

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

Wednesday, November 6, 2024

Hearing Room 301

10:00 AM

6:24-14925 Marcus Johnson

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and Technology Credit Union, in the amount of \$44,800.21, re: Solar Panels

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marcus Johnson

Represented By
Neil R Hedtke

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
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Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:22-11215 Eva Maria Lechuga

Chapter 7

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

EH__

[Tele. appr. Arturo Cisneros, chapter 7 trustee]

[Tele. appr. Deepak Devabose, rep. Debtor]

Docket 41

Tentative Ruling:

11/6/2024

Service: Proper

Opposition: None

While the Court is abundantly aware this is a very small surplus case, there appear to be a variety of issues requiring attention regarding special counsel fees:

First, Section 7(b)-(c) of the application to employ special counsel provides that "The reasonable attorneys' fees and costs of KLG would be paid by the Defendant and are separate from any settlement or judgment amount paid by the estate, and without the need of further order of this Court." As such, it is unclear why the total settlement amount of \$94,101.75 is included in the Final Report, as \$25,000 for KLG's fees apparently should be subtracted and paid directly from Defendant to KLG after determination of reasonableness by the Superior Court, as the employment application represents. Looking, however, at the 9019 motion filed as docket 28, page 4 lines 12-15, it appears that the Trustee shifted the flow of KLG's payment from coming directly from Defendant to KLG (noted in the KLG employment motion as quoted above), to being paid to KLG from the estate (noted in the 9019), without highlighting this change to the Court. If fees are being paid from the estate in a manner deviating from the employment application, also noting that Trustee's compensation is based in part on those fees, special counsel needs to file a fee application, especially since special counsel was employed in part under § 330

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Eva Maria Lechuga

Chapter 7

which contemplates "reasonable" attorney fees approved pursuant to separate fee application. Simply changing the process, without explanation, in the 9019 motion is improper.

Second, the application to employ special counsel clearly provides two potential fee awards: (1) "reasonable fees" under Section 328 without need for a fee application, and (2) 25% of recovery of "Additional Damages" recovered by the estate, under Section 330 and requiring a fee application. However, the 9019 motion does not clarify what special counsel's fee is comprised of. Given that the 9019 motion says the settlement is comprised of \$27,399.24 for actual damages and \$41,702.51 for "Additional Damages," presumably special counsel is obligated to file a fee application for the portion of its fee attributable to 25% of "Additional Damages."

Third, assuming the Trustee is taking the position that special counsel fees are being paid from the estate and that Trustee's fee should be calculated in part on payment of special counsel fees, it is not clear to the Court why the special counsel fees are not identified in the final report. The summary of Trustee's final report indicates approved disbursements of \$39,073.43, which presumably includes \$25,000 paid to KLG, but it is not clear what this total is comprised of.

Fourth, the motion to approve the compromise provides:

Pursuant to the KLG Employment Application, which was approved on May 3, 2023, KLG is entitled to payment of \$25,000 in attorney fees and costs. However, KLG has agreed that \$10,000 of its attorney fees and costs should be paid to Debtor so that she may procure a replacement vehicle. Finally, Debtor has claimed a \$3,325 exemption in the Vehicle. Therefore, in addition to approval of the Settlement Agreement, Trustee respectfully requests that the Court authorize him to distribute \$25,425.63 to KLG and \$13,325 to Debtor.

[Dkt. No. 28, pg. 10]. This section appears inherently contradictory. It states KLG is entitled to \$25,000 in attorney fees and costs but has agreed that \$10,000 should be paid to Debtor. Then it states KLG will get \$25,425.63. The math is incomprehensible to the Court. Having reviewed the billing entries, the Court notes a change in handling attorney from Ms. Khil to Mr. Smith during the case, and questions if that is related to the confusion.

**United States Bankruptcy Court
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Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Eva Maria Lechuga

Chapter 7

Last, it is not clear why the payment of \$10,000 to Debtor pursuant to the settlement agreement was included in the compensation base under 11 U.S.C. § 326(a).

The Court is inclined to either DENY the Trustee's final report without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Eva Maria Lechuga

Represented By
Melissa A Raskey

Trustee(s):

Arturo Cisneros (TR)

Represented By
Nathan F Smith
Christina J Khil

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:24-10465 Jose Mariano Orellana Guerrero and Chelsea Marie Ortega Chapter 7

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

EH__

[Tele. appr. Arturo Cisneros, chapter 7 trustee]

Docket 23

Tentative Ruling:

11/6/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, and there being no opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 1,878.00

Trustee Expenses: \$ 30.00

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):

Jose Mariano Orellana Guerrero

Represented By
James G. Beirne

Joint Debtor(s):

Chelsea Marie Ortega

Represented By
James G. Beirne

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Jose Mariano Orellana Guerrero and Chelsea Marie Ortega

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:24-10026 Jovanny A Barron and Andria Gabriella Barron

Chapter 7

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

EH__

[Tele. appr. Arturo Cisneros, chapter 7 trustee]

Docket 26

Tentative Ruling:

11/6/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, and there being no opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 1,754.00

Trustee Expenses: \$ 30.00

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):

Jovanny A Barron

Represented By

Vincent Renda

Joint Debtor(s):

Andria Gabriella Barron

Represented By

Vincent Renda

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Jovanny A Barron and Andria Gabriella Barron

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:23-14059 Raquel Cordero Banuelos

Chapter 7

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

EH__

[Tele. appr. Larry D. Simons, chapter 7 trustee]

Docket 21

Tentative Ruling:

11/6/2024

Service: Proper

Opposition: None

According to page 4 of Trustee's declaration, Trustee's final report calculations rely on a "total disbursements of \$6,534.44." Trustee's proposed distribution, however, identifies \$3,654.78 in funds received, and proposes to distribute \$1,441.88 to Trustee and \$2,212.90 to creditors. The "Individual Estate Property Record and Report," however, indicates that Trustee received \$3,684 to in tax returns but that he will "return \$833.56 to debtor as that portion of the federal tax refund belongs to the debtor," although that is not provided for in the distribution. Even that calculation appears incorrect because the first sentence of that entry states that 67.9% of the tax refund belongs to the estate (and thus 32.1% of the debtor).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raquel Cordero Banuelos

Represented By
Daniel King

Trustee(s):

Larry D Simons (TR)

Pro Se

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:23-13759 Joseph Paul Gere

Chapter 7

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

EH__

[Tele. appr. Larry D. Simons, chapter 7 trustee]

Docket 28

Tentative Ruling:

11/6/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, and there being no opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 480.10

Trustee Expenses: \$ 22.71

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):

Joseph Paul Gere

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

6:23-13093 Geoffrey Kun Chou

Chapter 7

#7.00 Application to Employ Employ Robberson Schroedter LLP as Special Litigation Counsel
(Motion filed 9/19/24)

EH__

[Tele. appr. Maggie Schroedter, rep. chapter 7 trustee]

[Tele. appr. Larry D. Simons, chapter 7 trustee]

Docket 61

Tentative Ruling:

11/6/2024

BACKGROUND

On July 14, 2023, Geoffrey Chou ("Debtor") filed a Chapter 7 voluntary petition.

On August 8, 2023, Wozniak Distribution, LLC & MonsterPeeps LLC (collectively, "Creditors") filed a motion for relief from the automatic stay, seeking to continue state court litigation. On August 29, 2023, the Court entered an order: (1) granting relief from the automatic stay; and (2) annulling the automatic stay.

On October 5, 2023, the Court approved a stipulation between Creditors and Debtor to extend the deadline to object to Debtor's discharge or file a non-dischargeability complaint until November 16, 2023. On November 16, 2023, the Court approved a second stipulation, this time extending the deadline until January 13, 2024.

On January 17, 2024, the Court entered Debtor's discharge. *After the discharge was entered*, Creditors submitted another stipulation, purporting to extend the discharge and non-dischargeability deadlines until February 26, 2024. Subsequently, Creditors filed a motion to vacate discharge and a motion to extend the discharge and non-dischargeability deadlines. The motion to vacate discharge was denied pursuant to order entered April 26, 2024 and Creditors abandoned pursuit of the request to further

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Geoffrey Kun Chou

Chapter 7

extend the deadlines. Ultimately, regardless of the effect of the January 2024 stipulation, the discharge and dischargeability deadlines expired in this case without action by Creditors.

On September 12, 2024, Trustee filed an application to employ special counsel (the "Application"), seeking to employ the law firm that represented Creditors in the proceedings in the case --- Robberson Schroedter LLP ("Counsel"). Specifically, Trustee appears to seek to employ Counsel to prosecute potential avoidable transfers and a revocation of discharge action. For reasons that are unclear, the application was filed again the following day, and a third time on September 19, 2024.

On October 7, 2024, Debtor filed an opposition to the Application. On October 30, 2024, Trustee filed a reply.

The Court notes that procedurally service of the application is improper. Specifically, the Court notes that although there are three notices of the application on the docket, there is no proof of service for any of these notices. Additionally, there is no proof of service for any of the three filed employment applications. Instead, there are proofs of service for the statement of disinterestedness and a proof of service for the notice of hearing. None of these proofs of service include the contents required or list service on the parties required by Local Rule 2014-1(b)(2)-(3).

DISCUSSION

As noted above, given that service of the application is improper, the Court is inclined to DISAPPROVE the application without prejudice, or CONTINUE the hearing on the application for amendment.

As to the merits, first, while applicant appears to state in the application and the reply that the Trustee's determination to pursue a 727(d) claim was based on facts not known until after the January 17, 2024 entry of discharge, when such facts were apparently disclosed during a continued 341(a) meeting and/or Rule 2004 meeting, the detail is not clear, and there is no declaration from the Trustee as to (1) what he learned that forms the basis of a 727(d) claim, and (2) when he learned it.

Second, the Court notes that Trustee is correct that caselaw establishes that a Chapter 7 trustee can employ a creditor's counsel to represent the estate when there is an

**United States Bankruptcy Court
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Courtroom 301 Calendar**

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Hearing Room 301

11:00 AM

CONT...

Geoffrey Kun Chou

Chapter 7

identity of interest, *see e.g., In re Best Craft Gen. Contractor & Design Cabinet, Inc.*, 239 B.R. 462 (Bankr. E.D.N.Y. 1999) (collecting cases). However, certainly a conflict would arise if applicant is representing the Trustee in an action against Debtor, and at the same time applicant is defending Creditors from a claim objection filed by the Trustee (noting that Creditors' disputed claims constitute the majority of claims against the estate). Thus, employment as special counsel would seem to require applicant's agreement not to take on any other representation of creditors in the case, absent an order from the Court authorizing such representation.

Third, Creditors argue that a reason for the proposed representation is to allow Creditors to continue prosecuting Debtor after the discharge and non-dischargeability deadlines expired, without having Creditors incur further fees, and to protect applicant from potential malpractice claims. As to the latter reason, it is not clear to the Court how this situation creates a potential or actual conflict, unless it is financially unreasonable for the estate to pursue these claims and applicant is just prosecuting the claims out of self-interest. As to the former reason the Court is concerned that the arrangement seems inequitable for the estate given that Creditors hold the majority of the claims in the case, coupled with the failure of Creditors non-dischargeability efforts. Of course, that situation changes if Creditors, not the estate, fund the 727(d) litigation, and the Court notes that the Creditors would be the majority beneficiaries if the Trustee prevails in the 727(d) claim.

Fourth, related to the point above, without knowing the funds in the estate and the merits and estimated costs of the Trustee's claims, the Court cannot evaluate the benefit of the proposed representation to the estate. To that end, the Court notes that of the three significant and distinct claimants, one appears to have a non-dischargeable priority tax claim.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Geoffrey Kun Chou

Represented By
Terrence Fantauzzi
Kelvin J Lo

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

Wednesday, November 6, 2024

Hearing Room 301

11:00 AM

CONT... Geoffrey Kun Chou

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Maggie Elyse Schroedter