no apparent progress is being made in this case. In some respects, this is a “simple” situation where the Debtor borrowed money from investors, who were given certificates to document the obligations of the Debtor, which monies were then used by Debtor to make loans to various religious organizations. The Debtor’s business operations is making the loans, collecting the loan payments, and then distributing the monies to the creditors. The court notes that the Bankruptcy Estate is dealing with one property which it has foreclosed on, and for which the foreclosed out former owner is attempting to thwart the Debtor in Possession from reselling the property. The court has authorized the employment of a third attorney in Illinois, where the foreclosed on property is located, to represent the Debtor in Possession on those matters (Order; Dckt. 118).

The interim fees authorized by the court for each of the Applicants and the present interim fee requested by the Applicants are as follows:

|                               | Dennis Miller, Esq.,<br>Lubin Olson & Niewiadomski, LLP                                       | Kathleen L. DiSanto, Esq.,<br>Bush Ross, PA  |
|-------------------------------|---|--|
| First Interim Fee Application | Fees.....\$19,500.00<br>Costs.....\$ 874.42<br>Order, 12/19/2022; Dckt. 186                   |  |
| Current Interim Applications  | Fees.....\$54,780.00<br>Costs.....\$ 481.26<br>2 <sup>nd</sup> Interim Application; Dckt. 286 | Fees.....\$100,164.50<br>Costs.....\$ 2,284.29<br>1 <sup>st</sup> Interim Application; Dckt. 122 |

The interim fees sought by Local Counsel for the Debtor in Possession and the *Pro Hac Vice* Counsel for the period May 18, 2022 though September 30, 2023 total approximately \$174,444.

In reviewing the Applications, it appears that the billing has all been that of two well experienced partner attorneys, with appropriately higher billing rates for services for such well experienced partner work, to do all the work in this case and bypassing any significant work by younger partners and associate attorneys, with lower billing rates.

For Local Counsel Dennis Miller, Esq., he is the only attorney who has worked on this Case to assist Pro Hac Vice Counsel Kathleen DiSanto, Esq. See Local Counsel Billing Records, Exhibit 2; Dckt. 290. Mr. Miller billed 91.3 hours at his \$600 an hour billing rate.

For *Pro Has Vice* Counsel Kathleen DiSanto, Esq., the Summary of Fees states that for the 261.6 hours billed on this case since its commencement, Ms. DiSanto billed 250 of the hours (95.6% of the hours billed). Effectively, Local and *Pro Hac Vice* Counsel are representing that they had no work that could be done on this file by associates in their respective firms.

In the court’s deeper dive into the billing records, the court notes that there does not appear to be significant duplication of work on the same matters, Local Counsel and *Pro Hac Vice* Counsel reviewing each other’s work, or effectively double billing for what should be the work of one attorney. Local Counsel and *Pro Hac Vice* Counsel appear to have appropriately divided the work, each doing their own respective work.

In reviewing the billing records for the Second Interim Application period, the court notes that Local Counsel bills for conferences with *Pro Hac Vice* Counsel, which appear to be to discuss matters that should be able to be handled by the lead attorney for Debtor in Possession (who the court has been led to believe is *Pro Hac Vice* Counsel Kathleen DiSanto, Esq.) should not require consultation by a \$600 an hour attorney. A sampling of these communications include (the court applying the principle of “if the court had to wade through it, the attorneys are going to have to read it”):

|            |   |               |          |
|------------|---|---------------|----------|
| 10/27/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW COURT PRE-HEARING DISPOSITION AND PREPARE FOR ORAL ARGUMENT TO ADDRESS COURT ISSUES ON PLAN                                       | .80<br>Hours  | \$480.00 |
| 10/27/22   | MULTIPLE TELEPHONE CALLS WITH K. DISANTO TO REVIEW COURT ISSUES AND PROBLEMS NOTED BY JUDGE SARGIS; REVIEW OF ACTIONS TO ADDRESS AND RESOLVE COURT'S CONCERNS ON PLAN TERMS | 1.30<br>Hours | \$780.00 |
| 10/28/22   | CONFERENCE CALL WITH L. BAKKEN AND K. DISANTO TO REVIEW THE DISCLOSURE STATEMENT HEARING AND FUTURE ACTIONS IN THE CASE TO RESPOND TO THE COURT'S CONCERNS                  | .70<br>Hours  | \$420.00 |
| 10/28/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW TERMS OF CERTIFICATES AND PROSPECTUS PROVIDED TO INVESTORS/CERTIFICATE HOLDERS  | .30<br>Hours  | \$180.00 |

|            |  |              |          |
|------------|--|--------------|----------|
| 11/28/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW ISSUES RAISED AT THE DISCLOSURE HEARING ON NOTICE TO CREDITORS AND CLARIFY THE STATUS OF CREDITOR INVESTORS IN THE REAL ESTATE PORTFOLIO   | .40<br>Hours | \$240.00 |
| 3/13/2023  | CONFERENCE CALL WITH K. DISANTO TO REVIEW SERVICE ISSUES RE TMI AND OPTIONS; ACTION TO SEEK APPROVAL FOR INTERIM DISTRIBUTIONS AND AMENDING SCHEDULES  | .60<br>Hours | \$360.00 |
|            |  |              |          |
| 5/31/2023  | CONFERENCE CALL WITH K. DISANTO ON STRATEGY TO ADDRESS COURT CLAIMS ON OPERATIONS POST PETITION AND HISTORY OF ATTEMPTED RESOLUTION WITH CERTIFICATE HOLDERS PRIOR TO FILING OF CHAPTER 11   | .60<br>Hours | \$360.00 |
| 6/02/2023  | CONFERENCE CALL WITH C. REID TO REVIEW ISSUES TO PREPARE FOR STATUS CONFERENCE AND RENEWED APPLICATION TO INCREASE BUDGET AND RETAIN BROKER FOR CHICAGO PROPERTY<br><br>( <i>Pro Hac Vice</i> Counsel also billed 0.50 hours, \$552.50, for this conference call.) | .80<br>Hours | \$480.00 |
| 6/09/2023  | CORRESPONDENCE TO C. REID AND K. DISANTO TO PROVIDE UPDATED MEIER DECLARATION AND LISTING AGREEMENT FOR SALE OF INDIANA PROPERTY AND EXPLAIN EDITS FOR BANKRUPTCY SALE   | .30<br>Hours | \$180.00 |
| 6/09/2023  | CONFERENCE CALL WITH K. DISANTO TO REVIEW ISSUES TO PREPARE FOR STATUS CONFERENCE AND ACTIONS TO CONTACT TMI AND GOLD STAR   | .30<br>Hours | \$180.00 |
| 6/14/2023  | TELEPHONE CALL WITH K. DISANTO TO REVIEW AND PREPARE FOR STATUS HEARING AND USE OF TMI OFFICER TO ADDRESS SERVICE ON ALL INVESTORS   | .30<br>Hours | \$180.00 |

|           |   |              |          |
|-----------|---|--------------|----------|
| 7/03/2023 | <p>CONFERENCE CALL WITH C. REID TO REVIEW DISCUSSIONS WITH TM AND REPAIRS TO THE INDIANA AVENUE PROPERTY</p> <p><i>(Pro Hac Vice Counsel also billed .20 hours, \$85.00, for this conference call.)</i></p>   | .30<br>Hours | \$180.00 |
| 7/03/2023 | <p>CONFERENCE CALL WITH C. REID AND M. YOUNG TO REVIEW ISSUES WITH TMI AND NEXT STEPS ON GETTING INDIANA AVENUE PROPERTY READY FOR SALE AND MARKETING</p> <p><i>(Pro Hac Vice Counsel also billed .30 hours, \$127.50, for this conference call.)</i></p>   | .30<br>Hours | \$180.00 |
| 7/26/2023 | <p>CONFERENCE CALL WITH C. REID, T. FONTANA AND K. DISANTO TO REVIEW UST MOTION AND ACTIONS TO CONFIRM INSURANCE AND MOTION TO DETERMINE SECURED POSITIONS</p> <p><i>(Pro Hac Vice Counsel also billed .30 hours, \$127.50, for this conference call.)</i></p>  | .30<br>Hours | \$180.00 |
| 7/26/2023 | <p>CONFERENCE CALL WITH C. REID, T. FONTANA AND K. DISANTO TO REVIEW UST MOTION AND ACTIONS TO CONFIRM INSURANCE AND MOTION TO DETERMINE SECURED POSITIONS</p> <p><i>(Pro Hac Vice Counsel also billed .30 hours, \$127.50, for this conference call.)</i></p>  | .30<br>Hours | \$180.00 |
| 7/26/2023 | <p>CORRESPONDENCE WITH AND CONFERENCE CALL WITH J. BLUMBERG TO REVIEW UST MOTION, STATUS ON INSURANCE AND CONFIRM BINDER IN PLACE, TMI INVOLVED IN PROCURING INSURANCE AND NEXT CASE ACTIONS TO SHOW UST MOVING CASE FORWARD</p> <p><i>(Pro Hac Vice Counsel also billed .40 hours, \$170, for this conference call.)</i></p> | .40<br>Hours | \$240.00 |
| 9/15/2023 | <p>CONFERENCE CALL WITH K. DISANTO TO REVIEW ALTERNATIVE TO MOTION TO RECLASSIFY CLAIMS AND PROCEEDING VIA AMENDED PLAN AND DISCLOSURE STATEMENT</p>  | .30<br>Hours | \$180.00 |

|           |   |              |            |
|-----------|---|--------------|------------|
| 9/19/2023 | CONFERENCE CALL WITH C. REID AND K. DISANTO TO ANALYZE PLAN TREATMENT ISSUES AND ASSETS TO BE LIQUIDATED WITH PROCEEDS DISTRIBUTED BEFORE OR AFTER PLAN CONFIRMATION<br><br>( <i>Pro Hac Vice</i> Counsel also billed .30 hours, \$127.50, for this conference call.) | .70<br>Hours | \$420.00   |
| 9/19/2023 | CONFERENCE CALL WITH K. DISANTO TO REVIEW CASH COLLATERAL ISSUES AND STATUS REPORT FOR SEPTEMBER 28 HEARING   | .30<br>Hours | \$180.00   |
|           |   |              |            |
|           |   | Totals       | \$5,580.00 |

The court notes that these communications appear to be ones in which two experienced counsel, the Debtor in Possession choosing to have to actively work on the Case, are discussing what they have done - effectively taking time to educate the other about the case. As shown above, these do not amount to a substantial amount of time or dollars.

Allocation of Work Between Local Counsel and *Pro Hac Vice* Counsel

In the court’s review of the Billing Records it is clear that substantial work is being billed by both Local Counsel and *Pro Hac Vice* Counsel. From the Court’s summary review, it appears that there are separate and distinct areas where each of the two counsel are working, and this is not a situation where the two counsel are working on the same matter, effectively double billing. While a question may exist as to whether such work was productive and the Debtor in Possession was actively prosecuting this Case to get a plan timely confirmed, there does not appear to be an issue of duplication of work by the Local Counsel and *Pro Hac Vice* Counsel.

At this juncture, the Opposition does not specifically identify specific non-productive work, but raises the overall issue of whether the legal services are reasonable and necessary for how this Bankruptcy Case has progressed.

**Review of Application**

A review of the application shows that Applicant’s services for the Estate include preparation and service of Applicant’s First Interim Fee Request this court approved on December 19, 2022 (Dckt. 186), services related to the first Disclosure Statement and Plan, general case administration, investigating and analyzing the secured or unsecured status of Debtor’s Certificate Holders and the effects on the Amended Disclosure Statement and Amended Plan, service on Debtor in Possession’s certificate holders, services provided regarding the property commonly known as 4130 S. Indiana Avenue, Chicago, Illinois 6065 (“Indiana Avenue Property”), preparing the Amended Disclosure Statement and Plan, and responding and opposing the United States Trustee’s Motion to Dismiss or Convert the Chapter 11 case to one under Chapter 7. Mtn., Dckt. 286 ¶ 4.

The US Trustee contends that the legal services should be compensated at a reduced rate because that no Plan or Disclosure Statement is yet to be approved, showing the legal services have not been beneficial.

#### U.S. Trustee's Opposition For Dual Appearances at Hearings/Status Conferences

The U.S. Trustee raises a valid issue concerning the appearances of both Local Counsel and *Pro Hac Vice* Counsel at hearings and status conferences. For Local Counsel, the Applicant in this Application, the "double fees for appearing" total \$3,840.

In most cases, the local counsel for a *pro hac vice* counsel serves a more administrative role, leaving the substantive work to the *pro have vice* counsel. Being local counsel is not a ticket to a "free ride" of tag along billings for an attorney who has no *bona fide* reason to be attending the hearings and status conferences.

Here, at this point in time, the court does not reduce the fees for the dual appearances. Local Counsel is doing substantial substantive work for the Debtor in Possession in this Bankruptcy Case. While it could be contended that Local Counsel could be informed by *Pro Hac Vice* Counsel of what the court and other parties said and did, that would necessitate conferences between the two Counsel which would warrant additional billings.

Additionally, the incremental modest cost in this case for the dual appearances is more than offset by the court having both counsel in the courtroom for the hearings and status conferences, and hearing the court's concerns directly "from the horse's mouth." Neither counsel can be later heard to say, "well nobody told me."

In not making a reduction for the dual appearances under the unique circumstances of the legal services provided in this case, the court does not minimize the Opposition of the U.S. Trustee on this point. It is a proper issue to raise and will heighten the attention of both Local Counsel and *Pro Hac Vice* Counsel as they continue in this case. Even more significantly, it clearly communicates to the legal world that the U.S. Trustee and the court consider fee applications seriously as we determine what constitutes reasonable and necessary billing by professionals.

#### U.S. Trustee Request for the Debtor in Possession Being Authorized to Pay 80% of the Allowed Interim Fees

The U.S. Trustee also requests that the court authorize the Debtor in Possession to pay only 80% of the allowed interim fees at this time. The U.S. Trustee raises several considerations. First, that this case has been in process for seventeen months and no progress has been made in the confirmation of a Plan. Second, the U.S. Trustee has a motion to dismiss or convert pending. Third, the U.S. Trustee argues that at this juncture it cannot be determined that the fees were actually reasonable and necessary given the status of this Bankruptcy Case.

It is a common practice for the court to authorize the payment of 80% of interim allowed fees in Chapter 11 and 12 cases - both for debtor in possession counsel and trustee counsel. When Chapter 11 cases drag on and on, without significant progress being made, there is an issue of whether the court, when making a final determination on the allowance of fees would determine that such were reasonable for a long drought of progress in the case.

More practically, it puts a real world application to Chapter 11 cases and debtor in possession counsel fees. In the “real” (nonbankruptcy world), a client pays an attorney for fees monthly and is constantly questioning why the matter is not moving faster, what is being produced for the dollars being paid, and the like. In a Chapter 11 case, the debtor in possession (generally) or trustee is not paying the fees out of their “own pocket” but out of the monies that will go to pay creditor claims, with unsecured claims being paid at a less than 100% of what is owed. Thus, an attorney or other professional being paid is of little personal financial impact to the debtor in possession or the trustee.

Looking at the Debtor in Possession’s proposed Disclosure Statement now filed in this case (Dckt. 303), general unsecured claims of \$4,051,844 will be paid pro rata distributions from an initial distribution of \$350,000 upon the effective date, and then four annual distributions.

|           |                          |                           |   |
|-----------|--------------------------|---------------------------|---|
| [Class] 3 | General Unsecured Claims | Impaired Entitled to Vote | <p>Estimated Claims:<br/>\$4,051,844.62</p> <p>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</p> |
|-----------|--------------------------|---------------------------|---|

Amd. Disc. Statement; Dckt. 303 at 16.

The Financial Projections, Exhibit 6 (Dckt. 304) for the proposed Amended Disclosure Statement projects \$1,733,534 in projected monies for distribution to creditors holding general unsecured claims. Thus, the Plan is projected to generate a 42.7% dividend for creditors holding general unsecured claims.

While the dividend on general unsecured claims does not, AND NEVER SHOULD, be the standard for determining or limiting fees to be allowed counsel for a debtor in possession or trustee, it does show that what Local Counsel and *Pro Hac Vice* counsel are being paid is of no significance to the Debtor in Possession and its principals who are in a fiduciary capacity exercising the powers of a bankruptcy trustee.

Thus, an even greater burden is placed on the court, the U.S. Trustee, and any creditors who find it financially reasonable to be active in considering, evaluating, and the determination of what constitute reasonable and necessary fees for legal services rendered by counsel for the Debtor in Possession in this Bankruptcy Case. As the court has noted before, notwithstanding there being more than (\$4,000,000) in general unsecured claims, there has been next to nothing in appearances by creditors or any of the management companies who purportedly are holding notes and making sure that the interests of the certificate holds are not abused.

Additionally, every experienced Chapter 11 practitioner is well aware of the practices of some debtor in possession attorneys who would just let a case drag on, and on, and on, and . . . . merrily billing and getting paid for services, the principals of the debtor continuing to get paid for operating the business

of the debtor that was property of the estate, and no headway being made to confirming a plan that would bring that gravy train of fees and payments to an end.

The court notes that in granting the First Interim Application for Local Counsel (Order; Dckt. 186), the court not only approved the fees on an interim basis, but also authorized payment of 100% of the interim approved fees. At the earlier juncture in this Case, it appeared that the Debtor in Possession and its counsel were dealing with issues and moving the case to an anticipated plan in the near(er) future. The application of the 80% payment authorization is not a prophylactic rule, imposed without thought.

Here, authorization to pay 80% at this time is appropriate and proper. If Debtor in Possession Counsel and the Debtor in Possession can move this case to confirmation, as a showing that these fees requested were all reasonable and necessary, such may be promptly done. But now seventeen months into this case, with the Debtor's business being the management and collection of monies on loans it has made, the level of confidence with respect to the prosecution of this case is fading (slightly) at this point.

The court limits the payment of the fees to 80% of the interim amounts allowed.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 12 hours in this category. Applicant reviewed and analyzed case issues that arose.

First Interim Fee Application: Applicant spent 3.2 hours in this category. Applicant reviewed bills for the legal services provided and the costs incurred. Applicant prepared and obtained the approval of the first interim application.

First Disclosure Statement and Plan: Applicant spent 5.3 hours in this category. Applicant worked with Ms. DiSanto in preparing and filing with the court an initial Disclosure Statement and Plan.

Investigate and Review Creditor Status of Certificate Holders; Service Issues: Applicant spent 19.6 hours in this category. Applicant analyzed the treatment of the Certificate Holders and what steps were taken historically, if any, to perfect security interests, purportedly granted by the Prospectus and Holder Agreement, and came to a conclusion with the Debtor in Possession on that issue as it impacted the Certificate Holders' treatment in the Amended Disclosure Statement and Plan.

Indiana Ave Property Work: Applicant spent 25.8 hours in this category. Applicant took repossession of this piece of collateral, repaired the premises, then marketed and sold it.

Amended Disclosure Statement and Plan Preparation Issues: Applicant spent 11.1 hours in this category. Applicant researched and investigated the status of the Certificate Holders treatment and claims and how the Certificate Holders should be treated in the Amended Disclosure Statement and Plan.

Address and Respond to US Trustee’s Motion to Dismiss or Convert: Applicant spent 14.3 hours in this category. After the US Trustee brought it to the attention of Applicant that Debtor’s insurance had lapsed and that it needed to be reinstated, Applicant advised Debtor of the insurance lapse, including insurance on the Indiana Avenue Property, and the need to promptly update.

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

| <b>Names of Professionals</b>                       | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|---|-------------|--------------------|--|
| Lubin Olsen & Niewiadomski LLP, by Dennis D. Miller | 91.3        | \$600.00           | \$54,780.00  |
| <b>Total Fees for Period of Application</b>         |             |                    | \$54,780.00  |

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.

| <b>Application</b>   | <b>Interim Approved Fees</b> | <b>Interim Fees Paid</b> |
|--|------------------------------|--------------------------|
| First Interim  | \$19,500.00                  | \$19,500.00              |
| <b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b> | \$19,500.00                  |                          |

Dckt. 186.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$481.26 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$943.37. Dckt. 186.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost, If Applicable</b> | <b>Cost</b> |
|---|-------------------------------------|-------------|
| Postage                                     | -----                               | \$481.26    |
| <b>Total Costs Requested in Application</b> |                                     | \$481.26    |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$54,780.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid from the available retainer with the remainder to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

**Costs & Expenses**

Second Interim Costs in the amount of \$481.26 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

|                    |             |
|--------------------|-------------|
| Fees               | \$54,780.00 |
| Costs and Expenses | \$481.26    |

pursuant to this Application as interim fees and costs pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Lubin Olsen & Niewiadomski LLP, by Dennis D. Miller (“Applicant”), local counsel for Eagle Ledge Foundation, Inc., the Debtor in Possession (“Client”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Lubin Olsen & Niewiadomski LLP is allowed the following fees and expenses as a professional of the Estate:

|                    |             |
|--------------------|-------------|
| Fees               | \$54,780.00 |
| Costs and Expenses | \$481.26,   |

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Debtor in Possession is authorized to pay 80% of the interim fees and 100% of the interim costs allowed by this Order from unencumbered monies of the Bankruptcy Estate.

7. [22-90160-E-11](#)  
[DDM-26](#)

EAGLE LEDGE FOUNDATION,  
INC.  
Kathleen DiSanto

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF BUSH ROSS, P.A.  
FOR KATHLEEN L. DISANTO,  
DEBTORS ATTORNEY(S)  
10-31-23 [294]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, Attorneys of record who have appeared in the Bankruptcy Case, creditors holding the twenty largest unsecured claims, parties requesting special notice, all creditors and parties in interest (Notice of Hearing only), and Office of the United States Trustee on October 31, 2023. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted, with the Debtor in Possession authorized to pay 80% of the interim fees and 100% of the interim expenses allowed by the court pursuant to this Application.**

Bush Ross, P.A. by Kathleen L. DiSanto, the Attorney ("Applicant") for Eagle Ledge Foundation, Inc., the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Costs in this case.

Fees are requested for the period May 18, 2022, through September 30, 2023. The order of the court approving employment of Applicant was entered on August 4, 2022. Dckt. 122. Applicant requests fees in the amount of \$100,164.50 and costs in the amount of \$2,284.29. Applicant is holding a retainer in the amount of \$3,348.12 and requests it apply this retainer to the requested fees, and the outstanding balance

is to be paid by Debtor in Possession. However, after consenting to some of the US Trustee's requested reductions (discussed below), Applicant requests fees in the amount of \$92,482.00.

### **United States Trustee's Opposition**

The United States Trustee, Tracy Hope Davis ("US Trustee"), filed an Opposition to this Motion on November 16, 2023. Dckt. 312. In her Opposition, US Trustee states:

1. Applicant should have the fees reduced by \$7,682.50 because:

A. First, the Firm's fee request includes approximately \$1,640 for attending Court hearings on October 27, 2022, April 6, 2023, June 15, 2023, September 7, 2023, and September 28, 2023. The Firm's co-counsel seeks allowance of fees for the same hearings. Absent a satisfactory explanation for the appearance of multiple attorneys, the Firm's fees for the hearings should be reduced by 50% (\$820).

B. Second, the Firm's fee request includes approximately \$5,142.50 for preparing the DIP's monthly operating reports. Because the DIP or its accountant should have prepared the reports, these fees should be denied.

C. Third, the Firm's fee request includes approximately \$1,720 for the services of an attorney who billed less than 5 hours on the case. Absent a satisfactory explanation, the fees for this "transitory" biller should be disallowed.

Dckt. 312 ¶ 1.

2. Debtor in Possession should be permitted to pay no more than 80% of the requested fees in this Motion. Debtor in Possession has not obtained approval of a disclosure statement or confirmation of a plan. Thus, it is too early to determine the extent to which Applicant's fees are necessary and reasonable.

*Id.* at ¶ 2.

### **Applicant's Reply**

Applicant filed a Reply to the US Trustee's Opposition on November 29, 2023. Dckt. 323. In its reply, Applicant states:

1. Applicant consents to a reduction of \$820.00 for appearance of multiple attorneys on behalf of Debtor in Possession at various hearings.

2. Applicant agrees to a reduction of \$5,142.50 for time spent preparing monthly operating reports.
3. Applicant agrees to reduce the amount of \$1,720.00 for services rendered by another Bush Ross attorney who billed less than five hours on the case.
4. Applicant objects to the 20% holdback because success of a case does not determine reasonableness of fees. Fees are determined based on whether services are reasonably likely to benefit the estate. If the court finds a holdback is warranted, Applicant requests no more than a 10% holdback.

## **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)).

## **DISCUSSION**

In this Bankruptcy Case the Debtor in Possession is represented by three lawyers and law firms. One is an Illinois lawyer employed as special counsel to address issues arising from and relating to the Debtor in Possession foreclosing on property in Chicago and selling the property.

The other two attorneys are Dennis Miller, Esq., of Lubin Olson & Niewiadomski, LLP, who is the Local Counsel for the Debtor in Possession and Kathleen L. DiSanto, Esq., of Bush Ross, P.A. in Tampa, Florida, who is not a member of the California State Bar, but who this court has authorized to appear *Pro Hac Vice* in this case as counsel for the Debtor in Possession.

Reviewing the Billing Records for Local Counsel’s 2<sup>nd</sup> Interim Fee Application and *Pro Hac Vice*’s 1<sup>st</sup> Interim Application (Dckts. 290 and 298, respectively), the court notes that both Local Counsel and *Pro Hac Vice* Counsel are providing substantial legal services for the Debtor in Possession. Local Counsel’s role is not merely that of being the “local guy” who knows the “peculiar” Rules and Practices in the Eastern District of California.

This Bankruptcy Case was filed on May 18, 2022. Now, seventeen months later, no plan has been confirmed and no apparent progress is being made in this case. In some respects, this is a “simple” situation where the Debtor borrowed money from investors, who were given certificates to document the obligations of the Debtor, which monies were then used by Debtor to make loans to various religious organizations. The Debtor’s business operations is making the loans, collecting the loan payments, and then distributing the monies to the creditors. The court notes that the Bankruptcy Estate is dealing with one property which it has foreclosed on, and for which the foreclosed out former owner is attempting to thwart the Debtor in Possession from reselling the property. The court has authorized the employment of a third

attorney in Illinois, where the foreclosed on property is located, to represent the Debtor in Possession on those matters (Order; Dckt. 118).

The interim fees authorized by the court for each of the Applicants and the present interim fee requested by the Applicants are as follows:

|                               |   |  |
|-------------------------------|---|--|
|                               | Dennis Miller, Esq.,<br>Lubin Olson & Niewiadomski, LLP                                       | Kathleen L. DiSanto, Esq.,<br>Bush Ross, PA  |
| First Interim Fee Application | Fees.....\$19,500.00<br>Costs.....\$ 874.42<br>Order, 12/19/2022; Dckt. 186                   |  |
|                               |   |  |
| Current Interim Applications  | Fees.....\$54,780.00<br>Costs.....\$ 481.26<br>2 <sup>nd</sup> Interim Application; Dckt. 286 | Fees.....\$100,164.50<br>Costs.....\$ 2,284.29<br>1 <sup>st</sup> Interim Application; Dckt. 122 |

The interim fees sought by Local Counsel for the Debtor in Possession and the *Pro Hac Vice* Counsel for the period May 18, 2022 though September 30, 2023 total \$174,444.

In reviewing the Applications, it appears that the billing has all been that of two well experienced partner attorneys, with appropriately higher billing rates for services for such well experienced partner work, to do all the work in this case and bypassing any significant work by younger partners and associate attorneys, with lower billing rates.

For Local Counsel Dennis Miller, Esq., he is the only attorney who has worked on this Case to assist *Pro Hac Vice* Counsel Kathleen DiSanto, Esq. See Local Counsel Billing Records, Exhibit 2; Dckt. 290. Mr. Miller billed 91.3 hours at his \$600 an hour billing rate.

For *Pro Has Vice* Counsel Kathleen DiSanto, Esq., the Summary of Fees states that for the 261.6 hours billed on this case since its commencement, Ms. DiSanto billed 250 of the hours (95.6% of the hours billed). Effectively, Local and *Pro Hac Vice* Counsel are representing that they had no work that could be done on this file by associates in their respective firms.

In the court’s deeper dive into the billing records, the court notes that there does not appear to be significant duplication of work on the same matters, Local Counsel and *Pro Hac Vice* Counsel reviewing each other’s work, or effectively double billing for what should be the work of one attorney. Local Counsel and *Pro Hac Vice* Counsel appear to have appropriately divided the work, each doing their own respective work.

In reviewing the billing records for the Second Interim Application period, the court notes that Local Counsel bills for conferences with *Pro Hac Vice* Counsel, which appear to be to discuss matters that should be able to be handled by the lead attorney for Debtor in Possession (who the court has been led to believe is *Pro Hac Vice* Counsel Kathleen DiSanto, Esq.) should not require consultation by a \$600 an hour attorney. A sampling of these communications include (the court applying the principle of “if the court had to wade through it, the attorneys are going to have to read it”):

|            |  |               |          |
|------------|--|---------------|----------|
| 10/27/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW COURT PRE-HEARING DISPOSITION AND PREPARE FOR ORAL ARGUMENT TO ADDRESS COURT ISSUES ON PLAN  | .80<br>Hours  | \$480.00 |
| 10/27/22   | MULTIPLE TELEPHONE CALLS WITH K. DISANTO TO REVIEW COURT ISSUES AND PROBLEMS NOTED BY JUDGE SARGIS; REVIEW OF ACTIONS TO ADDRESS AND RESOLVE COURT'S CONCERNS ON PLAN TERMS  | 1.30<br>Hours | \$780.00 |
| 10/28/22   | CONFERENCE CALL WITH L. BAKKEN AND K. DISANTO TO REVIEW THE DISCLOSURE STATEMENT HEARING AND FUTURE ACTIONS IN THE CASE TO RESPOND TO THE COURT'S CONCERNS   | .70<br>Hours  | \$420.00 |
| 10/28/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW TERMS OF CERTIFICATES AND PROSPECTUS PROVIDED TO INVESTORS/CERTIFICATE HOLDERS   | .30<br>Hours  | \$180.00 |
| 11/28/2022 | CONFERENCE CALL WITH K. DISANTO TO REVIEW ISSUES RAISED AT THE DISCLOSURE HEARING ON NOTICE TO CREDITORS AND CLARIFY THE STATUS OF CREDITOR INVESTORS IN THE REAL ESTATE PORTFOLIO   | .40<br>Hours  | \$240.00 |
| 3/13/2023  | CONFERENCE CALL WITH K. DISANTO TO REVIEW SERVICE ISSUES RE TMI AND OPTIONS; ACTION TO SEEK APPROVAL FOR INTERIM DISTRIBUTIONS AND AMENDING SCHEDULES  | .60<br>Hours  | \$360.00 |
|            |  |               |          |
| 5/31/2023  | CONFERENCE CALL WITH K. DISANTO ON STRATEGY TO ADDRESS COURT CLAIMS ON OPERATIONS POST PETITION AND HISTORY OF ATTEMPTED RESOLUTION WITH CERTIFICATE HOLDERS PRIOR TO FILING OF CHAPTER 11   | .60<br>Hours  | \$360.00 |
| 6/02/2023  | CONFERENCE CALL WITH C. REID TO REVIEW ISSUES TO PREPARE FOR STATUS CONFERENCE AND RENEWED APPLICATION TO INCREASE BUDGET AND RETAIN BROKER FOR CHICAGO PROPERTY<br><br>( <i>Pro Hac Vice</i> Counsel also billed 0.50 hours, \$552.50, for this conference call.) | .80<br>Hours  | \$480.00 |

|           |  |              |          |
|-----------|--|--------------|----------|
| 6/09/2023 | CORRESPONDENCE TO C. REID AND K. DISANTO TO PROVIDE UPDATED MEIER DECLARATION AND LISTING AGREEMENT FOR SALE OF INDIANA PROPERTY AND EXPLAIN EDITS FOR BANKRUPTCY SALE   | .30<br>Hours | \$180.00 |
| 6/09/2023 | CONFERENCE CALL WITH K. DISANTO TO REVIEW ISSUES TO PREPARE FOR STATUS CONFERENCE AND ACTIONS TO CONTACT TMI AND GOLD STAR   | .30<br>Hours | \$180.00 |
| 6/14/2023 | TELEPHONE CALL WITH K. DISANTO TO REVIEW AND PREPARE FOR STATUS HEARING AND USE OF TMI OFFICER TO ADDRESS SERVICE ON ALL INVESTORS   | .30<br>Hours | \$180.00 |
| 7/03/2023 | CONFERENCE CALL WITH C. REID TO REVIEW DISCUSSIONS WITH TM AND REPAIRS TO THE INDIANA AVENUE PROPERTY<br><br>( <i>Pro Hac Vice</i> Counsel also billed .20 hours, \$85.00, for this conference call.)  | .30<br>Hours | \$180.00 |
| 7/03/2023 | CONFERENCE CALL WITH C. REID AND M. YOUNG TO REVIEW ISSUES WITH TMI AND NEXT STEPS ON GETTING INDIANA AVENUE PROPERTY READY FOR SALE AND MARKETING<br><br>( <i>Pro Hac Vice</i> Counsel also billed .30 hours, \$127.50, for this conference call.)      | .30<br>Hours | \$180.00 |
| 7/26/2023 | CONFERENCE CALL WITH C. REID, T. FONTANA AND K. DISANTO TO REVIEW UST MOTION AND ACTIONS TO CONFIRM INSURANCE AND MOTION TO DETERMINE SECURED POSITIONS<br><br>( <i>Pro Hac Vice</i> Counsel also billed .30 hours, \$127.50, for this conference call.) | .30<br>Hours | \$180.00 |
| 7/26/2023 | CONFERENCE CALL WITH C. REID, T. FONTANA AND K. DISANTO TO REVIEW UST MOTION AND ACTIONS TO CONFIRM INSURANCE AND MOTION TO DETERMINE SECURED POSITIONS<br><br>( <i>Pro Hac Vice</i> Counsel also billed .30 hours, \$127.50, for this conference call.) | .30<br>Hours | \$180.00 |

|           |   |              |            |
|-----------|---|--------------|------------|
| 7/26/2023 | CORRESPONDENCE WITH AND CONFERENCE CALL WITH J. BLUMBERG TO REVIEW UST MOTION, STATUS ON INSURANCE AND CONFIRM BINDER IN PLACE, TMI INVOLVED IN PROCURING INSURANCE AND NEXT CASE ACTIONS TO SHOW UST MOVING CASE FORWARD<br><br>( <i>Pro Hac Vice</i> Counsel also billed .40 hours, \$170, for this conference call.) | .40<br>Hours | \$240.00   |
| 9/15/2023 | CONFERENCE CALL WITH K. DISANTO TO REVIEW ALTERNATIVE TO MOTION TO RECLASSIFY CLAIMS AND PROCEEDING VIA AMENDED PLAN AND DISCLOSURE STATEMENT   | .30<br>Hours | \$180.00   |
| 9/19/2023 | CONFERENCE CALL WITH C. REID AND K. DISANTO TO ANALYZE PLAN TREATMENT ISSUES AND ASSETS TO BE LIQUIDATED WITH PROCEEDS DISTRIBUTED BEFORE OR AFTER PLAN CONFIRMATION<br><br>( <i>Pro Hac Vice</i> Counsel also billed .30 hours, \$127.50, for this conference call.)   | .70<br>Hours | \$420.00   |
| 9/19/2023 | CONFERENCE CALL WITH K. DISANTO TO REVIEW CASH COLLATERAL ISSUES AND STATUS REPORT FOR SEPTEMBER 28 HEARING   | .30<br>Hours | \$180.00   |
|           |   |              |            |
|           |   | Totals       | \$5,580.00 |

The court notes that these communications appear to be ones in which two experienced counsel, the Debtor in Possession choosing to have to actively work on the Case, are discussing what they have done - effectively taking time to educate the other about the case. As shown above, these do not amount to a substantial amount of time or dollars.

Allocation of Work Between Local Counsel and *Pro Hac Vice* Counsel

In the court's review of the Billing Records it is clear that substantial work is being billed by both Local Counsel and *Pro Hac Vice* Counsel. From the Court's summary review, it appears that there are separate and distinct areas in each of the two counsel are working, and this is not a situation where the two counsel are working on the same matter, effectively double billing. While a question may exist as to whether such work was productive and the Debtor in Possession was actively prosecuting this Case to get a plan timely confirmed, there does not appear to be an issue of duplication of work by the Local Counsel and *Pro Hac Vice* Counsel.

At this juncture, the Opposition does not specifically identify specific non-productive work, but raises the overall issue of whether the legal services are reasonable and necessary for how this Bankruptcy Case has progressed.

## **Review of the Application**

A review of the application shows that Applicant's services for the Estate include: (a) rendering legal advice with respect to the Debtor's powers and duties as Debtor in Possession and general case administration, (b) preparing the Debtor's schedules of assets and liabilities, statement of financial affairs, and other required filings, legal papers, and reports, (c) analysis of issues concerning the automatic stay and preparation of suggestions of bankruptcy, (d) preparation for and representation at the section 341 meeting of creditors, (e) preparing applications to employ various professionals, (f) addressing issues relating to the Indiana Avenue Property obtained by the Debtor by foreclosure and eviction and preparation for marketing, (g) reviewing and analyzing proofs of claims, (h) formulating and preparing the Debtor's initial Disclosure Statement and Plan and the Amended Disclosure Statement and Plan, and (I) responding to the United States Trustee's Motion to Dismiss or Convert the Chapter 11 to Chapter 7. Mtn., Dckt. 294 ¶ 4.

The US Trustee contends that the legal services should be compensated at a reduced rate because no Plan or Disclosure Statement is yet to be approved, showing the legal services have not been beneficial.

### U.S. Trustee's Opposition For Dual Appearances at Hearings/Status Conferences

The U.S. Trustee raises a valid issue concerning the appears of both Local Counsel and *Pro Hac Vice* Counsel at hearings and status conferences. For Local Counsel, the Applicant in this Application, the "double fees for appearing" total \$3,840.

In most cases, the local counsel for a *pro hac vice* counsel serves a more administrative role, leaving the substantive work to the *pro have vice* counsel. Being local counsel is not a ticket to a "free ride" of tag along billings for an attorney who has no *bona fide* reason to be attending the hearings and status conferences.

Applicant agrees in its Response to reduce the requested fees by \$820.00 for appearances having been made by multiple attorneys at various hearings. The requested fees are reduced by \$820.00.

### U.S. Trustee Opposition to Fees For Preparation of Monthly Operating Reports

The U.S. Trustee objects to Applicant including fees for preparing Monthly Operating Reports for the Debtor in Possession. From reviewing the Billing Records, the billings are not just for an attorney's review of what the client prepared, but that responsibility being outsourced to Applicant.

In its Response, Applicant agreed to reduce the requested fees by \$5,142.50 for the Monthly Operating Report billings. The requested fees are reduced by \$5,142.50.

### U.S. Trustee Opposition to Fees for "Transitory Billers"

The U.S. Trustee has objected to \$1,720 in fees billed for the services of an attorney who billed less than 5 hours on the case. In its Response, Applicant agrees that the fees shall be reduced by \$1,720.00. The requested fees are reduced by \$1,720.00.

U.S. Trustee Request for the Debtor in Possession  
Being Authorized to Pay 80% of the Allowed Interim Fees

The U.S. Trustee also requests that the court authorize the Debtor in Possession to pay only 80% of the allowed interim fees at this time. The U.S. Trustee raises several considerations. First, that this case has been in process for seventeen months and no progress has been made in the confirmation of a Plan. Second, the U.S. Trustee has a motion to dismiss or convert pending. Third, the U.S. Trustee argues that at this juncture it cannot be determined that the fees were actually reasonable and necessary given the status of this Bankruptcy Case.

It is a common practice for the court to authorize the payment of 80% of interim allowed fees in Chapter 11 and 12 cases - both for debtor in possession counsel and trustee counsel. When Chapter 11 cases drag on and on, without significant progress being made, there is an issue of whether the court, when making a final determination on the allowance of fees would determine that such were reasonable for a long drought of progress in the case.

More practically, it puts a real world application to Chapter 11 cases and debtor in possession counsel fees. In the “real” (nonbankruptcy world), a client pays an attorney for fees monthly and constantly questions why the matter is not moving faster, what is being produced for the dollars being paid, and the like. In a Chapter 11 case, the debtor in possession (generally) or trustee is not paying the fees out of their “own pocket” but out of the monies that will go to pay creditor claims, with unsecured claims being paid at a less than 100% of what is owed. Thus, an attorney or other professional being paid is of little personal financial impact to the debtor in possession or the trustee.

Looking at the Debtor in Possession’s proposed Disclosure Statement now filed in this case (Dckt. 303), general unsecured claims of \$4,051,844 will be paid pro rata distributions from an initial distribution of \$350,000 upon the effective date, and then four annual distributions.

|           |                          |                           |   |
|-----------|--------------------------|---------------------------|---|
| [Class] 3 | General Unsecured Claims | Impaired Entitled to Vote | <p>Estimated Claims:<br/>\$4,051,844.62</p> <p>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</p> |
|-----------|--------------------------|---------------------------|---|

Amd. Disc. Statement; Dckt. 303 at 16.

The Financial Projections, Exhibit 6 (Dckt. 304) for the proposed Amended Disclosure Statement projects \$1,733,534 in monies for distribution to creditors holding general unsecured claims. Thus, the Plan is projected to generate a 42.7% dividend for creditors holding general unsecured claims.

While the dividend on general unsecured claims does not, AND NEVER SHOULD, be the standard for determining or limiting fees to be allowed counsel for a debtor in possession or trustee, it does show that what Local Counsel and *Pro Hac Vice* counsel are being paid is of no significance to the Debtor in Possession and its principals who are in a fiduciary capacity exercising the powers of a bankruptcy trustee.

Thus, an even greater burden is place don the court, the U.S. Trustee, and any creditors who find it financially reasonable to be active in considering, evaluating, and the determination of what constitute reasonable and necessary fees for legal services rendered by counsel for the Debtor in Possession in this Bankruptcy Case. As the court has noted before, notwithstanding there being more than (\$4,000,000) in general unsecured claims, there has been next to nothing in appearances by creditors or any of the management companies who purportedly are holding notes and making sure that the interests of the certificate holds are not abused.

Additionally, every experienced Chapter 11 practitioner is well aware of the practices of some debtor in possession attorneys who would just let a case drag on, and on, and on, and . . . . merrily billing and getting paid for services, the principals of the debtor continuing to get paid for operating the business of the debtor that was property of the estate, and no headway being made to confirming a plan that would bring that gravy train of fees and payments to an end.

The court notes that in granting the First Interim Application for Local Counsel (Order; Dckt. 186), the court not only approved the fees on an interim basis, but also authorized payment of 100% of the interim approved fees. At the earlier juncture in this Case, it appeared that the Debtor in Possession and its counsel were dealing with issues and moving the case to an anticipated plan in the near(er) future. The application of the 80% payment authorization is not a prophylactic rule, imposed without thought.

Here, authorization to pay 80% at this time is appropriate and proper. If Debtor in Possession Counsel and the Debtor in Possession can move this case to confirmation, as a showing that these fees requested were all reasonable and necessary, such may be promptly done. But now seventeen months into this case, with the Debtor's business being the management and collection of monies on loans it has made, the level of confidence with respect to the prosecution of this case, and whether all of these fees are reasonable and necessary) is fading (slightly at this point).

The court limits the payment of the fees to 80% of the interim amounts allowed.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 81.90 hours in this category. Applicant assisted the Debtor in analyzing its assets and liabilities in connection with the preparation and filing of bankruptcy schedules, statements, and reports.

Asset Disposition: Applicant spent 1.50 hours in this category. Applicant engaged with the Debtor on issues concerning the sale of the real property located at 4130 S. Indiana Avenue, Chicago, Illinois 60653 (“Indiana Avenue Property”). In an effort to avoid duplication of services, Ms. DiSanto has not billed on issues where Mr. Miller has taken the lead.

Relief From Stay/Adequate Protection Proceedings: Applicant spent 1.30 hours in this category. Applicant prepared suggestions of bankruptcy for filing in pending litigation. Ms. DiSanto researched potential stay violation arising from efforts to have the Indiana Avenue Property designated as a historical landmark.

Meetings of and Communications with Creditors: Applicant spent 6 hours in this category. Applicant prepared Debtor to testify at section 341 meeting of creditors and attending the meeting of creditors. Applicant also received regular telephone calls from certificate holders regarding general case status.

Fee/Employment Applications: Applicant spent 29.10 hours in this category. Applicant prepared applications and supporting documents regarding retention of various professionals and their fees.

Business Operations: Applicant spent 36.10 hours in this category. Applicant prepared a motion to pay affiliate officer salaries and motion to maintain existing cash management system with TMI. Applicant also drafted a motion to approve the property management agreement with ISBUILD regarding the Indiana Avenue Property and assisted the Debtor in addressing issues concerning the status of the eviction of the former tenant and repairs and maintenance to the Indiana Avenue Property.

Financing/Cash Collections: Applicant spent 11.10 hours in this category. Applicant assisted the Debtor in preparing appropriate cash collateral budgets and the motions and supplemental pleadings necessary to obtain authority for the use of cash collateral during the pendency of the case.

Claims Administration and Objections: Applicant spent 8.80 hours in this category. Applicant reviewed and analyzed the filed proofs of claim and attachments and compared the filed claims to the amended claims. Together with the Debtor, Applicant evaluated and analyzed potential objections to claims.

Plan and Disclosure Statement: Applicant spent 72.10 hours in this category. Applicant prepared the initial plan and disclosure statement, along with projections in support of the chapter 11 plan and the liquidation analysis. After the Court denied approval of Debtor’s Disclosure Statement and raised numerous issues regarding the Certificate Holders, Ms. DiSanto worked with Mr. Miller to research and investigate the status of the Certificate Holders treatment and claims. Applicant submitted an Amended Disclosure Statement and Plan, considering the Certificate Holders’ treatment.

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

| <b>Names of Professionals</b>             | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|---|-------------|--------------------|--|
| Bush Ross, P.A. by<br>Kathleen L. DiSanto | 261.60      | \$225 - \$500      | \$100,164.50   |

|   |                     |
|---|---------------------|
| <b>Total Fees for Period of Application</b> | <b>\$100,164.50</b> |
|---|---------------------|

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,284.29 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost, If Applicable</b> | <b>Cost</b>       |
|---|-------------------------------------|-------------------|
| Postage                                     | -----                               | \$42.12           |
| Reports/Record Searches                     |                                     | \$119.00          |
| FedEx                                       |                                     | \$234.58          |
| Travel                                      |                                     | \$1,513.31        |
| Online Research                             |                                     | \$375.28          |
| <b>Total Costs Requested in Application</b> |                                     | <b>\$2,284.29</b> |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Reduced Rate**

After consenting to the US Trustee’s reduction of \$7,682.50, Applicant seeks to be paid a single sum of \$92,482.00 for its fees incurred for Client. First Interim Fees in the amount of \$92,482.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid from the available retainer with the remainder to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

**Costs & Expenses**

First Interim Costs in the amount of \$2,284.29 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

|                    |             |
|--------------------|-------------|
| Fees               | \$92,482.00 |
| Costs and Expenses | \$2,284.29  |



**REVIEW OF EX PARTE MOTION  
AND COURT'S DECEMBER 1, 2023 ORDER (DCKT. 25)**

On November 1, 2023, Dannielle Ortega, Debtor, commenced this voluntary Chapter 7 Case in *pro se*. A search of the court's records did not show any prior bankruptcy case filings by Debtor in the Eastern District of California. On the Petition, Debtor affirms under penalty of perjury that she has not previously filed for bankruptcy within the eight years prior to the commencement of this Bankruptcy Case and that there are no bankruptcy cases pending or being filed by a spouse. Petition, ¶¶ 10; Dckt. 1. Debtor states under penalty of perjury that she is not married. Statement of Financial Affairs, ¶ 1; Dckt. 22.

On November 30, 2023, Debtor filed a motion titled Emergency Request for Extension of 30-Day Automatic stay. Dckt. 24. The grounds summarized in the *Ex Parte* Motion are:

- a. Debtor requests an emergency extension of the 30-day automatic stay as it applies to a pre-petition unlawful detainer judgment.

Debtor does not identify the landlord or the prepetition unlawful detainer proceedings in the *Ex Parte* Motion. However, in the Initial Statement (Official Form 101), Dckt. 8, the landlord is identified as "Constance Aban c/o Rowe Law Firm" ("Landlord"), and the residential property is identified as 2336 Carol Street, Modesto, California (Petition and Statement of Financial Affairs), and the Unlawful Detainer Action is identified as Superior Court for Stanislaus County, Turlock Division, Case No. UD-23-000901 (Dckt. 22 at 27).

- b. Factors necessitating the extension are stated to include Debtor's disability, Debtor having a minor child, Debtor's income being Social Security Disability benefits, and that Debtor's 23-year relationship with her partner recently came to an end. Additionally, Debtor was hospitalized for over a year, during which the former partner mishandled Debtor's finances, leaving her with debt and a drained bank account.
- c. Debtor is facing eviction from her current residence and will not have the funds to pay rent at a new place until December 15, 2023.
- d. If the stay is not extended and Debtor was evicted prior to December 15, 2023, Debtor and her minor child would be homeless.
- e. Debtor requests that the stay be extended for only fifteen days to December 15, 2023, so that she can make the move into her new place of residence.

*Ex Parte* Motion; Dckt. 24.

On her Statement of Financial Affairs Debtor, ¶ 9, Debtor lists an Unlawful Detainer Action in the Superior Court that is "pending." Dckt. 22 at 37. The landlord plaintiff in the Unlawful Detainer Action is listed as a creditor with an unsecured claim on Schedule E/F. Dckt. 22 at 21.

On November 1, 2023, Debtor also filed an Initial Statement About an Eviction Judgment Against You. Dckt. 8. This Initial Statement indicates that Debtor’s landlord has obtained an eviction judgment against the Debtor. The Debtor further states that she has the right to stay in the residence by paying her landlord the entire delinquent amount. Dckt. 8, Certification Section. With respect to such certification, the Initial Statement (Official Form 101A) includes the following additional information as to the automatic stay and the effect of Debtor providing the certifications in the Initial Statement:

- Stay of Eviction: (a) First 30 days after bankruptcy. If you checked both boxes above, signed the form to certify that both apply, and served your landlord with a copy of this statement, **the automatic stay under 11 U.S.C. § 362(a)(3) will apply to the continuation of the eviction against you for 30 days after you file your Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101).**
- (b) Stay after the initial 30 days. If you wish to stay in your residence after **that 30-day period and continue to receive the protection of the automatic stay** under 11 U.S.C. § 362(a)(3), **you must pay the entire delinquent amount to your landlord** as stated in the eviction judgment before the 30-day period ends. **You must also fill out Statement About Payment of an Eviction Judgment Against You (Official Form 101B),** file it with the bankruptcy court, and serve your landlord a copy of it before the 30-day period ends.

*Id.* [emphasis added].

### **Bankruptcy Code Provisions Regarding Unlawful Detainer Judgment and the Automatic Stay**

Congress provides the automatic stay to go into immediate effect upon the filing of a bankruptcy case to protect the debtor and the bankruptcy estate. 11 U.S.C. § 362(a). It is very broad and encompasses most acts that could have been taken prepetition against a debtor and a debtor’s assets. One such provision is 11 U.S.C. § 362(a)(3), which provides that the automatic stay applies and operates as a stay, applicable to all entities, of—

- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

The property of the bankruptcy estate consists of almost all real and personal property of a debtor, *see* 11 U.S.C. § 541(a), and includes things such as clothing, furniture, and other personal property.

Then, in 11 U.S.C. § 362(b) Congress “takes back” the automatic stay from a number of situations, including stating that there is not a stay:

(22) subject to subsection [11 U.S.C. § 362] (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor; . . . .

11 U.S.C. § 362(b)(22). The above referenced exception to the automatic stay not applying if there is a pre-petition unlawful detainer judgment provided in 11 U.S.C. § 362(l) is:

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

...

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

.....

This is the statutory language for the above quoted notifications given in the Initial Statement (Official Form 101A).

The court does not identify any provisions for “extending the stay” which is provided for in 11 U.S.C. § 362(l) in these Bankruptcy Code provisions. This can be contrasted with 11 U.S.C. § 362(c)(B) which provides for extending the automatic stay, which would terminate as to the debtor, for a debtor who had a case that was pending and dismissed in the year prior to filing bankruptcy. Additionally, Congress provides for imposing the stay as provided in 11 U.S.C. § 362(c)(4) in cases where it did not go into effect due to the debtor having had two prior bankruptcy cases that were pending and dismissed within one year prior to the bankruptcy case then before the court.

### **Other Basis For Extending the Stay Provided in 11 U.S.C. § 362(l)**

One provision of the Bankruptcy Code giving judges great power to issue orders is 11 U.S.C. § 105(a), which provides:

#### § 105. Power of court

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

Both the Ninth Circuit Court of Appeal and the U.S. Supreme Court have made it clear that the above does not provide a federal judge *carte blanche* to do whatever that judge thinks is “right,” but such orders or judgments must be issued to carry out the provisions of the Bankruptcy Code. *See, Law v. Siegel*, 571 U.S. 415, 421 (2014), in which the Supreme Court’s discussion includes:

It is hornbook law that §105(a) “does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.” 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013). Section 105(a) confers authority to “carry out” the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits.

Thus, the first question that arises is whether the termination after 30 days is an “explicit mandate” which cannot be altered, or Congress’ attempt to set a reasonable time period for the prompt return of a leased residential property to the landlord when the unlawful detainer judgment was issued pre-petition. In considering this, the thirty-day termination of the automatic stay and 11 U.S.C. § 362(c)(22) being applicable is keyed into a deadline for the debtor to take certain action – not a *per se*, absolute drop dead date.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 9006(b) for the bankruptcy court to extend the time periods in any statute:

(b) Enlargement.

(1) In general. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) Enlargement not permitted. The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) Enlargement governed by other rules. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

The restrictions provided in Federal Rule of Bankruptcy Procedure 9006(b)(2) and (3) do not apply to the time period provided in 11 U.S.C. § 362(l) and the application of 11 U.S.C. § 362(b)(22).

### **Extension of Time and Stay Granted**

Clearly, in this Case the Debtor has been quite candid in seeking the extension of the stay as it applies to an unlawful detainer judgment. Additionally, Debtor has expressly tailored her request to a minimum period of time to get out of the pre-petition rental property and into a lower cost residence.

Extending the automatic stay in its application and delaying the termination of the automatic stay as provided in 11 U.S.C. § 362(b)(22) is not contrary to the Bankruptcy Code, but works to reasonably enforce the Code to effectuate the reasonable relief afforded a debtor, and also protect the rights of the landlord.

Therefore, the court extends the automatic stay as it applies pursuant to 11 U.S.C. § 362(l) for an additional fifteen days to December 15, 2023, and the provisions of 11 U.S.C. § 362(b)(22) making the stay inapplicable to a pre-petition unlawful detainer judgment are not effective until 12:01 a.m. on December 16, 2023. In extending the stay, the court expressly provides that it is not applicable to any notices, pleadings, or proceeding that the landlord must take to schedule an eviction to occur on or after December 16, 2023.

The court schedules a hearing date on this *Ex Parte* Motion for 10:30 a.m. on December 7, 2023, to provide a time to be presented any issues which may have arisen with respect to actions taken by the landlord and counsel prior to this order being issued and notice thereof being provided to Landlord and Landlord's counsel. The court does not order the filing of any pleadings or response documents in light of the very limited duration of the extended stay and to avoid causing unnecessary expense on the landlord.



# FINAL RULINGS

9. [19-90464-E-7](#)  
[ADJ-4](#)

RICHARD RICKS  
Pro Se

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FORES MACKO  
JOHNSTON & CHARTRAND FOR  
ANTHONY D. JOHNSTON, TRUSTEES  
ATTORNEY(S)  
10-27-23 [\[225\]](#)

**Final Ruling:** No appearance at the December 7, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2023. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Anthony D. Johnston, the Attorney (“Applicant”) for Irma Edmonds, the Chapter 7 Trustee (“Client,” “Chapter 7 Trustee”), makes a First and Final Request for the Allowance of Fees and Costs in this case.

Fees are requested for the period January 11, 2022, through October 27, 2023. The order of the court approving employment of Applicant was entered on February 3, 2022. Dckt. 168. Applicant requests fees in the amount of \$1,687.50 and costs in the amount of \$45.57.

## 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 assisting Client in paying the California Franchise Tax Board claim. It was determined that the debtor in this case, Richard Arland Ricks, owed income taxes for the tax year 2021. Applicant prepared a motion, which this court granted, that gave Client the authority to pay those income taxes. The Estate has \$56,244.56 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

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

| <b>Names of Professionals</b>               | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|---|-------------|--------------------|--|
| Anthony D. Johnston                         | 4.50        | \$375.00           | \$1,687.50   |
| <b>Total Fees for Period of Application</b> |             |                    | \$1,687.50   |

Exhibit A, Dckt. 228.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$45.57 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost, If Applicable</b> | <b>Cost</b> |
|---|-------------------------------------|-------------|
| Copies                                      | -----                               | \$19.90     |
| Postage                                     |                                     | \$25.67     |
| <b>Total Costs Requested in Application</b> |                                     | \$45.57     |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,687.50 are approved pursuant 11 U.S.C. § 330, and 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.

**Costs & Expenses**

First and Final Costs in the amount of \$45.57 are approved pursuant to 11 U.S.C. § 330 and 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.

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

|                    |            |
|--------------------|------------|
| Fees               | \$1,687.50 |
| Costs and Expenses | \$45.57    |

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

**IT IS ORDERED** that Anthony D. Johnson is allowed the following fees and expenses as a professional of the Estate:

Anthony D. Johnston, Professional employed by the Chapter 7 Trustee

|                    |            |
|--------------------|------------|
| Fees               | \$1,687.50 |
| Costs and Expenses | \$45.57,   |

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

