UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY
DATE: January 7, 2020
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 7, 2020 at 1:00 p.m.

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1. 19-27409-B-13 NIKOLAY/NATALIA AKIMOV — MOTION FOR RELIEF FROM AUTOMATIC STAY
HRH-1 Mark Shmorgon — 12-12-19 [13]

BMO HARRIS BANK N.A. VS.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion for relief from stay.

BMO Harris Bank N.A. ("Movant") seeks relief from the automatic stay with respect to assets identified as (1) 2019 Peterbilt 579-Series Tractor Truck, (2) 2020 Great Dane Dry Vans and (3) 2020 Great Dane Refrigerated Vans (collectively "Vehicles"). The moving party has provided the Declaration of Kimberly Mudt to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Mudt Declaration states that there are pre-petition payments in default. With regard to the 2019 Peterbilt 579-Series Tractor Truck, the arrears amount to $10,705.52, consisting of 3 payments of $3,263.24 each, 5 late charges of $163.16 each and 4 fees in the amount of $25.00 each. With regard to the 2020 Great Dane Dry Vans, the arrears amount to $1,600.29, consisting of 1 payment of $1,500.28, 1 late charge of $75.01 and a fee of $25.00. With regard to the 2020 Great Dane Refrigerated Vans, the arrears amount to $9,209.42, consisting of 3 payments of $2,854.50, 4 late charges of $142.73 each and 3 fees of $25.00 each.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by these assets is determined to be $375,972.48 and the value of the Vehicle is determined to be $347,500.00, as stated the motion.

Debtor's plan filed November 27, 2019, provides for the surrender of the Vehicles in Sections 3.09 and 7.01. Dkt. 2.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments totaling $7,618.02. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or

estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). Moreover, the Debtors have indicated their intent to surrender their Vehicle in the plan filed November 27, 2019.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicles, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

2. 19-22312-B-13 AMELIA KROUSE
Mark W. Briden

ORDER TO SHOW CAUSE
12-6-19 [59]

DEBTOR DISMISSED: 12/06/2019

Final Ruling

The case having been dismissed on December 6, 2019, the order to show cause is discharged as moot.

The order to show case is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. 19-27318-B-13 JIMMY DAVID MOTION TO EXTEND AUTOMATIC STAY
KLG-1 Arete Kostopoulos 12-3-19 [11]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to deny without prejudice the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on November 12, 2019, due to failure to timely file documents (case no. 19-26610, dkt. 16). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor fails to explain with particularity the relief sought. The Debtor does not state whether he is entitled to an extension of the automatic stay pursuant to either §§ 362(c)(3)(C)(i)(II)(cc) or (III). It is not the court's responsibility to guess or select the course of action the Debtor should take.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

Moreover, even if the Debtor explained the relief sought with particularity and met the clear and convincing evidence standard for extending the automatic stay, the relief requested is no longer available. "[T]he court may extend the stay . . . after notice and **a hearing completed before the expiration of the 30-day period**[.] 11 U.S.C. § 362(c)(3)(B) (emphasis added). That did not - and now cannot - occur here.

This case was filed on November 25, 2019. Dkt. 1. Although the Debtor filed the motion to extend the automatic stay on December 3, 2019, dkt. 11, the Debtor set the

hearing on the motion on January 7, 2020, and, thus, set the hearing on a date more than 30 days after the petition date.[1] It is therefore not possible to complete a hearing on the Debtor's motion "before the expiration of the 30-day period" as § 362(c)(3)(B) requires.

The motion is denied without prejudice and the automatic stay is not extended. Further, under *Reswick* which this court follows, the automatic stay terminated in its entirety as to all parties and for all purposes 30 days after the November 25, 2019, petition date.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

[1] Inasmuch as the motion was filed on December 3, 2019, the Debtor could have requested to set a hearing on the court's December 17, 2019, calendar, *see* Local Bankr. R. 9014-1(f)(2), or, perhaps, set a hearing on the court's December 10, 2019, calendar by an order shortening time. *See* Local Bankr. R. 9014-1(f)(3).

4. 19-23222-B-13 DAVID CARTER
MS-2 Mark Shmorgon

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF CHERN LAW LLP FOR MARK SHMORGON, DEBTORS ATTORNEY(S)
10-1-19 [39]

Final Ruling

Introduction

The court has before it three separate *Application(s) for Attorney's Fees* filed in the following Chapter 13 cases: *In re Gary Vitalie*, 19-23098; *In re David Carter*, 19-23222; and *In re Lucia Salas*, 19-23827. All three fee applications are filed by Attorney Mark Shmorgon ("Attorney"). The fee applications are identical in substance but differ in amounts requested. The fee applications also originate from the same objection by the Chapter 13 Trustee ("Trustee") to confirmation of each debtor's plan at the inception of their respective bankruptcy case.

No party in interest has objected to or otherwise opposed any of the fee applications. Nevertheless, "the court has an independent duty to review all requests for compensation and to determine their reasonableness." *In re Beals*, 2007 WL 4287386, *1 (Bankr. E.D. Cal. 2007).

The court has reviewed and considered all three fee applications and their supporting declarations and exhibits. The court has also heard and considered Attorney's arguments and statements regarding the fee applications. And the court takes judicial notice of the dockets in each Chapter 13 case referenced above.

Because the fee applications are not opposed, oral argument will not assist in their resolution. *See* Local Bankr. R. 9014-1(h). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. And for the reasons explained below, each fee application will be granted in part and denied in part.

Background

In each Chapter 13 case identified above, Attorney elected to receive the $4,000.00 no-look fee permitted by Local Bankruptcy Rule ("Local Rule") 2016-1(c) as compensation services provided to each debtor.

Each debtor paid an Illinois firm identified as Allen Chern, LLP ("Chern Law"), defined and discussed in greater detail below, a certain amount of the no-look fee pre-petition for pre-petition services Chern Law purportedly provided to each debtor. The debtor in *Vitalie* paid Chern Law $1,725.00, the debtor in *Carter* paid Chern Law $2,250.00, and the debtor in *Salas* paid Chern Law $2,250.00.

The Chapter 13 plan filed in each case proposed to pay Attorney the balance of the $4,000.00 no-look fee. The *Vitalie* plan proposed to pay Attorney $2,275.00; the *Carter* plan proposed to pay Attorney $1,750.00; and the *Salas* plan proposed to pay Attorney $1,750.00.

The Trustee objected to confirmation of each debtor's Chapter 13 plan to the extent the balance of the no-look fee was to be paid through the debtor's respective plans. The Trustee asserted that it was less than clear who the attorney of record in each case was and also expressed concerns about irregularities in the employment and compensation process. More precisely, the Trustee asserted that each debtor appeared to be represented by different pre-petition and post-petition attorneys and/or law firms in violation of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), the Local Rules, and the *Rights and Responsibilities of Chapter 13 Debtors* which do not permit payment of the no-look Chapter 13 fee to one attorney or firm for pre-petition work with the balance of the same no-look fee paid to another attorney or firm for post-petition work.

The court resolved the Trustee's objection under the Local Rules rendering it unnecessary to reach Trustee's fee-sharing arguments or address the extent and nature of the relationship between Attorney and Chern Law. The court explained that, in addition to the Bankruptcy Code and the Bankruptcy Rules, compensation of attorneys representing Chapter 13 debtors in the Eastern District of California is governed by Local Rule 2016-1.

Local Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Rule 2016-1(c).]" (Emphasis added). Local Rule 2016-1(c), in turn, provides for a $4,000.00 no-look fee in non-business Chapter 13 cases, such as the three cases identified above. Payment of the $4,000.00 no-look fee (i) requires the attorney to comply with a few conditions listed in Local Rule 2016-1(c);[1] and, as noted, (ii) is premised on the absence of an objection. *See* Local Rule 2016-1(a).

Since Attorney did not opt-out of payment of the local rule no-look fee, the Trustee's objections triggered Local Rule 2016-1(a) which states: "When there is an objection [to the no-look fee under Local Rule 2016-1(c)]. . ., compensation *shall* be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added). Thus, the Trustee's objections overcame the presumption under the local rules that the no-look fee is fair and reasonable compensation for all pre- and post-petition Chapter 13 services and required Attorney to file a § 330 fee application.[2] *See* Local Rule 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). Stated another way, the objections placed the burden of demonstrating reasonableness of the Chapter 13 fees requested in each case identified above where it lies under applicable law, *i.e.*, with Attorney as the fee claimant. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted).

Consistent with the court's analysis, Attorney filed an initial set of fee applications in the three cases identified above. The initial fee applications were denied without prejudice due to defective notice under Bankruptcy Rule 2002(a)(6). Attorney re-filed the fee applications in each case. Proper notice of the fees applications was given, and the re-filed fee applications are now before the court.

The Fee Applications

Gary Vitalie [19-23098]

This Chapter 13 case was filed on May 15, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of February 28, 2019 through October 1, 2019[,]. . . for . . . 15.6 hours of Attorney

[1]Those conditions include limiting fees to $4,000.00 in a nonbusiness case, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Rule 2016-1(c)(1)-(4).

[2]As the court explained, an objection to the no-look fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) an exemption claimed on Schedule C is deemed allowed unless somebody objects to it. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, bears the burden of demonstrating the exemption should be allowed. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (9th Cir. BAP 2016); *Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a).

labor[.]" Case No. 19-23098, Docket 49 at 2:1-7. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,162.00; however, he is willing to discount his fees by $2,162.00 to $4,000.00 to honor his initial contract with debtor Gary Vitalie. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 51 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 52.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Amended Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $1,725 in pre-petition attorney's fees." *Id.*, Docket 18; SOFA #16.

David Carter [19-23222]

This case was filed on May 21, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of April 23, 2019 through October 1, 2019[,]. . . for . . . 16.5 hours of Attorney labor[.]" Case No. 19-23222, Docket 39 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,517.50; however, he is willing to discount his fees by $2,517.50 to $4,000.00 to honor his initial contract with debtor David Carter. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 41 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 42.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Lucia Salas [19-23827]

This case was filed on June 17, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of May 14, 2019 through October 1, 2019[,]. . . for . . . 14.2 hours of Attorney labor[.]" Case No. 19-23827, Docket 37 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $5,609.00; however, he is willing to discount his fees by $1,609.00 to $4,000.00 to honor his initial contract with debtor Lucia Salas. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 39 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for debtor Lucia Salas. *Id.*, Docket 40.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Chern Law and Attorney's Relationship to Chern Law

Chern Law is an Illinois-based firm. According to a Partnership Agreement between

Attorney and Chern Law dated January 21, 2016,[3] Chern Law is an Illinois limited liability partnership registered to do business in California as Allen Chern LLP.[4] It maintains offices at 79 W. Monroe Street, Fifth Floor, Chicago, IL 60603.

In addition to operating and filing bankruptcy cases under the name of *The Law Offices of Mark Shmorgon*, Attorney holds himself out as a partner of Chern Law. In each case, Attorney previously submitted a declaration from Ryan Michael Galloway, Chern Law's Associate General Counsel and Vice President of Legal Delivery, in which Mr. Galloway stated that Attorney is an equity partner of Chern Law. The Agreement, however, states that Attorney is a non-owner, non-equity partner with no control over, and no voting rights in, the purported Chern Law partnership. Agr. ¶ 24. In any event, the court assumes that Attorney is a Chern Law partner for purposes of the fee applications.[5]

But even assuming Attorney is a Chern Law partner, the Agreement raises more questions than it answers. Answers to those questions are not found in the record before the court. And the existence of those unanswered questions means that Attorney has not carried his burden of demonstrating that the fees requested, at least in part, in each of the fee applications filed in the cases identified above are reasonable.

Discussion

According to the Agreement, Chern Law "is engaged in the practice of representing consumers in a variety of debt relief services including chapter 7 and chapter 13 bankruptcy protection[.]" Agr., ¶ 1. Chern Law assesses clients' financial circumstances and advises clients with regard to various debt relief options, including bankruptcy. *Id.*

Chern Law also serves as "the initial point of contact for all new [c]lient calls[.]" *Id.*, ¶ 2. It "(i) schedule[s] and confirm[s] retention appointments, (ii) prepare[s] intake forms, disclaimers and agreements for [c]lients to sign at a retention meeting, (iii) field[s] all [c]lient calls creditor/opposing counsel calls, (iv) collect[s]/process[es] all [c]lient payments[.]" *Id.* For the most part, these services are provided by a staff partner, attorney, legal assistant, or other legal professional. *Id.* The client is then referred to a local "partner" attorney, such as Attorney in this case, who takes over the remainder of the bankruptcy process including, but not limited to, consulting with the client, filing the Chapter 13 petition, appearing in court, and providing other required post-petition services. *Id.*, ¶ 3.

Chern Law quotes clients the local no-look fee permitted in Chapter 13 cases. *Id.*, ¶ 4(A)(2). It then charges, collects, and retains a portion of the no-look fee for pre-

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[3]Attorney was ordered to submit certain documents for in camera review. The Agreement is one of the documents submitted. On its own motion, the court filed the Agreement under seal. The court will cite only to those portions of the Agreement necessary for this decision.

[4]Following the departures of Jason Allen and Kevin Chern, Chern Law changed its name to Deighan Law, LLP, for compliance reasons. Chern Law is apparently the registered d/b/a in California of Deighan Law, LLP. Chern Law is used for purposes of consistency throughout this decision.

[5]No party, the Trustee or the United States trustee in particular, has submitted evidence to the contrary or otherwise argued the Agreement is invalid. The court is also aware that other courts have found that attorneys associated with Chern Law and similar firms are partners of, or at a minimum sufficiently associated with, the out-of-state firm for compensation purposes. See In re Blevins, 2019 WL 575664, *2 (Bankr. N.D. Tex. 2019); In re Todarello, 2016 WL 4508188, *3 (Bankr. N.D. Ohio 2016); see also In re Williams, 2018 WL 832894, *21-24 (Bankr. W.D. Va. 2018), aff'd in part and rev'd in part on other grounds, Allen v. Fitzgerald, Trustee Region Four, 2019 WL 6742996 (W.D. Va. 2019).

petition services. *Id.* The remaining portion of the no-look fee distributed by the Chapter 13 trustee, presumably under a confirmed plan as was proposed in the three case identified above, is then allocated exclusively to the local partner attorney. *Id.*

But what happens if, as is the case here, there is an objection to the payment of the balance of the no-look fee through a confirmed plan? As explained above, under the local rules, that objection means the no-look fee is no longer presumed to be fair and reasonable compensation in the Chapter 13 case and is therefore no longer available. It also means the debtor's attorney must file a separate fee application under § 330 and with it submit time, task, rate, and responsible individual evidence. Attorney submitted no such evidence here, at least with regard to pre-petition services purportedly provided by the firm of which he claims to be a partner.

In each Chapter 13 case identified above, Attorney states that he provided certain pre-petition services and he seeks compensation for those services. There are, however, three problems with Attorney's representation and request.

First, Attorney's request for compensation that includes compensation for pre-petition service he apparently provided each debtor contradicts the fee disclosure documents filed with or shortly after the petition in each case. The fee disclosure documents all state that Chern Law, not Attorney, provided each debtor with pre-petition services and collected a fee for those pre-petition services. Attorney has therefore double-billed each debtor for pre-petition services. Attorney is not entitled to be compensated for pre-petition services to the extent the debtor has already paid Chern Law for those services.

Second, according to the Agreement, Chern Law, and only Chern Law, may charge, collect, and retain fees for pre-petition services. In fact, the Agreement expressly prohibits Attorney from collecting and retaining pre-petition fees (and apparently the post-petition fee as well despite it being allocated to the local partner). Agr., ¶ (3)(F) ("Partner shall not collect payments directly from a [c]lient in advance of filing a Chapter 7 case or not at all in a Chapter 13 case, except that Partner shall be permitted to collect initial retainer fees in cash, but only at the face-to-face consultation, and in such case Partner agrees to forward all such retainers to Firm headquarters no less than once per week via Federal Express, each such payment being clearly labeled with the date and amount of the payment and [c]lient name and I.D.").

Third, and most important, there is no time, task, rate, and responsible person evidence to support the pre-petition services that Chern Law purportedly provided each debtor and for which it charged and collected fees from each debtor. All the court is able to discern based on the record before it, which is limited to the terms of the Agreement, is that someone at Chern Law may have provided each debtor with some unidentified and unspecified service(s) pre-petition. That by no means permits any sort of reasonableness determination as to any pre-petition services purportedly provided.

That Chern Law may have provided some services to each debtor pre-petition which are not identified or specified raises yet another concern. Is Chern Law engaged in the unauthorized practice of law in California?

State law is fundamental in bankruptcy cases. For example, bankruptcy cases often involve significant issues of state law such as exemptions, liens, and property rights. State substantive law applies inside bankruptcy just as it does outside bankruptcy. *Raleigh v. Illinois Dept. of Rev.*, 530 U.S. 15, 20 (2000) (citing *Butner v. United States*, 440 U. S. 48, 55 (1979)). So the absence of evidence of who at Chern Law did what pre-petition for each debtor raises the specter that, from Illinois, an Illinois attorney not admitted in California, or worse yet non-lawyers in Illinois, provided legal services and advice to California residents about bankruptcy cases filed in

California.[6] That may constitute the unauthorized practice of law in California. *See* Cal. Bus. Prof. Code § 6125; Local Dist. Ct. R. 180 (applicable by Local Bankr. R. 1001-1(c)); *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 128-129 (1998), superceded by statute on other grounds.[7] And, of course, the unauthorized practice of law could result in cancellation and/or suspension of the Agreement and/or a denial of fees in whole and/or part. *See Birbrower*, 17 Cal. 4th at 135-36; *In re Sundquist*, 576 B.R. 858, 876-77 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019) (§ 329(a) provides bankruptcy court with authority to cancel or limit attorney's fee agreement with client).

In short, even assuming Attorney is a legitimate partner of Chern Law, Attorney has not met his burden of demonstrating the reasonableness of the pre-petition fees which apparently have already been charged, collected, and retained Chern Law. Therefore, in the *Vitalie*, *Carter*, and *Salas* cases identified above, all attorney's fees for pre-petition services whether provided by Chern Law or Attorney as a purported partner of Chern Law are denied, ordered disgorged, and shall be returned to each respective debtor by January 21, 2020. Proof of return shall be filed no later than January 24, 2020.

As to the post-petition fees Attorney requests, in general they appear reasonable. However, in two respects they are not. Limitation and reduction is therefore warranted.

First, Attorney's hourly rate of $395.00 is not reasonable. The court takes judicial notice that $395.00 per hour approaches the upper end of hourly rates charged by larger state-wide and regional law firms in the Sacramento area. Attorney is a sole practitioner. And even considering Attorney's association with Chern Law, there is no explanation (or evidence) as to how that association puts Attorney at the upper end of the Eastern District of California fee spectrum with regard to cases filed in this court. A reasonable rate charged by sole-practitioner consumer attorney's in the Eastern District of California is $275.00 per hour. Therefore, for purposes of each fee application identified above, Attorney's hourly rate is reduced from $395.00 per hour to $275.00 per hour.

Second, with regard to the total post-petition hours spent in each case, several entries are not reasonable. These are addressed below.

An attorney employed by the debtor in a Chapter 13 case may be entitled to "reasonable compensation . . . for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in [§ 330]." 11 U.S.C. § 330(a)(4)(B). The fee applicant bears the burden of proof. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). In fixing the amount of a reasonable fee, the court considers all relevant factors. *See* 11 U.S.C. § 330(a)(3)(A)-(F).

The customary method in the Ninth Circuit for ascertaining a reasonable fee in a bankruptcy case is the lodestar method, which is calculated by 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); *The Margulies Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (9th Cir. BAP 2011). However, the lodestar method is not the exclusive method or mandatory and a court may depart from it when appropriate. *Eliapo*, 468 F.3d at 598-99; *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound*

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[6]The court recognizes that the Agreement provides that state-specific issues are referred to a local "partner." Agr., ¶ 2. As noted, however, there is no evidence that occurred in this case because there is no evidence of the pre-petition services that Chern Law purportedly provided each debtor.

[7]To the extent Attorney is a partner of Chern Law participating in the same bankruptcy case, that may also make Attorney potentially liable, ethically at a minimum, for facilitating the unauthorized practice of law.

Plywood), 924 F.2d 955, 960-61 (9th Cir. 1991); *Placide*, 459 B.R. at 73; *In re South Dairy Farm*, 2014 WL 271635, *2 (Bankr. E.D. Cal. 2014).

Departure from the lodestar method is appropriate in several circumstances, such as when: (1) the fee application or supporting billing records are inadequate, *Unsecured Creditors' Committee*, 924 F.2d at 960-61; (2) the fee sought is disproportionate to the potential benefit to the estate, *Leichty v. Neary (In re Strand)*, 375 F.3d 854 (9th Cir. 2004); (3) application of the lodestar method would not yield a numerically precise fee award, *Unsecured Creditors' Committee*, 924 F.2d at 960; or (4) the professional has not exercised prudent billing judgment. *Hensley*, 461 U.S. at 434. When departing from the lodestar method, the court ultimately may "award compensation that is less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2).

The three cases identified above implicate the inadequate fee application and billing records and the prudent billing judgment prongs of the lodestar reduction analysis.

Gary Vitalie [19-23098]

In this case, Attorney states that he spent a total of 7.6 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 31. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 7.6 hours to 5.6 hours. At $275.00 per hour that equals $1,540.00 which is allowed for Attorney's post-petition services.

David Carter [19-23222]

In this case, Attorney states that he spent a total of 6.5 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 23. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 6.5 hours to 4.5 hours. At $275.00 per hour that equals $1,237.50 which is allowed for Attorney's post-petition services.

Lucia Salas [19-23827]

In this case, Attorney states that he spent a total of 4.2 hours on post-petition matters.

Attorney also states that on July 31, 2019, he spent .5 hours reviewing the Trustee's objection to confirmation. The Trustee's objection is at Docket 15. It is three pages total, two pages of text. The court does not believe that it took Attorney thirty minutes to read the document. These fees are therefore also disallowed as not

reasonable.

Attorney states that on August 13, 2019, it took him a total of .5 hours to file a response to an objection to confirmation. One half of an hour to file a response is not reasonable. Fees for these services will therefore be disallowed.

These adjustments reduce Attorney's total post-petition time from 4.2 hours to 3.2 hours. At $275.00 per hour that equals $880.00 which is allowed for Attorney's post-petition services.

Conclusion

For all the foregoing reasons, the fee applications in each of the Chapter 13 cases identified hereinabove are granted in part and denied in part as follows:

(1) **DENIED WITHOUT PREJUDICE** as to all pre-petition fees collected, charged, and retained by Chern Law. Those fees are ordered disgorged and shall be returned to the respective debtors by January 21, 2020, with proof of return also filed by January 24, 2020.

(2) **GRANTED** as to reduced post-petition fees as follows: (1) $1,540.00 in the *Vitalie* case; (2) $1,237.50 in the *Carter* case; and $880.00 in the *Salas* case.

Further, in order to permit the court to monitor the services that Chern Law provides California residents who file Chapter 13 cases in California and for which it charges, collects, and retains fees, in all Chapter 13 cases that Attorney files in his capacity as a partner of Chern Law and which are assigned to Department B, Attorney's election of the no-look fee under Local Rule 2016-1 is suspended for a period of one-hundred eighty (180) days from and after January 8, 2020. In all such cases, Attorney shall file and serve fee applications. And to the extent Chern Law requests compensation for pre-petition services in fee applications filed in those cases, the fee applications shall include detailed and verified time, task, and responsible person evidence.

The court will enter a minute order.

5. 19-23827-B-13 LUCIA SALAS
MS-2 Mark Shmorgon

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF CHERN LAW LLP FOR MARK SHMORGON, DEBTORS ATTORNEY(S)
10-1-19 [37]

Final Ruling

Introduction

The court has before it three separate *Application(s) for Attorney's Fees* filed in the following Chapter 13 cases: *In re Gary Vitalie*, 19-23098; *In re David Carter*, 19-23222; and *In re Lucia Salas*, 19-23827. All three fee applications are filed by Attorney Mark Shmorgon ("Attorney"). The fee applications are identical in substance but differ in amounts requested. The fee applications also originate from the same objection by the Chapter 13 Trustee ("Trustee") to confirmation of each debtor's plan at the inception of their respective bankruptcy case.

No party in interest has objected to or otherwise opposed any of the fee applications. Nevertheless, "the court has an independent duty to review all requests for compensation and to determine their reasonableness." *In re Beals*, 2007 WL 4287386, *1 (Bankr. E.D. Cal. 2007).

The court has reviewed and considered all three fee applications and their supporting declarations and exhibits. The court has also heard and considered Attorney's arguments and statements regarding the fee applications. And the court takes judicial notice of the dockets in each Chapter 13 case referenced above.

Because the fee applications are not opposed, oral argument will not assist in their resolution. *See* Local Bankr. R. 9014-1(h). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. And for the reasons explained below, each fee application will be granted in part and denied in part.

Background

In each Chapter 13 case identified above, Attorney elected to receive the $4,000.00 no-look fee permitted by Local Bankruptcy Rule ("Local Rule") 2016-1(c) as compensation services provided to each debtor.

Each debtor paid an Illinois firm identified as Allen Chern, LLP ("Chern Law"), defined and discussed in greater detail below, a certain amount of the no-look fee pre-petition for pre-petition services Chern Law purportedly provided to each debtor. The debtor in *Vitalie* paid Chern Law $1,725.00, the debtor in *Carter* paid Chern Law $2,250.00, and the debtor in *Salas* paid Chern Law $2,250.00.

The Chapter 13 plan filed in each case proposed to pay Attorney the balance of the $4,000.00 no-look fee. The *Vitalie* plan proposed to pay Attorney $2,275.00; the *Carter* plan proposed to pay Attorney $1,750.00; and the *Salas* plan proposed to pay Attorney $1,750.00.

The Trustee objected to confirmation of each debtor's Chapter 13 plan to the extent the balance of the no-look fee was to be paid through the debtor's respective plans. The Trustee asserted that it was less than clear who the attorney of record in each case was and also expressed concerns about irregularities in the employment and compensation process. More precisely, the Trustee asserted that each debtor appeared to be represented by different pre-petition and post-petition attorneys and/or law firms in violation of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), the Local Rules, and the *Rights and Responsibilities of Chapter 13 Debtors* which do not permit payment of the no-look Chapter 13 fee to one attorney or firm for pre-petition work with the balance of the same no-look fee paid to another attorney or firm for post-petition work.

The court resolved the Trustee's objection under the Local Rules rendering it unnecessary to reach Trustee's fee-sharing arguments or address the extent and nature of the relationship between Attorney and Chern Law. The court explained that, in addition to the Bankruptcy Code and the Bankruptcy Rules, compensation of attorneys representing Chapter 13 debtors in the Eastern District of California is governed by Local Rule 2016-1.

Local Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Rule 2016-1(c).]" (Emphasis added). Local Rule 2016-1(c), in turn, provides for a $4,000.00 no-look fee in non-business Chapter 13 cases, such as the three cases identified above. Payment of the $4,000.00 no-look fee (i) requires the attorney to comply with a few conditions listed in Local Rule 2016-1(c);[1] and, as noted, (ii) is premised on the absence of an objection. *See* Local Rule 2016-1(a).

Since Attorney did not opt-out of payment of the local rule no-look fee, the Trustee's objections triggered Local Rule 2016-1(a) which states: "When there is an objection [to the no-look fee under Local Rule 2016-1(c)]. . ., compensation *shall* be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added). Thus, the Trustee's objections overcame the presumption under the local rules that the no-look fee is fair and reasonable compensation for all pre- and post-petition Chapter 13 services and required Attorney to file a § 330 fee application.[2] *See* Local Rule 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). Stated another way, the objections placed the burden of demonstrating reasonableness of the Chapter 13 fees requested in each case identified above where it lies under applicable law, *i.e.*, with Attorney as the fee claimant. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted).

Consistent with the court's analysis, Attorney filed an initial set of fee applications in the three cases identified above. The initial fee applications were denied without prejudice due to defective notice under Bankruptcy Rule 2002(a)(6). Attorney re-filed the fee applications in each case. Proper notice of the fees applications was given, and the re-filed fee applications are now before the court.

The Fee Applications

Gary Vitalie [19-23098]

This Chapter 13 case was filed on May 15, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of February 28, 2019 through October 1, 2019[,]. . . for . . . 15.6 hours of Attorney

[1]Those conditions include limiting fees to $4,000.00 in a nonbusiness case, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Rule 2016-1(c)(1)-(4).

[2]As the court explained, an objection to the no-look fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) an exemption claimed on Schedule C is deemed allowed unless somebody objects to it. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, bears the burden of demonstrating the exemption should be allowed. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (9th Cir. BAP 2016); *Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a).

labor[.]" Case No. 19-23098, Docket 49 at 2:1-7. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,162.00; however, he is willing to discount his fees by $2,162.00 to $4,000.00 to honor his initial contract with debtor Gary Vitalie. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 51 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 52.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Amended Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $1,725 in pre-petition attorney's fees." *Id.*, Docket 18; SOFA #16.

David Carter [19-23222]

This case was filed on May 21, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of April 23, 2019 through October 1, 2019[,]. . . for . . . 16.5 hours of Attorney labor[.]" Case No. 19-23222, Docket 39 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,517.50; however, he is willing to discount his fees by $2,517.50 to $4,000.00 to honor his initial contract with debtor David Carter. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 41 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 42.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Lucia Salas [19-23827]

This case was filed on June 17, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of May 14, 2019 through October 1, 2019[,]. . . for . . . 14.2 hours of Attorney labor[.]" Case No. 19-23827, Docket 37 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $5,609.00; however, he is willing to discount his fees by $1,609.00 to $4,000.00 to honor his initial contract with debtor Lucia Salas. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 39 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for debtor Lucia Salas. *Id.*, Docket 40.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Chern Law and Attorney's Relationship to Chern Law

Chern Law is an Illinois-based firm. According to a Partnership Agreement between

Attorney and Chern Law dated January 21, 2016,[3] Chern Law is an Illinois limited liability partnership registered to do business in California as Allen Chern LLP.[4] It maintains offices at 79 W. Monroe Street, Fifth Floor, Chicago, IL 60603.

In addition to operating and filing bankruptcy cases under the name of *The Law Offices of Mark Shmorgon*, Attorney holds himself out as a partner of Chern Law. In each case, Attorney previously submitted a declaration from Ryan Michael Galloway, Chern Law's Associate General Counsel and Vice President of Legal Delivery, in which Mr. Galloway stated that Attorney is an equity partner of Chern Law. The Agreement, however, states that Attorney is a non-owner, non-equity partner with no control over, and no voting rights in, the purported Chern Law partnership. Agr. ¶ 24. In any event, the court assumes that Attorney is a Chern Law partner for purposes of the fee applications.[5]

But even assuming Attorney is a Chern Law partner, the Agreement raises more questions than it answers. Answers to those questions are not found in the record before the court. And the existence of those unanswered questions means that Attorney has not carried his burden of demonstrating that the fees requested, at least in part, in each of the fee applications filed in the cases identified above are reasonable.

Discussion

According to the Agreement, Chern Law "is engaged in the practice of representing consumers in a variety of debt relief services including chapter 7 and chapter 13 bankruptcy protection[.]" Agr., ¶ 1. Chern Law assesses clients' financial circumstances and advises clients with regard to various debt relief options, including bankruptcy. *Id.*

Chern Law also serves as "the initial point of contact for all new [c]lient calls[.]" *Id.*, ¶ 2. It "(i) schedule[s] and confirm[s] retention appointments, (ii) prepare[s] intake forms, disclaimers and agreements for [c]lients to sign at a retention meeting, (iii) field[s] all [c]lient calls creditor/opposing counsel calls, (iv) collect[s]/process[es] all [c]lient payments[.]" *Id.* For the most part, these services are provided by a staff partner, attorney, legal assistant, or other legal professional. *Id.* The client is then referred to a local "partner" attorney, such as Attorney in this case, who takes over the remainder of the bankruptcy process including, but not limited to, consulting with the client, filing the Chapter 13 petition, appearing in court, and providing other required post-petition services. *Id.*, ¶ 3.

Chern Law quotes clients the local no-look fee permitted in Chapter 13 cases. *Id.*, ¶ 4(A)(2). It then charges, collects, and retains a portion of the no-look fee for pre-

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[3]Attorney was ordered to submit certain documents for in camera review. The Agreement is one of the documents submitted. On its own motion, the court filed the Agreement under seal. The court will cite only to those portions of the Agreement necessary for this decision.

[4]Following the departures of Jason Allen and Kevin Chern, Chern Law changed its name to Deighan Law, LLP, for compliance reasons. Chern Law is apparently the registered d/b/a in California of Deighan Law, LLP. Chern Law is used for purposes of consistency throughout this decision.

[5]No party, the Trustee or the United States trustee in particular, has submitted evidence to the contrary or otherwise argued the Agreement is invalid. The court is also aware that other courts have found that attorneys associated with Chern Law and similar firms are partners of, or at a minimum sufficiently associated with, the out-of-state firm for compensation purposes. *See In re Blevins*, 2019 WL 575664, *2 (Bankr. N.D. Tex. 2019); *In re Todarello*, 2016 WL 4508188, *3 (Bankr. N.D. Ohio 2016); *see also In re Williams*, 2018 WL 832894, *21-24 (Bankr. W.D. Va. 2018), aff'd in part and rev'd in part on other grounds, *Allen v. Fitzgerald, Trustee Region Four*, 2019 WL 6742996 (W.D. Va. 2019).

petition services. *Id.* The remaining portion of the no-look fee distributed by the Chapter 13 trustee, presumably under a confirmed plan as was proposed in the three case identified above, is then allocated exclusively to the local partner attorney. *Id.*

But what happens if, as is the case here, there is an objection to the payment of the balance of the no-look fee through a confirmed plan? As explained above, under the local rules, that objection means the no-look fee is no longer presumed to be fair and reasonable compensation in the Chapter 13 case and is therefore no longer available. It also means the debtor's attorney must file a separate fee application under § 330 and with it submit time, task, rate, and responsible individual evidence. Attorney submitted no such evidence here, at least with regard to pre-petition services purportedly provided by the firm of which he claims to be a partner.

In each Chapter 13 case identified above, Attorney states that he provided certain pre-petition services and he seeks compensation for those services. There are, however, three problems with Attorney's representation and request.

First, Attorney's request for compensation that includes compensation for pre-petition service he apparently provided each debtor contradicts the fee disclosure documents filed with or shortly after the petition in each case. The fee disclosure documents all state that Chern Law, not Attorney, provided each debtor with pre-petition services and collected a fee for those pre-petition services. Attorney has therefore double-billed each debtor for pre-petition services. Attorney is not entitled to be compensated for pre-petition services to the extent the debtor has already paid Chern Law for those services.

Second, according to the Agreement, Chern Law, and only Chern Law, may charge, collect, and retain fees for pre-petition services. In fact, the Agreement expressly prohibits Attorney from collecting and retaining pre-petition fees (and apparently the post-petition fee as well despite it being allocated to the local partner). Agr., ¶ (3)(F) ("Partner shall not collect payments directly from a [c]lient in advance of filing a Chapter 7 case or not at all in a Chapter 13 case, except that Partner shall be permitted to collect initial retainer fees in cash, but only at the face-to-face consultation, and in such case Partner agrees to forward all such retainers to Firm headquarters no less than once per week via Federal Express, each such payment being clearly labeled with the date and amount of the payment and [c]lient name and I.D.").

Third, and most important, there is no time, task, rate, and responsible person evidence to support the pre-petition services that Chern Law purportedly provided each debtor and for which it charged and collected fees from each debtor. All the court is able to discern based on the record before it, which is limited to the terms of the Agreement, is that someone at Chern Law may have provided each debtor with some unidentified and unspecified service(s) pre-petition. That by no means permits any sort of reasonableness determination as to any pre-petition services purportedly provided.

That Chern Law may have provided some services to each debtor pre-petition which are not identified or specified raises yet another concern. Is Chern Law engaged in the unauthorized practice of law in California?

State law is fundamental in bankruptcy cases. For example, bankruptcy cases often involve significant issues of state law such as exemptions, liens, and property rights. State substantive law applies inside bankruptcy just as it does outside bankruptcy. *Raleigh v. Illinois Dept. of Rev.*, 530 U.S. 15, 20 (2000) (citing *Butner v. United States*, 440 U. S. 48, 55 (1979)). So the absence of evidence of who at Chern Law did what pre-petition for each debtor raises the specter that, from Illinois, an Illinois attorney not admitted in California, or worse yet non-lawyers in Illinois, provided legal services and advice to California residents about bankruptcy cases filed in

California.[6] That may constitute the unauthorized practice of law in California. *See* Cal. Bus. Prof. Code § 6125; Local Dist. Ct. R. 180 (applicable by Local Bankr. R. 1001-1(c)); *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 128-129 (1998), superceded by statute on other grounds.[7] And, of course, the unauthorized practice of law could result in cancellation and/or suspension of the Agreement and/or a denial of fees in whole and/or part. *See Birbrower*, 17 Cal. 4th at 135-36; *In re Sundquist*, 576 B.R. 858, 876-77 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019) (§ 329(a) provides bankruptcy court with authority to cancel or limit attorney's fee agreement with client).

In short, even assuming Attorney is a legitimate partner of Chern Law, Attorney has not met his burden of demonstrating the reasonableness of the pre-petition fees which apparently have already been charged, collected, and retained Chern Law. Therefore, in the *Vitalie*, *Carter*, and *Salas* cases identified above, all attorney's fees for pre-petition services whether provided by Chern Law or Attorney as a purported partner of Chern Law are denied, ordered disgorged, and shall be returned to each respective debtor by January 21, 2020. Proof of return shall be filed no later than January 24, 2020.

As to the post-petition fees Attorney requests, in general they appear reasonable. However, in two respects they are not. Limitation and reduction is therefore warranted.

First, Attorney's hourly rate of $395.00 is not reasonable. The court takes judicial notice that $395.00 per hour approaches the upper end of hourly rates charged by larger state-wide and regional law firms in the Sacramento area. Attorney is a sole practitioner. And even considering Attorney's association with Chern Law, there is no explanation (or evidence) as to how that association puts Attorney at the upper end of the Eastern District of California fee spectrum with regard to cases filed in this court. A reasonable rate charged by sole-practitioner consumer attorney's in the Eastern District of California is $275.00 per hour. Therefore, for purposes of each fee application identified above, Attorney's hourly rate is reduced from $395.00 per hour to $275.00 per hour.

Second, with regard to the total post-petition hours spent in each case, several entries are not reasonable. These are addressed below.

An attorney employed by the debtor in a Chapter 13 case may be entitled to "reasonable compensation . . . for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in [§ 330]." 11 U.S.C. § 330(a)(4)(B). The fee applicant bears the burden of proof. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). In fixing the amount of a reasonable fee, the court considers all relevant factors. *See* 11 U.S.C. § 330(a)(3)(A)-(F).

The customary method in the Ninth Circuit for ascertaining a reasonable fee in a bankruptcy case is the lodestar method, which is calculated by 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); *The Margulies Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (9th Cir. BAP 2011). However, the lodestar method is not the exclusive method or mandatory and a court may depart from it when appropriate. *Eliapo*, 468 F.3d at 598-99; *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound*

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[6]The court recognizes that the Agreement provides that state-specific issues are referred to a local "partner." Agr., ¶ 2. As noted, however, there is no evidence that occurred in this case because there is no evidence of the pre-petition services that Chern Law purportedly provided each debtor.

[7]To the extent Attorney is a partner of Chern Law participating in the same bankruptcy case, that may also make Attorney potentially liable, ethically at a minimum, for facilitating the unauthorized practice of law.

Plywood), 924 F.2d 955, 960-61 (9th Cir. 1991); *Placide*, 459 B.R. at 73; *In re South Dairy Farm*, 2014 WL 271635, *2 (Bankr. E.D. Cal. 2014).

Departure from the lodestar method is appropriate in several circumstances, such as when: (1) the fee application or supporting billing records are inadequate, *Unsecured Creditors' Committee*, 924 F.2d at 960-61; (2) the fee sought is disproportionate to the potential benefit to the estate, *Leichty v. Neary (In re Strand)*, 375 F.3d 854 (9th Cir. 2004); (3) application of the lodestar method would not yield a numerically precise fee award, *Unsecured Creditors' Committee*, 924 F.2d at 960; or (4) the professional has not exercised prudent billing judgment. *Hensley*, 461 U.S. at 434. When departing from the lodestar method, the court ultimately may "award compensation that is less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2).

The three cases identified above implicate the inadequate fee application and billing records and the prudent billing judgment prongs of the lodestar reduction analysis.

Gary Vitalie [19-23098]

In this case, Attorney states that he spent a total of 7.6 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 31. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 7.6 hours to 5.6 hours. At $275.00 per hour that equals $1,540.00 which is allowed for Attorney's post-petition services.

David Carter [19-23222]

In this case, Attorney states that he spent a total of 6.5 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 23. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 6.5 hours to 4.5 hours. At $275.00 per hour that equals $1,237.50 which is allowed for Attorney's post-petition services.

Lucia Salas [19-23827]

In this case, Attorney states that he spent a total of 4.2 hours on post-petition matters.

Attorney also states that on July 31, 2019, he spent .5 hours reviewing the Trustee's objection to confirmation. The Trustee's objection is at Docket 15. It is three pages total, two pages of text. The court does not believe that it took Attorney thirty minutes to read the document. These fees are therefore also disallowed as not

reasonable.

Attorney states that on August 13, 2019, it took him a total of .5 hours to file a response to an objection to confirmation. One half of an hour to file a response is not reasonable. Fees for these services will therefore be disallowed.

These adjustments reduce Attorney's total post-petition time from 4.2 hours to 3.2 hours. At $275.00 per hour that equals $880.00 which is allowed for Attorney's post-petition services.

Conclusion

For all the foregoing reasons, the fee applications in each of the Chapter 13 cases identified hereinabove are granted in part and denied in part as follows:

(1) **DENIED WITHOUT PREJUDICE** as to all pre-petition fees collected, charged, and retained by Chern Law. Those fees are ordered disgorged and shall be returned to the respective debtors by January 21, 2020, with proof of return also filed by January 24, 2020.

(2) **GRANTED** as to reduced post-petition fees as follows: (1) $1,540.00 in the *Vitalie* case; (2) $1,237.50 in the *Carter* case; and $880.00 in the *Salas* case.

Further, in order to permit the court to monitor the services that Chern Law provides California residents who file Chapter 13 cases in California and for which it charges, collects, and retains fees, in all Chapter 13 cases that Attorney files in his capacity as a partner of Chern Law and which are assigned to Department B, Attorney's election of the no-look fee under Local Rule 2016-1 is suspended for a period of one-hundred eighty (180) days from and after January 8, 2020. In all such cases, Attorney shall file and serve fee applications. And to the extent Chern Law requests compensation for pre-petition services in fee applications filed in those cases, the fee applications shall include detailed and verified time, task, and responsible person evidence.

The court will enter a minute order.

6. 19-21740-B-13 JUDITH HARTWELL
RAS-1 Justin K. Kuney

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-19 [31]

CHAMPION MORTGAGE COMPANY
VS.

No Ruling

7. 17-23945-B-13 DEMAR RICHARDSON — MOTION TO MODIFY PLAN
PSB-3 Pauldeep Bains — 12-3-19 [64]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

8. 15-22548-B-13 MARGARET CLARK
BLG-10 Chad M. Johnson
Thru #9

MOTION TO MODIFY PLAN
12-3-19 [180]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

9. 15-22548-B-13 MARGARET CLARK
EAT-1 Chad M. Johnson

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-26-19 [170]

U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1123 Pheasant Drive, Suisun City, California (the "Property"). Movant has provided the Declaration of Mary Garcia to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Garcia Declaration states that there are 35 post-petition payments in default totaling $110,863.04.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $557,376.80 according to Movant, and the value of the Property is determined to be $300,177.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

10. 15-22149-B-13 MATTHEW MCKEE
PGM-3 Peter G. Macaluso

MOTION TO REFINANCE
11-22-19 [111]

No Ruling

11. 19-26161-B-13 CIRILO/RIZEL LARON
APN-1 Peter G. Macaluso
Thru #14

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-14-19 [19]

Tentative Ruling

This matter was continued from December 10, 2017, to be heard in conjunction with two motions to value collateral. The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection and confirm the plan.

Feasibility depends on the granting of motions to value collateral of Nissan Motor Acceptance Corporation and Wells Fargo Bank N.A. Those motions are granted at Items 13 and 14.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 11, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

12. 19-26161-B-13 CIRILO/RIZEL LARON
DPC-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-15-19 [25]

Tentative Ruling

This matter was continued from December 10, 2017, to be heard in conjunction with two motions to value collateral. The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection and confirm the plan.

Feasibility depends on the granting of motions to value collateral of Nissan Motor Acceptance Corporation and Wells Fargo Bank N.A. Those motions are granted at Items 13 and 14.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 11, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

13. 19-26161-B-13 PGM-1 — CIRILO/RIZEL LARON, Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION, 11-20-19 [29]

Tentative Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Nissan Motor Credit Acceptance at $9,251.00.

Debtors' motion to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of 2016 Nissan Altima ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $9,251.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a response noting that Creditor filed a proof of claim. The Trustee does not oppose Debtors' motion.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Nissan Motor Acceptance is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 15, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,129.15. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $9,251.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

14. 19-26161-B-13 PGM-2 — CIRILO/RIZEL LARON, Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A., 11-20-19 [34]

Tentative Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at $5,217.00.

Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of 2011 Nissan Murano ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $5,217.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a response noting that Creditor filed a proof of claim. The Trustee does not oppose Debtors' motion.

Creditor has filed an objection to the Debtors' valuation and states that the Vehicle has a replacement value of $8,500.00 based on the NADA Guide. While the Creditor states that a copy of the NADA Guide is filed separately, a review of the court's docket shows that there are no separate exhibits filed.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Creditor's valuation. The Creditor has failed to provide evidence of the Vehicle's valuation, specifically a copy of the NADA Guide. However, even if the NADA Guide is provided, this is a third party industry source and therefore Creditor's valuation is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Because the court gives no weight to the Creditor's valuation, the court will accept the Debtors' opinion of value of $5,217.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on May 8, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,597.74. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $5,217.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. 19-27665-B-13 ANTOINETTE EDWARDS MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 12-16-19 [10]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 25, 2019, due to failure to timely filed documents (case no. 19-26361, dkt. 24). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

Debtor states that her circumstances have changed from the previous bankruptcy because she started a job in December 2019 and is now able to sustain her mortgage and bankruptcy payments. Additionally, she has retained legal counsel in the present bankruptcy but had filed her petition pro se in the previous bankruptcy. The Debtor asserts that the extension of the automatic stay is necessary to protect her assets including her home.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. 18-26469-B-13 MICHAEL/KELLY FREEMAN MOTION TO MODIFY PLAN
DBL-1 Bruce Charles Dwiggins 11-26-19 [21]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

17. 19-23669-B-13 JACK/MARYANNE JODOIN — MOTION TO CONFIRM PLAN
LBG-4 Lucas B. Garcia — 11-25-19 [65]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). However, there appears to be insufficient service of process on Chapter 13 Trustee David Cusick. The Debtors instead had served retired Chapter 13 Trustee Jan Johnson. Therefore, the court's decision is to deny the motion without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. 18-26272-B-13 PAULETTE PERFUMO — CONTINUED MOTION TO DISMISS CASE
DPC-1 Stephan M. Brown — 11-22-19 [64]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19. 19-21375-B-13 CYNTHIA ARIETA MOTION TO MODIFY PLAN
SJT-1 Susan J. Turner 12-2-19 [32]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

20. 19-24481-B-13 KIMBERLY BIGGS-JORDAN MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 11-14-19 [50]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

21. 19-27482-B-13 TONIA BEAIRD
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF WELLS FARGO AUTO FINANCE
12-21-19 [13]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Wells Fargo Auto Finance at $5,250.00.

Debtor's motion to value the secured claim of Wells Fargo Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Chevrolet Suburban ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,250.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,614.95 according to Claim No. 2-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $5,250.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. 19-24685-B-13 EMILIA ARDELEAN
19-2135 TBG-1
MASSIOUI V. ARDELEAN

MOTION TO QUASH AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL , MOTION TO STRIKE
12-4-19 [7]

WITHDRAWN BY M.P.

Final Ruling

The movant having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

23. 16-26589-B-13 KAREN LAVOW
DVW-1 Mary Ellen Terranella

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-19 [63]

U.S. BANK NATIONAL ASSOCIATION VS.

Tentative Ruling

This matter was continued from December 17, 2019. The motion was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). No supplemental documents have been filed by either debtor Karen Lavow or U.S. Bank National Association.

The court's decision is to grant the motion for relief from stay.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 355 Parkview Ter Apt B1, Vallejo, California (the "Property"). Movant has provided the Declaration of James Stefani to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Stefani Declaration states that there are pre-petition payments in default totaling $778.57. Additionally, there are 3 post-petition payments in default totaling $2,191.17.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $65,724.78 as stated in the Stefani Declaration. The value of the Property is determined to be $55,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24.	17-23289-B-13	CONCETTA MANZANO Pro Se	OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 1 11-25-19 [45]

CONTINUED TO 1/28/2020 AT 1:00 P.M.

Final Ruling

No appearance at the January 7, 2020, hearing is necessary. The court will enter a minute order.

25. 19-27689-B-13 KEITH JOHNSON MOTION TO IMPOSE AUTOMATIC STAY
PGM-1 Peter G. Macaluso 12-16-19 [10]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's fourth bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on March 4, 2019, after Debtor failed to bring his case current (case no. 17-26681, dkt.105). The Debtor's second bankruptcy case was dismissed on June 28, 2019, after Debtor failed to file the first certificate of completion from an approved nonprofit budge and credit counseling agency (case no. 19-21815, dkt. 26). The Debtor's third bankruptcy case was dismissed on November 4, 2019, after Debtor failed to timely pay installments according to the Order Approving Payment of Filing Fee in installments (case no. 19-24779, dkt. 50).

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor states that the current case was filed in order to save the Debtor's home from foreclosure. Debtor asserts that he and his non-filing spouse have sufficient monthly income of $10,694.40 to make monthly plan payments of $8,195.00. Debtor contends that there is no bad faith in the filing of the current or past bankruptcies. Debtor states that he experienced communication problems with his previous attorneys and that this resulted in the failure of his cases. Debtor has now retained new legal counsel.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

26. 19-23098-B-13 GARY VITALIE
MS-2 Mark Shmorgon

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF CHERN LAW LLP FOR MARK SHMORGON, DEBTORS ATTORNEY(S)
10-1-19 [49]

Final Ruling

Introduction

The court has before it three separate *Application(s) for Attorney's Fees* filed in the following Chapter 13 cases: *In re Gary Vitalie*, 19-23098; *In re David Carter*, 19-23222; and *In re Lucia Salas*, 19-23827. All three fee applications are filed by Attorney Mark Shmorgon ("Attorney"). The fee applications are identical in substance but differ in amounts requested. The fee applications also originate from the same objection by the Chapter 13 Trustee ("Trustee") to confirmation of each debtor's plan at the inception of their respective bankruptcy case.

No party in interest has objected to or otherwise opposed any of the fee applications. Nevertheless, "the court has an independent duty to review all requests for compensation and to determine their reasonableness." *In re Beals*, 2007 WL 4287386, *1 (Bankr. E.D. Cal. 2007).

The court has reviewed and considered all three fee applications and their supporting declarations and exhibits. The court has also heard and considered Attorney's arguments and statements regarding the fee applications. And the court takes judicial notice of the dockets in each Chapter 13 case referenced above.

Because the fee applications are not opposed, oral argument will not assist in their resolution. *See* Local Bankr. R. 9014-1(h). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. And for the reasons explained below, each fee application will be granted in part and denied in part.

Background

In each Chapter 13 case identified above, Attorney elected to receive the $4,000.00 no-look fee permitted by Local Bankruptcy Rule ("Local Rule") 2016-1(c) as compensation services provided to each debtor.

Each debtor paid an Illinois firm identified as Allen Chern, LLP ("Chern Law"), defined and discussed in greater detail below, a certain amount of the no-look fee pre-petition for pre-petition services Chern Law purportedly provided to each debtor. The debtor in *Vitalie* paid Chern Law $1,725.00, the debtor in *Carter* paid Chern Law $2,250.00, and the debtor in *Salas* paid Chern Law $2,250.00.

The Chapter 13 plan filed in each case proposed to pay Attorney the balance of the $4,000.00 no-look fee. The *Vitalie* plan proposed to pay Attorney $2,275.00; the *Carter* plan proposed to pay Attorney $1,750.00; and the *Salas* plan proposed to pay Attorney $1,750.00.

The Trustee objected to confirmation of each debtor's Chapter 13 plan to the extent the balance of the no-look fee was to be paid through the debtor's respective plans. The Trustee asserted that it was less than clear who the attorney of record in each case was and also expressed concerns about irregularities in the employment and compensation process. More precisely, the Trustee asserted that each debtor appeared to be represented by different pre-petition and post-petition attorneys and/or law firms in violation of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), the Local Rules, and the *Rights and Responsibilities of Chapter 13 Debtors* which do not permit payment of the no-look Chapter 13 fee to one attorney or firm for pre-petition work with the balance of the same no-look fee paid to another attorney or firm for post-petition work.

The court resolved the Trustee's objection under the Local Rules rendering it unnecessary to reach Trustee's fee-sharing arguments or address the extent and nature of the relationship between Attorney and Chern Law. The court explained that, in addition to the Bankruptcy Code and the Bankruptcy Rules, compensation of attorneys representing Chapter 13 debtors in the Eastern District of California is governed by Local Rule 2016-1.

Local Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Rule 2016-1(c).]" (Emphasis added). Local Rule 2016-1(c), in turn, provides for a $4,000.00 no-look fee in non-business Chapter 13 cases, such as the three cases identified above. Payment of the $4,000.00 no-look fee (i) requires the attorney to comply with a few conditions listed in Local Rule 2016-1(c);[1] and, as noted, (ii) is premised on the absence of an objection. *See* Local Rule 2016-1(a).

Since Attorney did not opt-out of payment of the local rule no-look fee, the Trustee's objections triggered Local Rule 2016-1(a) which states: "When there is an objection [to the no-look fee under Local Rule 2016-1(c)]. . ., compensation *shall* be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added). Thus, the Trustee's objections overcame the presumption under the local rules that the no-look fee is fair and reasonable compensation for all pre- and post-petition Chapter 13 services and required Attorney to file a § 330 fee application.[2] *See* Local Rule 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). Stated another way, the objections placed the burden of demonstrating reasonableness of the Chapter 13 fees requested in each case identified above where it lies under applicable law, *i.e.*, with Attorney as the fee claimant. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted).

Consistent with the court's analysis, Attorney filed an initial set of fee applications in the three cases identified above. The initial fee applications were denied without prejudice due to defective notice under Bankruptcy Rule 2002(a)(6). Attorney re-filed the fee applications in each case. Proper notice of the fees applications was given, and the re-filed fee applications are now before the court.

The Fee Applications

Gary Vitalie [19-23098]

This Chapter 13 case was filed on May 15, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of February 28, 2019 through October 1, 2019[,]. . . for . . . 15.6 hours of Attorney

[1]Those conditions include limiting fees to $4,000.00 in a nonbusiness case, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Rule 2016-1(c)(1)-(4).

[2]As the court explained, an objection to the no-look fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) an exemption claimed on Schedule C is deemed allowed unless somebody objects to it. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, bears the burden of demonstrating the exemption should be allowed. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (9th Cir. BAP 2016); *Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a).

labor[.]" Case No. 19-23098, Docket 49 at 2:1-7. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,162.00; however, he is willing to discount his fees by $2,162.00 to $4,000.00 to honor his initial contract with debtor Gary Vitalie. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 51 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 52.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Amended Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $1,725 in pre-petition attorney's fees." *Id.*, Docket 18; SOFA #16.

David Carter [19-23222]

This case was filed on May 21, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of April 23, 2019 through October 1, 2019[,]. . . for . . . 16.5 hours of Attorney labor[.]" Case No. 19-23222, Docket 39 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $6,517.50; however, he is willing to discount his fees by $2,517.50 to $4,000.00 to honor his initial contract with debtor David Carter. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 41 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for the debtor in this case. *Id.*, Docket 42.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Chern Law "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Lucia Salas [19-23827]

This case was filed on June 17, 2019. Attorney "seeks allowance and payment of $4,000.00 in professional services and $0.00 in expenses incurred during the period of May 14, 2019 through October 1, 2019[,]. . . for . . . 14.2 hours of Attorney labor[.]" Case No. 19-23827, Docket 37 at 2:1-6. Attorney states that his hourly rate is $395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney reports that his tracked time is $5,609.00; however, he is willing to discount his fees by $1,609.00 to $4,000.00 to honor his initial contract with debtor Lucia Salas. *Id.* at 4:27-5:2.

Attorney states in his declaration filed with the fee application that a record of his time provided to the debtor in this case is attached as Exhibit A to the application. *Id.*, Docket 39 at 4:5-7. Exhibit A is a billing statement which includes fees for pre-petition services that Attorney states **he** performed for debtor Lucia Salas. *Id.*, Docket 40.

Although Attorney states that **he** performed pre-petition services for the debtor in this case and seeks to collect for those services, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern "collected $2,250 in pre-petition attorney's fees." *Id.*, Docket 1; SOFA #16.

Chern Law and Attorney's Relationship to Chern Law

Chern Law is an Illinois-based firm. According to a Partnership Agreement between

Attorney and Chern Law dated January 21, 2016,[3] Chern Law is an Illinois limited liability partnership registered to do business in California as Allen Chern LLP.[4] It maintains offices at 79 W. Monroe Street, Fifth Floor, Chicago, IL 60603.

In addition to operating and filing bankruptcy cases under the name of *The Law Offices of Mark Shmorgon*, Attorney holds himself out as a partner of Chern Law. In each case, Attorney previously submitted a declaration from Ryan Michael Galloway, Chern Law's Associate General Counsel and Vice President of Legal Delivery, in which Mr. Galloway stated that Attorney is an equity partner of Chern Law. The Agreement, however, states that Attorney is a non-owner, non-equity partner with no control over, and no voting rights in, the purported Chern Law partnership. Agr. ¶ 24. In any event, the court assumes that Attorney is a Chern Law partner for purposes of the fee applications.[5]

But even assuming Attorney is a Chern Law partner, the Agreement raises more questions than it answers. Answers to those questions are not found in the record before the court. And the existence of those unanswered questions means that Attorney has not carried his burden of demonstrating that the fees requested, at least in part, in each of the fee applications filed in the cases identified above are reasonable.

Discussion

According to the Agreement, Chern Law "is engaged in the practice of representing consumers in a variety of debt relief services including chapter 7 and chapter 13 bankruptcy protection[.]" Agr., ¶ 1. Chern Law assesses clients' financial circumstances and advises clients with regard to various debt relief options, including bankruptcy. *Id.*

Chern Law also serves as "the initial point of contact for all new [c]lient calls[.]" *Id.*, ¶ 2. It "(i) schedule[s] and confirm[s] retention appointments, (ii) prepare[s] intake forms, disclaimers and agreements for [c]lients to sign at a retention meeting, (iii) field[s] all [c]lient calls creditor/opposing counsel calls, (iv) collect[s]/process[es] all [c]lient payments[.]" *Id.* For the most part, these services are provided by a staff partner, attorney, legal assistant, or other legal professional. *Id.* The client is then referred to a local "partner" attorney, such as Attorney in this case, who takes over the remainder of the bankruptcy process including, but not limited to, consulting with the client, filing the Chapter 13 petition, appearing in court, and providing other required post-petition services. *Id.*, ¶ 3.

Chern Law quotes clients the local no-look fee permitted in Chapter 13 cases. *Id.*, ¶ 4(A)(2). It then charges, collects, and retains a portion of the no-look fee for pre-

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[3]Attorney was ordered to submit certain documents for in camera review. The Agreement is one of the documents submitted. On its own motion, the court filed the Agreement under seal. The court will cite only to those portions of the Agreement necessary for this decision.

[4]Following the departures of Jason Allen and Kevin Chern, Chern Law changed its name to Deighan Law, LLP, for compliance reasons. Chern Law is apparently the registered d/b/a in California of Deighan Law, LLP. Chern Law is used for purposes of consistency throughout this decision.

[5]No party, the Trustee or the United States trustee in particular, has submitted evidence to the contrary or otherwise argued the Agreement is invalid. The court is also aware that other courts have found that attorneys associated with Chern Law and similar firms are partners of, or at a minimum sufficiently associated with, the out-of-state firm for compensation purposes. *See In re Blevins*, 2019 WL 575664, *2 (Bankr. N.D. Tex. 2019); *In re Todarello*, 2016 WL 4508188, *3 (Bankr. N.D. Ohio 2016); *see also In re Williams*, 2018 WL 832894, *21-24 (Bankr. W.D. Va. 2018), aff'd in part and rev'd in part on other grounds, *Allen v. Fitzgerald, Trustee Region Four*, 2019 WL 6742996 (W.D. Va. 2019).

petition services. *Id.* The remaining portion of the no-look fee distributed by the Chapter 13 trustee, presumably under a confirmed plan as was proposed in the three case identified above, is then allocated exclusively to the local partner attorney. *Id.*

But what happens if, as is the case here, there is an objection to the payment of the balance of the no-look fee through a confirmed plan? As explained above, under the local rules, that objection means the no-look fee is no longer presumed to be fair and reasonable compensation in the Chapter 13 case and is therefore no longer available. It also means the debtor's attorney must file a separate fee application under § 330 and with it submit time, task, rate, and responsible individual evidence. Attorney submitted no such evidence here, at least with regard to pre-petition services purportedly provided by the firm of which he claims to be a partner.

In each Chapter 13 case identified above, Attorney states that he provided certain pre-petition services and he seeks compensation for those services. There are, however, three problems with Attorney's representation and request.

First, Attorney's request for compensation that includes compensation for pre-petition service he apparently provided each debtor contradicts the fee disclosure documents filed with or shortly after the petition in each case. The fee disclosure documents all state that Chern Law, not Attorney, provided each debtor with pre-petition services and collected a fee for those pre-petition services. Attorney has therefore double-billed each debtor for pre-petition services. Attorney is not entitled to be compensated for pre-petition services to the extent the debtor has already paid Chern Law for those services.

Second, according to the Agreement, Chern Law, and only Chern Law, may charge, collect, and retain fees for pre-petition services. In fact, the Agreement expressly prohibits Attorney from collecting and retaining pre-petition fees (and apparently the post-petition fee as well despite it being allocated to the local partner). Agr., ¶ (3)(F) ("Partner shall not collect payments directly from a [c]lient in advance of filing a Chapter 7 case or not at all in a Chapter 13 case, except that Partner shall be permitted to collect initial retainer fees in cash, but only at the face-to-face consultation, and in such case Partner agrees to forward all such retainers to Firm headquarters no less than once per week via Federal Express, each such payment being clearly labeled with the date and amount of the payment and [c]lient name and I.D.").

Third, and most important, there is no time, task, rate, and responsible person evidence to support the pre-petition services that Chern Law purportedly provided each debtor and for which it charged and collected fees from each debtor. All the court is able to discern based on the record before it, which is limited to the terms of the Agreement, is that someone at Chern Law may have provided each debtor with some unidentified and unspecified service(s) pre-petition. That by no means permits any sort of reasonableness determination as to any pre-petition services purportedly provided.

That Chern Law may have provided some services to each debtor pre-petition which are not identified or specified raises yet another concern. Is Chern Law engaged in the unauthorized practice of law in California?

State law is fundamental in bankruptcy cases. For example, bankruptcy cases often involve significant issues of state law such as exemptions, liens, and property rights. State substantive law applies inside bankruptcy just as it does outside bankruptcy. *Raleigh v. Illinois Dept. of Rev.*, 530 U.S. 15, 20 (2000) (citing *Butner v. United States*, 440 U. S. 48, 55 (1979)). So the absence of evidence of who at Chern Law did what pre-petition for each debtor raises the specter that, from Illinois, an Illinois attorney not admitted in California, or worse yet non-lawyers in Illinois, provided legal services and advice to California residents about bankruptcy cases filed in

California.[6] That may constitute the unauthorized practice of law in California. *See* Cal. Bus. Prof. Code § 6125; Local Dist. Ct. R. 180 (applicable by Local Bankr. R. 1001-1(c)); *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 128-129 (1998), superceded by statute on other grounds.[7] And, of course, the unauthorized practice of law could result in cancellation and/or suspension of the Agreement and/or a denial of fees in whole and/or part. *See Birbrower*, 17 Cal. 4th at 135-36; *In re Sundquist*, 576 B.R. 858, 876-77 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019) (§ 329(a) provides bankruptcy court with authority to cancel or limit attorney's fee agreement with client).

In short, even assuming Attorney is a legitimate partner of Chern Law, Attorney has not met his burden of demonstrating the reasonableness of the pre-petition fees which apparently have already been charged, collected, and retained Chern Law. Therefore, in the *Vitalie*, *Carter*, and *Salas* cases identified above, all attorney's fees for pre-petition services whether provided by Chern Law or Attorney as a purported partner of Chern Law are denied, ordered disgorged, and shall be returned to each respective debtor by January 21, 2020. Proof of return shall be filed no later than January 24, 2020.

As to the post-petition fees Attorney requests, in general they appear reasonable. However, in two respects they are not. Limitation and reduction is therefore warranted.

First, Attorney's hourly rate of $395.00 is not reasonable. The court takes judicial notice that $395.00 per hour approaches the upper end of hourly rates charged by larger state-wide and regional law firms in the Sacramento area. Attorney is a sole practitioner. And even considering Attorney's association with Chern Law, there is no explanation (or evidence) as to how that association puts Attorney at the upper end of the Eastern District of California fee spectrum with regard to cases filed in this court. A reasonable rate charged by sole-practitioner consumer attorney's in the Eastern District of California is $275.00 per hour. Therefore, for purposes of each fee application identified above, Attorney's hourly rate is reduced from $395.00 per hour to $275.00 per hour.

Second, with regard to the total post-petition hours spent in each case, several entries are not reasonable. These are addressed below.

An attorney employed by the debtor in a Chapter 13 case may be entitled to "reasonable compensation . . . for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in [§ 330]." 11 U.S.C. § 330(a)(4)(B). The fee applicant bears the burden of proof. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). In fixing the amount of a reasonable fee, the court considers all relevant factors. *See* 11 U.S.C. § 330(a)(3)(A)-(F).

The customary method in the Ninth Circuit for ascertaining a reasonable fee in a bankruptcy case is the lodestar method, which is calculated by 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); *The Margulies Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (9th Cir. BAP 2011). However, the lodestar method is not the exclusive method or mandatory and a court may depart from it when appropriate. *Eliapo*, 468 F.3d at 598-99; *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound*

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[6]The court recognizes that the Agreement provides that state-specific issues are referred to a local "partner." Agr., ¶ 2. As noted, however, there is no evidence that occurred in this case because there is no evidence of the pre-petition services that Chern Law purportedly provided each debtor.

[7]To the extent Attorney is a partner of Chern Law participating in the same bankruptcy case, that may also make Attorney potentially liable, ethically at a minimum, for facilitating the unauthorized practice of law.

Plywood), 924 F.2d 955, 960-61 (9th Cir. 1991); *Placide*, 459 B.R. at 73; *In re South Dairy Farm*, 2014 WL 271635, *2 (Bankr. E.D. Cal. 2014).

Departure from the lodestar method is appropriate in several circumstances, such as when: (1) the fee application or supporting billing records are inadequate, *Unsecured Creditors' Committee*, 924 F.2d at 960-61; (2) the fee sought is disproportionate to the potential benefit to the estate, *Leichty v. Neary (In re Strand)*, 375 F.3d 854 (9th Cir. 2004); (3) application of the lodestar method would not yield a numerically precise fee award, *Unsecured Creditors' Committee*, 924 F.2d at 960; or (4) the professional has not exercised prudent billing judgment. *Hensley*, 461 U.S. at 434. When departing from the lodestar method, the court ultimately may "award compensation that is less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2).

The three cases identified above implicate the inadequate fee application and billing records and the prudent billing judgment prongs of the lodestar reduction analysis.

Gary Vitalie [19-23098]

In this case, Attorney states that he spent a total of 7.6 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 31. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 7.6 hours to 5.6 hours. At $275.00 per hour that equals $1,540.00 which is allowed for Attorney's post-petition services.

David Carter [19-23222]

In this case, Attorney states that he spent a total of 6.5 hours on post-petition matters.

Attorney states that on June 16, 2019, and July 30, 2019, it took him 1.5 hours to file a response to an objection to confirmation. One and a half hours to file a response is not reasonable. Fees for these services will therefore be disallowed.

Attorney also states that on August 6, 2019, he spent .5 hours reviewing the Trustee's supplemental objection to confirmation. The Trustee's objection is at Docket 23. It is three pages total, two pages of text. The court does not believe it took Attorney thirty minutes to read the document. These fees are therefore disallowed as not reasonable.

These adjustments reduce Attorney's total post-petition time from 6.5 hours to 4.5 hours. At $275.00 per hour that equals $1,237.50 which is allowed for Attorney's post-petition services.

Lucia Salas [19-23827]

In this case, Attorney states that he spent a total of 4.2 hours on post-petition matters.

Attorney also states that on July 31, 2019, he spent .5 hours reviewing the Trustee's objection to confirmation. The Trustee's objection is at Docket 15. It is three pages total, two pages of text. The court does not believe that it took Attorney thirty minutes to read the document. These fees are therefore also disallowed as not

reasonable.

Attorney states that on August 13, 2019, it took him a total of .5 hours to file a response to an objection to confirmation. One half of an hour to file a response is not reasonable. Fees for these services will therefore be disallowed.

These adjustments reduce Attorney's total post-petition time from 4.2 hours to 3.2 hours. At $275.00 per hour that equals $880.00 which is allowed for Attorney's post-petition services.

Conclusion

For all the foregoing reasons, the fee applications in each of the Chapter 13 cases identified hereinabove are granted in part and denied in part as follows:

(1) **DENIED WITHOUT PREJUDICE** as to all pre-petition fees collected, charged, and retained by Chern Law. Those fees are ordered disgorged and shall be returned to the respective debtors by January 21, 2020, with proof of return also filed by January 24, 2020.

(2) **GRANTED** as to reduced post-petition fees as follows: (1) $1,540.00 in the *Vitalie* case; (2) $1,237.50 in the *Carter* case; and $880.00 in the *Salas* case.

Further, in order to permit the court to monitor the services that Chern Law provides California residents who file Chapter 13 cases in California and for which it charges, collects, and retains fees, in all Chapter 13 cases that Attorney files in his capacity as a partner of Chern Law and which are assigned to Department B, Attorney's election of the no-look fee under Local Rule 2016-1 is suspended for a period of one-hundred eighty (180) days from and after January 8, 2020. In all such cases, Attorney shall file and serve fee applications. And to the extent Chern Law requests compensation for pre-petition services in fee applications filed in those cases, the fee applications shall include detailed and verified time, task, and responsible person evidence.

The court will enter a minute order.