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**UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIA**

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re
Jorene E. Mize,

Case No. 13-14894
DCN: RAF-12

Debtor.

MEMORANDUM DECISION

1 Frazee Law Group, counsel for the debtor in possession, filed its
2 first interim application for compensation seeking fees of \$54,295.00
3 and costs of \$6,036.50. The court approves fees of \$39,813.50 and
4 costs of \$5,286.50, on an interim basis.

5 **FACTS**

6 This is a Chapter 11 case, distinguished only by skirmishes with
7 the major secured creditor over cash collateral, valuation of
8 collateral, stay relief and cause for conversion or dismissal.

9 In the 10 months the case has been pending, major events include
10 employment of counsel and an appraiser; approval of the use of cash
11 collateral (achieved on the second effort); valuation of commercial
12 property located at 40807 Highway 41, Oakhurst (settled shortly before
13 a scheduled evidentiary hearing); resolution by settlement of a motion
14 for stay relief or, in the alternative, for dismissal or conversion;
15 extension of exclusivity; an unsuccessful motion for sanctions; and
16 approval of appraiser's fees (achieved on the second effort). A plan
17 and disclosure statement have been filed, but despite two efforts the
18 disclosure statement has not been approved.

19 Applicant Frazee Law Group has filed its first interim fee
20 application. The application covers the period from April 2, 2013,
21 (three months prior to the petition) through March 27, 2014. It seeks
22 fees of \$54,295.00 and costs of \$6,036.50.

23 **JURISDICTION**

24 This court has jurisdiction. See 28 U.S.C. § 1334; 11 U.S.C. §
25 330(a); General Order No. 182 of the U.S. District Court for the
26 Eastern District of California. This is a core proceeding. See 28
27 U.S.C. § 157(b)(2)(A).

1 DISCUSSION

2 I. Standards for Reasonable Compensation under § 330

3 Counsel for a Chapter 11 debtor in possession may be allowed
4 "reasonable compensation for actual, necessary services" and
5 "reimbursement for actual, necessary expenses." 11 U.S.C.
6 § 330(a)(1),(3)(A)-(F). The applicant bears the burden of proof.
7 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *In re Roderick Timber*
8 *Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir. 1995).

9 In most cases the method for ascertaining a reasonable fee for a
10 debtor's attorney in a Chapter 11 case is the lodestar, which requires
11 multiplying "the number of hours reasonably expended" by "a reasonable
12 hourly rate for the person providing the services." *Law Offices of*
13 *David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 598 (9th
14 Cir. 2006) (Chapter 13, quoting *Hensley*, 461 U.S. at 433) (internal
15 quotation marks omitted). The number of hours billed must be well
16 documented and may not include: (1) non-compensable time, such as time
17 spent on administrative tasks or secretarial work billed at paralegal
18 rates, see *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989); (2)
19 time resulting from "duplicative, unproductive, excessive, or
20 otherwise unnecessary" work, *In re Sullivan*, 454 B.R. 1, 4 (D. Mass.
21 2011); accord 11 U.S.C. § 330(a)(4)(A); and (3) entries demonstrating
22 that the applicant has failed to exercise prudent billing judgment,
23 *Hensley*, 461 U.S. at 434, 437; *Unsecured Creditors' Comm. v. Puget*
24 *Sound Plywood, Inc.*, 924 F.2d 955, 958-59 (9th Cir. 1991).

25 II. Fees

26 Applicant Frazee Law Group prays compensation of \$54,295.00.
27 That amount is comprised of \$43,320.00 in billable time by counsel
28 (144.4 hours at \$300.00 per hour) and \$10,975.00 in billable time by a

1 paralegal (87.8 hours at \$125.00 per hour).

2 **A. Hours**

3 The court disallows the following time as unproductive:

4 <u>Task</u>	5 <u>Attorney</u> <u>Time</u>	6 <u>Paralegal</u> <u>Time</u>	7 <u>Reason</u>
8 First Motion 9 to Use Cash 10 Collateral	2.5	2.4	Unproductive (denied for insufficient service)
11 First Fee 12 Application 13 (Specialty 14 Appraisals)	2.7	2.3	Unproductive (flat rate compensation sought, employment approved on lodestar method)
15 Rule 9011 16 Motion	8.1	0.00	Unproductive (failure to comply with safe harbor)
17 Total	13.3	4.7	

18 Reducing the billable hours by these amounts, the court approves
19 compensable attorney hours of 131.10 (144.4 hours - 13.3 hours) and
20 paralegal hours of 83.10 (87.8 hours - 4.7 hours).

21 **B. Rate**

22 To determine what constitutes a reasonable hourly rate under the
23 lodestar, the court turns to the "prevailing market rates in the
24 relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). This
25 requires looking at the "rate prevailing in the community for similar
26 work performed by attorneys of comparable *skill, experience, and*
27 *reputation.*" *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)
(emphasis added); *see also Blum*, 465 U.S. at 898 ("[T]he special skill
and experience of counsel should be reflected in the reasonableness of
the hourly rates.").

28 Here, the applicant has five years' experience; her paralegal

1 only four years. The work is of satisfactory quality. But she has
2 not yet demonstrated sufficient proficiency to support hourly rates of
3 \$300.00 for attorney time and \$125.00 for paralegal time. An example
4 of this is the disclosure statement. Notwithstanding two efforts
5 within the period for which fees are sought and the expenditure of
6 more than 50 hours by the applicant and her paralegal, the debtor has
7 not achieved approval of the disclosure statement. After considering
8 the skill, experience and reputation factors described in *Barjon*, the
9 court fixes a rate of \$250.00 per hour for the attorney and \$85.00 per
10 hour, approximately one-third of that amount, for her paralegal.

11 Fees of \$39,813.50 (131.0 hours x \$250/hour = \$32,750.00 + 83.1
12 hours x \$85/hour = \$7,063.50) are approved on an interim basis.

13 **III. Costs**

14 Applicant Frazee Law Group prays costs of \$6,036.50, including
15 \$750.00 for special appearance counsel Marshall Moushigian, who
16 appeared at the status conference, motion for employment (Frazee Law
17 Group), and cash collateral hearing on September 4, 2013. Moushigian
18 has not been employed, as required by 11 U.S.C. §§ 323, 330, and
19 special appearances are not authorized at status conferences. Order
20 Re: Chapter 11 Status Conference, July 24, 2013, ECF No. 21. As a
21 consequence, the court will reduce costs by \$750.00, and approves
22 costs of \$5,286.50.

23 **CONCLUSION**

24 Fees of \$39,813.50 and costs of \$5,286.50 are approved on an
25 interim basis. Such amounts shall be finalized, and may be adjusted,
26 by a final application for compensation and expenses, which shall be
27 filed prior to case closure. The applicant may draw upon any retainer

28 /

1 held. All other relief is denied. The court will issue a separate
2 order.

3 Dated: May 28, 2014

/s/

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5

Fredrick E. Clement
United States Bankruptcy Judge