

**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: March 2, 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

March 2, 2021 at 1:00 p.m.

1. [21-20402](#)-B-13 ALFONSO PULIDO MOTION TO EXTEND AUTOMATIC STAY
[PGM](#)-1 Peter G. Macaluso 2-11-21 [[11](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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). Further briefing is unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case and in all of the Debtor's prior bankruptcy cases. See Fed. R. Evid. 201(c)(1).

The court's decision is deny the motion and the automatic stay will not be continued. Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

Background

The court has before it a motion to continue the automatic stay of 11 U.S.C. § 362(a) as to all creditors filed by debtor Alfonso Pulido ("Debtor"). This is the Debtor's second bankruptcy case filed after a prior case was dismissed within the one-year period prior to the February 3, 2021, petition date ("Petition Date") of this case. It is also the Debtor's seventh bankruptcy case in total, five of which were nonproductive, nonperforming, and were dismissed. U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor") filed an opposition.

As indicated in *italics* below, the Debtor had a prior case dismissed within the one year period prior to the Petition Date. The prior case was dismissed after the Debtor failed to make plan payments totaling over \$17,500.00.

All of the Debtor's prior bankruptcy cases and their outcome are as follows:

a. *Case No. 19-20233, chapter 13, filed on January 15, 2019, and dismissed on December 22, 2020, following a notice of default and intent to dismiss for failure to make over \$17,500.00 in plan payments. Notably, the Debtor did not dispute the default stated in the notice of intent to dismiss and elected to allow the case to be dismissed in lieu of filing an amended plan to address the default.*

b. *Case No. 16-20614, chapter 13, filed on February 3, 2016, and dismissed on November 16, 2018, following a notice of default and intent to dismiss for failure to make over \$13,000.00 in plan payments. Notably, the Debtor did not dispute the default stated in the notice of intent to dismiss and elected to allow the case to be dismissed in lieu of filing an amended plan to address the default.*

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c. Case No. 12-27154, chapter 11, filed on April 12, 2012, and dismissed on June 4, 2012. Disclosure statement was not approved.

d. Case No. 11-46841, chapter 7, filed on November 14, 2011, and discharged on July 31, 2012.

e. Case No. 09-47122, chapter 11, filed on December 11, 2009, and dismissed on March 9, 2011, for not timely filing monthly operating reports (the operating reports that were filed were described by the court as an "incoherent mess"), continuing diminution and loss to the estate, and the absence of any reasonable likelihood of rehabilitation.

f. Case No. 09-39656, chapter 13, filed on September 14, 2009, and dismissed on December 1, 2009, for unreasonable delay prejudicial to creditors and failure to produce tax documents.

For purposes of this motion and the continuation of the automatic stay in this chapter 13 case, the Debtor states that his circumstances have changed because his spouse can return to work now that the pandemic has eased up.

Creditor objects to the motion stating that there is no good faith change in the Debtor's circumstances. Specifically, Creditor argues that the Debtor proffers no legitimate or credible reason why he did not make the \$17,500.00+ plan payments in the most recent dismissed case (which payments included Creditor's mortgage payments and property tax payments). Creditor also states that Debtor's schedules revealed he was making more than sufficient income during the applicable months in 2020 to pay plan payments and/or county taxes but chose not to.

Creditor also states that while the Debtor contends his spouse will go back to work, the Debtor's current Schedule I shows that the Debtor's spouse is not employed and therefore not making any income leaving the Debtor as the sole source of income.

The court agrees with Creditor.

Discussion

This being the Debtor's second bankruptcy case filed after a prior case was dismissed within the one-year period prior to the Petition Date, under § 362(c)(3)(A) the automatic stay will terminate in its entirety 30 days after the Petition Date unless continued. *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011); see also *Fareed Sepehry-Fard v. U.S. Bank, N.A. (In re Sepehry-Fard)*, 2018 WL 2709718 at *4 (9th Cir. BAP June, 5, 2018); *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

The automatic stay may be continued beyond the 30-day period after a noticed hearing completed before the 30-day period expires, and only if the party moving to continue the stay demonstrates that the latter case was filed in good faith as to the creditors to be stayed (which, here, is all creditors). See 11 U.S.C. § 362(c)(3)(B). Although the second case is presumptively not filed in good faith, the presumption may be rebutted by clear and convincing evidence of a substantial change in circumstances that permits the court to conclude that a plan will be confirmed and fully performed in the second case. See 11 U.S.C. § 362(c)(3)(C)(III)(b).

The Debtor asserts that his circumstances have changed between his most recent prior dismissed case and this one because the pandemic has eased up and his spouse can now return to work. These unsupported and unsubstantiated assertions are not persuasive evidence. And they certainly are not the clear and convincing evidence required to rebut the presumption that the current case was not filed in good faith.

Evidence that the pandemic has eased up is non-existent.

The schedules also reflect that the Debtor's spouse is not employed. And there is no evidence with regard to the Debtor's spouse's employability or willingness to be

employed.¹

More important, by the Debtor's own admission, there is no substantial change in the Debtor's financial circumstances between the most recent dismissed case and this one. The substantial plan payment default which resulted in dismissal of the Debtor's most recent prior case included property tax payments. See case no. 19-20233, dkt. 50 at 4. The schedules and proposed plan in this case also reflect substantial property tax debt. And yet, in this case, Debtor candidly admits that he "[does] not have the cash available to cure the property taxes[.]" Dkt. 13 at 2:14. Without cash to pay property taxes in this case the Debtor is unlikely to confirm - much less fully perform under - a chapter 13 plan.

Finally, not only has the Debtor failed to overcome the presumption that the present case was not filed in good faith but considering the totality of the circumstances, *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d 1219, 1224 (9th Cir. 1999), including the Debtor's pre-filing conduct, *In re Huerta*, 137 B.R. 356, 367-68 (Bankr. C.D. Cal. 1992), the court is persuaded this case was in fact not filed in good faith. The Debtor's repeat filing of nonproductive and nonperforming bankruptcy cases which are ultimately dismissed is indicative of an abuse of the bankruptcy process, filing bankruptcy cases for an improper purpose, and therefore bad faith. See *Tsafaroff v. Taylor* (*In re Taylor*), 884 F.2d 478, 485 (9th Cir. 1989) (citing *Downey Savings & Loan Ass'n v. Metz*, (*In re Metz*), 820 F.2d 1495, 1497 (9th Cir. 1987)).

Conclusion

For the foregoing reasons, the Debtor's motion to continue the automatic stay as to all creditors will be denied. The automatic stay of § 362(a) will not be imposed and will terminate in its *entirety* 30 days after the Petition Date.

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

The court will issue an order.

¹This apparently is not the first time the Debtor has used this excuse. In the context of a failed effort to save one of the prior cases from dismissal, the court rejected a nearly identical argument noting that the Debtor presented no evidence of his spouse's employment, employability, or willingness to be employed. The court also noted that, as is the case here, it did "not have [a] declaration from the Debtor's wife concerning her ability and willingness to contribute to the debtor's plan." Case no. 09-47122, dkt. 210 at 2.

2. [20-25505](#)-B-13 LYNDA GREEN
[RDG](#)-1 Robert W. Fong

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
2-8-21 [[23](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed December 11, 2020. will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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 motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 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). Opposition was filed.

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 second amended plan.

First, the plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's plan proposes to pay a 100% dividend to unsecured creditors in 60 months however the Debtor is not proposing to pay interest.

Second, Debtor's plan at Section 3.07 provides for Mr. Cooper as a Class 1 claim an ongoing mortgage payment of \$1,209.45, pre-petition arrears of \$17,529.06 and post-petition arrears in the amount of \$4,837.80. The total post-petition arrears due is \$6,047.25. Debtor's plan provides for post-petition arrears of \$4,837.80 and accordingly is not feasible. 11 U.S.C. § 1325(a)(6).

Third, the plan at Section 7.01 Paragraph 3 states that the trustee shall pay \$4,302.04 of the balance on hand to Mr. Cooper as a dividend to post-petition delinquency. The balance on hand as of February 8, 2021, is \$4,381.41. Debtor will have an additional plan payment due in the amount of \$2,229.00 before the hearing on debtor's motion, and an additional post-petition mortgage payment in the amount of \$1,209.45 is scheduled to disburse prior to the hearing on debtor's motion. Trustee is not able to anticipate what the balance on hand total might be at the time of confirmation and is not able to administer the plan according to these terms. Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

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.

4. [19-21429](#)-B-13 JAYCEE DEVERA
[JCK](#)-3 Gregory J. Smith

MOTION TO MODIFY PLAN
1-19-21 [[41](#)]

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.

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 Debtor's Chapter 13 plan, Peter Macaluso ("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. 59. Applicant now seeks additional compensation in the amount of \$997.50 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 79.

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 the filing of a modified plan that would extend the term length to 84 months. Applicant states that he nor the Debtor could have anticipated the global pandemic of COVID-19 and its impact on the economy and Debtor's bankruptcy. 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 Debtor, estate, and creditors.

That said, Applicant's billing records include one entry billed in a quarter-hour increment. Specifically, that on September 15, 2020, with a corresponding task description of "[r]eviewed rulings for Motion to Modify, . . . granted, no appearance required." Dkt. 79 at 3:3.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133 at *17 (N.D. Cal. Sept. 30, 2011). Such is the case here.

The court seriously doubts that it took Applicant 15 minutes to review the civil minutes and/or minute order. Therefore, the court will reduce the attorney's fees for the time entry of August 11, 2020, to .10 hours. *See Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358 at *6 (S.D. Ala. June 1, 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That amounts to a \$45.00

reduction to the \$997.50 requested, or an allowed total of \$952.50.

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

Additional Fees	\$952.50
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$952.50 and additional costs and expenses of \$0.00.

The court will issue an order.

6. [11-49137](#)-B-13 LEON ELLIS
[PGM-2](#) Peter G. Macaluso
Thru #7

MOTION TO AVOID LIEN OF ARROW
FINANCIAL SERVICES LLC
1-22-21 [[77](#)]

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 to avoid lien of Arrow Financial Services LLC.

This is a request for an order avoiding the judicial lien of Arrow Financial Services LLC ("Creditor") against the Debtor's property commonly known as 2440 Northfield Court, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,706.97. An abstract of judgment was recorded with Sutter County on October 28, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$160,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C. The first and second deeds of trust recorded against the Property total \$269,100.15.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

7. [11-49137](#)-B-13 LEON ELLIS
[PGM-3](#) Peter G. Macaluso

MOTION TO AVOID LIEN OF NEWPORT
CAPITAL RECOVERY GROUP II, LLC
1-22-21 [[83](#)]

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 to avoid lien of Newport Capital Recovery Group II, LLC.

This is a request for an order avoiding the judicial lien of Newport Capital Recovery Group II, LLC ("Creditor") against the Debtor's property commonly known as 2440 Northfield Court, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,022.74. An abstract of judgment was recorded with Sutter County on April 26, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$160,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C. The first and second deeds of trust recorded against the Property total \$269,100.15.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

8. [19-24643](#)-B-13 STACY HALLINAN
[JCK](#)-3 Gregory J. Smith

MOTION TO MODIFY PLAN
1-19-21 [[43](#)]

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.

9. [20-24652](#)-B-13 LILLIE BRACY
[BLG](#)-2 Chad M. Johnson

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON,
DEBTORS ATTORNEY(S)
1-26-21 [[42](#)]

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.

Fees and Costs Requested

Chad M. Johnson ("Applicant"), the attorney to Chapter 13 Debtor, makes his first request for the allowance of \$3,161.00 in fees and \$310.00 in expenses. The period for which the fees are requested is for September 3, 2020, through December 14, 2020. The order of the court approving employment of Applicant was entered on January 26, 2021. Dkt. 42.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 45, exh. B.

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.

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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 to 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 relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate. However, the court takes issue with the reasonableness of Applicant's hourly rate the Debtor is charged in this chapter 13 case.

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*, 924 F.2d at 960-61; *Placide*, 459 B.R. at 73; *In re South Dairy Farm*, 2014 WL 271635 at *2 (Bankr. E.D. Cal. Jan. 22, 2014). Departure is appropriate when billing judgment is not prudent. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

Applicant's \$400.00 hourly rate charged in this chapter 13 case exceeds the reasonable hourly rate generally allowed for consumer attorneys in the Eastern District of

California. See *Hall v. FCA US LLC*, 2018 WL 2298431 at *7 (E.D. Cal. May 21, 2018); *Lyon v. Bergstrom Law, Ltd.*, 2017 WL 3913375 at *3 (E.D. Cal. Sept. 7, 2017). It is also not aligned with reasonable hourly rates charged by bankruptcy attorneys with more experience who regularly appear before this court. See *In re Hsin-Shawn Cindi Sheng*, 2019 WL 6033212 at *4 (Bankr. E.D. Cal. Nov. 8, 2019); see also *Toler Bail Bonds v. Begovich*, Adv. No. 18-02201 (Dkt. 114 (2020)).

Therefore, based on the foregoing, the court makes the following reductions to the attorney's fees award of the interim compensation requested:

Professional	Hours Spent/Hourly Rate	Total Requested	Total Allowed
Attorney	6.70 hrs. @ \$400.00/hr.	\$2,680.00	6.70 hrs. @ \$350.00/hr. \$2,345.00
Paralegal	2.60 hrs. @ \$185.00/hr.	\$ 481.00	2.60 hrs. @ \$185.00/hr. \$481.00
		\$3,161.00	\$2,826.00

The motion is ORDERED GRANTED IN PART for fees (attorney and paralegal) of \$2,826.00 and expenses of \$310.00 for a total of \$3,136.00, less the \$900.00 retainer the Debtor paid prepetition.

The court will enter a minute order.

10. [20-23961](#)-B-13 PETER/MEGAN GALLEGOS
[NAR](#)-1 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF
FIRST TECH FEDERAL CREDIT UNION
2-1-21 [[37](#)]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on First Tech Federal Credit Union. A review of the proof of service shows that Debtor served Synchrony Bank and not First Tech Federal Credit Union and there is no evidence that the former is the servicer. The address used by the Debtors also does not match that listed in proof of claim no. 10. Therefore, the court's decision is to deny the motion without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

11. [20-24072](#)-B-13 LORENA FLORES MOTION TO CONFIRM PLAN
[PGM](#)-2 Peter G. Macaluso 1-22-21 [[43](#)]

CONTINUED TO 3/16/2021 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S
OBJECTION TO CLAIM.

Final Ruling

No appearance at the March 2, 2021, hearing is required. The court will issue an
order.

12. [20-24076](#)-B-13 DON HARDING AND VIRIGNIA MOTION TO CONFIRM PLAN
[PGM](#)-1 SIMMS 1-18-21 [[27](#)]
Peter G. Macaluso

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.

13. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON MOTION TO CONFIRM PLAN
[BSH](#)-4 Brian S. Haddix 1-6-21 [[66](#)]
Thru #15

Final Ruling

The motion been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, an amended plan was filed on January 20, 2021. The confirmation hearing for the amended plan is scheduled for March 2, 2021. The earlier plan filed January 6, 2021, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

14. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON OBJECTION TO CLAIM OF
[BSH](#)-5 Brian S. Haddix HARLEY-DAVIDSON CREDIT CORP.,
CLAIM NUMBER 10
1-10-21 [[77](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claim No. 10 of Harley-Davidson Credit Corp. and allow the secured claim amount of \$10,262.11 (and not \$10,252.11 as stated in the Debtors' motion).

Debtors request that the court reduce the allowed claim of Harley-Davidson Credit Corp. ("Creditor"), Claim No. 10, from \$15,649.13 to \$10,252.11. The claim is asserted by the Creditor to be \$14,884.83 in principal and \$764.30 in accrued unpaid interest.

The Debtors state that there is a \$4,622.72 discrepancy between the outstanding principal owed at the conclusion of the prior case, no. 18-27891, based on Creditor's then proof of claim filed February 18, 2019, and payments made by the Chapter 13 Trustee to the Creditor, and the new principal amount stated in the proof of claim filed by the Creditor in this case on August 20, 2020. The court takes judicial notice of the prior bankruptcy filing, Creditor's prior proof of claim in the amount of \$23,349.00, and the principal and interest paid by the Trustee to the Creditor in the amounts of \$13,086.89 and \$666.45, respectively.

Debtors state that they notified Creditor's counsel via e-mail regarding the disputed amount and August 26, 2020, and October 6, 2020, requesting clarification of the accounting. Creditor's counsel did not respond.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtors have met their burden of overcoming the presumptive validity of the claim. There is no accounting as to why Creditor's claim is \$14,884.83 in principal and \$764.30 in accrued unpaid interest. By the court's calculation, the principal should be \$10,262.11 (and not \$10,252.11 as stated in the Debtors' motion.)

Based on the evidence before the court, the Creditor's claim is allowed in the secured claim amount of \$10,262.11. The objection to the proof of claim is sustained.

Although requested in the motion, Debtors have not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this objection. Debtors are not awarded any attorneys' fees.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

15. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON MOTION TO CONFIRM PLAN
[BSH-6](#) Brian S. Haddix 1-20-21 [[84](#)]

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.

16. [20-21594](#)-B-13 RUSSELL/GLORIA HUTSELL MOTION TO CONFIRM PLAN
[SLE](#)-4 Steele Lanphier 1-15-21 [[87](#)]

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.

17. [20-21595](#)-B-13 JOHN FORDON
[RJ-4](#) Richard L. Jare

MOTION FOR COMPENSATION FOR
RICHARD JARE, DEBTORS
ATTORNEY(S)
2-2-21 [[75](#)]

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 Debtor's Chapter 13 plan, Richard Jare ("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. 54. Applicant now seeks additional compensation in the amount of \$2,000.00 in fees and \$0.00 in costs. This is a reduction from extraordinary services provided amounting to \$3,600.00.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 77.

The Chapter 13 Trustee filed a response not otherwise opposing the fees requested by the Applicant, but notes that no declaration was filed by the Debtor indicating his agreement to the fees requested. Nonetheless, Applicant did serve the Debtor and no response was filed.

Discussion

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 Debtor would require the selling of exempt property. 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 Debtor, estate, and creditors. The court also notes that the Applicant is providing a

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

Additional Fees	\$2,000.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$2,000.00 and costs and expenses of \$0.00

The court will issue an order.

18. [21-20357](#)-B-13 CHE LUCKY
[BSH](#)-1 Brian S. Haddix

CONTINUED MOTION TO IMPOSE
AUTOMATIC STAY
2-8-21 [[15](#)]

Final Ruling

This matter was continued from February 23, 2021, to provide any party in interest to file a response by 5:00 p.m. on Friday, February 26, 2021. No response was filed. Therefore, the court's conditional ruling at docket 28 shall become the court's final decision. The continued hearing on March 2, 2021, at 1:00 p.m. will be vacated.

The court will issue an order.