

**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: February 9, 2021

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

February 9, 2021 at 1:00 p.m.

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| 1. | <u>16-27824-B-13</u> JOSE/ARELLY TALAVERA
MM-1 Michael S. Martin
<u>Thru #2</u> | CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOSE CRUZ
TALAVERA AND ARELLY ELYZABETH
TALAVERA
12-22-20 [<u>32</u>] |
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Final Ruling

The motion has been set for hearing on 28-days notice. 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.

Due to court closures in response to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion to approve settlement agreement.

Jose Talavera and Arelly Talavera ("Debtors") request that the court approve a settlement with Boston Scientific Corporation ("Boston Scientific"). Joint Debtor Arelly Talavera ("Joint Debtor") was part of a products liability class action lawsuit against Boston Scientific for damages suffered from a gynecological mesh implantation.

Joint Debtor and Boston Scientific have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at docket 34.

The Chapter 13 Trustee initially objected to the Debtors' claim of exemption of the settlement proceeds, RDG-1. However, on February 2, 2021, the Trustee filed a response which the court construes as a withdrawal of the objection. See dkt. 46.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

The Trustee's objection is deemed withdrawn and the claimed exemption is allowed.

The objection is ORDERED WITHDRAWN and the exemption is ALLOWED for reasons stated in the minutes.

The court will issue an order.

3. 19-21229-B-13 MELISSA ELIZABETH SIMPSON MOTION FOR RELIEF FROM
VC-1 Taras Kurta AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-6-21 [64]

REGIONAL ACCEPTANCE
CORPORATION VS.

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

Regional Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Kia Optima (the "Vehicle"). The moving party has provided the Declaration of Sheldon Singer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Singer Declaration states that there are 3 post-petition payments in default totaling \$1,718.34.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$22,870.91, as stated in the Singer Declaration, while the value of the Vehicle is determined to be \$0.00, as stated in Schedules A/B and D filed by Debtor.

Separately, Debtor's schedules indicate that she has no interest in the Vehicle, was only a co-signer on the Vehicle, and that the Vehicle actually belongs to her daughter. Debtor's Schedule I, line 11, states that her daughter provides a monthly contribution of \$572.78 toward the Vehicle's payment.

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 Debtor and the estate have not made post-petition payments. 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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 Vehicle, 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.

The request for relief from stay as to the non-filing co-debtor, Olivia Morrell Sem, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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 minutes.

The court will issue an order.

4. 19-21036-B-13 JULIE/GREGORY RENWICK
PGM-4 Peter G. Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
1-7-21 [108]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$6,000.00. Dkt. 75. Applicant now seeks additional compensation in the amount of \$1,020.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 108.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would require the filing of a modified plan that would extend the term length to 84 months. Applicant states that he nor the Debtors could have anticipated the global pandemic of COVID-19 and its impact on the economy and Debtors' bankruptcy. Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

That said, Applicant's billing records include one entry billed in a quarter-hour increment. Specifically, that on August 11, 2020, with a corresponding task description of "[r]eviewed rulings for Motion to Modify, . . . granted, no appearance required." Dkt. 108 at 3:7.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133 at *17 (N.D. Cal. Sept. 30, 2011). Such is the case here.

The court seriously doubts that it took Applicant 15 minutes to review the civil minutes and/or minute order. Therefore, the court will reduce the attorney's fees for the time entry of August 11, 2020, to .10 hours. *See Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358 at *6 (S.D. Ala. June 1, 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That amounts to a \$45.00 reduction to the \$1,020.00 requested, or an allowed total of \$975.00.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$975.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$975.00 and additional costs and expenses of \$0.00.

The court will enter an order.

5. 18-24845-B-13 VICTOR HERRADA
PGM-6 Peter G. Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
1-8-21 [113]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00. Dkt. 92. Applicant now seeks additional compensation in the amount of \$885.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 113.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require the filing of a modified plan that would extend the term length to 84 months. Applicant states that he nor the Debtor could have anticipated the global pandemic of COVID-19 and its impact on the economy and Debtor's bankruptcy. Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

That said, Applicant's billing records include one entry billed in a quarter-hour increment. Specifically, that on August 11, 2020, with a corresponding task description of "[r]eviewed rulings for Motion to Modify, . . . granted, no appearance required." Dkt. 113 at 3:2-3.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133 at *17 (N.D. Cal. Sept. 30, 2011). Such is the case here.

The court seriously doubts that it took Applicant 15 minutes to review the civil minutes and/or minute order. Therefore, the court will reduce the attorney's fees for the time entry of August 11, 2020, to .10 hours. *See Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358 at *6 (S.D. Ala. June 1, 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That amounts to a \$45.00

reduction to the \$885.00 requested, or an allowed total of \$840.00.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$840.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$840.00 and additional costs and expenses of \$0.00.

The court will enter an order.

6. 18-24864-B-13 ERIC BARBARY AND MARIAN MOTION FOR COMPENSATION FOR
PGM-6 CORK-BARBARY PETER G. MACALUSO, DEBTORS
Peter G. Macaluso ATTORNEY(S)
1-7-21 [116]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00. Dkt. 51. Applicant now seeks additional compensation in the amount of \$870.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 116.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would require the filing of a modified plan that would extend the term length to 84 months. Applicant states that he nor the Debtors could have anticipated the global pandemic of COVID-19 and its impact on the economy and Debtors' bankruptcy. Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

That said, Applicant's billing records include one entry billed in a quarter-hour increment. Specifically, that on August 11, 2020, with a corresponding task description of "[r]eviewed rulings for Motion to Modify, . . . granted, no appearance required." Dkt. 116 at 3:1-2.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. See *Alvarado v. FedEx Corp.*, 2011 WL 4708133 at *17 (N.D. Cal. Sept. 30, 2011). Such is the case here.

The court seriously doubts that it took Applicant 15 minutes to review the civil minutes and/or minute order. Therefore, the court will reduce the attorney's fees for the time entry of August 11, 2020, to .10 hours. See *Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358 at *6 (S.D. Ala. June 1, 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That amounts to a \$45.00

reduction to the \$870.00 requested, or an allowed total of \$825.00.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$825.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$825.00 and additional costs and expenses of \$0.00.

The court will enter an order.

7. 19-24282-B-13 JUAN/MARIA SALAS
EAT-1 Peter G. Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-8-21 [92]

WILMINGTON TRUST, NATIONAL
ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on 28-days notice. 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). Responses were filed by the Chapter 13 Trustee and Debtors.

Due to court closures in response to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to deny without prejudice the motion for relief from stay.

Wilmington Trust, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5304 Sweet Pea Lane, Stockton, California (the "Property"). Movant has provided the Declaration of Holly Webb to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Webb Declaration states that there are 10 post-petition payments in default totaling \$19,030.90 effective August 1, 2020.

Responses were filed by the Chapter 13 Trustee and the Debtors. The Trustee states that it has disbursed a total of \$15,231.18 to Nationstar Mortgage, which is listed as a Class 1 claim in Debtors' plan, for post-petition mortgage payments. Payments to Nationstar Mortgage for post-petition mortgage payments are delinquent under the terms of Debtors' plan in the amount of \$5,785.20. Based on the Debtors' plan payment posted January 25, 2021, a payment in the amount of \$3,856.80 is scheduled to disburse to the Class 1 post-petition mortgage claim with the Trustee's January 2021 payments.

The Debtors respond stating that they will file, set, serve, and be current under a modified plan that provides for ongoing mortgage payments, pre-petition arrears, and post-petition arrears owed to Movant before the hearing on this matter. A review of the court's docket shows that a modified plan was filed on February 4, 2021. The confirmation hearing is set for March 16, 2021.

Movant's motion is therefore denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

8. 20-21594-B-13 RUSSELL/GLORIA HUTSELL CONTINUED MOTION TO APPROVE
SLE-3 Steele Lanphier LOAN MODIFICATION
1-15-21 [82]

Final Ruling

This matter was continued from February 2, 2021, to allow any party in interest to file an opposition or response to the motion by 5:00 p.m. on Friday, February 5, 2021. No opposition or response was filed. Therefore, the motion is deemed granted for reasons stated at dkt. 94 and the continued hearing on the motion is vacated.

The court will issue an order.