

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Peli Popovich Hunt,
Debtor.

Case No.: 2:11-bk-58222-ER
Chapter: 7

**MEMORANDUM OF DECISION
APPROVING THE TRUSTEE'S FINAL
REPORT AND AWARDED FEES AND
EXPENSES TO THE ESTATE'S
PROFESSIONALS**

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local
Bankruptcy Rule 9013-1(j)(3)]

I. Introduction

The Court has reviewed the Trustee's Final Report [Doc. No. 606] (the "TFR") and the associated applications for payment of fees and expenses filed by professionals employed by the estate (collectively, the "Fee Applications").¹ Peli Popovich Hunt (the "Debtor") received notice

¹ The Court has reviewed the following papers in connection with this matter:

- 1) Trustee's Final Report [Doc. No. 606] (the "TFR");
 - a) Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object [Doc. No. 607] (the "NFR");
 - b) Bankruptcy Noticing Center Certificate of Notice of NFR [Doc. No. 609];
 - c) Request for Court Costs [Doc. No. 596];
 - d) Notice of Court Costs Due [Doc. No. 598];
 - e) Notice to Professionals to File Applications for Compensation [Doc. No. 597];

of the TFR and the Fee Applications but has not filed a timely opposition thereto.² Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),³ this matter is appropriate for disposition without a hearing. For the reasons set forth below, the Court will (1) approve the TFR, (2) award the fees and expenses requested by the applicants, and (3) vacate the hearings on the TFR and Fee Applications that are set for February 17, 2021 at 10:00 a.m.

II. Findings of Fact and Conclusions of Law

A. Case History

Debtor filed a voluntary Chapter 11 petition on November 23, 2011. Debtor was a self-employed individual who allegedly conducted all of her business activities as a sole proprietor. Debtor's business activities consisted of (1) investing in real property, (2) leasing real property to tenants, and (3) managing Robert W. Hunt, M.D., A Medical Corporation (the "Corporation"), as president and sole director thereof.

The sequence of events precipitating the bankruptcy began when Dr. Robert W. Hunt, the former principal of the Corporation, died on October 26, 2007. Subsequent to Dr. Hunt's death,

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- 2) Third and Final Application for Compensation of Attorneys' Fees and Reimbursement of Expenses by SulmeyerKupetz, A Professional Corporation, General Bankruptcy Counsel for Chapter 7 Trustee [Doc. No. 605];
 - 3) First and Final Application for Compensation of Attorneys' Fees and Reimbursement of Expenses by SulmeyerKupetz, A Professional Corporation, General Bankruptcy Counsel for Chapter 11 Trustee [Doc. No. 604];
 - 4) Application for Payment of Final Fees and/or Expenses [filed by LEA Accountancy, LLP] [Doc. No. 601];
 - a) Declaration of Elissa D. Miller in Support of the Second and Final Fee Application for LEA Accountancy, LLP [Doc. No. 602];
 - b) Notice of Errata Re Application for Payment of Final Fees and/or Expenses for LEA Accountancy, LLP [Doc. No. 603]; and
 - 5) Application for Payment of Final Fees and/or Expenses [filed by Meija & Associates, Inc.] [Doc. No. 600].

² Pursuant to Local Bankruptcy Rule ("LBR") 2016-1(c)(4)(C), Debtor received notice of the amounts of fees and expenses requested by all estate professionals. *See* Doc. No. 609 (certificate of service upon Debtor of the Trustee's Final Report, which itemizes all fees requested by estate professionals). Although the LBRs do not require professionals to provide Debtor separate notice of their fee applications, *see* LBR 2014-1(c)(4)(C), several professionals served their final fee applications upon Debtor. *See* Doc. No. 605 at 71 (certificate of service upon Debtor of SulmeyerKupetz's final application for fees incurred as general bankruptcy counsel to the Chapter 7 Trustee) and Doc. No. 601 at 34 (certificate of service upon Debtor of LEA Accountancy's final application for fees incurred as accountants to the Chapter 7 Trustee). The notice received by Debtor went beyond that required by the LBRs.

³ Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

the Corporation ceased the practice of medicine, and its sole business was collecting workers compensation accounts receivable. A dispute with doctors formerly employed by the Corporation (the “Doctor Creditors”) led to entry of a judgment against the Debtor and the Corporation, and in favor of the Doctor Creditors, in the amount of \$3,509,617.23 (the “Doctor Creditor Judgment”). Debtor sought bankruptcy protection after the Doctor Creditors attempted to enforce the Doctor Creditor Judgment against a medical office building located at 3661–3663 Torrance Boulevard, Torrance, CA 90503 (the “Torrance Property”).

On March 1, 2012, upon the motion of the Doctor Creditors, the Court appointed a Chapter 11 Trustee.⁴ The Court found that appointment of a Trustee was required because Debtor had attempted to conceal assets of the estate and preferential transfers from creditors and the United States Trustee (the “UST”); had made false statements at the § 341(a) meeting of creditors; and had misused estate funds in violation of her fiduciary obligations to creditors.⁵ On March 8, 2012, Elissa D. Miller (“Miller”) was appointed as the Chapter 11 Trustee.⁶ On July 17, 2012, upon a motion by Miller that was joined by the Doctor Creditors, the case was converted to Chapter 7 over the Debtor’s opposition.⁷ Subsequent to the conversion, Miller was appointed as the Chapter 7 Trustee (the “Trustee”).⁸

As further discussed below, after Miller was appointed as the Chapter 11 Trustee, Debtor opposed almost every single action taken by Miller to administer the estate, and appealed nearly all the orders entered by the Court. (Unless otherwise indicated, all appeals discussed herein were initiated and prosecuted by Debtor.) None of the Debtor’s appeals were successful; however, the necessity for Miller to defend against each appeal greatly increased the costs of administering the estate. In the related case filed against the Corporation, Debtor was designated as a vexatious litigant and was subjected to pre-filing restrictions on October 16, 2014.⁹ In connection with appeals filed by Debtor in the Corporation’s case, Judge Andrew J. Guilford of the U.S. District Court for the Central District of California entered an order imposing further pre-filing restrictions upon Debtor.¹⁰ Although Judge Guilford’s order applies to the Corporation’s case rather than this case, it is worth quoting because in the Court’s view, Judge Guilford’s description of Debtor’s behavior in the Corporation’s case aptly describes her behavior in this case:

Peli Popovich Hunt [Debtor] has consistently imposed various significant burdens on the Court’s resources and time by, among other things, filing numerous appeals from a bankruptcy adversary proceeding, incomprehensible documents, and countless errata. [Debtor’s] actions continue to show that she does not listen to the Court and fails to effectively advocate on her behalf. She appears unwilling to accept *any* decision not in her favor. Appellant’s unhindered onslaught on the Central District concerning the underlying bankruptcy stops now....

⁴ Doc. No. 86 (order directing the appointment of a Chapter 11 Trustee).

⁵ Doc. No. 83 (ruling setting forth the reasons for appointment of a Chapter 11 Trustee).

⁶ Doc. No. 88.

⁷ Doc. No. 170 (order converting case to Chapter 7) and Doc. No. 165 (ruling setting forth reasons for the conversion of the case to Chapter 7).

⁸ Doc. No. 171.

⁹ Doc. No. 434, Case No. 2:11-bk-58228-ER.

¹⁰ Doc. No. 46, Case No. 2:15-cv-00667-AG.

In many of the Court's Orders in this and other of [Debtor's] appeals, the Court has expressed its frustration with [Debtor's] filings. Many of her motions are frivolous. The Court has on numerous occasions told [Debtor] that her papers are incomprehensible, and has even encouraged her to retain counsel or at least visit the pro se clinic. A brief review of [Debtor's] actions show that she almost uniformly appeals decisions adverse to her in the underlying action. If she has an adverse decision on a motion filed in one of her appeals, she will often ... use portions of newly filed motions to reargue adverse decisions on earlier motions. The Court finds that a vast majority of [Debtor's] filings and actions are frivolous.

Order Finding Appellant a Vexatious Litigant and Imposing Pre-Filing Restriction, Issuing an Order to Show Cause Concerning Dismissal of Appeal, and Denying "Motion to Refiled Stay of Pending Appeal" at 1 and 4–5 [Doc. No. 46, Case No. 2:15-cv-00667-AG].

On July 25, 2012, Debtor appealed the order converting the case to Chapter 7 to the District Court.¹¹ On January 31, 2014, in a detailed memorandum, the District Court affirmed the order of conversion.¹² On April 28, 2014, the District Court denied Debtor's motion for reconsideration of the affirmance.¹³ On July 5, 2017, the Ninth Circuit affirmed the District Court's orders.¹⁴

On July 17, 2012, the Court approved, over the Debtor's opposition, the Trustee's application to employ Coldwell Banker to market the Torrance Property.¹⁵ On September 14, 2012, the Court approved, again over Debtor's opposition, the Trustee's motion to sell the Torrance Property to Blue Sky Capital Partner, LP for \$4.05 million.¹⁶ The Court denied Debtor's motion for a stay of the order authorizing the sale.¹⁷ On July 25, 2014, the District Court issued a lengthy memorandum affirming the Court's order authorizing the sale of the Torrance Property.¹⁸ On August 25, 2014, Debtor appealed the District Court's affirmance to the Ninth Circuit.¹⁹ In the Ninth Circuit appeal, Debtor filed a motion captioned "Motion for Full Summary Reversal" on July 6, 2015,²⁰ followed by a motion captioned "Corrected Motion for Full Summary Reversal" on July 9, 2015,²¹ both of which were denied on August 18, 2015.²² On July 5, 2017, the Ninth Circuit affirmed the order authorizing the sale of the Torrance Property.²³

On April 4, 2013, the Court approved, over Debtor's opposition, the Trustee's motion to sell the estate's fractional interest in property located in Glendale, California (the "Glendale

¹¹ Doc. No. 181 (notice of appeal).

¹² Doc. No. 59, Case No. 2:12-cv-06600-MMM.

¹³ Doc. No. 66, Case No. 2:12-cv-06600-MMM.

¹⁴ Doc. No. 50, Case No. 14-55845.

¹⁵ Doc. No. 169.

¹⁶ Doc. No. 258 (order authorizing sale of Torrance Property) and Doc. No. 239 (ruling granting Trustee's motion to sell Torrance Property).

¹⁷ Doc. No. 252.

¹⁸ Doc. No. 60, Case No. 2:12-cv-08439-MMM.

¹⁹ Doc. No. 1, Case No. 14-56390.

²⁰ Doc. No. 11, Case No. 14-56390.

²¹ Doc. No. 12, Case No. 14-56390.

²² Doc. No. 16, Case No. 14-56390.

²³ Doc. No. 60, Case No. 14-56390.

Property”) for \$87,500.²⁴ Debtor’s appeals of the sale order to the District Court and subsequently to the Ninth Circuit were unsuccessful.²⁵

Debtor appealed multiple other orders entered by the Court, first to the District Court, and after this proved unsuccessful, then to the Ninth Circuit. None of the Debtor’s appeals resulted in any of the orders entered by the Court being overturned. The orders unsuccessfully appealed included, without limitation, the following:

- 1) An order approving the Trustee’s motion to spent \$5,235 of the estate’s funds to pay for a day of mediation in connection with an avoidance action that the Trustee brought against Miguel Popovich and Gaston Popovich²⁶;
- 2) An order approving the Trustee’s motion to settle an avoidance action that the Trustee brought against Miguel Popovich and Gaston Popovich, even though Debtor was not a party to the settlement²⁷;
- 3) An order approving the Trustee’s motion for approval of a compromise providing for the allowance of claims against the Corporation’s estate²⁸; and
- 4) Orders awarding fees on an interim basis to professionals employed by the estate.²⁹

B. The Court Approves the TFR and Awards the Fees and Costs Requested by the Estate’s Professionals

Section 330(a)(1) allows the Court to award “reasonable compensation for actual, necessary services rendered” by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

²⁴ Doc. No. 380.

²⁵ Doc. No. 15, Case No. 2:13-cv-02705-MMM (District Court’s order affirming the sale of the Glendale Property); Doc. No. 66, Case No. 14-55776 (Ninth Circuit’s order affirming the sale).

²⁶ Doc. No. 472.

²⁷ Doc. No. 501.

²⁸ Doc. No. 576.

²⁹ Doc. Nos. 528–30.

§330(a)(3).

The Court “must calculate awards for attorneys’ fees using the ‘lodestar’ method, and the amount of that fee must be determined on the facts of each case. The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal citations and quotations omitted).

“The ‘prevailing market rates in the relevant community’ set the reasonable hourly rate for purposes of computing the lodestar amount.... ‘Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits.’ Within this geographic community, the district court should ‘tak[e] into consideration the experience, skill, and reputation of the attorney [or paralegal].’” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205–06 (9th Cir. 2013) (internal citations omitted).

Section 326 allows the Court to award compensation to a Chapter 11 and Chapter 7 Trustee, and provides in relevant part:

In a case under chapter 7 ..., the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee’s services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Section 330(a)(7) provides:

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

The Ninth Circuit Bankruptcy Appellate Panel (“BAP”) explains the proper application of §326(a) as follows:

Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. In our decision in *Salgado–Nava*, we analyzed the interaction between this maximum compensation formula and the provision of § 330(a)(7) that the bankruptcy court must “treat [a trustee's] compensation as a commission, based on section 326.” *In re Salgado–Nava*, 473 B.R. at 915–22. We held that a trustee’s request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. “[A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review.” *Id.* at 921. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to “determine whether there exists a rational relationship” between the compensation requested and the services rendered.

Fear v. United States Trustee (In re Ruiz), 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

1. SulmeyerKupetz, A Professional Corporation

SulmeyerKupetz, A Professional Corporation (“SulmeyerKupetz”) was employed as the general bankruptcy counsel for both the Chapter 11 Trustee and the Chapter 7 Trustee. The Court finds that the services performed by SulmeyerKupetz were beneficial to the estate, and that the time spent and rates charged for those services were reasonable. SulmeyerKupetz was required to perform an extensive amount of work to liquidate the assets of the estate because the Debtor opposed nearly every action undertaken by Miller.

For work SulmeyerKupetz performed in its capacity as counsel to the Chapter 11 Trustee, the Court awards, on a final basis, fees in the amount of \$43,497.50 and costs in the amount of \$272.50. For work SulmeyerKupetz performed in its capacity as counsel to the Chapter 7 Trustee, the Court awards, on a final basis, fees in the amount of \$898,485.50 (consisting of \$796,971.00 previously awarded on an interim basis and \$101,514.50 sought in connection with this application) and costs in the amount of \$28,007.68 (consisting of \$20,832.45 previously awarded on an interim basis and \$7,175.23 sought in connection with this application).

2. LEA Accountancy, LLP

LEA Accountancy, LLP (“LEA”) was employed as the accountant for the Chapter 7 Trustee. LEA’s services included, without limitation, preparing the estate’s state and federal individual and fiduciary tax returns and resolving a federal tax lien. The Court finds that the services performed by LEA were beneficial to the estate, and that the time spent and rates charged for those services were reasonable. The Court awards to LEA, on a final basis, fees in the amount of \$22,556.50 (consisting of \$11,895.50 previously awarded on an interim basis and \$10,661.00 sought in connection with this application) and expenses in the amount of \$1,444.95 (consisting of \$582.76 previously awarded on an interim basis and \$862.19 sought in connection with this application).

3. Meija & Associates

Meija & Associates (“Meija”) was employed as an accountant to the Debtor before Miller was appointed as the Chapter 11 Trustee.³⁰ Meija’s services included, without limitation, preparing Monthly Operating Reports and reconciling Debtor’s books and bank accounts. The Court finds that the services performed by Meija were beneficial to the estate, and that the time spent and rates charged for those services were reasonable. The Court awards to Meija, on a final basis, fees in the amount of \$8,075.00.³¹

4. Elissa D. Miller, Chapter 11 Trustee and Chapter 7 Trustee

Elissa D. Miller (“Miller”) served as the Chapter 11 Trustee and Chapter 7 Trustee. Pursuant to the formula set forth in § 326, Miller is entitled to compensation of \$6,286.56 for work performed as the Chapter 11 Trustee and \$162,358.19 for work performed as the Chapter 7

³⁰ There is no indication that Meija’s final fee application was served upon the Debtor. However, Debtor received notice of the TFR, which sets forth the fees requested by Meija. The Court finds that Debtor received adequate notice of Meija’s fee request.

³¹ Meija’s final fee application did not seek reimbursement of any costs.

Trustee. This case does not present any extraordinary circumstances warranting departure from the commission set forth in § 326.

5. Other Administrative Expenses

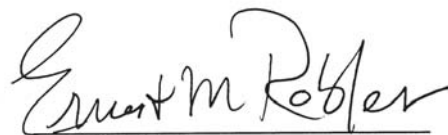
To the extent not already paid, the Court approves the payment of the following costs of administration set forth in the TFR: (a) \$1,465.00 in U.S. Bankruptcy Court charges; (b) \$975.00 in fees to the United States Trustee; (c) \$14,383.25 in bond payments to International Sureties, Ltd.; and (d) \$4,515.00 in mediation fees to Judicate West.

III. Conclusion

Based upon the foregoing, the TFR is approved in its entirety, and the Court awards to each fee applicant the fees and expenses requested in those professional's respective fee applications. The hearings on the TFR and Fee Applications that are set for February 17, 2021 at 10:00 a.m. are **VACATED**. The Trustee shall submit an order consistent with this Memorandum of Decision within seven days.

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Date: February 16, 2021

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive, flowing style. The first name "Ernest" is written in a larger, more prominent script, followed by "M." and "Robles". The signature is positioned above a horizontal line.

Ernest M. Robles
United States Bankruptcy Judge