

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re Case No. 12-17945  
LeRoy Edward Green DCN: BCS-7  
and Kristie Johnson Green  
Debtors.

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**MEMORANDUM DECISION**

1 Shein Law Group represented the Greens in a Chapter 13. Except  
2 for a modestly difficult contested matter, the case is routine. Two  
3 attorneys worked on the case. Some duplication of effort and  
4 overstaffing occurred. In other instances, the fees requested are  
5 disproportionate to the tasks performed. Chapter 13 attorneys are  
6 entitled to reasonable compensation. Shein Law Group seeks fees of  
7 \$21,494. Are the fees reasonable?

#### 8 **FACTS**

9 LeRoy Edward Green is a semi-retired real estate broker; his  
10 wife, Kristie Johnson Green is an escrow officer. The Greens own a  
11 home, two timeshares, a 401(k) account, two vehicles, and other  
12 ordinary types of personal property. Their income is above the  
13 applicable median income for the State of California. Secured debts  
14 include a loan secured by a deed of trust against their home and a car  
15 debt. No priority debts were scheduled. Unsecured debts aggregate  
16 almost \$102,000, including a \$9,000 loan from Mr. Green's employer,  
17 Guarantee Real Estate Services.

18 The Greens filed an emergency Chapter 13 bankruptcy petition.  
19 Shein Law Group, PC ("Shein") represents them. This case was the  
20 Greens' second case within one year. Because the stay would have  
21 terminated under 11 U.S.C. § 362(c)(3), the Greens moved to extend the  
22 stay, which the court granted.

23 The Greens filed a plan on the same day that they filed the  
24 petition. The Greens later amended their plan, which the court  
25 confirmed.

26 The case involved a dispute over a stay violation that required  
27 modest efforts to resolve. About six months after the order for  
28 relief, Guarantee Real Estate withheld \$1,000 from Mr. Green's

1 paycheck to recover on their claim against the Greens, and it  
2 threatened to continue to withhold amounts until the entire sum was  
3 paid. The Greens brought a motion for sanctions to address the stay  
4 violation. The dispute settled two months later, and Guarantee Real  
5 Estate returned the \$1,000 it had obtained and agreed not to withhold  
6 further amounts. But in the interim period before the dispute  
7 settled, Shein performed services relating to the dispute that  
8 resulted in \$10,477 in fees.

9 Shein has filed a First Interim Application for Compensation. In  
10 the application, Shein requests that the court approve fees of \$21,494  
11 and costs of \$1,099.76.

#### 12 JURISDICTION

13 This court has jurisdiction. See 28 U.S.C. § 1334; 11 U.S.C. §  
14 330(a); General Order No. 182 of the U.S. District Court for the  
15 Eastern District of California. This is a core proceeding. See 28  
16 U.S.C. § 157(b)(2)(A).

#### 17 DISCUSSION

##### 18 I. Standards for Reasonable Compensation under § 330

19 A debtor's attorney in a Chapter 13 case may be allowed  
20 "reasonable compensation for actual, necessary services" and  
21 "reimbursement for actual, necessary expenses." 11 U.S.C.  
22 § 330(a)(1),(3)(A)-(F), (4)(B). The applicant bears the burden of  
23 proof. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *In re Roderick*  
24 *Timber Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir. 1995).

25 Unless the attorney agrees to accept a flat rate fee, the  
26 customary method for ascertaining a reasonable fee for a debtor's  
27 attorney in a Chapter 13 case is the lodestar, which requires  
28 multiplying "the number of hours reasonably expended" by "a reasonable

hourly rate for the person providing the services." *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 598 (9th Cir. 2006) (quoting *Hensley*, 461 U.S. at 433) (internal quotation marks omitted). The number of hours billed must be well documented and may not include: (1) non-compensable time, such as time spent on administrative tasks or secretarial work billed at paralegal rates, see *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989); (2) time resulting from "duplicative, unproductive, excessive, or otherwise unnecessary" work, *In re Sullivan*, 454 B.R. 1, 4 (D. Mass. 2011); accord 11 U.S.C. § 330(a)(4)(A); and (3) entries demonstrating that the applicant has failed to exercise prudent billing judgment, *Hensley*, 461 U.S. at 434, 437; *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 958-59 (9th Cir. 1991).

While the lodestar is the primary method for determining fees, it is neither the exclusive, nor mandatory, method for doing so. See *Puget Sound Plywood*, 924 F.2d at 960-61. Departure from the lodestar is appropriate where: (1) the fee application or supporting billing records are inadequate or insufficiently detailed, *id.* at 960-61; (2) the fee sought is disproportionate to the potential benefit to the estate, see *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860-61 (9th Cir. 2004); (3) the application of the lodestar would not yield a numerically precise fee award, see *Puget Sound Plywood*, 924 F.2d at 960; or (4) the professional has not exercised prudent billing judgment, see *Hensley*, 461 U.S. at 434, 437; *In re Parreira*, 464 B.R. 410, 417 (Bankr. E.D. Cal. 2012).

## **II. Reasons for Departure from the Lodestar Method**

Shein's records reveal three primary problems. First, there has been unnecessary duplication of effort. See 11 U.S.C. §

1 330(a)(4)(A)(i); *Hensley*, 461 U.S. at 434 (overstaffing). Shein had  
2 two attorneys working on this Chapter 13 case, Benjamin C. Shein  
3 ("Benjamin Shein") and Katy L. McCully. In some instances, both  
4 attorneys duplicated services by attending or preparing for the same  
5 hearing. For example, on April 11, 2013, the court held a scheduling  
6 conference on the Greens' motion for sanctions. Only Benjamin Shein  
7 appeared, but he and McCully each billed \$450 for the appearance. A  
8 similar instance of double billing occurred in preparation for the  
9 hearing on the motion for sanctions, in which Benjamin Shein and  
10 McCully each billed \$337.50.

11 A more subtle version of the problem appears in the entries for  
12 September 12, 2012. Shein billed \$337.50 for "Office conference with  
13 Ms. McCully and [the Greens] to (1) review credit report; (2) review  
14 client questionnaire and client documents; and (3) answer questions  
15 related to payment of debts and the bankruptcy process." The same  
16 day, McCully billed \$112.50 for "Review and organization of client  
17 documents and client questionnaire in order to draft petition and  
18 schedules." The use of two attorneys in a Chapter 13 case is not per  
19 se impermissible. But total fees should not increase appreciably by  
20 the use of more than one lawyer, unless the size or complexity of the  
21 case is such that one lawyer could not reasonably be expected to  
22 handle it. This is not such a case. And the court finds that the use  
23 of two lawyers has, in fact, resulted in unnecessary duplication of  
24 efforts and unnecessary fees.

25 Second, the applicant has not exercised prudent billing judgment.  
26 Several examples illustrate this point. The applicant billed  
27 \$1,227.50 for successfully prosecuting a routine motion to extend the  
28 automatic stay. The motion and supporting documents ran approximately

1 34 pages in length. But the motion was unopposed, and Shein should  
2 have anticipated the lack of opposition. Since the Chapter 13 plan  
3 was filed prior to the motion to extend the stay and proposed a 100%  
4 dividend to unsecured creditors, opposition was unlikely. Ordinarily,  
5 motions to extend the stay are routine and uncomplicated.

6 Another example is helpful. Shein sought sanctions against  
7 Guarantee Real Estate for violating the stay when it engaged in  
8 postpetition collection activity. The dispute concerned \$1,000  
9 actually withheld from Mr. Green's paycheck plus a threat of continued  
10 wage deductions. This threat of continued wage deduction is less  
11 serious than Shein perceived, given that the court would not dismiss a  
12 Chapter 13 for plan defaults arising from stay violations. But before  
13 the matter was resolved by settlement, Shein incurred fees of \$10,477  
14 for services relating to the dispute. Fees associated with the  
15 sanctions motion were excessive given the size of the dispute and  
16 potential consequences to the client.

17 In part, these fees were higher than necessary because Shein  
18 refused a professional courtesy and prepared for the initial hearing  
19 to a greater extent than was warranted. The sanctions motion was  
20 noticed for hearing on April 11, 2013. On April 3, 2013, counsel for  
21 Guarantee Real Estate emailed Benjamin Shein and McCully requesting a  
22 continuance because of a calendaring error he had made. Shein refused  
23 the professional courtesy. *See Ahanchian v. Xenon Pictures, Inc.*, 624  
24 F.3d 1253, 1263 (9th Cir. 2010) ("Where . . . there is no indication  
25 of bad faith, prejudice, or undue delay, attorneys should not oppose  
26 reasonable requests for extensions of time brought by their  
27 adversaries."). And then, Shein spent \$2,812.50 preparing for and  
28 attending the hearing, which resulted in an unnecessary expense to the

1 estate. 11 U.S.C. § 330(a)(4). The parties resolved the matter  
2 before the next hearing. But because Shein took an inflexible  
3 position regarding allowing the continuance, it prepared for an  
4 unnecessary hearing. Under the circumstances, it was certain that the  
5 court would not resolve the matter on the initial hearing date. See  
6 *United States v. Ayres*, 166 F.3d 991, 9996 (9th Cir. 1999)  
7 (discouraging contempt sanctions "on the papers" where issues are  
8 controverted); see also Fed. R. Bankr. P. 9014(d) (requiring testimony  
9 for "disputed material factual issues"); Fed. R. Civ. Proc. 60(b)  
10 (permitting relief from an order based on mistake, inadvertence, or  
11 excusable neglect), incorporated by Fed. R. Bankr. P. 9024. And even  
12 if the matter had proceeded as scheduled, fees of \$2,812.50 for  
13 preparing for and attending such a law and motion hearing is more than  
14 what is reasonably necessary. Preparation for and attendance at this  
15 one hearing accounts for 27% of the fees for the entire contested  
16 matter (\$2,812.50 of \$10,477.00).

17 In addition, fees expended working on Chapter 13 plans were  
18 excessive. The fees for this work were \$2,771.00. Debtors' original  
19 plan provided for 60 payments of \$4,235.00. It treated two secured  
20 claims, one inside and the other outside the plan. It provided a 100%  
21 dividend to unsecured creditors. The Greens filed a modified plan  
22 prior to confirmation that was identical to the original plan, except  
23 that it added a lease to the plan. The modified plan was confirmed  
24 without objection.

25 Third, secretarial work has been billed at paralegal rates. See  
26 *Missouri*, 491 U.S. at 288 n.10. By way of illustration, on October 3,  
27 2012, Anna B. Dusi, the paralegal, billed time for lodging an order  
28 granting the motion to extend the stay. She also entered time on May

1 10, 2013 for preparing a proof of service for "amended Schedules I and  
2 J for filing with the Court and serve [sic] on parties." The court  
3 notes the existence of at least 24 such entries, totaling  
4 approximately \$414.

5 Because of these problems, Shein has not sustained its burden  
6 that the lodestar provides a reliable method for computing a  
7 reasonable fee for debtor's counsel.

8 **III. An Alternative Approach to Establishing a Reasonable Fee for**  
9 **Services Rendered**

10 Unable to apply the lodestar method, the court adopts an approach  
11 that uses an across-the-board reduction as described in *In re Strand*,  
12 375 F.3d at 857. The court considers several factors in making this  
13 determination. The first factor is the size and complexity of the  
14 case. *In re Wheeler*, 439 B.R. 107, 111 (Bankr. E.D. Mich. 2010)  
15 (noting the complexity of the case as a proper factor for  
16 consideration in Chapter 13 compensation motions). The Greens' case  
17 presents a garden-variety Chapter 13 case. The stay violation was the  
18 only non-routine matter in the case.

19 Second, the court considers the stage of the case in which the  
20 application is filed. This application represents fees from the  
21 commencement of the case through plan confirmation and the claims  
22 review period.

23 Third, the court considers the level of acrimony between the  
24 parties in the case. With the exception of the skirmish with  
25 Guarantee Real Estate over the stay violation, the case was not  
26 acrimonious. The stay violation was resolved within two months.

27 Fourth, the court considers the prevailing fees for other Chapter  
28 13 cases. The Bankruptcy Court for the Eastern District of California



1 has already determined that \$4,000 for a nonbusiness Chapter 13 and  
2 \$6,000 for a business Chapter 13 are amounts that are presumptively  
3 reasonable. See LBR 2016-1(c)(1). The court also considers the opt-  
4 out fees in other Chapter 13 cases of similar size, complexity, and  
5 acrimony. Based on the court's experience with Chapter 13 cases, the  
6 fees requested well exceed the usual opt-out fees of Chapter 13  
7 practitioners in similar cases.

8 Fifth, to its credit, Shein has voluntarily reduced its fees 7.9  
9 hours in connection with the contested matter involving Guarantee Real  
10 Estate Services and .2 hours in connection with plan confirmation.

11 For the reasons discussed, the court will award Shein interim  
12 compensation of two-thirds of the compensation requested, which  
13 amounts to \$14,329.33, and all of the applicant's costs, which total  
14 \$1,099.76. These amounts cover services rendered and expenses  
15 incurred in the period from September 11, 2012, to May 13, 2013. To  
16 the extent that the application seeks fees exceeding such amount, the  
17 court finds that Shein has not carried its burden of proof that the  
18 fees are reasonable. Future fee applications in this case should not  
19 request compensation for preparing or confirming the Second Modified  
20 Chapter 13 Plan, July 3, 2013, ECF No. 108, or the Second Interim  
21 Application for Compensation, improperly designated First Interim  
22 Application for Compensation, July 3, 2013, ECF No. 97, which the  
23 court views as primarily benefitting Shein.

#### 24 CONCLUSION

25 The application will be approved in part and disapproved in part  
26 without prejudice. Fees of \$14,329.33 and costs of \$1,099.76 are  
27 awarded on an interim basis. The remaining fees requested are  
28 disallowed without prejudice. Prior to the close of the case, Shein

1 will make a final application for compensation, at which time the  
2 court may adjust the award. The court will issue an order consistent  
3 with the findings herein.

4 Dated: August 28, 2013 /S/

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Fredrick E. Clement  
United States Bankruptcy Judge