

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, October 13, 2021

Hearing Room 301

11:00 AM

6:18-15022 Rafael Alvarez Martinez

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 39

Tentative Ruling:

TENTATIVE RULING

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$3,299.37

Trustee Expenses: \$87.21

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Rafael Alvarez Martinez

Represented By
Kevin J Kunde

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, October 13, 2021

Hearing Room 301

11:00 AM

6:20-15054 Luis Alberto Pineda-Mata

Chapter 7

#2.00 CONT. Notice of Objection and Motion to Extend Time to File Additional Evidence in Support of Objection to Debtor's Claimed Homestead Exemption, with Proof of Service
(Motion filed 3/24/21)

From: 5/5/21,8/11/21

EH__

[Tele. appr. Tinho Mang, rep. chapter 7 trustee]

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Alberto Pineda-Mata

Represented By
Todd L Turoci

Trustee(s):

Charles W Daff (TR)

Represented By
Chad V Haes
Tinho Mang
D Edward Hays

**United States Bankruptcy Court
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11:00 AM

6:14-17350 Dean L. Springer, Sr. and Tami Jo Springer

Chapter 7

#2.10 CONT. Notice of Trustee's Final Report and Applications for Compensation (Marshack Hays LLP and Menchaca & Company LLP) (Motion filed 8/6/21)

From: 9/1/21, 9/29/21

EH__

Docket 247

Tentative Ruling:

Continued Hearing Date: October 13, 2021

This hearing was continued to allow Trustee's Counsel to supplement the Second and Final Fee Application for Allowance of Fees and Costs ("Second Fee Application") of \$263,342.25 in fees and \$16,644.08 in expenses. [Dkt. Nos. 237, 255, 256 and 257]. The Court ordered Counsel to provide further (1) evidence establishing the reasonableness of their compensation as to the litigation against Hilder & Associates and (2) explanation for fees in the "Litigation" category in the amount of \$58,388. *Id.* Counsel filed the Second Declaration of D. Edward Hays ("Second Declaration"), (1) explaining the litigation against Hilder & Associates in some detail and re-sorting certain fees from the "Litigation" category to the Hilder & Associates category, and (2) sub-categorizing fees in the "Litigation" category. [Dkt. No. 258]. Counsel also proposes \$11,510.90 as a reduction in their fees. *Id.*

The court has an independent duty to examine the reasonableness of the fees and expenses requested by retained professionals. *In re Auto Parts, Inc.*, 211 B.R. 29, 33 (B.A.P. 9th Cir.1997). Under 11 U.S.C. § 330, the court may award reasonable compensation to a professional person employed under 11 U.S.C. § 327, for actual and necessary services rendered. *See* 11 U.S.C. § 330(a)(1)(A). In determining the reasonableness of compensation, the court can consider a variety of factors including, whether the services were necessary to the administration of or the completion of a case, whether they were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the issue, and whether the

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compensation is reasonable based on the customary compensation charged. *See* 11 U.S.C. §§330(a)(3)(C), (D) and (F).

I. Expenses

In the Second Fee Application, Counsel requested \$2,645.69 for online research ("The Firm incurred \$2,645.69 during the second Reporting Period in costs related to online computer research including Westlaw, Lexis, and Pacer.") [Dkt. No. 237]. Without more information about how the online research costs are allocated, the Court determines this is part of Counsel's overhead expenses, and thus, rejects the reimbursement of it. *See Nozzi v. Hous. Auth.*, CV 07-380 PA (FFMx), 2018 U.S. Dist. LEXIS 26049, at *22 (C.D. Cal. July 7, 2015) (holding that the online research costs of \$17,094.02 is part of an attorney's overhead); *see also Mauss v. NuVasive, Inc.*, 13cv2005 JM (JLB), 2018 WL 6421623, (S.D. Cal. Dec. 5, 2018) (rejecting the reimbursement of the online research costs of \$5,990.25 and requiring more information as to whether online research fees are allocated evenly among the active cases the firm has at a given time, in proportion to the amount of hours billed on a case, or in some other manner).

II. \$263,342.25 in Fees

1. Fees in the Hilder & Associates and "Litigation" Categories

In the Second Declaration, Counsel states that total fees for the Hilder & Associates ("H&A") category have been increased from \$68,454.50 to \$69,359.50, because some of fees in the "Litigation" category were re-sorted into the H&A category. [Dkt. No. 237, pg. 21, line 15-17; and Dkt. No. 258, pg. 8, fn. 3]. However, without any explanation, the total fee amount of sub-categories in the "Litigation" category in the chart, in the Second Declaration, not only did not decrease, but actually increased to \$61,811.15. [Dkt. No. 258, pg. 9].

2. Fees for "Brutzkus Gubner Disgorgement" in "Litigation" Category

In the Second Declaration, Counsel requests fees related to Brutzkus Gubner Disgorgement in the amount of \$1,845. [Dkt. No. 258, pg. 9, category B and Ex. 2].

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However, Counsel's First Fee Application included \$1,482 of these fees. [Dkt. Nos. 85 and 255]. Specifically, as shown in Exhibit 2, Counsel requests \$1,482 fees for Brutzkus Gubner Disgorgement for the period from October 8, 2014 to April 1, 2015. [Dkt. No. 258, pgs. 69-71, category B and Ex. 2]. Since this period was included in the First Fee Application, the request should be reduced by \$1,482, which presumably leaves \$363 (\$1,845-\$1,482) as the remaining fees for the second fee period.

3. Fees for "Simons v. Springer" in the "Litigation" Category

In the Second Declaration, Counsel requests fees for Simons v. Springer services (the "Denial of Discharge") in the amount of \$16,020.15 in the "Litigation" category, and \$6,953.50 as fees in the Denial of Discharge Category. [Dkt. No. 258, pg. 9 and Ex. 2; and Dkt. No. 237, pg. 14, line 21-23]. Thus, Counsel requests the total amount of \$22,973.65 (\$16,020.15+\$6,953.50) as their fees in the Denial of Discharge category. However, the billing entries for sub-category Denial of Discharge in the "Litigation" category from September 22, 2014 to March 31, 2015 contained in Exhibit 2 [Dkt. No. 258, Ex. 2, pgs. 55-56] are not in the "Litigation" category in the Second Fee Application [Dkt. No. 237, Ex.3, pg. 147]. These appear to be new time entries.

4. Fees for "General Litigation" in the "Litigation" Category

Likewise, the billing entries for sub-category "General Litigation" in the "Litigation" category from August 27, 2014 to December 18, 2014 contained in Exhibit 2 [Dkt. No. 258, Ex. 2, pg. 128] are not in the "Litigation" category in the Second Fee Application [Dkt. No. 237, Ex.3, pg. 147]. These appear to be new time entries.

5. Proposed Reduction of \$11,510.90

The proposed reduction of \$11,510.90 does not appear to be correct after adding the itemized reductions.

Based on the foregoing issues, specifically, organization and calculation errors that impede analysis of bigger picture issues as to the effectiveness of Applicant's services, it is the Court's intention to deny the Application without prejudice to allow Applicant to refile a corrected fee application.

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APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Joint Debtor(s):

Tami Jo Springer

Pro Se

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays
Laila Masud

**United States Bankruptcy Court
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2:00 PM

6:17-20092 Mark Bastorous

Chapter 7

Adv#: 6:20-01059 Pringle v. Bishay

#3.00 Motion To Substitute Mervat Shafik As Defendant Pursuant To Federal Rule Of Civil Procedure 25(a), Made Applicable By Federal Rule Of Bankruptcy Procedure 7025; Memorandum Of Points And Authorities, And Declaration Of David M. Goodrich In Support Thereof
(Motion filed 9/7/21)

EH__

[Tele. appr. David Goodrich, rep. Plaintiff]

[Tele. appr. Sonja Hourany, rep. Plaintiff, LISTEN ONLY]

Docket 27

Tentative Ruling:

BACKGROUND:

On August 5, 2021, the Trustee and defendant Boles Bishay entered into a settlement agreement, which has been approved by this Court, to resolve all of the claims for relief alleged in the complaint filed in this proceeding. [Dkt. No. 289 in the main case]. On July 19, 2021, the Court and the Trustee were informed of Mr. Bishay's passing when Mervat Shafik, Mr. Bishay's widow, filed the Suggestion of Death. [Dkt. 285 in the main case]. On September 7, 2021, the Trustee filed the Motion to substitute Ms. Shafik, as the Defendant in this adversary proceeding. [Dkt. No. 27]. The Trustee argues that this substitution is proper because (1) the Motion is timely, (2) the Trustee's causes of action survive Mr. Bishay's death, and Ms. Chafik is Mr. Bishay's admitted successor in interest and/or legal representative.

APPLICABLE LAW:

Federal Rule of Civil Procedure ("FRCP") 25(a)(1), made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure ("FRBP") 7025,

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provides in relevant part:

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If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

"In deciding a motion to substitute under Rule 25(a)(1), a court must consider whether: (1) the motion is timely; (2) the claims pled are extinguished; and (3) the person being substituted is a proper party." *Fugnetti v. Bird B Gone, Inc.*, Case No.: SACV 19-00847-CJC(DFMx), 2020 U.S. Dist. LEXIS 209665, *4 (C.D. Cal. Sep. 17, 2020); *Estate of Bloom v. City of San Diego*, Case No.: 3:17-cv-02324-AJB-MSB, 2021 WL 3810521, *4-5 (E.D. Cal. Aug. 25, 2021). If Rule 25(a)(1) is met, "[t]he substituted party steps into the same position as [the] original party." *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996).

ANALYSIS:

I. The Motion was Timely Filed Under Rule 25(a).

Rule 25(a)(1) requires two affirmative steps to trigger the running of the 90-day period: (1) a formal suggestion of death upon the record; and (2) service of other parties and nonparty successors or representatives of the deceased with a suggestion of death. *Fugnetti*, 2020 U.S. Dist. LEXIS 209665, *5; *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).

Here, the formal suggestion of Mr. Bishay's death was entered on the record when Ms. Shafik filed and served the Suggestion of Death on July 19, 2021 [Dkt. No. 285]. The 90-day deadline to file and serve a FRCP (25)(a)(1) motion is October 17, 2021. The Trustee filed and served the Motion on September 7, 2021 [Dkt. No. 27]. Thus, the Motion is timely.

II. The Claims Survive Mr. Bishay's Death.

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To determine the survival of the cause of action, courts turn to the substantive law controlling the suit. *Vinetz v. Wolpoff & Abramson, L.L.P.*, Case No. CV 07-8021 PSG (CWx), 2009 WL 482299, *3 (C.D. Cal. Feb. 24, 2009); *see also Gutierrez v. Tucker*, No. 2:19-CV-0878-JAM-DMC-P, 2021 U.S. Dist. LEXIS 75933, *4 (E.D. Cal. Apr. 20, 2021) ("To determine whether a cause of action survives a party's death, the Court must look to the law, state or federal, under which the cause arose."); *Hawkins v. Eads*, 135 B.R. 380, 385 (Bankr. C.D. Cal. 2021) ("Abatement of a claim on death is a question of substance as to which state law governs for state claims and federal law for federal claims.").

1. Federal Law Causes of Action

For federal law causes of action, "if no specific provision is made by act of Congress for its survival, [a cause of action] survives or not according to the principles of the common law." *Heikkila v. Barber*, 308 F.2d 558, 561 (9th Cir. 1962). Here, the Trustee's causes of action to avoid fraudulent transfers are under 11 U.S.C. §§ 548 and 550, and to preserve the transfers for the benefit of the estate under 11 U.S.C. § 551 ("Avoidance Provisions"). [Dkt. Nos. 1 and 27]. There are no express provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure providing for the survival of the Avoidance Provisions, so the Court will apply federal common law.

"[U]nder federal common law, federal claims typically survive a decedent's death if they are remedial in nature and not penal." *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1056-57 (9th Cir. 2018); *Brunoehler v. Tarwater*, CV 15-688-DMG (JEMx), 2020 WL 4352790, *3 (C.D. Cal. Jan. 31, 2020); *Jim 72 Properties, LLC v. Montgomery Clearnes*, 151 F.Supp.3d 1095, 1098 (C.D. Cal. 2015). Courts apply a three-factor test to determine survivability: (1) whether the purpose of the statute was to redress individual wrongs or more general wrongs to the public; (2) whether recovery under the statute runs to the harmed individual or to the public; and (3) whether the recovery authorized by the statute is wholly disproportionate to the harm suffered. *Jim 72 Properties, LLC*, 151 F.Supp.3d at 1098. While courts must assess each factor in turn, the legislative intent behind the law is the dominant factor. *Id.*

Where the purpose of a statute is to redress an individual wrong, it is more likely to have a remedial purpose. *Id.*; *Riggs v. Gov't Emp. Fin. Corp.*, 623 F.2d 68,

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72 (9th Cir. 1980). "When considering whether the purpose of the statute is to redress individual wrongs as opposed to deterring public wrongs, courts refer to the Congressional findings and declaration of purpose." *Jim 72 Properties, LLC*, 151 F.Supp.3d at 1098.

A corollary to the power to continue the posthumous administration of any bankruptcy case is the power to exercise all of the avoiding powers authorized by the Bankruptcy Code as integral to case administration. Thus, the related causes of action to reverse an unauthorized post-petition transfer under section 549 and to recover the property or its value under section 550 do not abate. The same conclusion applies to the liability of the trustee's other avoiding powers -- 11 U.S.C. §§ 544-548 and 724(a) -- that are covered by section 550

Eads, 135 B.R. at 386, n.14.

Here, pursuant to *Eads*, the Court finds that the claims under 11 U.S.C. §§ 548, 550, and 551 are remedial in nature. Thus, the Trustee's causes of action under federal law survive Mr. Bishay's death.

2. State Law Causes of Action

For state law causes of action, "the law of the forum state determines whether a [cause of action] survives or is extinguished upon the death of a party." *Gutierrez v. Discount Gold Brokers, Inc.*, Case No. CV 14-01145 PA (MRWx), 2020 WL 7247318, *1 (C.D. Cal. Feb. 25, 2020) (quotations omitted) (citation omitted). In California, "[a] pending action or proceeding does not abate by the death of a party if the cause of action survives." Cal. Code Civ. P. § 377.21. "Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death but survives subject to the applicable limitation period." Cal. Code Civ. P. § 377.20(a).

The Trustee's causes of action to avoid fraudulent transfers are under California Civil Code §§ 3439.04 and 3439.05. [Dkt. Nos. 1 and 27]. Thus, the Trustee's causes of action under California law survive Mr. Bishay's death.

III. Ms. Shafik is Mr. Bishay's Successor in Interest and/or Legal Representative

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Rule 25(a)(1) requires evidence that the person proposed to be substituted is the decedent's successor in interest or legal representative. *See Jewett v. Bishop, White Marshall & Weibel, P.S.*, CV 12-10142 PSG (MRWx), 2013 WL 6818245, at *7 (C.D. Cal. Feb.25, 2013); *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996) (applying 25(a)(1) to the legal representatives of the deceased's estate); *Mallonee v. Fahey*, 200 F.2d 918, 919 (9th Cir. 1952) ("It is plain ... that Rule 25(a)(1) applies only to the substitution of legal representatives. That is not only clear from its history; it is implicit in the wording of the provision and in the cases construing it." (footnote omitted)).

Here, the Suggestion of Death shows that Ms. Shafik is "the sole surviving trustee of the Trust, in its capacity as the successor to Mr. Bishy as contemplated by Rule 25 of the Federal Rules of Civil Procedure." [Dkt. No. 285]. The Suggestion of Death was filed by counsel, who indicated that they are "Attorneys for Successor to Defendant Boles Bishay and Creditor MERVAT SHAFIK." *Id.* Ms. Shafik stated in her declaration that she "was the spouse of Boles Bishay until his recent death" and that she is "the sole surviving trustee of the Boles Bishay and Mervat Shafik Revocable Living Trust dated February 5, 2021." *Id.* Thus, Ms. Shafik is Mr. Bishay's successor in interest and/or legal representative.

TENTATIVE RULING

The Court is inclined to GRANT the Motion permitting the proposed substitution of Mervat Shafik as the Defendant.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Mark Bastorous

Represented By
Thomas F Nowland

Defendant(s):

Boles Bishay

Pro Se

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Joint Debtor(s):

Bernadette Shenouda

Represented By
Thomas F Nowland

Plaintiff(s):

John P. Pringle

Represented By
David M Goodrich

Trustee(s):

John P Pringle (TR)

Represented By
David M Goodrich
Reem J Bello

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6:21-11740 Yvonne Miranda

Chapter 7

Adv#: 6:21-01074 Fisher v. Miranda et al

#4.00 CONT. Status Conference RE: [1] Adversary case 6:21-ap-01074. Complaint by Mark Lee Fisher against Yvonne Miranda, Linda Juarez. false pretenses, false representation, actual fraud))

From: 9/8/21

EH__

[Tele. appr. Todd Turoci, rep. Defendant]

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yvonne Miranda

Represented By
Freddie V Vega

Defendant(s):

Yvonne Miranda

Represented By
Todd L Turoci

Linda Juarez

Represented By
Todd L Turoci

Joint Debtor(s):

Linda Juarez

Represented By
Freddie V Vega

Plaintiff(s):

Mark Lee Fisher

Represented By
Erik Hammett

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Trustee(s):

Howard B Grobstein (TR)

Pro Se