UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, November 18, 2020
Place: Department B - Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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. 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 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 20-13310-B-13 **IN RE: EARL/YOLONDA ALLEN**
   SL-1

   CONTINUED MOTION TO IMPOSE AUTOMATIC STAY
   10-15-2020 [11]

   EARL ALLEN/MV
   SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

This motion to impose the automatic stay was originally filed with an order shortening time and Local Rule of Practice ("LBR") 9014-1(f)(3). Doc. #10. The court: (1) imposed the automatic stay for all purposes as to all parties until November 20, 2020, (2) continued the matter to November 18, 2020, and (3) ordered that the debtors' counsel shall file and serve by first class mail a notice of the continued hearing by November 4, 2020. Doc. #20. Counsel complied with the order, filing an amended notice of hearing and certificate of service, which indicate notice of the continued hearing was sent on October 23, 2020 by certified U.S. mail with return receipt to National Default Servicing Corporation and Quicken Loans, LLC. Doc. #24. All other parties in interest were served via first class mail on October 23, 2020. *Id.*

The notice of the continued hearing was served pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Earl and Yolanda Allen ("Debtors") filed this motion to impose the automatic stay, which was granted on October 22 for all purposes as to all parties until November 20, 2020. Doc. #11, #20. Ms. Allen filed a declaration stating that the debtors' home is subject to a foreclosure sale, which was scheduled to be held on October 27, 2020. Doc. #9. This court will now consider whether to impose the automatic stay indefinitely, until terminated by further order.

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the later case is filed. This was case was filed on October 14, 2020. Doc. #1. Debtor had two cases that were pending but dismissed in the past year, case no. 20-10097 (filed on January 13, 2020 and dismissed on April 6, 2020) and case no. 20-11639 (filed on May 8, 2020 and is pending dismissal as of October 15, 2020).

11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, if within 30 days after the filing of the later case, and at the request of a party in interest, the court may order they stay to take effect after a notice and hearing. The debtor must demonstrate that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (*overruled on other grounds by Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because two or more previous cases under this title in which the individual was a debtor were within the 1-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all parties.

The first case (20-10097) was filed on January 13, 2020 and dismissed on April 6, 2020. The first case was dismissed because the debtors did not provide the trustee with requested documents under 11 U.S.C. § 521(a)(3)-(3). *See* case no. 20-10097, Doc. #30. The debtors did not provide all pages of the most recent Federal Tax Return and did not file complete and accurate schedules, statements, and a plan. *Id.*, Doc. #30. The debtors did not provide the trustee with required 2019 tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal Income Tax Return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B). The debtors failed to appear at the meeting of creditors as required by 11 U.S.C. §§ 341, 343. Additionally, the debtors did not confirm a plan within a reasonable time. The court

found that 84 days without confirming a plan constituted unreasonable delay by the debtors that is prejudicial to creditors, and therefore cause existed to dismiss the case under § 1307(c)(1).

The second case (20-11639) was filed on May 8, 2020 and dismissed on October 19, 2020. *See* case no. 20-11639, Doc. #25. The second case was dismissed because the debtors became delinquent in the amount of $4,350.00, which was due to be paid to the chapter 13 trustee not later than October 13, 2020. *Id.*, Doc. #21. Ms. Allen filed a second declaration stating that the second case was dismissed for the failure to make their plan payments timely. Doc. #13. Ms. Allen states that "[she] procrastinated and waited too long and did not send the plan payments on time." *Id.* at ¶ 4. Ms. Allen's business, "Five Dollar Jewelry," is dependent on sales events at craft shows, trade shows, and her home to make sales. Due to the COVID-19 Pandemic, which began in March, her business has seen a drastic decline causing it to grind "to a total halt." *Ibid.* She expected that the shelter-in-place restrictions would be lifted months ago, but that has not happened. Ms. Allen has continued to purchase inventory—approximately "$1,000.00-plus per month over [her] actual sales"–from her vendor in anticipation of major sales events that were canceled due to COVID-19. Ms. Allen adds that she did not "communicate with [her] husband about this situation, and he was blind-sided when he found out [they] were behind." *Id.* at ¶ 4.

Ms. Allen contends that they are preparing a plan in which the debtors will pay all of their secured creditors and 100% of their unsecured creditors because of the following reasons:

(1) The debtors are closing Ms. Allen's business, "Five Dollar Jewelry," permanently because its losses outweigh the income it is providing. The business has been taking consistent losses for the last six months, especially during the shelter-in-place restrictions caused by COVID-19.
(2) With the business closed, the debtors estimate they will save more than $1,500.00 per month because they no longer will be purchasing inventory for the business. Additionally, Ms. Allen will be able to focus her time and energy on making sure the plan payments and living expenses are paid on time.

Id. at ¶ 5. The debtors maintain that this new case has been filed in good faith and express a willingness to maintain their plan payments for an extended period.

While this case was continued, Debtors filed amended schedules, including Form 122C-1 and business income and expenses. Doc. #25. Debtors also proposed a chapter 13 plan, which provides for 60 months of plan payments of $2,360 and a 100% dividend to nonpriority unsecured creditors. Doc. #26. This new case appears to have been filed in good faith.

The motion will be GRANTED, and the automatic stay imposed for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further

hearing is proper pursuant to LBR 9014-1(f)(2). If so, the court will issue an order which may contain conditions or limitations permissible under § 362(c)(4)(B).

2. 19-10516-B-13 **IN RE: FRANK CRUZ**
TCS-3

CONTINUED MOTION TO MODIFY PLAN
9-11-2020 [180]

FRANK CRUZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Secured Creditor Salas Financial ("Salas") filed an objection to the Frank Cruz's ("Debtor") fully noticed motion to modify his chapter 13 plan. Doc. #188. Per this court's last order (Doc. #192), Debtor had until either November 4, 2020 to file and serve a written response to Salas' objection to confirmation, or until November 11, 2020 to file, serve, and set for hearing a confirmable modified plan or the objection would be sustained on the grounds therein and the motion to modify the plan would be denied. Debtor has neither responded to the objection nor filed a modified plan. Therefore, pursuant to the court's previous order, Salas' objection will be SUSTAINED, and this motion to modify will be DENIED WITHOUT PREJUDICE.

3. 18-14020-B-13 **IN RE: JOSEPH/CLAUDIA CARRILLO**
JRL-3

MOTION TO MODIFY PLAN
10-14-2020 [44]

JOSEPH CARRILLO/MV
JERRY LOWE/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. 20-13426-B-13 **IN RE: ASHLEY AMEZQUITA TRUJILLO**
PBB-1

MOTION TO EXTEND AUTOMATIC STAY
11-4-2020 [8]

ASHLEY AMEZQUITA TRUJILLO/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion to extend the automatic stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Doc. #8, #9. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall

terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-10100. That case was filed on January 15, 2019 and was dismissed on October 15, 2020 for failure to make plan payments. This case was filed on October 29, 2020 and the automatic stay will expire on November 28, 2020.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (*overruled on other grounds by Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

The debtor, Ashley Amezquita Trujillo, filed a declaration stating that she fell behind on plan payments because she had to use her disposable income to pay for her out-of-pocket medical co-pays. Doc. #10 at ¶ 6. Ms. Trujillo states that she is pregnant, due before the end of the year, and her pregnancy is classified as high risk, which increased her medical expenses during the prior case. *Ibid.* Ms. Trujillo states that she refiled this case to prevent repossession of her vehicle, which she relies on for transportation. *Id.* at ¶ 7. Ms. Trujillo included her chapter 13 plan and Schedules I and J as exhibits, which indicate she has proposed a chapter 13 plan with 55 months of plan payments of $300. Doc. #11, Ex. A at ¶ 2.01. Schedule J shows that Ms. Trujillo has a monthly net income of $301.33, which demonstrates her ability to pay under the proposed plan. *Id.*, Ex. B at ¶ 23c. Accordingly, this case appears to have been filed in good faith.

The motion will be GRANTED, and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

5. 17-13530-B-13 **IN RE: JAI LEE**
FW-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
10-9-2020 [35]

PETER FEAR/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Debtor's counsel, Peter Fear of the Law Office of Fear Waddell, P.C. ("Movant"), requests fees of $3,742.00 and costs of $162.29 for a total of $3,904.29 for services rendered from July 1, 2018 through October 7, 2020. Doc. #35. The debtor has consented to this fee application. Doc. #37, Ex. E.

According to the plan and prior fee application, Movant opted out of the "no look" fee under LBR 2016-1(c) and allocated $7,500 in the plan for attorney's fees. Doc. #5 at ¶ 2.05. The plan also provides for $312.50 of each monthly payment for administrative expenses. *Id.* at ¶ 2.07. Movant was paid $1,500.00 in pre-filing attorney fees plus $310.00 for the filing fee. Doc. #22. On August 23, 2018, this court approved interim fees of $2,355.50 and costs of $379.46, for a total of $2,734.96 for services rendered from August 22, 2017 to

June 30, 2018. Doc. #29. By this court's estimate, there should be approximately $4,765.04 remaining under the plan.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Reviewing and analyzing correspondence and information from the debtor's mortgage company and communication with a creditor regarding proof of claim issues; (2) Gathering documents from the debtor at the request from the chapter 13 trustee for the annual review of the case; (3) Preparing the first interim fee application, which was granted August 23, 2018; (4) Preparing for the debtor's discharge after the last payment in January 2021, including review of notice of completed plan payments, case closing review, memorandum regarding deadlines and tasks for case closing, preparation of statements, and review of trustee's final report; and (5) Case administration. Doc. #37, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $3,742.00 in fees and $162.29 in costs.

6. 18-13595-B-13 **IN RE: DIMAS COELHO**
TCS-3

MOTION TO DISGORGE FEES
10-20-2020 [81]

DIMAS COELHO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of respondent to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Dimas Silva Coelho ("Debtor") filed this motion asking that her former counsel be ordered to disgorge $800.00 in attorney's fees. Her former counsel was Thomas O. Gillis ("Mr. Gillis"). Doc. #81. Mr. Gillis did not timely file opposition and his default is entered.

This motion will be GRANTED.

This case was filed on August 31, 2018 and Mr. Gillis was the attorney of record. Doc. #1. Debtor's chapter 13 plan was confirmed on January 22, 2019. Doc. #53. According to the plan, Mr. Gillis opted-in to the "no look" fee of LBR 2016-1(c) and was paid $4,000.00 prior to the filing of this case. Doc. #14 at ¶ 3.05.

Under LBR 2016-1(c), the "no look fee," provides for a maximum fee of $4,000.00 in nonbusiness cases and $6,000.00 in business cases. *See* LBR 2016-1(c)(1). This fee is intended to fairly compensate the debtor's attorney for all pre-confirmation services and much post-confirmation services. "Only in instances where substantial and unanticipated post-confirmation work is necessary" will counsel be able to request additional fees. LBR 2016-1(c)(3). Alternatively, a court may modify compensation if it proves to be improvident in light of circumstances not anticipated at plan confirmation. LBR 2016-1(c)(5).

Mr. Gillis was suspended effective February 16, 2020. *See* www.calbar.ca.gov; Doc. #61. Though the notice of suspension (Doc. #61) in this case states he was suspended January 31, 2020, Mr. Gillis did receive a short extension on the eve of his suspension causing him to be licensed through February 15, 2020.

Debtor has been in bankruptcy for 26 months and paid $5,252.75 to the chapter 13 trustee. Doc. #81. Post-confirmation work has yet to be completed. *Id.* Under the fee rubric previously used for Mr. Gillis' cases, Phase III is completed, the plan is confirmed, and 90 days has expired from the filing of the Notice of Filed Claims. Debtor contends that Mr. Gillis has earned 80% of his $4,000.00 fee, which is $3,200.00, and seeks to have Mr. Gillis disgorge the remaining $800 to compensate his new attorney. *Id.*

This court, sitting *en banc* with the Honorable Ronald H. Sargis and the Honorable Fredrick E. Clement, previously ordered fees disgorged in Mr. Gillis' other cases. *See, e.g.*, *In re Cervantes*, 617 B.R. 687 (Bankr. E.D. Cal. 2020).

As discussed in *Cervantes*, § 11 U.S.C. § 330 sets the threshold for awarding fees to most professionals. When evaluating the reasonableness of fees, under § 330(a)(3) the court is instructed to consider "time spent, rates charged, necessity or beneficial nature of the service, timeliness, skill of the professional and customary compensation by comparably skilled professionals outside of the bankruptcy field." *In re Cervantes*, 617 B.R. at 693-94. With chapter 13 cases, § 330(a)(4) states:

> In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney 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 this section.

11 U.S.C. § 330(a)(4)(B). *See also*, *In re Pedersen*, 229 B.R. 445, 448 (Bankr. E.D. Cal. 1999). Apart from § 330, the court has inherent authority to order disgorgement of all compensation in the appropriate case. *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997) (disgorgement ordered due to counsel's misrepresentation in appointing documents and acceptance of fees post-petition).

11 U.S.C. § 329 gives the court a statutory basis to critically evaluate Mr. Gillis' compensation:

> If such [debtor's attorney's] compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
>
> (1) the estate, if the property transferred—
>
> (A) would have been property of the estate; or
>
> (B) was paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

11 U.S.C. § 329(b). Section 330 sets the standard by which fees are evaluated under § 329. *Am. Law Ctr. PC, v. Stanley (In re Jastrem)*, 253 F.3d 438, 443 (9th Cir. 2001); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 298 B.R. 392, 401 (B.A.P. 9th Cir. 2006) (*aff'd in part, rev'd in part and remanded by Eliapo*, 468 F.3d at 592). Additionally, LBR 2016-1(c)(5) provides authority to scrutinize the no-look fee:

> The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

LBR. 2016-1(c)(5). Mr. Gillis' post-confirmation suspension was not anticipated, and he will not complete the case. The court will determine the appropriate fee and order Gillis to return any unearned portion.

As part of this court's determination in *Cervantes*, the court considered "rubrics" offered by the chapter 13 trustee and Mr. Gillis, took into account the specific circumstances each of these cases involved, and found the following formula as an "appropriate template if the court is asked to consider fees paid or promised in those cases in which Gillis was counsel and has received some or all

of the opt-in fee." *In re Cervantes*, 617 B.R. at 698. This "rubric" shows the percentage of the opt-in fee *earned* at each stage of the case:

> Phase I (pre-petition through meeting of creditors) – 30% earned.
>
> Phase II (meeting of creditors through initial confirmation) – 60% earned.
>
> Phase III (confirmation to 90 days after Notice of Filed Claims) – 80% earned.
>
> Phase IV (discharge, closure, certifications, necessary lien clearances) – 100%.

Ibid. Although *Cervantes* is pending appeal, having recently been transferred from the Bankruptcy Appellate Panel to the District Court in September 2020, the court will adopt this rubric until a final determination is made. No party affected has provided evidence that the rubric should either be adjusted or inapplicable in this case.

Applying this rubric to the current case, Mr. Gillis has earned 80% of his $4,000 fee, thereby entitling him to a maximum payment of $3,200. Mr. Gillis was paid the full $4,000 of his fee before the case was filed, but he is not entitled to $800 of that received fee. Therefore, Mr. Gillis' total fee received is excessive under the rubric and he will be ordered to disgorge $800 in unearned fees of the $4,000 fee he received prior to filing.

Accordingly, this motion will be GRANTED. Mr. Gillis shall disgorge $800 in unearned fees to Debtor so that Debtor may pay his current bankruptcy counsel to complete Phase IV of his chapter 13 case.

7. 20-10357-B-7 **IN RE: STEPHEN MEZA**
FW-3

CONTINUED MOTION TO AMEND
11-10-2020 [73]

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

NO RULING.

11:00 AM

1. 17-14112-B-13 **IN RE: ARMANDO NATERA**
   20-1035

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   6-5-2020 [1]

   NATERA V. BARNES ET AL
   GABRIEL WADDELL/ATTY. FOR PL.
   RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to December 9, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

A motion to dismiss the adversary proceeding was filed on November 6, 2020 and set for hearing on December 9, 2020. *See* ZCL-1. Accordingly, this status conference will be continued to December 9, 2020 to be heard in connection with the motion to dismiss.