

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 2, 2016 at 2:00 P.M.

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1. [14-29903](#)-C-13 BIENVENIDO/PRISCILA DE LA AMENDED MOTION FOR COMPENSATION
BLG-4 CRUZ BY THE BANKRUPTCY LAW GROUP, PC
Paul Bains FOR PAULDEEP BAINS, DEBTORS'
ATTORNEY(S)
1-5-16 [[74](#)]

Final Ruling: No appearance at the February 2, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 5, 2016. 28 days' notice is required. That requirement was met.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by 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)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.
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Pauldeep Bains, the Attorney for Debtors, ("Applicant") for Roosevelt and Raulette McClinton, ("Clients"), makes an Amended Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 20, 2014 through January 5, 2016. Applicant requests fees in the amount of \$2,800.00 and costs in the amount of \$28.02, for an aggregate of \$2,4828.02.

The Chapter 13 Trustee filed a statement of nonopposition on January 12,

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;

(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 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 related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

It was unanticipated when the debtor's filed their Chapter 13 that they would fall behind on their plan payments and would be unable to get the plan current. It was also unanticipated that debtors would have excess money from their 2014 taxes. It was also unanticipated that they would need to increase the monthly payment based on disposable income.

It was necessary to prepare and file a Response to Trustee's Motion to Dismiss; It was necessary to prepare and file a Motion to Modify BLG-3 to reflect the changes in the household income, to catch up the missing plan payments and to account for excess money from 2014 tax refund.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

1. Case Admin: Telephone and email communications with clients and Trustees office. Total Hours 2.0 hours (2.0 hours were no-charged and 0.0 were billed);
2. Motion to Dismiss Response, Motion to Value and Motion to Confirm: Preparation of Response to Trustee's Motion to Dismiss, Preparation of Motion to Value, Preparation of Motion to Confirm and Modified Plan; Communication with debtors, Response on Opposition to MTC and attend hearing on Motion to Confirm Total Hours 10.8 hours. (2.8 hours were nocharged and 8.0 were billed).
3. Motion for Compensation BLG-4: Preparation of Motion for Additional Attorney Fees Total Hours 2.0 hours. (2.0 hours were no-charged and .0 were billed).

The total number of hours expended in this case for which applicant seeks additional compensation is 14.8 and break down as follows: Attorneys 12.4 hrs; Paralegals 2.0 hrs; Administrative Staff .4 hrs. The hourly rates at the time the client retained are as follows: Attorneys \$350/hr; Paralegals \$185/hr; Administrative Staff \$85/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,800.00
Costs	\$28.02

The Chapter 13 Trustee filed a statement of nonopposition on April 23, 2015.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Pauldeep Bains is allowed the fees in the amount of \$2,800.00 and costs in the amount of \$28.02 as a professional of the Estate.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor does not have the ability to pay the proposed plan payment of \$2,395. Schedule J filed in support does not adequately calculate income. Monthly net income is stated as \$2,395; however, the Trustee's calculation shows that the actual amount is \$50.00 lower.
2. The Plan does not specify the total dollar amount of a claim for post-petition mortgage arrears owed to NationStar Mortgage.

Debtor's Reply

The opposition was based on errors in the debtor's declaration and schedule J. Trustee likewise opposes confirmation because the Debtor did not specify the exact amount of her post petition arrears.

Debtor has amended her schedule J and is submitting an amended declaration to fix the clerical errors spotted by the trustee in regards to her expenses.

Debtor also proposes adding in the confirmation order the correct amount of Class 1 Post petition mortgage arrears to supplemental the dividend amount. The correct amount is \$2,897.92 as stated by the Trustee.

Discussion

As the Trustee highlights, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

3. [14-22172](#)-C-13 GARY/DEBORA WHITLEY
TJW-2 Timothy Walsh

MOTION TO APPROVE LOAN
MODIFICATION
1-14-16 [[35](#)]

Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on January 14, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Approve Loan Modification has been set for hearing on the notice required by 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Debora and Gary Whitley ("Debtors") seeks court approval for Debtor to incur post-petition credit. Caliber Home Loans, Inc. ("Creditor") has agreed to a loan modification which will set the terms of Debtor's mortgage payment as follows:

New Principal Balance: \$248,285.12
Modification interest rate: 5.500%
Modification interest only payment \$1,137.97
Monthly Escrow payment \$231.90
Reduction period end date: 2/1/2021
Deferred Amount \$82,064.89

The Motion is supported by the Declaration of Debtors. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

Trustee's Opposition

The Chapter 13 Trustee has no objection to the terms of the loan modification. Rather, the Trustee is uncertain that the loan modification agreement is being offered by the party who is the owner or holder of the existing note.

Discussion

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtors' ability to fund that Plan. However, the court does not have evidence that Caliber Home Loans, Inc. is either the holder of the note or has authority, as servicer, to modify Debtors' loan. The court cannot grant the motion at this time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debora and Gary Whitley having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied.

Final Ruling: No appearance at the February 2, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is continued to February 23, 2016 at 2:00 p.m.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation.

TRUSTEE'S OPPOSITION

Trustee opposed the motion, stating that Debtors improperly set the confirmation hearing, and that the confirmation hearing on this matter should be no sooner than February 10, 2016.

DEBTOR'S RESPONSE

Debtors have filed an amended notice of hearing, setting this hearing on February 23, 2016 to be in compliance with 11 U.S.C. § 1324(b).

TRUSTEE'S AMENDED OPPOSITION

On January 28, 2016, Trustee filed an amended opposition to confirmation on the basis that Debtor is \$150 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$600 is due February 25, 2015. The case was filed on December 11, 2015, and Debtor has paid \$450 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

The court will continue the instant motion to February 23, 2016 in accordance with Debtor's amended notice of hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to February 23, 2016 at 2:00 p.m.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, 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 offers 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (iii).

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. 14 days' notice is required. This requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, 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. At the hearing -----.

The Motion to Extend the Automatic Stay is granted.
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Andre Michael Huddleston and Vonetta LeeAnn Huddleston ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-21714) was dismissed on November 24, 2015, after Debtor failed to confirm a plan. See Order, Bankr. E.D. Cal. No. 15-21714, Dckt. 47, November 24, 2015. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B).

The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor provides that they fell behind on monthly payments because Debtor Andre Michael Huddleston lost his job. Debtor states that he is now in the final stages of being hired by Sacramento County and expects to be employed prior to February 2016. Furthermore, Debtor Vonetta Huddleston is in the process of obtaining a staffing agency position and expects to be positioned prior to February 2016.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.
