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4
5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 In re) Case No. 05-37694-D-13L
9 JAMES AND LORI MIGUEL,) Docket Control No. MWB-8
10 Debtors.)
11) DATE: December 11, 2007
12) TIME: 1:00 p.m.
13) DEPT: D (Courtroom 34)

14 **MEMORANDUM DECISION ON THIRD MOTION FOR APPROVAL OF**
15 **ATTORNEYS FEES AND COSTS PAYABLE**

16 **This memorandum decision is not approved for publication and may**
17 **not be cited except when relevant under the doctrine of law of**
18 **the case or the rules of claim preclusion or issue preclusion.**

19 James and Lori Miguel (the "debtors") filed a voluntary
20 petition for relief under Chapter 13 of the United States
21 Bankruptcy Code ("Code") on October 13, 2005. Throughout this
22 case Mark W. Briden, Attorney at Law ("Counsel") has acted as
23 counsel for the debtors and this is Counsel's third fee motion.
24 Through this third fee motion (the "Motion"), Counsel seeks
25 additional compensation of \$2,632.50 in fees and \$41.20 in costs.
26 Although no party has filed opposition to the Motion, the court
27 has an independent duty to review all requests for compensation
28 and to determine their reasonableness.

Section 330 of the Code sets out the standard for which
courts should determine the reasonableness of attorneys' fees.
This section provides that in determining the amount of

1 reasonable compensation the court should consider the nature,
2 extent, and value of the services rendered, taking account of all
3 relevant factors, including the time spent on the services, the
4 rates charged for the services, and the customary compensation of
5 comparably skilled attorneys in other cases. Reasonableness is
6 determined by looking at the nature, extent and value of the
7 services rendered. See In re Eliapo 298 B.R. 392, 401 (9th Cir.
8 BAP 2003).

9 In determining reasonableness under § 330(a)(3)(D) of the
10 Code the court is to consider whether services were performed
11 within a reasonable amount of time commensurate with the
12 complexity, importance, and nature of the problem, issue, or task
13 addressed. One component of this analysis requires the court to
14 look at what other competent Chapter 13 practitioners would
15 charge for a Chapter 13 case similar in complexity.

16 "The burden is upon the applicant to demonstrate that the
17 fees are reasonable." In re Basham, 208 B.R. 926, 931-932 (9th
18 Cir. BAP 1997) [citing Hensley v. Eckerhart, 461 U.S. 424, 437,
19 103 S.Ct. 1933, 1941 (1983)].

20 This case is a routine non-business Chapter 13 case.
21 Although there has been a moderate amount of activity in this
22 case, none of the work required of Counsel has been unusually
23 complex, or out of the ordinary. The activity in this case has
24 consisted of garden-variety motions and objections. Further, the
25 court notes that when considering the original fee that the
26 debtors paid, along with the fees approved under prior fee
27 motions, Counsel has already been paid a total of \$11,651. As
28 prior awards were allowed on an interim basis, they are subject

1 to review at this time. Accordingly, the court will consider all
2 prior fee requests, and prior fee awards, in considering the
3 additional compensation requested in the Motion.

4 Turning now to Counsel's current fee request. The court
5 notes that Counsel represents Chapter 13 debtors on a regular
6 basis. The court finds that Counsel's hourly rate (\$195 per
7 hour) is reasonable and the court does not have an issue with the
8 quality of Counsel's services. With that said, the court does
9 have a real concern that the aggregate of the fees requested in
10 this case exceed the reasonable value of the services rendered.

11 The burden is on Counsel to demonstrate that the fees
12 requested are reasonable. However, the Motion, and prior fee
13 motions, are void of any analysis or discussion as to the
14 reasonableness of the fees requested. Accordingly, Counsel has
15 not met his burden to demonstrate the fees requested are
16 reasonable. On the contrary, and for the reasons stated below,
17 the court finds the aggregate fee requested in this case is
18 excessive and unreasonable.

19 There are numerous time entries that are excessive. By way
20 of example only, on October 6, 2005 Counsel charged 2.0 hours for
21 "Formulation and Preparation of Chapter 13 Plan." This Chapter
22 13 plan is a form plan which merely required Counsel to fill in
23 blanks in five different sections of the form plan. Then on May
24 11, 2006 Counsel charged 2.0 hours for "Formulation and
25 Preparation of Declaration of Debtor in Support of Motion to
26 Confirm First Amended Plan." This is a simple three page
27 declaration. A review of the time charged for the form plan and
28 declaration leads the court to one of two conclusions. One, that

1 Counsel is extremely inefficient, or alternatively the time
2 charged is grossly inflated. In either event these charges are
3 clearly excessive and unreasonable.

4 However, rather than dissect Counsel's charges line-by-line,
5 or task-by-task, the court chooses to take a more holistic
6 approach. The debtors' case is a routine Chapter 13 and the
7 court finds the total fees requested in this case exceed the
8 reasonable value of services rendered when compared to what other
9 competent practitioners would charge for a Chapter 13 case of
10 similar complexity.

11 The court notes that under the Guidelines for Payment of
12 Attorneys' Fees in Chapter 13 Cases Applicable in the Eastern
13 District of California (the "Fee Guidelines") in effect when this
14 case was filed, the allowed "opt-in" fee for a Chapter 13 case
15 was \$2,500 and \$4,000 for a business case. Although attorneys
16 can "opt-out" of the Fee Guidelines, there is a general
17 presumption that the fixed fee provided for in the Fee Guidelines
18 for attorneys who "opt-in" is sufficient to cover the basic
19 attorney services necessary in a routine Chapter 13 case. See In
20 re Eliapo, supra at 599. In fact, many competent Chapter 13
21 attorneys use the "opt-in" procedure provided for in the Fee
22 Guidelines and provide full representation for the fixed fee.

23 Although Counsel has opted out of the Fee Guidelines, the
24 fixed fee charged by many competent Chapter 13 practitioners is
25 to be considered and used as a guide as to what is reasonable
26 attorney compensation for handling a routine chapter 13 case.
27 The court finds that even when considering the moderate activity
28 in this case, that reasonable compensation does not exceed the

1 amount Counsel has already been paid, to wit \$11,651. This
2 amount is more than 450% of the fixed fee set under the Fee
3 Guidelines and is a very generous allowance for the services
4 rendered in this case.

5 As Counsel has already been paid \$11,651, no additional
6 compensation will be allowed.

7 A separate order will be entered consistent with this
8 memorandum decision.

9 Dated: January 7, 2008

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Robert S. Bardwil
United States Bankruptcy Judge

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