

**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 16, 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 16, 2021 at 1:00 p.m.

-
1. [20-22306](#)-B-13 MARCEL/SIKWAYI DAWSON MOTION FOR COMPENSATION BY THE
[CRG](#)-4 Carl R. Gustafson LAW OFFICE OF LINCOLN LAW, LLP
FOR CARL R. GUSTAFSON, DEBTORS
ATTORNEY(S)
12-31-20 [[84](#)]

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 in part the motion for compensation.

Fees and Costs Requested

Carl R. Gustafson ("Applicant"), the attorney to Chapter 13 Debtors, makes a request for the allowance of \$5,592.50 in fees and \$0.00 in expenses. This is from work totaling \$7,042.50, of which \$1,450.00 was already paid pre-petition. The period for which the fees are requested is for March 2020 through December 2020. The order of the court approving employment of Applicant was entered on August 19, 2020. Dkt. 56. Applicant did not seek compensation pursuant to Local Bankr. R. 2016-1(c).

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 88.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

February 16, 2021 at 1:00 p.m.

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant do relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtors and bankruptcy estate. The court, however, takes issue with the reasonableness of the hourly rates charged.

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).

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 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 is appropriate when billing judgment is not prudent. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

The \$450.00 hourly rate charged by the "Sr. Attorney" (admitted to the state bar in 2007) exceeds the reasonable hourly rate allowed for consumer attorneys in the Eastern District of California. See *Hall v. FCA US LLC*, 2018 WL 2298431, *7 (E.D. Cal. May 21, 2018); *Lyon v. Bergstrom Law, Ltd.*, 2017 WL 3913375, *3 (E.D. Cal. Sept. 7 2017). It also exceeds reasonable rates charged by bankruptcy attorneys who regularly appear before this court, including those with substantially more experience. See *In re Hsin-Shawn Cindi Sheng*, 2019 WL 6033212, *4 (Bankr. E.D. Cal. Nov. 8, 2019); see also *Toler Bail Bonds v. Begovich*, Adv. No. 18-02201 (Dkt. 114). Same with the \$350.00 hourly rate charged by the "Attorney" (who was only recently admitted to the state bar in 2020). See *Sheng, supra*; *Toler, supra*.

And although it appears that Applicant routinely charges an unreasonable rate of \$175.00 per hour for paralegal time, dkt. 87 at 2:10, the motion states that in this case "Debtors contracted with Applicant for representation on an hourly basis at a rate of . . . \$125.00 for Paralegal hours." Dkt. 84 at 1:24-25.

Therefore, based on the foregoing, the court makes the following reductions to and allowance of the attorney's fees requested:

Professional	Hours Spent/Hourly Rate	Total Requested	Total Allowed
Sr. Attorney	4.80 hrs. @ \$450.00/hr.	\$2,160.00	4.80 hrs. @ \$350.00/hr. \$1,680.00
Attorney	6.80 hrs. @ \$350.00/hr.	\$2,380.00	6.80 hrs. @ \$250.00/hr. \$1,700.00
Paralegal	14.30 hrs. @ \$125.00/hr.	\$2,502.50	14.30 hrs. @ \$125.00/hr. \$1,787.50
		\$7,042.50 <u>(\$1,450.00)</u> \$5,592.00	\$5,167.50 <u>(\$1,450.00)</u> \$3,717.50

The motion is ORDERED GRANTED IN PART for fees of \$3,717.50 and costs and expenses of \$0.00.

The court will enter a minute order.

2. [20-22014](#)-B-13 JEFFREY COON
[JHK](#)-1 Grace S. Johnson

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-14-21 [[23](#)]

DAIMLER TRUST VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a leased 2017 Mercedes-Benz C300A (the "Vehicle"). The moving party has provided the Declaration of Beverly Kono to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kono Declaration states that as of January 6, 2021, the account is current. However, on January 5, 2021, the Debtor voluntarily surrendered the Vehicle to Movant.

Discussion

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). Since the Vehicle is leased, there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Moreover, the Debtor surrendered the Vehicle to Movant on January 5, 2021. Therefore, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The request for relief from stay as to any non-filing co-debtor, 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.

3. [20-24821](#)-B-13 ALEISHA CORREA
[JCK](#)-1 Gregory J. Smith

MOTION TO CONFIRM PLAN
12-31-20 [[21](#)]

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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors 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 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 issue an order.

Final Ruling

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 not confirm the first amended plan.

Debtor set for hearing the motion to confirm on the 35-days notice as required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). However, a supplemental document was filed by the Debtor on February 8, 2021, that was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1). To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), 35 days notice is required, 21 days notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1).

The Chapter 13 Trustee did not file an opposition to the confirmation of Debtor's first amended plan filed January 6, 2021, and the deadline to oppose confirmation has since passed. However, the Trustee did file an opposition to the Debtor's supplemental document stating that the Debtor is now attempting to change the plan without giving proper notice. Additionally, even with the proposed change, the Debtor is still delinquent \$964.00.

The Debtor has filed a second supplemental document stating that he acknowledges the untimely filed first supplemental document but that the plan is still at 100% repayment plus .13% interest. Debtor also states that he will be current on plan payments and has stopped an auto payment on his ongoing mortgage.

The court agrees with the Trustee that the Debtor is now attempting to change the plan without giving proper notice. There is also no indication from the court's docket that the Debtor has cured the delinquency in plan payments. Therefore, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

5. [20-24357](#)-B-13 SERGIO/FABIOLA CASTANEDA MOTION TO CONFIRM PLAN
[RWF](#)-1 Robert W. Fong 1-2-21 [[24](#)]

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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have 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 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 issue an order.

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). 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 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 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 issue an order.

7. [17-20879](#)-B-13 TODD GIBBS AND LYDIA MOTION FOR COMPENSATION FOR
[MC-4](#) DIAZ-GIBBS MUOI CHEA, DEBTORS ATTORNEY(S)
Muoi Chea 1-18-21 [[49](#)]

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, Muoi Chea ("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. 17. Applicant now seeks additional compensation in the amount of \$1,000.00 in fees, which is a reduction from additional services in the amount of 16.8 hours or \$4,200.00.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 54.

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 two ex parte motions to incur debt to refinance their home loan. Applicant states that she responded to numerous emails and telephone calls associated with this work, and that the Debtors and estate have benefitted from the refinance since they are able to take equity from their home and payoff early their chapter 13 plan. Debtor's plan was originally scheduled to complete on February 25, 2022, however, they are now scheduled to complete on February 25, 2021. Separately, Applicant states that she and the Debtors have agreed to reduced additional fees of \$1,000.00 from the total additional services expended in the amount of 16.8 hours or \$4,200.00.

The court finds the hourly rates reasonable and that the 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.

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

Additional Fees	\$1,000.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for fees of \$1,000.00 and costs and expenses of \$0.00.

The court will issue an order.