



**IT IS ORDERED as set forth below:**

**Date: August 18, 2020**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	)	
	)	<b>Case No. 19-67128-pwb</b>
<b>JAMES EDWARD McCONNELL,</b>	)	
<b>Debtor.</b>	)	<b>Chapter 13</b>
	)	

**ORDER AND NOTICE OF HEARING ON APPLICATIONS FOR FINAL  
COMPENSATION BY TRUSTEE AND ATTORNEYS FOR TRUSTEE**

The Chapter 7 Trustee and his attorneys have filed applications for final compensation and reimbursement of expenses for services rendered before conversion of this case to Chapter 13 in the total amount of \$15,000. [56]. The total amount of unsecured claims filed prior to the bar date set in the Chapter 7 case is less than \$ 20,000.

Neither the United States Trustee (whose duties include supervising Chapter 7 trustees and reviewing applications for compensation, 28 U.S.C. § 586(a)(1), (3)) nor the debtor (who must bear the burden of payment of allowed fees given the value of nonexempt assets in this case) objected. No one else objected, either, but because creditors will be paid in full in this case given the value of the debtor's nonexempt assets regardless of the amount of the fees, neither creditors nor the Chapter 13 trustee have any economic interest in how much they are.

The Court, however, has an independent duty to review applications of trustees and their professionals for compensation. 11 U.S.C. § 330(a)(2). For reasons set forth below, the Court is scheduling a hearing on the applications to permit the Chapter 7 Trustee and his attorneys to address the Court's concerns.

The Trustee has requested compensation in the amount of \$ 1,915 based on his hourly rate and reimbursement of expenses of 30 cents. His law firm requests compensation of \$ 13,304 and reimbursement of expenses of \$ 210.50. Although the total compensation requested by the Trustee and his law firm is thus \$ 15,219, they have voluntarily reduced their fees by \$ 429.80 to \$ 14,789.20, resulting in a total amount requested of \$ 15,000. (Fees of \$ 14,789.20 and expenses of \$ 210.80). It is not clear whether the reduction is for compensation of the Trustee or the law firm; it does not matter because it is the Trustee's law firm. The Court for purposes of considering the applications will assume that the Trustee's compensation is reduced.

## **I. Background**

### **A. Events in the Chapter 7 Case**

Debtor filed a chapter 7 case on October 28, 2019. ([1]). The Debtor's chapter 7 schedules reflect ownership of a residence valued at \$ 117,692 ([1] at 15) encumbered by

security deeds in favor of Wells Fargo Home Mortgage for \$ 73,634<sup>1</sup> and Discover Home Equity Loans in the amount of \$ 31,657, and a homeowners' association claim of \$ 275, a total of \$ 105,566. ([1] at 23-24). Debtor claimed an exemption in the residence of \$ 12,126, the equity based on these amounts. ([1] at 2).<sup>2</sup> Schedules I and J show no monthly net income, based on net monthly income of \$ 2,988 and net monthly expenses in the same amount. ([1] at 34-37).

The Chapter 7 Trustee determined that the value of the residence “would support a listing price” of \$ 215,000 – some \$ 100,000 more than the Debtor reported – and result in a benefit of approximately \$ 84,000 to the estate. ([26] at 2, ¶ 10).<sup>3</sup> The Chapter 7 Trustee filed an application to retain a real estate agent on January 8, 2020. ([26]).

### **B. The Debtor's Motion to Convert to Chapter 13 and the Trustee's Opposition**

The Debtor filed a motion to convert his case to chapter 13 on January 22, 2020. ([30]). The Debtor's obvious purpose was to propose a plan to pay his creditors over time so that he could retain his residence.<sup>4</sup>

The Chapter 7 Trustee objected to conversion of the case on three grounds ([38]):

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<sup>1</sup> The proof of claim of Wells Fargo shows a debt of only \$ 65,555.41. (Proof of claim No. 11). Discover Home Equity has not filed a proof of claim.

<sup>2</sup> The Debtor stated that he was not entitled to any tax refunds. ([1] at 28). The Trustee received the Debtor's federal tax refund for 2019 in the amount of \$ 1,624, which he has turned over to the Chapter 13 Trustee. ([56] at 6).

<sup>3</sup> Sales price of \$ 215,000 less the sum of a six percent commission (\$ 12,900), encumbrances (\$ 105,566), and exemption (\$ 12,126) is \$ 84,408.

<sup>4</sup> The Chapter 7 Trustee observes that he made an offer to settle with the Debtor to avoid a sale of the property and that he “received no response whatsoever” to the offer. ([38] at 11, ¶¶ 15-16). Neither the itemization of services that the Chapter 7 Trustee rendered nor the description of the law firm's services reflect the offer. The Court does not doubt that the Trustee made the offer, but the absence of any charge for it indicates that it was an oral offer to the debtor or his lawyer that would not necessarily have required a response.

In any event, the Trustee does not explain how much the Debtor would have had to pay, how long he would have to pay it, or how someone in the Debtor's circumstances could fund a payment to the Trustee within a reasonable period of time. Perhaps the Debtor and his attorney knew that he would not be able to come up with a satisfactory proposal.

1. Chapter 13 is not feasible in view of the fact that the Debtor has no current monthly income according to the budget in his schedules. ([38] at 4, ¶ 19).
2. Conversion would not be in the “best interest of creditors.” ([38] at 4-5, ¶ 20).
3. The motion to convert was filed in bad faith. ([38] at 5, ¶ 21). The only basis for this contention is, “Based on Debtor’s Value of only \$ 117,692.00 when compared with Trustee’s Value of \$ 215,000, it appears that Debtor purposely undervalued the Property to hide the true equity therein, thereby evidencing bad faith.” (*Id.*).

The Trustee also contended that a conversion to chapter 13 would “prejudice creditors and cause further delay in the administration of the Bankruptcy Case.” ([38] at 5, ¶ 22). The Trustee concluded, “Debtor is not seeking a conversion of his Bankruptcy Case in a good faith effort to pay his creditors, but in an effort to not pay them in direct response to Trustee’s interest shown in the Property.” ([38] at 5, ¶ 23).

The Court has concerns about the Trustee’s arguments and conclusions. Assuming that the residence sells for a price in the range of the \$ 215,000 listing price, the sale will produce proceeds substantially greater than the real estate commission, encumbrances, and debtor’s exemption. Payment of unsecured claims, therefore, is a certainty. That being the case, the Debtor cannot possibly propose a plan that does not provide for payment of unsecured claims in full under the “best interest of creditors” requirement for confirmation in 11 U.S.C. § 1325(a)(4). If Debtor’s purpose is not to pay his creditors, he quite obviously cannot succeed.

The record does not reveal the basis for the Debtor’s \$ 117,692 valuation of the property, but the Court cannot, and will not, assume that a debtor filing a chapter 7 case in this district undervalues property in an effort to conceal its value. Even if that is the purpose, the tactic is doomed to fail, as this case illustrates.

Publicly available sources reflect values in the range of \$ 238,800 to \$ 272,000.<sup>5</sup> As this case illustrates, chapter 7 trustees conduct their own investigation of the value of a debtor's real estate and do not rely on the debtor's opinion of value.<sup>6</sup> In these circumstances, without more, the Court doubts that these circumstances establish the Debtor's bad faith.<sup>7</sup>

The Chapter 7 Trustee accurately points out that the Debtor's Schedules I and J as originally filed did not show that he had the ability to fund a plan to provide for full payment of his unsecured creditors. But feasibility is a completely different question than bad faith. Debtors frequently find ways to reduce expenses in order to retain property. Circumstances may change to result in more income, or further review of the debtor's financial circumstances may reveal the existence of income that the debtor may not have thought was income. In this case, for example,

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<sup>5</sup> Fulton County's appraisals of real property for tax purposes are online. [https://iaspublicaccess.fultoncountygga.gov/datalets/datalet.aspx?mode=value\\_history&sIndex=1&idx=1&LMparent=20](https://iaspublicaccess.fultoncountygga.gov/datalets/datalet.aspx?mode=value_history&sIndex=1&idx=1&LMparent=20). These publicly available tax records show an assessed value of \$238,800 for 2020. The value for 2017 was \$ 88,200, perhaps justifying a lower valuation than \$ 238,800.

Although Zillow valuations cannot be used as evidence, bankruptcy lawyers and others often check it for an idea of value. Zillow shows a present estimate of \$258,904 with a range of \$243,000 to \$273,000. [https://www.zillow.com/homes/1369-High-Point-Ave-SW--Atlanta,-GA-30315-rb/65462470\\_zpid/](https://www.zillow.com/homes/1369-High-Point-Ave-SW--Atlanta,-GA-30315-rb/65462470_zpid/) (last visited August 17, 2020).

The Court is curious about how the Debtor came up with his valuation – particularly the precise value of \$ 117,692 – but has difficulty imagining that it was an effort to hide its value from the trustee or anyone else.

<sup>6</sup> As this case also illustrates, it is not in the best interest of a debtor to purposefully undervalue property that the debtor wants to retain because a chapter 7 trustee will sell it for what it's worth. An accurate valuation of the property by the Debtor presumably would have led him and his counsel to file a chapter 13 case to begin with. See W. Homer Drake, Jr., et al., CHAPTER 13 PRACTICE AND PROCEDURE, § 2.6 (“When a debtor wants to retain encumbered property, an accurate understanding of the value of the property and the amount of the debt that encumbers it is critical. The failure to do so can have significantly adverse consequences.”).

<sup>7</sup> The Debtor's failure to schedule his tax refund, see *supra* note 2, may have provided the basis for an argument that the omission demonstrates bad faith. The Court would have difficulty accepting such an argument in the context of a consumer debtor who filed his chapter 7 petition in October, over two months before the end of the taxable year. Clearly, he was not entitled to a refund at that time.

the Debtor's amended schedules reflect an additional \$ 500 per month of income in the form of rent from his roommate and a reduction of expenses of \$ 400, resulting in the ability to pay \$ 900 per month under a chapter 13 plan. ([46] at 10-13).

Undisputed and important policy considerations favor giving a consumer debtor the opportunity to avoid liquidation – especially the loss of a residence. And it involves little or no risk to the interest of creditors. In this case, even if the Debtor's chapter 13 case fails, the case will be reconverted to chapter 7, and the residence will still be available for liquidation and payment of creditors in full. Other circumstances may exist that the record does not reflect, but the Court is concerned that it does not appear that the Trustee could have prevailed in his opposition to conversion.

The court rescheduled the hearing on the Debtor's motion to convert several times at the request of the parties. ([39, 41, 42, 43]). On May 21, 2020, the Debtor filed amendments to his schedules ([46]) and a chapter 13 plan ([47]). The plan provides for monthly payments of \$ 900, payment of 100 percent of unsecured claims, and payment of the fees and expenses of the Chapter 7 Trustee and his law firm in monthly payments beginning at \$ 300 per month and increasing to \$ 680 per month in May 2021.<sup>8</sup>

After the Debtor amended his schedules and filed the plan, the Court entered an Order permitting conversion of the case, with the consent of the Debtor and the Trustee. [48].

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<sup>8</sup> The plan states an estimated claim of \$ 12,000 for compensation of the Chapter 7 Trustee and his law firm. Plan § 5.3 [(47) at 7]). The plan also provides for payment of the fully secured claim of Associated Credit Union in full. *Id.* § 3.2 at 4-5. The plan states that no arrearages exist on the three claims that encumber his residence. *Id.* § 3.1 at 3-4.

## II. Allowance of Attorney's Fees

### A. Allowance of Compensation under § 330(a)

Section 330(a)(1) authorizes the Court to award “reasonable compensation for actual, necessary services” rendered by a trustee and his professionals. Paragraphs (3), (4), and (6) of § 330(a) provide instructions for making that determination.

Section 330(a)(3) directs the court, in determining reasonable compensation, to consider “the nature, the extent, and the value of such services, taking into account all relevant factors,” including six specific considerations set forth in subparagraphs (A) through (F). These non-inclusive factors are: (1) time spent; (2) rates charged; (3) whether the services were necessary or beneficial at the time at which the services were rendered; (4) 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; (5) whether the professional is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (6) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than bankruptcy cases.

Section 330(a)(4)(A) states what is effectively the converse of some of these listed factors. Thus, it prohibits compensation for unnecessary duplication of services, for services that were not reasonably likely to benefit the debtor's estate, and for services that were not necessary to the administration of the estate.

Section 330(a)(6) requires that any compensation awarded for preparation of a fee application must be “based on the level and skill reasonably required to prepare the application.” The Supreme Court in *Baker Botts L.L.P. v. Asarco LLC*, 576 U.S. 121, 135 S.Ct. 2158 (2015),

held that attorney's fees incurred by an estate professional in defending a fee application are not allowable under § 330(a).

The usual beginning point for determination of attorney's fees under § 330(a)(1) is calculation of the so-called "lodestar" amount. *E.g.*, *Grant v. George Schumann Tire & Battery Co.*, (*In re George Schumann Tire & Battery Co.*), 908 F.2d 84 (11<sup>th</sup> Cir. 1990). *See also Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11<sup>th</sup> Cir. 1988).

The lodestar amount is the attorney's reasonable hourly fee multiplied by the number of hours reasonably expended. Determination of the lodestar requires consideration of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5<sup>th</sup> Cir. 1974). *E.g.*, *Speights & Runyan v. Celotex Corp. In re Celotex Corp.*, 227 F.3d 1336, 1341 (11<sup>th</sup> Cir. 2000).

The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup> Cir. 1974).



## **B. Reasonable Hourly Rate**

The requested attorney's fees reflect hourly rates for the attorney of \$ 575 and for paralegals of \$ 210 and \$ 225.<sup>9</sup> The Court does not question that these are the normal and customary rates that the law firm charges and that they are commensurate with the skill, expertise, and reputation of the attorney and the law firm.

The concern, rather, is whether such rates are appropriate in the context of a consumer bankruptcy case. Put another way, the question is whether a consumer bankruptcy case like this one requires a level of expertise that justifies retention of an attorney with an hourly rate of \$ 575. This implicates *Johnson* factors (2), the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (8) the amount involved and the results obtained; and (12) awards in similar cases.

Based on the current record, it does not seem that this consumer bankruptcy case is particularly novel or difficult. (For reasons stated earlier and later, the Debtor's motion to convert the case did not make it either novel or difficult.) To be sure, any consumer case with assets is somewhat unusual; almost all consumer cases under chapter 7 are no-asset cases that proceed with little or no activity.

But as asset cases go, this one is routine. It takes no particular legal expertise to employ a real estate agent, sell a residence, object to claims if appropriate, and distribute the money. Indeed, in the absence of a controversy regarding any of these matters, the Court questions whether a bankruptcy trustee – presumably well-versed in bankruptcy law and procedure – even requires legal assistance to accomplish these tasks.<sup>10</sup>

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<sup>9</sup> The amounts are for 2020. In 2019, the attorney's rate was \$ 570, and the paralegal rates were \$ 205 and \$ 225. One paralegal billed 2 hours of time in 2019 at \$ 170 per hour. ([56] at 10).

<sup>10</sup> See text accompanying note 12 *infra*.

Appendix A identifies applications for compensation filed in January and February 2020 by lawyers representing chapter 7 trustees in chapter 7 bankruptcy cases.<sup>11</sup> In those cases, hourly rates charged by all other law firms are significantly lower than \$ 575. Most hourly rates are in the \$ 300 to \$ 400 range. The closest rates are \$ 495 and \$ 525, which are the highest rates for lawyers in two separate firms where other lawyers with lower rates may do much of the work.

Furthermore, the effective amount in controversy in the Debtor's bankruptcy case from the standpoint of the estate is less than \$ 20,000, the amount of the unsecured claims.

In these circumstances, the Court is concerned that allowance of compensation under § 330(a)(1) based on the hourly rates the law firm requests is not appropriate.

### **C. Necessity and Benefit of the Services**

The Court does not question whether the attorney and paralegals took too much time to perform the services they rendered. Rather, the concern is the extent to which the services were necessary and beneficial, as § 330(a) and the *Johnson* factors require.

For purposes of analysis, the Court has categorized the itemized services rendered as follows. Appendix B shows the categories into which the Court has placed specific time entries.

1. Trustee Duties. Services that appear to be the performance of trustee duties – \$ 1,786.00.

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<sup>11</sup> Charges by other law firms for paralegal time are also lower, ranging from \$ 75 to \$ 200 compared to the law firm's range of \$ 170 to \$ 300. The Court will take judicial notice of the records in those cases under Fed. R. Evid. 201(c)(1).

The Court narrowed the applications it reviewed to those in January and February for three reasons: (1) most of the activity in this case took place during that time; (2) the time period is before the Covid-19 restrictions on various activities began in mid-March; (3) the applications in this time period reflect current billing rates for attorneys at the time the services were rendered.

2. Attorney Retention and Compensation. Services pertaining to the retention and compensation of the law firm – \$ 3,331.00.

3. Sale of Real Estate. Services pertaining to the sale of the Debtor’s residence – \$ 694.50.

4. Opposition to Conversion. Services pertaining to the Trustee’s opposition to the Debtor’s motion to convert – \$ 7,492.50.

*Trustee Duties*

A trustee employs an attorney to provide legal services, not to perform duties of the trustee. The items in this category appear to be services that are part of the trustee’s duties.

*Attorney Retention and Compensation*

The services in this category are for filing applications to retain the law firm and to allow compensation and reimbursement of expenses. The Court has these concerns:

1. Whether a trustee requires legal services to prepare a rather routine application to employ counsel;
2. Whether it is justifiable for the trustee to charge the estate for legal services for appearing at a hearing on compensation when the trustee’s application is scheduled at the same time, particularly in the absence of any stated objection;
3. Whether the level and skill of the persons who prepared the fee application were reasonably required to prepare it;
4. Whether a charge for these matters equal to about 25 percent of the total requested compensation reflects the exercise of reasonable billing judgment; and
5. Whether a professional is entitled to compensation for appearing at a hearing on a fee application.

*Sale of Real Estate*

The Court questions the extent to which the preparation and filing of a routine application to employ a real estate broker requires any significant legal work. The Court notes that a chapter 7 trustee may accomplish the sale of real estate without a lawyer. Attached as Appendix C is a list of motions to sell property that a nonlawyer trustee filed from 2017 to 2019 without a lawyer.<sup>12</sup>

*Opposition to Conversion*

Over half of the compensation the law firm requests, \$ 7492.50, is for services in opposition to the Debtor's motion to convert. The Court is concerned that such opposition was neither necessary nor beneficial to the estate.

The Debtor was faced with losing a residence. The Chapter 7 Trustee offered to permit the Debtor to "buy out" his equity and retain it. But the Debtor's financial circumstances do not indicate even a remote possibility that he could come up with enough cash to pay the unsecured claims – as well as the Chapter 7 Trustee and his counsel – in full. The Court does not know whether the Trustee would have agreed to an extended payment period equal to the time it will take the Debtor to complete payments under the proposed plan, which will probably exceed three years.<sup>13</sup>

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<sup>12</sup> The Court will take judicial notice of the records in these cases under Fed. R. Evid. 201(c)(1).

<sup>13</sup> It appears that it will take the Debtor at least 32 months to pay enough money to pay all of the claims under the plan, excluding the fees of the Chapter 7 Trustee and his law firm. Exactly how long it will take depends on the Chapter 13 Trustee's percentage fee and the calculation of interest on the claim secured by his vehicle. If the Court awards \$ 15,000 in fees, it will take the Debtor at least another 17 months to complete plan payments.

The Chapter 7 Trustee opposed conversion on the basis of the Debtor's bad faith. The contention is that the Debtor wanted to convert the case to avoid paying his creditors. A more likely motivation was his desire to retain his residence.

Moreover, in the circumstances of this case the Debtor could not avoid full payment of his creditors even if that was his purpose. The Debtor is represented by counsel who regularly represents consumer debtors in this District. It seems inconceivable to the Court – unless the Debtor completely ignored his lawyer, or his lawyer provided incompetent advice – that he thought he could avoid paying his creditors in full through a Chapter 13 plan.

It is true that the Debtor's original Schedules I and J showed that he had no net income to fund a plan. This situation obviously raises feasibility concerns. Nevertheless, lack of feasibility is not necessarily a dispositive factor with regard to bad faith at the outset of a chapter 13 case; debtors in chapter 13 cases regularly find ways to fund their plan, and bankruptcy policy requires giving them a chance to do so. Moreover, the Debtor – or at least his counsel – knew when the Debtor sought conversion that feasibility would be required and presumably had a basis for deciding to proceed under Chapter 13. Unless other circumstances exist that the record does not reflect, it seems highly unlikely that these circumstances would show the bad faith required to preclude conversion under *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), and its progeny.

The only other basis for opposition to conversion was that it was not in the best interest of creditors to convert to chapter 13 because it would result in delay of payment of their claims. This is an inevitable consequence of conversion in any case. It provides no basis for denial of conversion on a motion filed three months after the filing of the case.

None of this is unusual. The Court regularly sees chapter 7 debtors seek to convert their cases to chapter 13 to keep their homes after the chapter 7 trustee takes action to sell their residences that they thought they would be able to keep in the mistaken belief that they had no nonexempt equity.

The judges in this district routinely permit such conversions because it is an easy call. Indeed, precedent in this district permits a debtor to convert to chapter 13 to avoid the trustee's sale of his residence even when the debtor converts the case over a year after filing the chapter 7 case, the trustee had a contract to sell the residence, and the debtor had received a chapter 7 discharge. *In re Carter*, 285 B.R. 61 (Bankr. N.D. Ga. 2002) (Drake, J.). The purpose of chapter 13 is to permit debtors to keep their property – especially residences – and no danger to creditors arises because, if a debtor fails, the real estate is still available for liquidation.

For all of these reasons, the Court questions whether the legal services rendered in opposition to conversion were beneficial or necessary.

### **III. Allowance of Trustee's Compensation**

Section 330(a)(7) states, “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.” Section 326(a) provides a commission schedule for compensation of a Chapter 7 trustee based 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.”

The only money the Chapter 7 Trustee disbursed in this case was the \$ 1,624 he received for the Debtor's 2019 federal tax refund. Under § 326(a), the Trustee is entitled to 25 percent of this amount, or \$ 406.

The Chapter 7 Trustee, however, contends that a chapter 7 trustee is entitled to compensation based on a *quantum meruit* theory.<sup>14</sup> The Court will consider this legal issue at the hearing scheduled below and will thereafter determine it.<sup>15</sup>

If *quantum meruit* provides a basis for the award of compensation, the Court will then consider the amount of compensation, if any, that should properly be awarded. The Court will entertain views from any party in interest as to the proper standard for determining the amount of any compensation. To the extent that the basis for compensation is based on an hourly fee, the Court will entertain views as to what the rate should be<sup>16</sup> and will consider the hourly rates of other Chapter 7 trustees who are lawyers.<sup>17</sup>

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<sup>14</sup> The Bankruptcy Abuse and Consumer Protection Act of 2005 added paragraph (7) to 11 U.S.C. § 330(a). The Chapter 7 Trustee cites two cases in support of the *quantum meruit* theory that were decided after the amendment in 2005 that added paragraph (7). *In re Robb*, 534 B.R. 354 (B.A.P. 8<sup>th</sup> Cir. 2015); *In re Bartlett*, 590 B.R. 175 (Bankr. D. Mass. 2018). *Robb* does not hold that a trustee may obtain compensation on a *quantum meruit* theory. The *Robb* court dismissed, for lack of standing, the debtor's appeal from the bankruptcy court ruling allowing *quantum meruit*. *Bartlett* noted a conflict among lower courts on the availability of *quantum meruit* to permit compensation to a chapter 7 trustee who made no disbursements in a chapter 7 case converted to chapter 13.

<sup>15</sup> The Court will appreciate the views of the Chapter 7 Trustee and any other party in interest as to how the provisions of 11 U.S.C. § 1326(b)(3) relate to the question of whether compensation is available under a *quantum meruit* theory. This provision, also added in 2005, provides for payment of unpaid compensation of a chapter 7 trustee that has been allowed "due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b)." See W. Homer Drake, Jr., et al., CHAPTER 13 PRACTICE & PROCEDURE § 6:8.

<sup>16</sup> Moreover, the same hourly rate may not apply to all of the trustee's work. Evaluative work relating to the case may justify compensation at a higher rate than, for example, preparing an interim report, paying trustee expenses, or depositing money. *Cf. Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 at 717 (5<sup>th</sup> Cir. 1974) ("It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.").

<sup>17</sup> Hourly fees of other chapter 7 trustees who are lawyers range from \$ 290 to \$ 470. Appendix D is a list of applications to employ a law firm filed in January and February 2020 that state an hourly rate for legal serviced to be rendered by a lawyer who is a chapter 7 trustee. The Court will take judicial notice of the records in those cases under Fed. R. Evid. 201(c)(1).

**IV.**

In accordance with the foregoing, it is hereby **ORDERED, and NOTICE IS HEREBY GIVEN** that the Court will hold a hearing on the Applications for Final Compensation by Trustee and Attorneys for Trustee and Request for Allowance of Claim As Administrative Expense Priority at **11:30 a.m. on October 1, 2020** in Courtroom 1401, United States Courthouse, Russell Federal Building, 75 Ted Turner Blvd, Atlanta, Georgia. Given the current public health crisis, however, the hearings will be telephonic only, unless the Court orders otherwise. Parties desiring to participate in the hearing must use Judge Bonapfel's Toll Free Number: 888-684-8852 and Access Code: 1896529. Please check the "Important Information Regarding Court Operations During COVID-19 Outbreak" tab at the top of the GANB Website [www.ganb.uscourts.gov](http://www.ganb.uscourts.gov) prior to the hearing for instructions on whether to appear in person or by phone.

The Court will not hear testimony at this hearing. The Court will hear a proffer of testimony from any party desiring to present testimony. In the absence of any objection to the proffer, the Court may accept it. If the Court does not accept the proffer, the Court will schedule a further hearing to hear the testimony.

Any party in interest, including the United States Trustee, may file a written response with regard to the issues addressed herein, but no response is required.

[End of Order]



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**APPENDIX A**

**List of Applications for Compensation Filed by Lawyers for Chapter 7 Trustees**

Case No.	Trustee	App. Date	Doc. #	Professional/Firm	Attorney Rates		Paralegal Rates	
					Low	High	Low	High
19-57057-lrc	Hays	2/24/2020	45	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$290.00
19-66654-jwc	Hays	2/19/2020	18	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$185.00	\$300.00
19-68140-sms	Gordon	2/17/2020	21	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-68176-pmb	Gordon	2/5/2020	15	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-69051-bem	Gordon	2/17/2020	11	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-69099-wlh	Gordon	2/17/2020	29	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-69133-lrc	Bargar	2/14/2020	22	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-69300-jwc	Bargar	2/13/2020	19	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-70695-pwb	Gordon	2/3/2020	12	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-70697-jwc	Gordon	2/18/2020	12	Arnall, Golden & Gregory, LLP	\$435.00	\$575.00	\$170.00	\$300.00
19-70711-wlh	Gordon	2/17/2020	21	Arnall, Golden & Gregory, LLP	\$445.00	\$575.00	\$170.00	\$300.00
19-70714-pmb	Gordon	2/10/2020	19	Arnall, Golden & Gregory, LLP	\$435.00	\$575.00	\$170.00	\$300.00
19-57751-jwc	Hays	1/17/2020	25	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-61728-lrc	Hays	1/17/2020	25	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-65388-pwb	Hays	1/31/2020	19	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-66306-sms	Bargar	1/21/2020	21	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-67190-jwc	Bargar	1/16/2020	13	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-67191-pwb	Bargar	1/22/2020	18	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-67260-lrc	Trauner	1/22/2020	19	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-67939-jrs	Bargar	1/22/2020	13	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-68348-pwb	Bargar	1/16/2020	23	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-68560-wlh	Gordon	1/24/2020	31	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$300.00
19-68798-jwc	Trauner	1/22/2020	15	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-69032-sms	Gordon	1/10/2020	17	Arnall, Golden & Gregory, LLP	\$430.00	\$570.00	\$170.00	\$300.00
19-69106-lrc	Gordon	1/10/2020	13	Arnall, Golden & Gregory, LLP	\$435.00	\$570.00	\$170.00	\$300.00
19-69134-sms	Gordon	1/10/2020	19	Arnall, Golden & Gregory, LLP	\$435.00	\$570.00	\$170.00	\$300.00
19-69352-lrc	Bargar	1/14/2020	13	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-70307-bem	Hays	2/10/2020	16	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
19-70322-lrc	Hays	2/18/2020	8	Arnall, Golden & Gregory, LLP	\$445.00	\$570.00	\$170.00	\$290.00
18-66700-wlh	Ogier	1/28/2020	28	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$535.00	\$115.00	\$200.00
17-66951--pwb	Cooper	2/18/2020	52	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-55352-jwc	Steil	2/7/2020	23	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-55353-pmb	Cooper	2/28/2020	27	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-55850-jwc	Ogier	1/31/2020	41	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-57090-jwc	Ogier	2/14/2020	44	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-59731-sms	Ogier	1/21/2020	19	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00

19-61407-jwc	Steil	1/14/2020	36	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-62384-jwc	Ogier	2/24/2020	16	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-64011-jwc	Steil	1/6/2020	24	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-64957-wlh	Steil	1/28/2020	29	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-65891-lrc	Ogier	2/7/2020	24	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-66708-jwc	Ogier	1/21/2020	18	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-66959-lrc	Ogier	2/4/2020	42	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-67393-sms	Ogier	1/31/2020	10	Ogier, Rothschild, & Rosenfeld, PC	\$400.00	\$525.00	\$115.00	\$200.00
19-70242-wlh	Steil	2/21/2020	20	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
20-60160-pwb	Ogier	2/19/2020	12	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
20-62775-jwc	Ogier	2/24/2020	7	Ogier, Rothschild, & Rosenfeld, PC	\$300.00	\$525.00	\$115.00	\$200.00
19-65378-wlh	Lubin	1/3/2020	14	Lamberth, Cifelli, Ellis & Nason, PA	\$200.00	\$495.00	\$75.00	\$195.00
19-65892-sms	Lubin	1/3/2020	12	Lamberth, Cifelli, Ellis & Nason, PA	\$200.00	\$495.00	\$75.00	\$195.00
19-67264-sms	Lubin	2/12/2020	10	Lamberth, Cifelli, Ellis & Nason, PA	\$200.00	\$495.00	\$75.00	\$195.00
19-69764-sms	Lubin	2/24/2020	18	Lamberth, Cifelli, Ellis & Nason, PA	\$200.00	\$495.00	\$75.00	\$195.00
16-72589-bem	Cooper	2/7/2020	53	Macey, Wilensky & Hennings	\$450.00	\$450.00	N/A	N/A
19-64623-lrc	Goodman	1/23/2020	42	Goodman & Goodman, PC	\$425.00	\$425.00	\$85.00	\$85.00
19-22223-jrs	Nasuti	1/15/2020	13	Thompson, O'Brien, Kemp & Nasuti	\$325.00	\$425.00	\$195.00	\$195.00
19-22263-jrs	Nasuti	1/20/2020	15	Thompson, O'Brien, Kemp & Nasuti	\$325.00	\$425.00	\$125.00	\$185.00
18-22005-jrs	Nappier	2/20/2020	88	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
18-70522-wlh	Palmer	1/31/2020	13	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-54495-lrc	Palmer	1/23/2020	31	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-62845-pwb	Lubin	1/8/2020	29	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-68241-sms	Palmer	1/24/2020	47	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-68761-lrc	Palmer	1/7/2020	12	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-69023-jwc	Palmer	1/23/2020	16	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-69637-bem	Trauner	1/24/2020	17	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
20-60349-jrs	Scarver	1/31/2020	17	Ragsdale, Beals, Seigler & Patterson & Gray, LLP	\$265.00	\$400.00	\$135.00	\$135.00
19-22289-jrs	Nappier	1/13/2020	13	Betty A. Nappier	\$395.00	\$395.00	N/A	N/A
19-22320-jrs	Nappier	1/9/2020	16	Betty A. Nappier	\$395.00	\$395.00	N/A	N/A
19-22329-jrs	Nappier	1/13/2020	17	Betty A. Nappier	\$395.00	\$395.00	N/A	N/A
20-21059-jrs	Nappier	1/13/2020	17	Betty A. Nappier	\$395.00	\$395.00	N/A	N/A
19-69506-pwb	Miller	1/27/2020	17	Martha Miller Law, LLC	\$395.00	\$395.00	\$125.00	\$125.00
19-12370-pwb	Mann	2/26/2020	23	Mann & Wooldridge, PC	\$375.00	\$375.00	N/A	N/A
19-53144-sms	Pettie	2/18/2020	46	Jason L. Pettie, PC	\$360.00	\$360.00	N/A	N/A
19-66775-sms	Pettie	2/24/2020	24	Jason L. Pettie, PC	\$360.00	\$360.00	N/A	N/A
19-67488-pmb	Pettie	2/18/2020	19	Jason L. Pettie, PC	\$360.00	\$360.00	N/A	N/A
19-12283-whd	Baker	1/24/2020	18	James G. Baker, PC	\$350.00	\$350.00	N/A	N/A
19-12412-whd	Baker	2/10/2020	21	James G. Baker, PC	\$350.00	\$350.00	N/A	N/A

19-10853-whd	Mann	2/17/2020	17	Mann & Wooldridge, PC	\$350.00	\$350.00	N/A	N/A
19-10855-whd	Mann	2/17/2020	20	Mann & Wooldridge, PC	\$350.00	\$350.00	N/A	N/A
19-11887-whd	Mann	1/23/2020	12	Mann & Wooldridge, PC	\$350.00	\$350.00	N/A	N/A
19-12320-whd	Mann	2/28/2020	12	Mann & Wooldridge, PC	\$350.00	\$350.00	N/A	N/A
18-53536-pwb	Layng	2/27/2020	30	William J. Layng, Jr., PC	\$350.00	\$350.00	\$100.00	\$100.00
19-62425-sms	Layng	1/16/2020	34	William J. Layng, Jr., PC	\$350.00	\$350.00	\$100.00	\$100.00
19-63674-bem	Layng	2/25/2020	34	William J. Layng, Jr., PC	\$350.00	\$350.00	\$100.00	\$100.00
19-64537-lrc	Layng	2/11/2020	30	William J. Layng, Jr., PC	\$350.00	\$350.00	\$100.00	\$100.00
18-42985-pwb	Richardson	2/12/2020	23	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42062-pwb	Richardson	1/2/2020	14	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42201-bem	Richardson	1/31/2020	18	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42464-pwb	Richardson	2/5/2020	19	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42862-bem	Richardson	2/21/2020	12	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42863-bem	Richardson	2/21/2020	11	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
19-42864-pwb	Richardson	2/5/2020	10	Brinson, Berry, Askew, Seigler, Richardson, Davis, LLP	\$235.00	\$325.00	\$100.00	\$100.00
16-10862-whd	Howell	1/16/2020	70	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
16-11161-whd	Howell	1/15/2020	33	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
18-11283-whd	Howell	2/13/2020	56	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-12033-whd	Howell	1/14/2020	22	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-12062-whd	Howell	1/14/2020	11	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-12063-whd	Howell	1/14/2020	10	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-12142-whd	Howell	2/13/2020	22	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-12170-whd	Howell	2/13/2020	36	Griffin E. Howell III & Assoc.	\$305.00	\$305.00	N/A	N/A
19-10148-whd	Baker	2/12/2020	44	James G. Baker, PC	\$295.00	\$295.00	N/A	N/A
18-20231-jrs	Patten	1/28/2020	26	Smith, Gilliam, Williams & Miles	\$290.00	\$290.00	N/A	N/A
18-20477-jrs	Patten	1/2/2020	13	Smith, Gilliam, Williams & Miles	\$290.00	\$290.00	N/A	N/A

**APPENDIX B**

**Categorization of Services Rendered by Attorneys for Trustee**

**Trustee Duties**

Timekeeper	Date	Hours	Rate	Hours x Rate
CAS	12/2/2019	1.0	160	160.00
NCG	12/3/2019	1.2	570	684.00
PEB	12/6/2019	0.3	215	64.50
PEB	12/6/2019	0.9	215	193.50
NCG	12/9/2019	1.2	570	684.00
Subtotal		4.6		1,786.00

**Attorney Retention and Compensation**

Timekeeper	Date	Hours	Rate	Hours x Rate
PEB	12/6/2019	0.6	215	129.00
AGF	5/26/2020	3.2	210	672.00
NCG	5/26/2020	0.3	575	172.50
NCG	5/27/2020	1.7	575	977.50
NCG	5/27/2020	2.4	575	1,380.00
Subtotal		8.2		3,331.00

**Sale of Real Estate**

Timekeeper	Date	Hours	Rate	Hours x Rate
PEB	12/6/2019	0.3	215	64.50
PEB	1/7/2020	2.0	225	450.00
PEB	1/7/2020	0.8	225	180.00
Subtotal		3.1	665	694.50

**Opposition to Conversion**

Timekeeper	Date	Hours	Rate	Hours x Rate
NCG	1/8/2020	1.2	575	690.00
NCG	1/23/2020	0.9	575	517.50
PEB	2/7/2020	2.0	225	450.00
NCG	2/10/2020	1.2	575	690.00
NCG	2/12/2020	0.5	575	287.50
PEB	2/24/2020	0.2	225	45.00
PEB	2/24/2020	0.4	225	90.00
NCG	2/24/2020	0.8	575	460.00
NCG	2/27/2020	0.1	575	57.50
NCG	3/4/2020	0.5	575	287.50
NCG	3/6/2020	0.2	575	115.00
NCG	3/9/2020	0.1	575	57.50
NCG	4/1/2020	1.3	575	747.50
PEB	4/2/2020	0.4	225	90.00
PEB	4/2/2020	0.4	225	90.00
NCG	4/2/2020	1.0	575	575.00
NCG	4/6/2020	0.1	575	57.50
NCG	4/14/2020	0.2	575	115.00
NCG	4/17/2020	0.8	575	460.00
PEB	4/20/2020	0.6	225	135.00
NCG	4/20/2020	0.1	575	57.50
PEB	5/21/2020	0.8	225	180.00
PEB	5/21/2020	0.9	225	202.50
NCG	5/21/2020	1.7	575	977.50
NCG	5/26/2020	0.1	575	57.50
Subtotal		16.5		7,492.50

**Totals**

	Hours	Fees
Trustee Duties	4.6	1,786.00
Retention & Compensation	8.2	3,331.00
Sale of Real Estate	3.1	694.50
Opposition to Conversion	16.5	7,492.50
<b>Totals</b>	<b>32.4</b>	<b>13,304.00</b>

**APPENDIX C**

**Motions to Sell Property Filed by Nonlawyer  
Trustee Without Counsel, 2017-2019**

Case Number	Title	Date Filed	Doc. #	Trustee
15-40543-mgd	Kevin Patrick Massengale	2/17/2017	104	Montz
16-42853-pwb	Angel Tonya Bharwani	4/10/2017	23	Montz
17-41051-bem	Mary Ann Snyder	8/31/2017	25	Montz
17-40804-pwb	Patrick Eugene Baynes and Melissa Ann Baynes	10/24/2017	38	Montz
18-40384-pwb	Joseph Powell Stewart	6/26/2018	34	Montz
13-40571-pwb	Richard John Reece	8/13/2018	84	Montz
16-41059-bem	Timothy Lamar Patterson and Robin Michelle Patterson	11/5/2018	85	Montz
18-41302-pwb	Paragon Wool, LLC	11/9/2018	38	Montz
17-40571-pwb	Jeffrey Scott Graham and Melissa Landa Graham	1/14/2019	112	Montz
18-42745-pwb	John Ross Branch	4/30/2019	28	Montz
18-42745-pwb	John Ross Branch	5/8/2019	32	Montz
18-66766-jwc	Beautiful Brows LLC	7/3/2019	154	Hays
19-41856-pwb	Thomas Edwin Engram	11/14/2019	19	Montz
19-41856-pwb	Thomas Edwin Engram	12/2/2019	21	Montz

**APPENDIX D**

**List of Applications to Employ Trustee's Law Firm**

Case No.	Trustee	Hourly Rate	App. Empl. Date	Doc. #
19-12412-whd	Baker	\$350.00	2/10/2020	21
19-69352-lrc	Bargar	\$445.00	1/14/2020	13
19-64623-lrc	Goodman	\$425.00	1/23/2020	42
19-12170-whd	Howell	\$305.00	2/13/2020	36
18-53536-pwb	Layng	\$350.00	2/27/2020	30
19-12370-pwb	Mann	\$375.00	2/26/2020	23
19-69506-pwb	Miller	\$395.00	1/27/2020	17
20-21059-jrs	Nappier	\$395.00	1/13/2020	17
19-22263-jrs	Nasuti	\$425.00	1/20/2020	15
20-62775-jwc	Ogier	\$395-\$470	2/24/2020	7
18-20477-jrs	Patten	\$290.00	1/2/2020	13
19-67488-pmb	Pettie	\$360.00	2/18/2020	19
19-42864-pwb	Richardson	\$325.00	2/5/2020	10
19-70242-wlh	Steil	\$300-\$390	2/21/2020	20