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Attorneys for Creditor on this Objection and Request for Hearing,
CALIFORNIA ATTORNEY LENDING II, INC.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re,

GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

Hearing Date: TBD

Hearing Time: TBD

Courtroom:

1668, Roybal Courthouse
255 E. Temple St.
Los Angeles, CA 9001

Hon. Barry Russell

[11 U.S.C. §§ 327 and 328; Fed. R.
Bank. P. 2014; L.B.R. 2014]

**CALIFORNIA ATTORNEY LENDING II, INC.'S (1) OBJECTION TO CHAPTER 7
TRUSTEE'S APPLICATION TO EXPAND SCOPE OF SERVICES OF SPECIAL
LITIGATION COUNSEL, LARRY W. GABRIEL, THE LAW OFFICE OF JENKINS,
MULLIGAN & GABRIEL, LLP, and (2) REQUEST FOR COURT HEARING ON
TRUSTEE'S APPLICATION TO BE SET AND NOTICED BY TRUSTEE MADE
PURSUANT TO L.B.R. 99013-1(f)**

I. INTRODUCTION

California Attorney Lending II, Inc. (“CAL II”) submits this objection to the Chapter 7 Trustee’s Application to Expand Scope of Services of Special Litigation Counsel, Larry W. Gabriel, the Law Offices of Jenkins, Mulligan & Gabriel, LLP (“Trustee’s Application”), dated February 15, 2022, and requests that the Court hold a hearing to be set and noticed by the Trustee.

CAL II is one of the secured creditors in this Chapter 7 bankruptcy proceeding, and it files this objection on the grounds that the proposed scope of work is not in the best interest of the estate and that the Trustee has not satisfied her burden of demonstrating that the expansion of the scope of work is necessary in this proceeding. The proposed expansion of work by Mr. Gabriel is redundant of services already underway in this matter, and the Trustee has not proffered any evidence of misconduct by CAL II necessitating further costly investigation.

Accordingly, CAL II requests that the Trustee’s Application be denied, and, if granted, be subject to express restrictions on the proposed scope of work and fees. At a minimum, CAL II requests a hearing for the Trustee to offer admissible evidence of any misconduct by CAL II that would necessitate the expansion of Mr. Gabriel’s services and to demonstrate why the proposed work (to the extent actually necessary) cannot be completed by previously retained professionals in this proceeding.

II. RELEVANT PROCEDURAL BACKGROUND

On December 17, 2021, the Court approved the Chapter 7 Trustee’s November 16, 2021 amended application to employ Larry W. Gabriel and Jenkins, Mulligan & Gabriel, LLP to serve as special counsel in *Miller v. Erika Girardi, et al.*, Adv. Case No. 2:21-ap-01155 (ECF Doc. 849.)

Previously, on October 13, 2021, the Chapter 7 Trustee filed an Application to employ Girard Sharp as special litigation counsel to evaluate and prosecute claims and pursue

subordination against three “Litigation Lenders” that provided financing to the Debtor prior to the bankruptcy (the “Sharp Application”). (ECF Doc. 770.) The Court denied that application on December 13, 2021 (ECF Doc. 917.)

The Trustee’s Application has been made for the same purpose as the Sharp Application as the Trustee states “that it would be preferable [sic] for Mr. Gabriel, Jenkins Mulligan & Gabriel LLP . . . to expand its role as special litigation counsel for the purposes of evaluating and, if appropriate, prosecute claims against the Debtor’s Litigation Lenders.” (ECF Doc. 1018). The Trustee has previously made numerous prior applications to employ professionals including the following:

- a. law firm Smiley Wang-Ekval, LLP as Trustee’s general counsel at a rate of \$350-625/hour to “analyze . . . potential litigation claims, of this Estate . . . [a]nalyze and litigate . . . validity, priority, and avoidability of any liens . . . [i]nvestigate potential assets of the Estate held by third parties and, if warranted and requested . . . litigate to recover such assets . . . [a]dvice the Trustee concerning the rights and remedies of the Estate and of the Trustee in regard to secured, priority, and general unsecured claims of creditors . . . [r]epresent the Trustee in any proceeding or hearing in the Bankruptcy Court, including, without limitation, objections to claims, and in any action where the rights of the Estate or the Trustee may be litigated . . . [a]ssist the Trustee in the settlement of any debts owed to the Debtor [c]onduct examinations of witnesses, claimants, or adverse parties and prepare and assist in the preparation of reports, accounts, applications and orders.” (ECF Doc. 59.);
- b. a well-known forensic accounting and financial advisory group Development Specialists, Inc. (“DSI”) at a rate of \$250-615/hour to among other things “investigate the status and values of assets of the Estate . . . [a]ssist in the identification of possible causes of action

and support of any litigation brought by the Trustee . . . reconstruct financial transactions of the Debtor . . . [and] analyze and liquidate claims against the Estate.” (ECF Doc. 82.); and

- c. law firm Ronald Richards and Associates, APC as special litigation counsel for a contingency fee of 35-45% of any net recovery for investigation and appropriate litigation regarding debtor Girardi Keese assets transferred to Thomas Girardi’s wife “either directly or to one or more people or entities on her behalf.” (ECF Doc. 318.).
- d. law firm SulmeyerKupetz, A Professional Corporation, as special avoidance power litigation counsel at a rate of 100% for standard fees for all legal personnel and a 20% success fee of each Avoidance Power Claim to, among other things, “advis[e] the Trustee regarding the proposed commencement of Avoidance Power Claims and any defenses thereto . . . negotiate[e] with the recipients of Avoidance Power Claims regarding any demands transmitted on behalf of the Trustee, . . . [and] commenc[e], prosecut[e], defend[], and compromis[e] Avoidance Power Claims.” (ECF Doc. 820.)
- e. iDiscovery Solutions, as the Chapter 7 Trustee’s computer consultant for an hourly rate for professional services including “collections, storage, analysis and processing of electronically stored information and, as necessary forensic analysis and other computer consulting services as required by the Trustee.” (ECF Doc. 92.)

On May 11, 2021, the Trustee filed her Motion for Order Approving Compromise with California Attorney Lending II, Inc. Pursuant to Federal Rule Bankruptcy Procedure 9019 ("CAL II Compromise Motion") which was approved on June 9, 2021 by Order Granting Motion to Approve Compromise with California Attorney Lending II, Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 ("CAL II Compromise Order). The CAL

compromise Order preserved "any party in interest's rights to object to Cal II's claim for post-Petition interest at the California judgment interest rate of 10% and reasonable fees, costs or charges under 11 U.S.C. § 506(b)" without reference subordination or any other Chapter 5 claims against CAL II.

In the CAL II Compromise Motion, the Trustee stated that she "has reviewed the documentation received from CAL II and has raised certain issues relating to the validity, priority, scope, and extent of CAL II's claim and related security interest.... The Trustee and CAL II have engaged in discussions and entered into a settlement agreement ...to resolve their disputes." The CAL II Compromise Motion stated that the Trustee "acknowledges the validity, priority, scope, and extent of CAL II's claim and first priority perfected security interest in substantially all of the Debtor's personal property assets." It also provided that, "CAL II shall have a single allowed claim of \$6,508,061.55 as of the Petition Date.... CAL II shall have a first priority perfected security interest in substantially all of the Debtor's personal property assets...as reflected in CAL II's loan documents, filed UCC Financing Statements and continuations and amendments...."

III. LEGAL STANDARD

Pursuant to 11 U.S.C. § 327(a), the court may approve the trustee's request "to employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties" as set forth under 11 USCS § 101 *et seq.* If approved, the Court "may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 . . . if . . . such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed." 11 U.S.C. § 328(c).

The Bankruptcy Code defines a “disinterested person” as one that “does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.” 11 U.S.C. § 101 (14)(c).

Section 327(a) effectively imposes a two-prong test required for court approval of employment of professional persons, and a “trustee may employ attorneys with court approval only if (1) they do not hold or represent an interest adverse to the estate, and (2) are disinterested persons.” *See Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 687 (B.A.P. 9th Cir. 2006). While disinterestedness is broadly defined by statute as set forth above, 11 U.S.C. § 101(14)(c), the term “adverse interest” is defined by well-established case law to include “(1) . . . possess[ing] or assert[ing] any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) . . . possess[ing] a predisposition under circumstances that render such a bias against the estate.” *Id.* at 688.

Additionally, Fed. R. Bank. P. 2014 mandates that application for employment of a professional, like here, requires, among other things, “specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered . . . and to the best of the applicant’s knowledge, all of the person’s connections with the debtor, creditors, [and] any other party in interest.” Once such application is filed, a timely response and request for hearing on the application may be filed, properly served upon the applicant and the United States Trustee, and comport with Local Bankruptcy Rule 9013-1(o)(4). L.B.R. 2014-1(b)(5).

IV. ARGUMENT

The Trustee's Application provides no explanation of why Mr. Gabriel's services are necessary and justified as it merely states the proposed scope of work and fee structure. As an initial matter and as outlined in Section II above, *at least* three other professionals have been employed by the Trustee to investigate and pursue potential claims on behalf of the Trustee and the estate. The proposed expanded scope of Mr. Gabriel's services clearly overlaps with the duties of the already employed law firms and forensic accounting firms. This duplicative effort underscores that the Trustee's Application to allow Mr. Gabriel and his firm to investigate and potentially litigate potential claims appears likely to further drain the estate's assets. On the Sharp Application, the Court has pinpointed one of the many concerns of the creditors in the instant application stating, "Don't you think they're a little worried about the fact that . . . they would want to keep these expenses down?" (ECF Doc. 959.) Despite the fact the proposed fee structure outlined in the Trustee's Application includes lesser hourly rates than in the Sharp Application, there is the potential for 30-40% contingency fees if the Trustee decides to prosecute a claim. Thus, the concern of the creditors has not been obviated by this instant application. While the hourly rate is lower, the Trustee has once again failed to demonstrate the *necessity* of the expense, which is crucial to approving the scope (or expansion of scope) of employment of special litigation.

Moreover, the Trustee's Application is baseless fishing attempt to uncover unspecified lender misconduct. This Court has already pinpointed the reason for the creditors' opposition in stating "[i]t seems to me that's exactly what they're concerned about, is an open-ended investigation" (ECF Doc. 959.) In fact, during the hearing in relation to the Sharp Application, Trustee's counsel stated that the Court has already granted "ten to fifteen 2004 exam requests for bank records to try to figure this stuff out" and that forensic analysis was already in progress. (ECF

Doc. 959.) The Trustee's Application proffers no evidence of any misconduct of CAL II necessitating an investigation in addition to all the efforts that have already been employed to uncover any potential claims and pursue subordination.

Overall, common sense dictates that this proposed investigation would not be worthwhile. The suggested notion that the Litigation Lenders had knowledge of the Debtor's misuse of funds yet continued to provide loans defies any sound business judgment. Even assuming, *arguendo*, that the lenders had suspicions of the Debtor's misconduct, their interests were secured. Without any existing admissible evidence, as this Court has already noted, "it's sort of a long shot" that any potential misconduct would be uncovered, especially in light of all the efforts already employed with previously retained law firms and forensic accountants. Therefore, before this Court grants an application to expand the scope of special counsel's services, CAL II requests that the Trustee come forth with any evidence of any complicity by CAL II in the Debtor's misconduct justifying the expansion of work.

V. CONCLUSION

For the reasons set forth herein, CAL II opposes the Trustee's Application, and requests that the Court deny it in its entirety, or at a minimum, set this matter for a hearing at which time the Trustee should provide information that justifies the expansion of the scope of services of Special Litigation Counsel, Larry W. Gabriel, the Law Office of Jenkins, Mulligan & Gabriel, LLP.

DATED: February 28, 2022.

Respectfully submitted,

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Main Place Tower, Buffalo, New York 14202

A true and correct copy of the foregoing document entitled (*specify*): California Attorney Lending II, Inc.'s (1) objection to Chapter 7 Trustee's Application to Expand Scope of Services of Special Litigation Counsel and (2) Request for Court Hearing on Trustee's Application to be Set and Noticed by Trustee made Pursuant to L.B.R. 99013-1(f)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 02/28/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 02/28/2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Girardi Keese
1126 Wilshire Boulevard
Los Angeles, California 90017-1904

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 02/28/2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
US Bankruptcy Court, Roybal Federal Building
255 E. Temple Street, STe. 1660
Los Angeles, California 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

02/28/2022 William F. Savino
Date *Printed Name*

s/ William F. Savino
Signature

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