



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
September 28, 2018

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:	)	Case No.: 17-13475-MKN
	)	Chapter 11
CALVARY COMMUNITY ASSEMBLY OF	)	
GOD, INC.,	)	
	)	Date: September 5, 2018
Debtor.	)	Time: 9:30 a.m.
	)	

**ORDER ON FIRST AND FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE TIME PERIOD OF APRIL 1, 2018 THROUGH JUNE 30, 2018, BY BARNES & THORNBURG LLP<sup>1</sup>**

On September 5, 2018, the court heard the First and Final Application for Compensation and Reimbursement of Expenses for the Time Period of April 1, 2018 through June 30, 2018, brought by Barnes & Thornburg LLP (“B&T Fee Application”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On June 28, 2017, Calvary Community Assembly of God, Inc. (“Debtor”) filed a voluntary Chapter 11 bankruptcy petition along with its schedules of assets and liabilities (“Schedules”) and other required information. (ECF No. 1). On the same date, a notice was sent to all parties in interest that a meeting of creditors would be held on August 3, 2017, at the office

<sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 of the United States Trustee (“UST”) for this judicial district. The notice also set forth a deadline  
2 of November 1, 2017, for non-governmental creditors to file proofs of claim, as well as a  
3 deadline of December 26, 2017, for government units to file proofs of claim.

4 On its Schedule “A/B,” Debtor listed real property located at 2900 N. Torrey Pines Drive,  
5 Las Vegas, Nevada, described as including “a church, a school, and 5-6 acres of vacant land.”<sup>2</sup>  
6 The value of the real property was scheduled as \$11,000,000. In addition to the real property,  
7 the same Schedule described various items of personal property having a value of \$43,805.32.  
8 On its Schedule “D,” Debtor listed one creditor identified as Assemblies of God Loan Fund  
9 (“AGLF”) having a claim in the amount of \$3,400,000 secured by a mortgage against the real  
10 property.<sup>3</sup> No other secured claims were listed. On its Schedule “E/F,” Debtor listed creditors  
11 holding priority and non-priority unsecured claims in the aggregate amount of \$132,500. The  
12 Schedules are signed under penalty of perjury by Bruce A. Morris who is described as the  
13 “Pastor” of the Debtor.<sup>4</sup>

14 On December 26, 2017, the deadline for both non-governmental and governmental  
15 entities to file proofs of claim had expired. According to the claims register maintained by the  
16 clerk of the court, secured claims totaling \$3,967,836.56, and unsecured claims totaling  
17 \$63,354.78 had been filed by the applicable deadlines. Included in those figures are a secured  
18 claim filed by AGLF in the amount \$3,659,055.84, and a separate secured claim in the amount of  
19 \$308,780.72 filed by Assemblies of God, Northern California and Nevada.

20 On January 26, 2018, AGLF filed a motion to appoint a Chapter 11 trustee to replace the  
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22 <sup>2</sup> In addition to a church and an elementary school, the Debtor also operated a daycare  
23 facility on the real property.

24 <sup>3</sup> As the owner of the real property, the Debtor’s opinion of its value (\$11,000,000) would  
25 be admissible. See In re Lake Tahoe Partners, L.L.C., 2016 WL 1626798, at \*3 (Bankr. N.D.  
26 Cal. Apr. 21, 2016); Everest Stables, Inc. v. Canani, 2011 WL 1321657, at \*3 (C.D. Cal. Oct. 6,  
2011).

27 <sup>4</sup> On July 10, 2017, an amended Chapter 11 petition was filed to which was attached a  
28 document entitled “Calvary Community Church, Church Board Agenda, June 15, 2017.” Item 6  
of that document indicates that at a prior gathering, the persons in attendance on June 15, 2017,  
had authorized a voluntary Chapter 11 proceeding to be filed on behalf of the Debtor.

1 management of the Debtor (“Trustee Motion”). (ECF No. 94). The Trustee Motion was noticed  
2 to be heard on February 28, 2018. (ECF No. 96).

3 On February 27, 2018, the UST filed a motion to dismiss the Chapter 11 proceeding  
4 (“Dismissal Motion”). (ECF No. 100). The Dismissal Motion was noticed to be heard on April  
5 4, 2018.

6 On February 28, 2018, the Trustee Motion was heard. No opposition to the appointment  
7 of a Chapter 11 trustee was filed by the Debtor, the UST, or any other party in interest. No party  
8 in interest appeared at the hearing to oppose the appointment of a Chapter 11 trustee. The  
9 motion was granted and counsel for AGLF was directed to submit an appropriate order.

10 On March 6, 2018, an order was entered granting the Trustee Motion and directing the  
11 UST to appoint a Chapter 11 trustee in this matter. (ECF No. 106).

12 On March 12, 2018, the UST submitted an application to approve the appointment of  
13 Kavita Gupta (“Gupta”) as the Chapter 11 trustee for the case, along with a supporting  
14 declaration of the proposed trustee. (ECF Nos. 110 and 111). On the same date, an order was  
15 entered approving the UST’s request. (ECF No. 112).

16 On March 19, 2018, a notice of acceptance of appointment as Chapter 11 trustee was  
17 filed on behalf of Gupta. (ECF No. 115). That notice was filed by the law firms of Holley  
18 Driggs Walch Fine Wray Puzey & Thompson (“Holley Driggs”) and Cooley LLP (“Cooley”).

19 On April 16, 2018, an application was filed pursuant to Sections 327 and 328 for  
20 authorization to employ the law firm of Barnes & Thornburg LLP (“B&T”) as lead counsel for  
21 the Chapter 11 trustee as of April 1, 2018 (“B&T Employment Application”). (ECF No. 135).  
22 That application was filed by B&T and Holley Driggs, signed by Gupta, and accompanied by the  
23 supporting declaration of Ali M. M. Mojdehi (“Mojdehi Employment Declaration”) (ECF No.  
24 136).<sup>5</sup> The application was noticed to be heard on May 23, 2018. (ECF No. 137).

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26 <sup>5</sup> It is not clear from the B&T Employment Application or the Mojdehi Employment  
27 Declaration when the involvement of Cooley ended. In any event, there has never been a request  
28 to approve the employment of the Cooley law firm and no compensation for its services prior to  
April 1, 2018, has been requested.

1 On April 20, 2018, an application was filed pursuant to Sections 327 and 328 for  
2 authorization to employ Holley Driggs as local counsel for the Chapter 11 trustee *nunc pro tunc*  
3 to March 14, 2018. (ECF No. 151). That application was filed by Holley Driggs and B&T,  
4 signed by Gupta, and accompanied by the supporting declarations of proposed local counsel as  
5 well as the Chapter 11 trustee. (ECF Nos. 152 and 153). The application also was noticed to be  
6 heard on May 23, 2018. (ECF No. 154).

7 On May 21, 2018, an order was entered approving a stipulation to withdraw the UST's  
8 Dismissal Motion. (ECF No. 174).

9 On May 23, 2018, the applications to employ B&T and Holley Driggs were heard. No  
10 opposition or objections were filed or presented to either application. Both applications were  
11 granted.

12 On May 31, 2018, orders were entered approving the Chapter 11 trustee's employment of  
13 both B&T and Holley Driggs pursuant to Sections 327 and 328. (ECF Nos. 183 and 185).

14 On June 12, 2018, Gupta filed a substitution for Holley Driggs to act as lead counsel  
15 instead of B&T. (ECF No. 187).<sup>6</sup>

16 On June 13, 2018, an order was entered approving the substitution. (ECF No. 188).

17 On July 16, 2018, the instant B&T Fee Application was filed, accompanied by the  
18 Declaration of Ali M. M. Mojdehi ("First Mojdehi Fee Declaration").<sup>7</sup> (ECF Nos. 224 and 225).  
19 The application was noticed to be heard on August 15, 2018. (ECF No. 226).<sup>8</sup> The application,  
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21 <sup>6</sup> There is no dispute that the Chapter 11 trustee terminated the services of B&T on June  
22 12, 2018, thereby necessitating the substitution of different lead counsel.

23 <sup>7</sup> Attached as Exhibit "1" to the First Mojdehi Fee Declaration are copies of the May 31,  
24 2018, June 11, 2018, and July 11, 2018 invoices and billing statements reflecting the services  
25 performed by the applicant (collectively "B&T Billing Statement"). Those billing statements  
26 identify by first and last name, rather than initials, the professionals at the B&T firm who  
27 performed the services described.

28 <sup>8</sup> On July 31, 2018, a limited opposition to the B&T Fee Application was filed by AGLF.  
(ECF No. 232). That opposition by the secured creditor only concerns the source of payment of  
any allowed administrative expenses rather than the allowance itself. It does not need to be  
addressed at this time.

1 declaration, and notice of hearing were served on all parties in interest, including the UST. (ECF  
2 No. 227).

3 On August 6, 2018, an order was entered extending the deadline for the Chapter 11  
4 trustee to object to the B&T Fee Application and continuing the hearing to September 5, 2018.  
5 (ECF No. 235).<sup>9</sup>

6 On August 22, 2018, the Chapter 11 trustee filed her objection to the B&T Fee  
7 Application (“Objection”) accompanied by her supporting declaration (“Gupta Declaration”).  
8 (ECF Nos. 247 and 248).

9 On August 30, 2018, B&T filed a reply (“Reply”) to the Objection along with a further  
10 Declaration of Ali M. M. Mojdehi (“Second Mojdehi Fee Declaration”), in addition to an ex  
11 parte motion to seal (“Seal Motion”) portions of the Reply and accompanying declaration. (ECF  
12 Nos. 257, 258 and 255). Attached as Exhibit “1” to the Reply is a line-by-line response to the  
13 Chapter 11 trustee’s Objection, using the Chapter 11 trustee’s table format, to certain time entries  
14 contained in the B&T Billing Statement (“Reply Exhibit 1”). Attached as Exhibit “2” to the  
15 Reply is a table setting forth the time entries in the Chapter 11 trustee’s tables in which she has  
16 objected on more than one basis (“Reply Exhibit 2”). Attached to the Second Mojdehi Fee  
17 Declaration as Exhibits “A” through “R” (“Mojdehi Exhibits”) are copies of emails and letters,  
18 as well as billing invoices and statements, exchanged between the Chapter 11 trustee and the  
19 B&T firm. The Seal Motion, as well as redacted versions of the Reply and Second Mojdehi Fee  
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21 <sup>9</sup> On August 16, 2018, Holley Driggs filed an application for allowance of final  
22 compensation as counsel for the Chapter 11 trustee through August 16, 2018. (ECF No. 237).  
23 The Holley Driggs application is supported by a declaration of counsel that includes copies of  
24 various billing statements from the law firm. (ECF No. 239). The billing statements of the  
25 Holley Driggs firm identify the professional performing services by use of initials, rather than  
26 first and last name. That fee application was noticed to be heard on September 19, 2018. (ECF  
27 No. 240). The following day, Holley Driggs filed a motion to withdraw as attorney of record  
28 that also was noticed to be heard on the same date as its final fee application. (ECF Nos. 243 and  
244). Both the final fee application and the withdrawal motion disclose that the Chapter 11  
trustee now will be represented by the law firm of Lewis Roca Rothgerber Christie LLP (“Lewis  
Roca”). As of the date of the hearing on the B&T Fee Application, an application for  
authorization to employ the Lewis Roca firm as counsel for the Chapter 11 trustee has not been  
filed.

1 Declaration, was served on all parties in interest, including the UST. (ECF No. 260).

2 On September 4, 2018, an order was entered granting the Seal Motion. (ECF No. 261).

### 3 APPLICABLE LEGAL STANDARDS

4 Section 330 provides that the court may award to a professional person employed under  
5 Section 327 reasonable compensation for actual, necessary services rendered by the professional  
6 person and reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1)(A)-(B). “The  
7 court may, on its own motion or on the motion of the United States Trustee, the United States  
8 Trustee for the District or Region, the trustee for the estate, or any other party in interest, award  
9 compensation that is less than the amount of compensation that is requested.” 11 U.S.C. §  
10 330(a)(2). Moreover, Section 330(a)(3) provides that:

11 In determining the amount of reasonable compensation to be awarded to ...  
12 [a] professional person, the court shall consider the nature, the extent, and  
13 the value of such services, taking into account all relevant factors,  
14 including —

15 (A) the time spent on such services;

16 (B) the rates charged for such services;

17 (C) whether the services were necessary to the administration of, or  
18 beneficial at the time at which the service was rendered toward the  
19 completion of, a case under this title;

20 (D) whether the services were performed within a reasonable amount of  
21 time commensurate with the complexity, importance, and nature of the  
22 problem, issue, or task addressed;

23 (E) with respect to a professional person, whether the person is board  
24 certified or otherwise has demonstrated skill and experience in the  
25 bankruptcy field; and

26 (F) whether the compensation is reasonable based on the customary  
27 compensation charged by comparably skilled practitioners in cases other  
28 than cases under this title.

11 U.S.C. § 330(a)(3)(A)-(F) (emphasis added).

22 Section 330(a)(4) provides that “[t]he court shall not allow compensation for (i)  
23 unnecessary duplication of services; or (ii) services that were not – (I) reasonably likely to  
24 benefit the debtor's estate; or (II) necessary to the administration of the case.” 11 U.S.C.  
25 §330(a)(4)(A)(i)-(ii)(I and II). In Smith v. Edwards & Hale, Ltd. (In re Smith), 317 F.3d 918  
26 (9th Cir. 2002), abrogated on other grounds by Lamie v. United States Trustee, 540 U.S. 526  
27 (2004), the court observed that “[u]nder [S]ection 330(a)(4)(A), a bankruptcy court may award  
28 compensation if the services rendered were not unnecessarily duplicative and if the services

1 rendered were both reasonably likely to benefit the debtor's estate and were necessary for the  
2 administration of the case." Id. at 926 (emphasis added). The Smith court acknowledged that  
3 Section 330 "[e]xpressly contemplate[d] compensation for preparation of fee applications." Id.  
4 at 927, citing 11 U.S.C. § 330(a)(6).

#### 5 DISCUSSION

6 The B&T Fee Application seeks the allowance of attorney's fees in the amount of  
7 \$123,114.50 and costs in the amount of \$5,595.25 for 211.5 hours of services rendered from  
8 April 1, 2018 through June 30, 2018.<sup>10</sup> Notice was properly given and only the Chapter 11  
9 trustee has objected to the compensation requested by her former lead bankruptcy counsel.

10 The instant fee application is accompanied by hourly billing statements. The application  
11 summarizes the contents of the B&T Billing Statement by using the various "project categories"  
12 of services described in the professional compensation guidelines issued by the UST ("UST  
13 Guidelines").<sup>11</sup> While the UST Guidelines provide a useful structure for fee requests to be  
14 reviewed, the court is not bound by those guidelines as they are not a substitute for the  
15 requirements of Section 330.

16 The Chapter 11 trustee does not object to the hourly rates billed by the various  
17 professionals tasked by B&T to perform services in this case. Instead, she objects both to  
18 specific time entries appearing in the B&T Billing Statement, and to the overall amount of the  
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20 <sup>10</sup> Other than fees in connection with the preparation and presentation of the instant fee  
21 application, B&T does not seek compensation for professional services after its termination on  
22 June 12, 2018. B&T apparently does seek an additional \$10,575 in estimated fees and costs  
23 incurred in July and August 2018, in connection with preparing and presenting the instant fee  
24 application ("Estimated Additional Fees"). See B&T Fee Application at 1:15-19. Elsewhere in  
25 the same fee application, however, B&T describes that additional amount as \$7,175 rather than  
26 \$10,575. See B&T Fee Application at 6:18-20 and 8:24-27. Although not stated in the instant  
27 application, it appears that the \$10,575 amount consists of \$7,175 plus the \$3,400 in estimated  
28 storage fees sought by B&T. The additional fees sought for preparation of the fee application are  
set forth in the August 10, 2018 billing statement submitted as Mojdehi Exhibit "Q."

<sup>11</sup> See Executive Office for the United States Trustee, Appendix B Guidelines for  
Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United  
States Code by Attorneys in Larger Chapter 11 Cases, 78 Fed.Reg., No. 116 (June 17, 2013).

1 fees and costs sought. See Objection at 8:3 to 29:15.<sup>12</sup> Specific fee reductions are requested, id.  
2 at 8:3 to 28:6, or, in the alternative, an across the board reduction of up to sixty percent of all  
3 fees requested by B&T. Id. at 28:7 to 29:15.<sup>13</sup>

4 The Chapter 11 trustee's specific reductions are set forth in seven separate "tables" of  
5 billing entries appearing in the Objection. The objections contained in these seven tables appear  
6 to fall into three categories. Table "1" and Table "2" object to time entries for email  
7 communications apparently between members of the B&T firm. For the entries encompassed by  
8 these two tables ("Category One"), the Chapter 11 trustee seeks a fee disallowance of \$7,170.00.  
9 Table "3" objects to the amount of time spent by B&T in communicating with potential  
10 purchasers of the real property of the estate. Table "4" objects to the time spent by B&T in  
11 preparing the B&T Employment Application. Table "5" objects to the time spent by B&T to  
12 prepare and present a follow-up, postpetition financing motion. Table "6" objects to the time  
13 spent by B&T in preparing the instant fee application. For the entries encompassed by these four  
14 tables ("Category Two"), the Chapter 11 trustee seeks a fee disallowance of \$26,145.<sup>14</sup> Table  
15

16 <sup>12</sup> The Chapter 11 trustee has objected to the timeliness on which the monthly billing  
17 statements were provided to her by B&T. See Objection at 5:8-9. Given that the instant fee  
18 application encompasses services for seventy-three days from April 1, 2018, to June 12, 2018,  
19 and the transition of the same individual attorneys from the Cooley firm to B&T, the timing of  
20 the billing statements prepared by the latter law firm is not unreasonable. There appears to be no  
prejudice to the Chapter 11 trustee inasmuch as she has provided detailed objections to specific  
time entries as well as the aggregate amount of the fees requested. Moreover, no other party in  
interest has objected.

21 <sup>13</sup> The Chapter 11 trustee also has objected to certain storage fees requested by B&T for  
22 the Debtor's records that were held by B&T after its employment was terminated. See Objection  
23 at 29:16-25. At the hearing on the instant fee application, the court was advised that the records  
24 were retrieved from B&T on August 1, 2018, and transferred to the offices of the Chapter 11  
25 trustee's new counsel. The court also was advised that the parties resolved the dispute as to the  
26 \$3,400 in estimated storage fees sought in the application. After the Objection was filed by the  
Chapter 11 trustee, B&T reduced its actual storage fee request to the final amount of \$580.00,  
see Reply at 17:4-6, and the Chapter 11 trustee agreed to that figure at the hearing.

27 <sup>14</sup> The Chapter 11 trustee summarizes the aggregate amount of the fee reductions  
28 requested in a separate table appearing on pages 3 and 4 of her Objection. The left hand column  
of that table states that there is a requested disallowance of \$26,145, see Objection at 4:4, while  
the text of the Objection itself seeks a disallowance of \$34,370. Id. at 13:20-23.

1 “7” objects to billing entries that allegedly violate the UST Guidelines by being too vague, or  
2 describing services that are lumped together.<sup>15</sup> For the entries encompassed by this table  
3 (“Category Three”), the Chapter 11 trustee seeks a fee disallowance of as much as \$40,047.50.  
4 Inasmuch as the total amount of fees sought by B&T for services to the Chapter 11 trustee is  
5 \$123,114.50, and the total amount of disallowances requested by the Chapter 11 trustee appears  
6 to be \$73,362.50 (\$7,170 + \$26,145 + \$40,047.50), the Chapter 11 trustee does not object to  
7 \$49,752.00 in fees for services to the estate.<sup>16</sup>

8 The Chapter 11 trustee’s alternative request for an across the board reduction  
9 (“Alternative Objection”) overlaps the specific disallowances requested in the various tables, and  
10 appears to be based on the same internal emails amongst counsel, allegedly excessive time billed  
11 by senior attorneys, and alleged violations of the UST Guidelines. See Objection at 28:24 to  
12 29:3.

13 Not surprisingly, B&T argues that the services rendered were reasonable under Section  
14 330 and properly requested in this case. Moreover, B&T maintains that neither a disallowance  
15 of specific billing entries, nor an across the board reduction of the total requested compensation  
16 is appropriate.<sup>17</sup>

17  
18 <sup>15</sup> B&T’s Reply Exhibit 1 provides an additional description of the services rendered or  
19 separates out the services lumped together. At the hearing on the B&T Fee Application, no  
20 suggestion was made by the Chapter 11 trustee that the additional information appearing in that  
21 Exhibit is insufficient to meet the UST Guidelines. The court has reviewed Reply Exhibit 1 and  
22 concludes that it provides sufficient information to discern the professional services performed  
23 and the time spent by the fee applicant as required by Section 330.

24 <sup>16</sup> In the introduction to her objection, the Chapter 11 trustee states, *inter alia*, that she  
25 seeks an order disallowing \$76,762.50 in fees and costs resulting in a proposed allowance of  
26 \$78,848.45. See Objection at 2:2-5. If those two figures are added together, however, the total  
27 is \$155,610.95. As the maximum amount sought by the B&T Fee Application, including  
28 Estimated Additional Fees, is \$139,284.75, see B&T Fee Application at 1:13-19, the Chapter 11  
trustee’s basic math does not make sense.

<sup>17</sup> The Chapter 11 trustee terminated the operations of the church, the elementary school,  
and the daycare facility on or about March 26, 2018. That decision was contrary to the  
recommendation of the then-Cooley and now-B&T attorneys to delay closures to soften the  
impact on church members, students, and parents. Apparently due to this fundamental  
disagreement, the relationship between the Chapter 11 trustee and her lead bankruptcy counsel

1 The court has considered the written and oral arguments of counsel, along with the  
2 declarations, billing statements, and record in the case. Based on these considerations, the court  
3 concludes that the B&T Fee Application should be granted as set forth below.

4 **Category One.**

5 The Chapter 11 trustee maintains that the B&T firm billed for too many email and other  
6 exchanges of information within the law firm. See Objection at 8:3 to 13:19. She relies on  
7 Table 1 to list eleven hours billed by B&T attorneys for, *inter alia*, reviewing and responding to  
8 emails from other firm members. She then relies on Table 2 to suggest that a “third attorney”  
9 with the initials “AM” also billed an additional 4.5 hours to perform duplicate, unnecessary  
10 tasks. Id. at 10:22 to 11:3. Because of the “unnecessary” or “duplication of” services  
11 represented by Table 2, the Chapter 11 trustee argues that the eleven hours described in Table 1,  
12 totaling \$7,170.00 in professional fees, should be disallowed. Id. at 13:18-19.

13 A simple comparison between Table 1 and Table 2, however, reflects that most if not all  
14 of the “AM” entries appearing on Table 2 already appear on Table 1.<sup>18</sup> Moreover, many of the  
15 entries in Table 2 are inaccurate. For example, a comparison of Table 2 to the entries in the  
16 actual billing statements would easily reveal that an entry dated 4/3/18 by “AM” for .10 hours  
17 under the description “Reviewed email regarding need for financing and related issues” simply  
18 does not exist; rather, that time entry and description is dated 04/04/18 under the name Ali  
19 Mojdehi. See B&T Billing Statement at page 11. Additionally, Table 2 includes an entry dated  
20 04/12/18 by “AM” for .80 hours under the description “Reviewed and analyzed draft financing  
21 papers and exchanged emails regarding same and followed up” that also does not exist; the

22  
23 deteriorated to the point where both questioned the professionalism and professional judgment of  
24 the other. See Mojdehi Exhibits “I” and “J.” The unfortunate and unnecessary friction between  
25 two self-assured parties, however, is immaterial to the inquiry under Section 330.

26 <sup>18</sup> The Chapter 11 trustee’s use of tables to simplify the presentation of her objections is  
27 laudable but not necessarily helpful if the entries in the actual billing statements are not  
28 accurately transferred to the tables. Using a professional’s initials in tables you create rather than  
the actual names in the billing statements, and then questioning the identity of the professional  
represented by the initials, see Objection at 10:14 to 11:3, is like claiming you have been  
misquoted in your autobiography.

1 correct date is 04/13/18, but Table 2 also includes the correct entry as well. Compare B&T  
2 Billing Statement at page 12 with Table 2 at 12:21-22. Table 2 also includes an entry dated  
3 04/19/18 by “AM” described as “Reviewed and analyzed draft loan documents and followed up  
4 regarding same and reviewed multiple emails exchanged regarding loan documents and  
5 upcoming hearing” that also did not exist, but which apparently took place on 04/24/18.  
6 Compare B&T Billing Statement at 12 with Table 2 at 9:18-20. Because Table 2 duplicates  
7 much of the information in Table 1 and also contains many inaccuracies, it hardly supports the  
8 Chapter 11 trustee’s contention that the eleven hours set forth in Table 1 are unreasonable.

9       Having considered Table 1 and Table 2, as well as the substance of the Chapter 11  
10 trustee’s argument, however, the court overrules the Category One objection. By its nature,  
11 internal communications within a law firm create some duplication, but the intended purpose of  
12 such communication is to coordinate services on behalf of the client. The court’s review of the  
13 time entries in Table 1 does not reveal an amount of duplication that is unreasonable in this case.  
14 The court therefore concludes that the Chapter 11 trustee’s request to disallow fees for these  
15 services is without merit.

16       **Category Two.**

17       The Chapter 11 trustee also argues that B&T billed for too much time in four discrete  
18 areas. The Chapter 11 trustee does not suggest that services in those areas was unnecessary, but  
19 only that the time spent by the B&T firm was excessive.

20       First, the Chapter 11 trustee objects to 5.3 hours billed in connection with communicating  
21 with potential purchasers of the Debtor’s real property. Those time entries appear in Table 3, but  
22 the Chapter 11 trustee argues that only .5 hours should be allowed for preparing a “two-  
23 paragraph email” that was transmitted to potential purchasers. She also argues that only 2.00  
24 hours should be allowed for compiling a list of potential purchasers. See Objection at 14:26 to  
25 15:3. By far the largest single entry in Table 3 is 1.2 hours on 4/4/18 that included a follow up  
26 with the client, i.e., the Chapter 11 trustee, regarding potential purchasers of the real property.  
27 There is another entry on 4/9/18 reflecting additional communications with the Chapter 11  
28

1 trustee.<sup>19</sup> Given the Chapter 11 trustee's own involvement in tailoring counsel's  
2 communications with prospective purchasers, the court concludes that "two-paragraph email"  
3 clearly involved more than the use of a keyboard. Thus, the total amount of time billed for  
4 communicating with prospective purchasers is not excessive.<sup>20</sup>

5 Second, the Chapter 11 trustee objects to 15 hours billed "to prepare B&T's employment  
6 application." Objection at 15:7-8. The cumulative billing entries are set forth in Table 4, and the  
7 total amount billed for the services set forth in Table 4 is \$8,077.50. The Chapter 11 trustee  
8 argues that only four hours should be allowed to the preparation of the B&T Employment  
9 Application for an allowed fee of \$2,100. Id. at 16:22-24.<sup>21</sup> But even a cursory review of Table  
10 4 reflects that the services were not restricted to the B&T Employment Application. Instead, it  
11 included preparation of the employment application for the Chapter 11 trustee's financial  
12 advisors. No later than the entry on 4/10/18, it appears from Table 4 that many of the subsequent  
13 billing entries include the preparation of the additional employment application. Indeed, the  
14 record reflects that on April 16, 2018, an application for authorization to employ Grobstein  
15 Teeple LLP as financial advisors was filed on behalf of the Chapter 11 trustee ("Grobstein  
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17 <sup>19</sup> Nothing in the Gupta Declaration suggests that the "follow up" and additional  
18 communications regarding potential purchasers did not take place, or should not have been taken  
19 into account by the Chapter 11 trustee's lead bankruptcy counsel.

20 <sup>20</sup> Moreover, it appears that there was an additional paraprofessional named Andrea  
21 Mattingly who provided services to the estate, but whose services were not billed. See Second  
22 Mojdehi Fee Declaration at ¶ 15. Reference to Ms. Mattingly appears in Table 3 in the 4/9/18  
23 time entry, but there is no separate time entry for Ms. Mattingly. While it would have been  
24 simpler to include separate billing entries for Ms. Mattingly as "no charge" items, it appears that  
25 B&T in fact did not charge for her services.

26 <sup>21</sup> The Chapter 11 trustee argues that the Holley Driggs firm billed only \$1,667 for its  
27 employment application "which is over 80% less than the amount billed by B&T for the same  
28 service." Objection at 16:21-22. The court is not sure how a figure can be "over" a certain  
percentage "less" than another figure. Perhaps the objection is that the amount sought by B&T is  
4 times the amount sought by Holley Driggs for a similar fee application, or that Holley Driggs  
billed only 20% of the amount billed by B&T. Regardless of the amount of time billed by the  
Holley Driggs firm or any other professional for similar services, however, the question is  
whether the time billed by the B&T firm is unreasonable under the circumstances.

1 Employment Application”). (ECF No. 138). Additionally, it appears that the largest single  
2 entry in Table 4 is 3.80 hours on 4/9/18 that included a conflict search with respect to B&T’s  
3 employment application. Given the apparent size of the B&T firm, see Mojdehi Employment  
4 Declaration at ¶ 2, it is not unreasonable for B&T to have expended significant time examining  
5 and detailing its various connections as required by FRBP 2014(a). See Mojdehi Employment  
6 Declaration at ¶¶ 6 through 15. Moreover, gathering information to draft an employment  
7 application for a separate, outside professional, i.e., the financial advisors, is not the same  
8 obtaining information in-house.<sup>22</sup> On balance, the court concludes that the time expended by  
9 B&T to obtain authorization for its employment was reasonable.

10 Third, the Chapter 11 trustee objects to 16.30 hours billed in connection with a “Second  
11 Financing Motion.” Objection at 17:1-3. The billing entries are set forth in Table 5 and  
12 encompass services from 4/4/18 to 4/25/18. Id. at 17:4-19. Prior to the 4/4/18 billing entry, the  
13 record reflects that on March 26, 2018, a Verified Emergency Motion for Interim and Final  
14 Orders Authorizing Estate to Obtain Postpetition Financing; Granting Liens; and Scheduling a  
15 Final Hearing, was filed on behalf of the Chapter 11 trustee (“First Financing Motion”). (ECF  
16 No. 118). Attached to the First Financing Motion was a simple verification signed by the  
17 Chapter 11 trustee along with a copy of a letter dated March 26, 2018, containing a loan offer for  
18 postpetition financing. After an emergency hearing conducted in the morning of March 27,  
19 2018,<sup>23</sup> an interim order was entered in the afternoon granting the First Financing Motion and  
20 scheduling a final hearing for April 25, 2018. (ECF No. 123). On April 13, 2018, the Second  
21 Financing Motion was filed by B&T, along with the Holley Driggs firm, accompanied by the  
22

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23 <sup>22</sup> In this instance, it appears that the financial advisors had a connection with the Chapter  
24 11 trustee that required disclosure under FRBP 2014(a). See Declaration of Disinterestedness for  
25 Employment of Professional Person under Rule 2014, Federal Rules of Bankruptcy Procedure, at  
¶ 7, attached to Grobstein Employment Application

26 <sup>23</sup> At the emergency hearing, the Chapter 11 trustee’s attorney, Janet Gertz, appeared  
27 telephonically, as well as Robert Kinan, counsel for the postpetition lender. After the First  
28 Financing Motion was granted, it appears that much of the drafting of the Second Financing  
Motion was done by attorney Allison Rego of the B&T, who bills at a significant, but lower  
hourly rate than attorneys Gertz or Mojdehi.

1 Declaration of Kavita Gupta in Support of Emergency Motion for Interim and Final Orders  
2 Authorizing Estate to Obtain Postpetition Financing; Granting Liens; and Scheduling a Final  
3 Hearing; and in Support of Order Shortening Time (“Gupta Financing Declaration”). (ECF No.  
4 132). Attached to the Gupta Financing Declaration is a copy of a “Cash Requirements Analysis  
5 – Wind Down” along with a letter dated April 11, 2018, from the postpetition lender. The  
6 Chapter 11 trustee argues that only 4.5 hours should be allowed to prepare the Second Financing  
7 Motion as well as to prepare for a hearing, for an allowed fee of \$2,362.50. Id. at 17:5-10.

8 It is clear, however, that the preparation of the Second Financing Motion was  
9 significantly different from the First Financing Motion. Moreover, it also is clear that the  
10 preparation for any hearing on the Second Financing Motion would be significantly different  
11 from the First Financing Motion, including a possible discussion of the projection of cash needs  
12 and the negotiations of the final agreement. Counsel in this district are well aware of the  
13 consequences of being unprepared, see, e.g., In re Spickelmier, 469 B.R. 903 (Bankr. D. Nev.  
14 2012)(attorney’s lack of preparation and professionalism subject to sanctions as an “epic fail”),  
15 so the court finds no fault in counsel adequately preparing for what ultimately became an  
16 uncontested proceeding. Thus, the court concludes that the time billed for the Second Financing  
17 Motion was reasonable.

18 Fourth, the Chapter 11 trustee objects to 12.90 hours billed in connection with the B&T  
19 Fee Application. Objection at 18:14-15. The billing entries are set forth in Table 6, encompass  
20 services from 5/21/18 to 6/22/18, and are in the total amount of \$7,102.50. Id. at 18:19 to 19:8.<sup>24</sup>  
21 The Chapter 11 trustee argues that only 7.0 hours should be allowed for the preparation of the  
22 B&T Fee Application, with those hours to be allocated between junior associates at a \$350  
23 hourly rate and senior attorneys at a \$525 hourly rate; the total allowance would be \$2,800. Id.

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24 <sup>24</sup> There is a discrepancy in the entries appearing in Table 6 as well as the total amount  
25 billed for the instant fee application compared to the entries and total amount shown in the B&T  
26 Billing Statement. Table 6 appears to include the billing entries shown on page 8 of the June 11,  
27 2018 billing statement and page 3 of the July 11, 2018 billing statement. See B&T Billing  
28 Statement at pages 27 of 35 and 33 of 35. The total shown on Table 6 (\$7,102.50) does not  
match the combined dollar amounts on those pages of the billing statements (\$2,275 plus \$5,570,  
i.e., \$7,845). Table 6 omits a time entry for 5/23/18 of .60 hours for attorney Gertz (therefore  
totaling 13.5 hours), but that entry would not explain the dollar amount of the discrepancy.

1 at 19:17-21. Additionally, the Chapter 11 trustee objects to the allowance of any portion of the  
2 \$7,175 in Estimated Additional Fees “to prepare for and attend the hearing for the Application  
3 with no explanation why an additional 12-13 hours would be justified for such services.” Id. at  
4 19:22-24. The Estimated Additional Fee, however, was not just for preparing and attending the  
5 hearing on the B&T Fee Application. Rather, the \$7,175 estimate is based on an additional 9.5  
6 hours spent from 07/02/18 to 07/27/18 to prepare the fee application totaling \$5,092.50, see  
7 Mojdehi Exhibit “Q,”<sup>25</sup> with the remaining \$2,082.50 of the Estimated Additional Fee sought for  
8 attorney Mojdehi to prepare and attending the hearing. See Reply at 14:8-15 and Second  
9 Mojdehi Fee Declaration at ¶ 5.

10 The expenditure of 23 hours to prepare the B&T Fee Application appears is excessive  
11 inasmuch as the B&T Billing Statement already was separated into the project categories used in  
12 the UST Guidelines. See UST Guidelines at ¶ C.8 and Exhibit D-1 thereto. Indeed, B&T  
13 admittedly prepared its fee application using the UST Guidelines. See B&T Fee Application at  
14 6:11-12. Construction of the fee application primarily involved preparing a summary of the  
15 services performed in each project category, see B&T Fee Application at 6:23 to 9:13, and a  
16 single paragraph explaining the necessity for the services. Id. at 11:7-23. While lead counsel in  
17 a Chapter 11 proceeding seldom are terminated mid-case, preparation of the instant application  
18 was otherwise routine because B&T was unaware of whether the Chapter 11 trustee would even  
19 object. Id. at 5:20-23.<sup>26</sup> Under these circumstances, the court agrees with the Chapter 11 trustee

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20  
21 <sup>25</sup> With the additional 9.5 hours appearing in the August 10 billing statement, plus the  
22 13.5 hours appearing in the prior B&T Billing Statement, it appears that a total of 23.0 hours  
23 have been billed for the B&T Fee Application. Adding \$5,092.50 to the \$7,103.50 found in  
24 Table 7, the total amount sought for preparation of the B&T Fee Application would be  
25 \$12,196.00. Adding \$7,175.00 to the \$7,103.50 found in Table 7, the total amount sought for  
26 preparation of the B&T Fee Application would be \$14,278.50. If the hours encompassed by the  
27 Estimated Additional Fee are added to the 211.5 hours encompassed by the B&T Fee  
28 Application, the time allocated to the B&T Fee Application itself would be slightly more than ten  
percent of the total hours for which compensation is requested.

<sup>26</sup> Although it appears that B&T expended substantially more time and effort in preparing  
its response to the Chapter 11 trustee’s objections, its fees for such efforts are not compensable  
and B&T does not seek them. See Baker Botts L.L.P. v. ASARCO LLC, 135 S.Ct. 2158, 2166-  
67 (U.S. 2015).

1 that a portion of the total amount of fees for preparation of the B&T Fee Application, including  
2 the Estimated Additional Fee, should be disallowed. The total amount of \$6,000 will be allowed  
3 for preparation and presentation of the instant fee application, and the balance of the amount  
4 requested for this task is disallowed.

5 **Category Three.**

6 The Chapter 11 trustee maintains that the B&T firm has not complied with the UST  
7 Guidelines. See Objection at 20:3-27. She relies on Table “7” to list time entries reflecting  
8 86.10 hours billed by B&T professionals and seeks disallowance of \$40,047.50 in fees for vague  
9 time entries or \$37,280.50 for lumped time entries. Id. at 28:5.<sup>27</sup> In response, B&T has provided  
10 an additional description of the services rendered, separates out the services lumped together, or  
11 both. See B&T’s Reply Exhibit 1. At the hearing on the B&T Fee Application, no suggestion  
12 was made by the Chapter 11 trustee that the additional information supplied by B&T is  
13 insufficient to meet the UST Guidelines. More important, the court has reviewed Reply Exhibit  
14 1 and concludes that B&T has provided sufficient information to discern the professional  
15 services performed and the time spent by the fee applicant as required by Section 330. The  
16 disallowances requested in this category are without merit.

17 **Alternative Objection.**

18 In the alternative, the Chapter 11 trustee seeks to disallow 60% (\$73,868.70) of the  
19 \$123,114.50 of fees appearing in the B&T Billing Statement, all of the \$7,175 in Estimated  
20 Additional Fees, and \$3,400 in “retroactive” storage fees, allegedly leaving a net of \$78,848.45  
21 in allowed fees and expenses. See Objection at 29:10-13.<sup>28</sup> This across the board disallowance,  
22

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23 <sup>27</sup> Many of the time entries in Table 7 also appear in Tables 1, 3, 4, 5 and 6. Reply  
24 Exhibit 2 specifically identifies the time entries in Table 7 that appear in the other tables. At the  
25 hearing, the Chapter 11 trustee acknowledged that granting the relief requested by all of the  
26 tables would duplicate the disallowances for certain services performed by the B&T firm.

27 <sup>28</sup> These figures (\$78,868.70 plus \$7,175 plus \$3,400) come to a total of \$89,443.70. If  
28 that total is subtracted from the maximum amount sought in the B&T Fee Application  
(\$139,284.75), see note 16, supra, the remainder is \$49,841.05 rather than \$78,848.45. So the  
court cannot reconcile the latter figure used by the Chapter 11 trustee. The phrase “I was told  
there would be no math” is the stuff of comedy legend, see <https://vimeo.com/65921206>, but  
contested fee applications should not require the court to review the basic arithmetic used by

1 however, is based on the Chapter 11 trustee's same objections encompassed by Category One,  
 2 Category Two and Category Three. Id. at 28:22 to 29:3. Except for a disallowance in Category  
 3 Two of a portion of the requested fees for preparation of the B&T Fee Application, the court  
 4 concluded above that the Chapter 11 trustee's objections are without merit. For the same  
 5 reasons, the court concludes that the fee disallowance sought by the Alternative Objection is  
 6 without merit.

### 7 CONCLUSION

8 Based on the foregoing, the court will allow professional compensation for the project  
 9 categories specified in the B&T Fee Application as follows: \$46,496.00 for Asset Disposition,  
 10 \$2,665.00 for Business Operations, \$11,812.50 for Case Administration, \$15,961.00 for Claims  
 11 Administration and Objections, \$14,077.50 for Employment and Fee Applications,<sup>29</sup> and  
 12 \$29,695.00 for Financing and Cash Collateral. The total allowed amount of professional fees is  
 13 \$120,707.00. Reimbursement for costs advanced is allowed in the total amount of \$6,175.25.<sup>30</sup>  
 14 The total amount of allowed professional fees and reimbursement of costs will be \$126,882.25.

15 **IT IS THEREFORE ORDERED** that the First and Final Application for Compensation  
 16 and Reimbursement of Expenses for the Time Period of April 1, 2018 through June 30, 2018, by  
 17 Barnes & Thornburg LLP, Docket No. 224, be, and the same hereby is, **GRANTED** in the  
 18 amount of \$120,707.00 in professional fees and \$6,175.25 in reimbursement for costs advanced.

19 **IT IS FURTHER ORDERED** that the compensation and reimbursement allowed by this  
 20 Order, in the total amount of \$126,882.25, shall be paid by the Chapter 11 trustee at such time as  
 21 sufficient funds are available in the bankruptcy estate to pay all allowed administrative expenses.  
 22  
 23

24 both sides to a fee dispute. The court apologizes in advance, of course, if its own numerical  
 25 calculations are inaccurate.

26 <sup>29</sup> This figure represents \$8,077.50 for the professional employment applications included  
 27 in Table 4, plus the \$6,000.00 allowed for preparation of the B&T Fee Application.

28 <sup>30</sup> This figure represents the \$5,595.25 requested through June 30, 2018, plus the agreed  
 post-termination storage fees of \$580.00.

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