

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 1, 2014 at 9:32 A.M.

1. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION TO DISMISS
[13-2288](#) JWK-3 ADVERSARY PROCEEDING
PRIOR V. TRI COUNTIES BANK ET AL 12-27-13 [[93](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The matter is deemed submitted on the papers. Briefing for this matter is closed. The court will issue a memorandum decision and order.

2. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED AMENDED MOTION FOR
[13-2288](#) NJR-2 SUMMARY JUDGMENT
PRIOR V. TRI COUNTIES BANK ET 1-3-14 [[107](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The matter is deemed submitted on the papers. Briefing for this matter is closed. The court will issue a memorandum decision and order.

3. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR PARTIAL
[13-2288](#) WFH-2 SUMMARY JUDGMENT
PRIOR V. TRI COUNTIES BANK ET 1-14-14 [[111](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The matter is deemed submitted on the papers. Briefing for this matter is closed. The court will issue a memorandum decision and order.

4. [14-23302](#)-B-7 JAGRAJ SINGH AND SATINDER MOTION TO COMPEL ABANDONMENT
CAH-1 KAUR 5-27-14 [[16](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to August 12, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

5. [14-21607](#)-B-7 RENA WASHINGTON MOTION TO EMPLOY ESTELA O. PINO
PA-1 AS ATTORNEY
5-27-14 [[16](#)]

Tentative Ruling: The motion is granted in part to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the debtor's request to employ Pino & Associates ("P&A") as general bankruptcy counsel to the estate, effective as of April 27, 2014. P&A's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that P&A is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court does not grant P&A's requested effective date of employment of April 18, 2014. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp., 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). In this case, the motion was filed and served on May 27, 2014, 39 days after the requested effective date of employment. Neither the motion nor the supporting declaration describe extraordinary or exceptional circumstances which justify retroactive employment to a date more than thirty days earlier than the date of the filing of the motion. Therefore, the court grants P&A an effective date of employment of April 27, 2014, which is 30 days prior to the date of the filing of the motion.

The court will issue a minute order.

6. [14-21607](#)-B-7 RENA WASHINGTON
PA-2

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-27-14 [[21](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to Fed. R. Bankr. P. 4004(b), the deadline for the chapter 7 trustee to file a complaint under 11 U.S.C. § 727 objecting to the discharge of the debtor is extended to and including August 25, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

7. [14-22315](#)-B-11 BARRY JOHNSON
PRE-4

MOTION TO EXTEND EXCLUSIVITY
PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT
6-17-14 [[59](#)]

Tentative Ruling: The motion is dismissed without prejudice.

There is no evidence on the court's docket that the motion was properly served on all parties in interest to the motion. This is a motion for extension of the debtor's exclusivity period for the filing of a chapter 11 plan and disclosure statement pursuant to 11 U.S.C. § 1121(d). Due to the nature of the relief sought in the motion, the court treats it as a contested matter under Fed. R. Bankr. P. 9014 under which the debtor seeks relief as to all of his creditors. Therefore, the debtor must serve the motion on all creditors. The debtor must also serve the motion on the United States trustee, as required by section 1.1 of the Region 17 United States Trustee Guidelines. No certificate of service of the motion on the foregoing entities is filed on the court's docket.

The court will issue a minute order.

8. [14-20117](#)-B-7 ALFONSO/AVELINA BORJA
BOR-1

MOTION TO REOPEN CHAPTER 7
BANKRUPTCY CASE
6-16-14 [[24](#)]

CASE CLOSED 4/18/14

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is denied.

The debtors seek to reopen the case for the purpose of allowing them to file a reaffirmation agreement with Green Tree Servicing, the alleged holder of the first priority deed of trust on the debtors' residence. Allowing the debtors to reopen the case, however, would not result in any relief to the debtors because any reaffirmation agreement will be filed after the debtors have received their discharge. Pursuant to 11 U.S.C. § 524(c)(1), a reaffirmation agreement is enforceable only if such an agreement was made before the granting of a discharge. The debtors received a discharge on April 15, 2014. The motion alleges that Green Tree Servicing contacted them regarding entry into a reaffirmation agreement after they received their discharge and the case was closed. The debtors have cited no legal authority for (1) vacatur of their discharge or (2) a conclusion that, since they have already received a discharge, vacatur would render a reaffirmation agreement with Green Tree Servicing enforceable. Accordingly, the motion is denied.

The court will issue a minute order.

9. [11-48519](#)-B-7 VICTOR HANNAN MOTION TO COMPROMISE
MPD-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH VICTOR LLOYD
HANNAN AND/OR MOTION TO SELL
6-3-14 [[208](#)]

Tentative Ruling: None.

10. [14-24124](#)-B-7 PIOTR/KATIE STACHNIUK CONTINUED MOTION TO COMPEL
FF-1 ABANDONMENT
4-25-14 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

11. [13-32529](#)-B-7 GARY/DEBRA CAMPBELL MOTION TO EXTEND TIME
HSM-7 6-2-14 [[92](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The deadline for the chapter 7 trustee to file an objection to the debtors' claims of exemption is extended to and

including August 4, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

12. [14-23733](#)-B-7 LINH NGUYEN

MOTION TO COMPEL ABANDONMENT
6-18-14 [[30](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to July 29, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired. In this case, the debtor filed an amended Schedule C on June 18, 2014, which amended the identity of property claimed as exempt under Cal. Civ. Proc. Code § 703.140(b)(6). Parties in interest will have until July 18, 2014, to object to the amended claim of exemption.

The court will issue a minute order.

13. [14-21034](#)-B-7 RICHARD FECTION
HMS-2

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR, TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT OR
TO DISMISS CASE PURSUANT TO 11
U.S.C. SECTION 707(B)
5-28-14 [[66](#)]

Tentative Ruling: Because the notice of hearing erroneously sets a deadline for filing and serving opposition to the motion of June 24, 2014, only seven days before the date of the hearing, the court treats this motion as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

14. [14-23047](#)-B-7 MATTHEW/ERICKA BORG
UST-1

MOTION TO APPROVE STIPULATION
PROHIBITING LAWRENCE LOCKWOOD
FROM THE USE OF ELECTRONIC
SIGNATURES AND IMPOSING CIVIL
PENALTY
5-23-14 [[32](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The Stipulation to Entry of Order between the United States trustee and the debtors' counsel filed on May 23, 2014 (Dkt. 31) (the "Stipulation") is approved and shall be binding between the parties thereto. Pursuant to the Stipulation, the debtors' counsel, Lawrence Lockwood, Esq., is prohibited from using electronic signatures to indicate signatures other than his own on documents filed with the court for the period July 15, 2014 through and including July 14, 2015. Pursuant to the Stipulation and 11 U.S.C. § 707(b)(4)(B), the court assesses a civil penalty against Mr. Lockwood in the amount of \$250, payable to the United States trustee. Except as so ordered, the motion is denied.

Counsel for the United States trustee shall submit a proposed form of order in the form attached as Exhibit "A" to the Stipulation.

15. [13-35749](#)-B-7 ALEXANDER HOWARD
[14-2084](#) DL-1
SACRAMENTO MUNICIPAL UTILITY
DISTRICT V. HOWARD

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
5-30-14 [[17](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the plaintiff has not shown the court that it is entitled to judgment as a matter of law in this case. The motion (Dkt. 17) contains no citation to the legal authority applicable to this matter, nor does it apply any of the facts alleged in the complaint and submitted with the motion to legal standard(s) that would demonstrate that the plaintiff is entitled to judgment in this matter as a matter of law. Pages 5-7 of the motion, which address each of the plaintiff's individual claims for relief, are nothing more than exact copies of the allegations pertaining to each claim in the complaint, without no discussion as to why the plaintiff is entitled to judgment as a matter of law on each claim.

Pursuant to LBR 9014-1(d)(5), each motion shall cite the legal authority relied upon by the filing party. "[E]ntry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." In re Meyer, 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). Accordingly, the plaintiff has not shown the court that it is entitled to judgment as a matter of law in this case.

The court will issue a minute order.

16. [13-35752](#)-B-7 THOMAS/MARJORIE CROUCH MOTION TO SELL
JRR-1 6-3-14 [[32](#)]

Tentative Ruling: This motion is unopposed. In this instance the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to short sell real property located at 8362 Tracy Terrace, Granite Bay, California (the "Property") to Jonathan J. DiFrancesco and Patricia L. DiFrancesco for \$510,000.00 on the terms set forth in the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion, provided that the court's ruling does not authorize sale of the Property to any other purchaser, does not authorize sale of the Property free and clear of liens, and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agrees to do so. The trustee is authorized to execute all documents necessary to complete the sale. The net proceeds of the sale designated as a carveout for the estate shall be administered for the benefit of the estate. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves a commission in the amount of \$17,850.00, to be paid as a chapter 7 administrative expense to the trustee's agent, Realty Executives. The trustee is also authorized to pay the buyers' agent Keller Williams \$12,750.00 from the proceeds of the sale. The 14-day stay of the order granting this motion under Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The court approved employment of Realty Executives as real estate agent for the trustee by order entered February 19, 2014 (Dkt. 26). The court finds that the approved commission is reasonable compensation for actual, necessary services.

The court will issue a minute order.

17. [13-23353](#)-B-7 ALLEN-SIMMONS HEATING & MOTION TO COMPROMISE
PA-3 SHEET METAL CO. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CORDELIA POINT,
LLC
6-3-14 [[57](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication. By this motion the chapter 7 trustee seeks authorization to enter into a compromise agreement with Cordelia Point, LLC ("Cordelia"). Although the motion describes certain material terms of the compromise, the trustee asserts in the motion that the compromise is "in the process of being documented." In addition, the trustee has not presented evidence, other than the fact of the filing of an amended claim by Cordelia, that Cordelia consents to all terms of the compromise. The absence of an actual, finalized compromise to which both parties thereto consent for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise, no case or controversy within the meaning of Article III exists.

The motion is dismissed due to the ripeness issue discussed above. However, the court also notes that pursuant to the terms of the compromise, Cordelia will receive a distribution from the estate in satisfaction of its claim, which is filed as a general, non-priority unsecured claim, prior to other creditors. The motion provides no analysis of expected distributions to other creditors to show that they will receive equal or greater percentage dividends from the estate.

The court will issue a minute order.

18. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION FOR FINAL DECREE
KG-608 6-3-14 [[694](#)]

Disposition Without Oral Argument: The motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to Fed. R. Bankr. P. 3022, the clerk of the court shall enter a final decree in this case on form EDC-7-170 (Rev. 9/1/10). Upon entry of the final decree, the clerk of the court shall close the case.

The court finds, based on the undisputed declaration of the joint debtor Jesus Medina in support of the motion, that the debtors' estate has been fully administered pursuant to the terms of the confirmed chapter 11 plan.

The court will issue a minute order granting the motion.

19. [14-24555](#)-B-7 RALPH/KELLY DENNIS

AMENDED MOTION TO DISMISS
DUPLICATE CASE
6-4-14 [[15](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

20. [13-27856](#)-B-7 ARTHUR LUND
HCS-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF
HERUM/CRABTREE/SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
5-22-14 [[72](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$3,500.00 in fees and costs for the period of August 20, 2013, through and including July 1, 2014, payable as a chapter 7 administrative expense to the law firm Herum\Crabtree\Suntag ("HCS"). Except as so ordered, the motion is denied.

By order entered on September 6, 2013 (Dkt. 32), the court authorized the chapter 7 trustee to retain the Suntag Law Firm as counsel for the estate in this case, with an effective date of employment of August 20, 2013. On February 1, 2014, the Suntag Law Firm merged with the law firm Herum\Crabtree, to become HCS. The court authorized the chapter 7 trustee to employ HCS as counsel for the estate by order entered March 24, 2014 (Dkt. 68), with an effective date of employment of February 7, 2014. The applicant now seeks compensation for services rendered and costs incurred during the period of August 20, 2013, through and including July 1, 2014. The requested fees and costs are approved in full. The court notes that it would ordinarily reduce the applicant's fees because the billing statements show an intention to bill one hour for a court appearance on this matter. This matter is being resolved without oral argument and will therefore not be called for hearing on July 1, 2014. No appearance is required. However, because the applicant has already substantially reduced its fees and costs from the actual work performed as evidenced by the applicant's billing records and the application, the requested fees are approved in full. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

21. [13-35166](#)-B-7 WILLIAM/DEBORAH ROBINSON MOTION TO SELL
KJH-1 6-3-14 [[21](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion the chapter 7 trustee seeks court approval to sell the estate's non-exempt interest in a 2003 Honda Accord LE V6 (VIN 1HGCM66573A028207) (the "Asset") to Sandra Nerwinski (the "Buyer") in an "as is" and "where is" condition for \$5,000.00 subject to overbidding. However, the trustee has failed to provide evidence that there is an actual sale agreement with the Buyer for the court to approve. Sales of motor vehicles are governed by division 2 of the California Uniform Commercial Code. Donovan v. RRL Corp., 26 Cal.4th 261, 276 n. 4, 27 P.3d 702, 109 Cal.Rptr.2d 807 (2001). California Commercial Code § 2201(1) requires a contract for the sale of a motor vehicle for a price of \$500.00 or more to be in writing in order to be enforceable by way of action or defense.

The absence of an actual sale agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no written, finalized, actual sale agreement to which the Buyer consents, no case or controversy within the meaning of Article III exists.

Here, the trustee has failed to provide the court with a copy of the sale agreement or any other evidence that there is a final agreement in place to which the Buyer consents. While the court acknowledges that the material terms of the sale agreement are set forth in the motion, the Buyer has not signed the motion or any other document submitted by the trustee evidencing her consent. Accordingly, the motion is not ripe for adjudication and is dismissed without prejudice.

The court will issue a minute order.

22. [12-27767](#)-B-11 DOMINIQUE ENGEL MOTION TO VALUE COLLATERAL OF
MLA-6 JP MORGAN CHASE BANK, N.A.
6-3-14 [[229](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtor's real property located at 10625 Metteer Road, Live Oak, CA 95953 (the "Property") had a value of

\$425,000.00 as of the date of the motion. Except as so ordered, the motion is denied.

The motion does not request valuation as of any particular date. Therefore, for purposes of this motion, the Property had a value of \$425,000.00 as of June 3, 2014 (the date of the motion and supporting declaration (Dkt. 231)). The Property is encumbered by a first deed of trust held by U.S. Bank, N.A. with a balance of approximately \$465,969.28. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

23. [14-21070](#)-B-7 MELFORD HICKS MOTION TO EXTEND TIME
HSM-4 5-30-14 [[41](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The deadline for the chapter 7 trustee to file an objection to the debtor's claims of exemption is extended to and including July 29, 2014. Except as so ordered, the motion is denied.

The court finds that the trustee has established "cause" to extend the time for filing objections to the debtor's claims of exemption pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1).

The court will issue a minute order.

24. [12-28371](#)-B-7 MARY KEITH MOTION TO AVOID LIEN OF
LRR-2 PORTFOLIO RECOVERY ASSOCIATES,
LLC
5-21-14 [[30](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Portfolio Recovery Associates, LLC, recorded in the official records of San Joaquin County, Doc. No. 2012-032821, is avoided as against the real property located at 357 Redwood Avenue, Tracy, CA 95376 (the "Property").

The value of the debtor's interest in the Property was \$88,850.00 as of the date of the petition. The unavoidable liens total \$0.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 704.730(a)(2), under which she exempted \$88,850.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. 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 Property and its fixing is avoided.

The court will issue a minute order.

25. [13-36071](#)-B-7 MICHAEL KUNTZ MOTION TO EMPLOY ALDON L.
HCS-2 BOLANOS AS SPECIAL COUNSEL
6-17-14 [[36](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

26. [14-24074](#)-B-7 PAUL/CYNTHIA HANSCOM CONTINUED MOTION TO COMPEL
FF-1 ABANDONMENT
4-25-14 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

27. [14-22276](#)-B-7 SHAWNA EMERY MOTION TO EXTEND DEADLINE TO
HLC-2 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
6-13-14 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

28. [14-22278](#)-B-7 GIFFORD/VICKI BERRY MOTION TO AVOID LIEN OF BUTTE
DBJ-1 COUNTY CREDIT BUREAU
5-27-14 [[13](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Butte County Credit Bureau, recorded in the official records of Tehama County, Book no. 1908, Pages 524-526, is avoided as against the real property

located at 807 Oak Street, Red Bluff, CA 96080 (the "Property").

The Property had a value of \$42,000.00 as of the date of the petition. The unavoidable liens total approximately \$0.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$42,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. 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 debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

29. [14-22278](#)-B-7 GIFFORD/VICKI BERRY MOTION TO AVOID LIEN OF BUTTE
DBJ-2 COUNTY CREDIT BUREAU
5-27-14 [[18](#)]

Tentative Ruling: The motion is denied without prejudice.

By this motion the debtors seek to avoid the judicial lien held by Butte County Credit Bureau as it encumbers their claim of exemption in the real property located at 807 Oak Street, Red Bluff, CA 96080 (the "Property"). However, the debtors have failed to establish the existence of a judicial lien encumbering the Property. To avoid a nonconsensual judicial lien, the debtors must satisfy the following elements:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (table). The debtors have not shown the existence of a judicial lien encumbering the Property. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). Here, the debtors state in the motion and accompanying declaration (Dkt. 20) that an abstract of judgment in favor of Butte County Credit Bureau was recorded in the official records of Tehama County on or about August 8, 2001. The court acknowledges the abstract of judgment attached as an exhibit (Dkt. 21, p.2-3). However, the abstract of judgment bears no evidence of having been recorded in Tehama County. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

30. [14-22278](#)-B-7 GIFFORD/VICKI BERRY
DBJ-3

MOTION TO AVOID LIEN OF BUTTE
COUNTY CREDIT BUREAU
5-27-14 [[23](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Butte County Credit Bureau, recorded in the official records of Tehama County, Book no. 1741, Pages 141-143, is avoided as against the real property located at 807 Oak Street, Red Bluff, CA 96080 (the "Property").

The Property had a value of \$42,000.00 as of the date of the petition. The unavoidable liens total approximately \$0.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$42,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. 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 debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

31. [14-22278](#)-B-7 GIFFORD/VICKI BERRY
DBJ-4

MOTION TO AVOID LIEN OF BUTTE
COUNTY CREDIT BUREAU
5-27-14 [[28](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Butte County Credit Bureau, recorded in the official records of Tehama County, Book no. 1741, Pages 144-146, is avoided as against the real property located at 807 Oak Street, Red Bluff, CA 96080 (the "Property").

The Property had a value of \$42,000.00 as of the date of the petition. The unavoidable liens total approximately \$0.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$42,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. 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 debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

32. [14-22278](#)-B-7 GIFFORD/VICKI BERRY
DBJ-5

MOTION TO AVOID LIEN OF BUTTE
COUNTY CREDIT BUREAU
5-27-14 [[33](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Butte County Credit Bureau, recorded in the official records of Tehama County, Book no. 1755, Pages 609-611, is avoided as against the real property located at 807 Oak Street, Red Bluff, CA 96080 (the "Property").

The Property had a value of \$42,000.00 as of the date of the petition. The unavoidable liens total approximately \$0.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$42,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. 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 debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

33. [14-22990](#)-B-7 BRYAN JACKSON
CAR-1

MOTION TO REDEEM
6-5-14 [[15](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The debtor withdrew the motion on June 27, 2014 (Dkt. 25).

34. [12-20997](#)-B-11 DONALD/ELIZABETH HYATT
MRL-3

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, NA
6-12-14 [[93](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

This motion for valuation is apparently for purposes of plan treatment. However, in chapter 11, "for purposes of the reorganization plan, the value of collateral is determined at the time the plan is confirmed." In

re Capital West Investors, 178 B.R. 824, 827-28 (Bankr. N.D. Cal. 1995), rev'd on other grounds and remanded, 186 B.R. 497 (N.D. Cal. 1995). In this instance, the motion requests a valuation as of the petition date, which was January 8, 2012, two and one-half years ago. That date cannot reasonably be viewed as "at the time of confirmation." Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

35. [14-23498](#)-B-7 JESSIE/MARIFEL BARTOLOME MOTION TO RECONSIDER
MDM-1 5-16-14 [[19](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). The matter is continued from June 17, 2014, at 9:32 a.m. to allow the court to review an amended application for waiver of the chapter 7 filing fee which the debtors filed shortly after the hearing on June 17, 2014 (Dkt. 33) (the "Amended Application"). The court now issues the following tentative ruling.

The motion is granted. The order entered April 29, 2014 (Dkt. 14) (the "Order"), which granted the debtors' application to waive the chapter 7 filing fee filed April 4, 2014 (Dkt. 5) (the "Application"), is modified. The filing fee is not waived; rather, the debtors are ordered to pay the full balance of the chapter 7 filing fee on or before July 29, 2014.

The debtors commenced the above-captioned case on April 4, 2014, by filing a voluntary petition under chapter 7 (Dkt. 1). On April 4, 2014, the debtors filed the Application, which resulted in the court entering the Order. The trustee asserts that, at the time of the Application, the debtors' schedules were incomplete and/or inaccurate. Specifically, he argues that, based on the debtors' testimony at the first meeting of creditors held on May 13, 2014, the debtors omitted from their original Schedule B (Dkt. 1, p.16), which is among the schedules the court analyzed in first considering the Application, several vehicles whose value total \$11,600.00, two retirement accounts, and income tax refunds totaling \$7,500.00. The trustee requested at the meeting of creditors that the debtors file amended schedules properly disclosing these omitted assets. The court notes that the debtors did file amended Schedules B and C on June 10, 2014 (Dkt. 28) disclosing joint debtor Jessie Bartolome ("Mr. Bartolome")'s interest in a 401(k) retirement plan valued at \$14,476.49 as well as the debtors' interest in a tax refund received on February 13, 2014, valued at \$7,500.00. A continuation of Schedule B was filed on June 12, 2014 (Dkt. 31) disclosing Marifel Bartolome ("Mrs. Bartolome")'s interest in a 401(k) retirement plan, and interests in four vehicles: a 2003 Ford Expedition, a 2002 Dodge Ram, a 1999 Toyota Tacoma, and a 1998 Plymouth Voyager. The trustee now requests that the court reconsider the Order because it is not based on an honest and accurate disclosure of all assets and income.

The Order itself states: "However, the Court may order the debtor to pay the filing fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted." Pursuant to that provision, the court finds that the trustee's administration of the bankruptcy case shows that the debtors do not qualify for a waiver of the chapter 7 filing fee. The court's authority to waive the filing and

other fees for chapter 7 cases is governed by 28 U.S.C. § 1930, and may be exercised only in accordance with the policies of the Judicial Conference of the United States (the "Judicial Conference"). The procedures promulgated by the Judicial Conference on August 11, 2005, particularly paragraph II, state that the district court or the bankruptcy court may waive the chapter 7 filing fee for an individual debtor who: (a) has income less than 150% of the U.S. Department of Health and Human Services' Poverty Guidelines for 2014 applicable to a family of the size involved (the "Poverty Guidelines"); and (b) is unable to pay that fee in installments. Thus, determining whether to waive the chapter 7 filing fee is a two-prong test.

Regarding the first prong of the analysis, the Judicial Conference procedures make clear at paragraph II that the income to be used for comparison to the Poverty Guidelines is the "Total Combined Monthly Income" as of the date of the bankruptcy filing as reported on Line 16 of Schedule I ("Schedule I Income"). Here, the debtors' Schedule I Income is \$2,563.77 (Dkt. 1, p.28). The Application states at Part 1.1 that the debtors' household size is eight (8). 150% of the Poverty Guidelines for a household of eight is \$5,011.25. Thus, the debtors' Schedule I Income is less than 150% of the Poverty Guidelines and the first part of the analysis promulgated by the Judicial Conference is satisfied.

However, the court finds that the debtors are not debtors who are unable to pay the filing fee in installments. In light of the \$7,500.00 tax refund the debtors received on February 13, 2014, the court finds that, although their Schedule I Income is less than 150% of the Poverty Guidelines, they nonetheless have sufficient assets to pay the filing fee. Accordingly, the court grants the motion and modifies the Order to require payment in full of the filing fee.

The court acknowledges the filing of the Amended Application, but it does not persuade the court to change its position. To start, as stated above the court determines the first prong of the Judicial Conference's analysis by comparing 150% of the Poverty Guidelines to the debtors' Schedule I Income. The debtors still pass the first prong of the analysis regardless of the income reported on the Application and Amended Application.

Furthermore, the court still finds that the debtors fail the second prong of the Judicial Conference's analysis because, although their Schedule I Income is less than 150% of the Poverty Guidelines, they have sufficient assets to pay the filing fee in light of the \$7,500.00 tax refund they received on February 13, 2014. The Amended Application discloses the tax refund at Part 3.16. Accordingly, the motion is granted.

To conclude, the trustee notes in the motion that the debtors have not been forthright in their disclosures to the court. The court agrees with this assessment in light of the following. First, the debtors have not been honest in reporting their income and expenses in this case. Both the Application and Amended Application report average monthly income of \$2,563.71, which is substantially similar to their Schedule I Income. The Application states monthly expenses at Part 2.6 of \$6,315.03, while the Amended Application states monthly expenses at Part 2.6 of \$5,876.11. These numbers are not the court's greatest concern. The debtors appeared on matter number five of the June 17, 2014, at 1:30 p.m. reaffirmation calendar seeking to reaffirm a debt on a 2006 Dodge Charger and reported substantially different income and expense figures than what they have

stated under penalty of perjury on both their schedules and fee waiver applications. Specifically, the debtors stated on the record that their income is approximately \$3,600.00 per month, and their expenses are approximately \$2,500.00 per month. On that basis, the court approved the debtors' reaffirmation agreement. The debtors cannot simply report different income and expense figures to the court depending on what their particular objective in the case may be at a given time.

Second, the trustee states in the motion that the debtors' schedules are incomplete and inaccurate due to a series of omissions made. Although the court acknowledges that the debtors have addressed these concerns in amended Schedule B and the continuation of amended Schedule B, the debtors have continued to omit certain assets in the Application and Amended Application. Specifically, the Application omits the debtors' respective 401(k) plans, all vehicles with the exception of the 2006 Dodge Charger, and the \$7,500.00 tax refund. The Amended Application discloses the 2006 Dodge Charger, the 2003 Ford Expedition, Mr. Bartolome's 401(k) plan, and the \$7,500.00 tax refund. However, the Amended Application continues to omit Mrs. Bartolome's 401(k) plan and several vehicles.

Finally, at Part 4.20 of both applications, the debtors disclose that they have filed one prior bankruptcy case, case no. 12-33609, on August 24, 2012. However, both applications fail to disclose the bankruptcy case, case no. 11-48771, that the debtors filed on December 13, 2011.

Taken together, the above behavior is indicative of exactly what the trustee describes in his motion: the debtors failing to be honest and accurate in their disclosures to the court. The court finds that the debtors do not qualify for a chapter 7 filing fee waiver in this case, and instructs them to pay the fee in full on or before July 29, 2014.

The court will issue a minute order.

36. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON
UST-2

CONTINUED MOTION FOR THE
COURT'S DETERMINATION OF THE
REASONABLE VALUE OF THE
SERVICES OF JEFFERY YAZEL, ESQ.
2-28-14 [[107](#)]

Tentative Ruling: Jeffery Yazel ("Mr. Yazel")'s opposition is overruled. The motion is granted in part. The reasonable value of Mr. Yazel's services in this case, as determined elsewhere on today's calendar, is \$2,905.00 in fees and \$474.03 in expenses, for a total of \$3,379.03. Pursuant to 11 U.S.C. § 329(b), Mr. Yazel is ordered to disgorge to the estate the amount of \$6,620.97. The disgorgement order shall be enforceable as a money judgment. Except as so ordered, the motion is denied.

By this motion, the United States Trustee (the "UST") requests that the court (1) review the legal services provided by Mr. Yazel in this case; (2) determine the reasonable value of those services; and (3) order any excessive payments disgorged and turned over to its payer or to the estate pursuant to 11 U.S.C. § 329(b). This matter has been continued several times to allow Mr. Yazel to file a properly noticed and served application for compensation so that the court could take up both matters simultaneously. Mr. Yazel's employment application is the subject of

Matter 37 on today's calendar and, for the reasons set forth in that ruling, the court has determined the reasonable value of Mr. Yazel's services in this case to be \$3,379.03.

Pursuant to 11 U.S.C. § 329, "(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation." 11 U.S.C. § 329(a). Under 11 U.S.C. § 329(b), the court has the authority to order the cancellation of any such agreement or order the return of any such payment, to the extent it determines that such compensation exceeds the reasonable value of any such services. 11 U.S.C. § 329(b).

Here, the Disclosure of Compensation of Attorney for Debtor (Dkt. 1, p.4), executed by Mr. Yazel on July 15, 2013, states that he and the debtor agreed to compensation of \$10,000.00 in contemplation of or in connection with services to be rendered in this case. The UST initially argues in the instant motion that Mr. Yazel's fees and costs should be disapproved in their entirety because (1) he allegedly abandoned representation of the debtor or was dismissed by the debtor; (2) no plan and disclosure statement have been filed in this case; and (3) no fee application has been filed. However, the UST's reply (Dkt. 124) to Mr. Yazel's opposition/application for compensation (Dkt. 115) appears to indicate that he only seeks a reduction in fees by approximately \$5,110.00.

For the reasons set forth elsewhere on today's calendar, Mr. Yazel's fees and costs have been approved on a reduced first and final basis in the amount of \$3,379.03. According to the billing statements attached to the compensation motion (Dkt. 156, p.5-15), Mr. Yazel has received a \$10,000.00 retainer. Pursuant to 11 U.S.C. § 329(b), to the extent Mr. Yazel has received (whether applied or not) funds in connection with this case in excess of \$3,379.03, he is ordered to disgorge said funds to the estate.

The court will issue a minute order.

37. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON
JBY-2

MOTION FOR COMPENSATION FOR
JEFFERY B. YAZEL, DEBTOR'S
ATTORNEY(S)
5-21-14 [[154](#)]

Tentative Ruling: The application is granted in part to the extent set forth herein. The application is approved on a first and final basis in the amount of \$2,905.00 in fees and \$474.03 in expenses, for a total of \$3,379.03, for the period of July 8, 2013, through and including December 10, 2013. The total allowed fees and costs shall be paid as a chapter 11 administrative expense. The applicant is authorized to apply \$3,379.03 of his pre-petition retainer (\$10,000.00) to the allowed fees and costs. Except as so ordered, the motion is denied.

Factual Background

The above-captioned case was commenced on July 15, 2013, by the filing of a voluntary petition under chapter 11 (Dkt. 1). Applicant Jeffery Yazel ("Mr. Yazel")'s name appears on the voluntary petition (Dkt. 1, p.3) as well as the Disclosure of Compensation of Attorney for Debtor (Dkt. 1, p.4) (the "Disclosure"), which states that Mr. Yazel and the debtor agreed to payment of \$10,000.00 for legal services in this case, \$0.00 of which Mr. Yazel received pre-petition. Although the Disclosure states that Mr. Yazel received no pre-petition retainer, both Mr. Yazel and the United States Trustee (the "UST") refer to a \$10,000.00 amount received by Mr. Yazel as a retainer. The UST refers to it as a retainer (Dkt. 107, p.4, lines 5-8), whereas Mr. Yazel's billing statements (Dkt. 156, p.5) refer to it as an "initial deposit."

An application for employment of Mr. Yazel in this case was filed on August 13, 2013 (Dkt. 11), and approved by order entered August 30, 2013 (Dkt. 21). The court assigned an effective date of employment of July 8, 2013.

A preliminary status conference was held on September 24, 2013, at 1:30 p.m. and continued to December 10, 2013, at 1:30 p.m. to allow Mr. Yazel to file certain motions to value collateral. At the continued status conference held December 10, 2013, Mr. Yazel stated that he was preparing to close his office at the end of January 2014 and would be obtaining replacement counsel to substitute into the case for him. He further explains in his declaration in support of the instant motion that he was "obliged to withdraw from representation of the Debtor herein because of the imminent closure of the Yazel Law Firm and pending bar discipline" (Dkt. 156, p.2, lines 18-19). On February 14, 2014, the debtor filed an application to employ the Abdallah Law Group, P.C. ("Abdallah") as chapter 11 counsel in this case (Dkt. 92), which was approved by order entered March 7, 2014 (Dkt. 110). The court assigned to Abdallah an effective date of employment of January 15, 2014. No chapter 11 plan or disclosure statement has been filed in this case.

On February 28, 2014, the UST filed a motion pursuant to 11 U.S.C. § 329 requesting that the court (1) review the legal services provided by Mr. Yazel in this case; (2) determine the reasonable value of those services; and (iii) order any excessive payments disgorged and turned over to its payer or to the estate, whichever is most appropriate based on the status of the case at the time of the hearing on that motion (Dkt. 107) (the "Reasonableness Motion"). Specifically, the UST sought complete denial of compensation and a court order that Mr. Yazel return his retainer in its entirety. Mr. Yazel responded to the motion on March 28, 2014, in the form of an application for compensation (Dkt. 115). The motion was continued to today's calendar to be heard in conjunction with the instant motion.

Through this motion, Mr. Yazel seeks on a first and final basis compensation in the amount of \$11,130.00 in fees and \$474.03 in expenses, for a total award of \$11,604.03, for the period of July 16, 2013, through and including December 10, 2013. Mr. Yazel claims that the fees incurred are for 31.8 hours of services at a rate of \$350.00 per hour. Although he states July 16, 2013, as the start date for the period requested, the court construes the application as a request for approval of compensation beginning on July 8, 2013, the effective date of Mr. Yazel's employment and the date of the first entry in the attached billing statements. Of

the amount requested, he asserts that \$4,663.09 is current held in the debtor's trust account. He seeks court authorization for disbursement of these funds as well as further compensation in the amount of \$6,940.94. In support of the motion, he has attached as Exhibit "A" copies of the chronological billing records he maintained in this case (Dkt. 156, p.5-15). Mr. Yazel asserts that the services he rendered in this case were fair, reasonable, and necessary to the estate. The court has reviewed the billing statements in light of the below legal standard as well as the objections raised by the UST in the Reasonableness Motion. The court approves Mr. Yazel's expenses in full and reduces his requested fees by the amount of \$8,225.00.

Legal Standard

Compensation of officers is governed by the provisions of 11 U.S.C. § 330. 11 U.S.C. §§ 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [an] attorney" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1)(A) and (B). In determining the amount of reasonable compensation, a court should take into account all relevant factors including, but not limited to:

- (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.

11 U.S.C. § 330(a)(3)(A) - (F). 11 U.S.C. § 330(a)(4)(A) also provides that the court shall not allow compensation for unnecessary duplication of services, services that were not reasonably likely to benefit the debtor's estate, or necessary to the administration of the case. 11 U.S.C. § 330(a)(4)(A).

In light of 11 U.S.C. § 330, the Executive Office for United States Trustees developed procedural guidelines for the review of applications for compensation and reimbursement of expenses by the United States Trustees (the "Guidelines"). The Guidelines are not intended to supersede 11 U.S.C. § 330 and other local rules but complement those procedures. In pertinent part, the Guidelines state that all time and service entries should be arranged by project categories. 28 C.F.R. Pt. 58, App. A. Each project category should contain a narrative summary including a description of the project, its necessity and benefit to the estate, identification of each person providing services on the project,

and a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project. Id. With regard to time entries, the Guidelines require that:

Time and service entries be reported in chronological order under the appropriate project category...Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry...Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

Id.

As recognized by the Guidelines, lumping or block billing, a timekeeping practice that involves including multiple services in a single, aggregated time entry without any breakdown of the time spent on each service, prevents the bankruptcy court from assessing the reasonableness of time expended on each activity. See In re Dutta, 175 B.R. 41, 46-47 (9th Cir. B.A.P. 1994); LV v. New York City Dep't of Educ., 700 F.Supp.2d 510, 525 (S.D.N.Y.2010) ("[B]lock-billing can make it 'exceedingly difficult for courts to assess the reasonableness of the hours billed. In such circumstances courts have found it appropriate to cut hours across the board by some percentage.'" (internal citations omitted)). Lumping services in a single billing entry is "universally disapproved" by bankruptcy courts. In re Recycling Indus., Inc., 243 B.R. 396, 406 (Bankr.D.Colo.2000); In re Telcar, Inc., 2007 WL 1438376 *3 (Bankr.D.Idaho 2007) (citations omitted). Similarly, vague and ambiguous descriptions of work performed prevent the bankruptcy court from assessing the reasonableness of the work, and should be eliminated or reduced. See Grogg v. General Motors Corp., 612 F.Supp. 1375, 1382 (D.C.N.Y. 1985); In re Sonicblue Inc., 2006 WL 2067882, at *8 (Bankr. N.D. Cal. 2006); Dotson v. City of Syracuse, 2011 WL 817499, at *24 (N.D.N.Y. 2011) ("Descriptions of work such as 'review of file', 'review of documents' and 'review of letters' are vague and do not permit a court to evaluate the reasonableness of the services.").

Discussion

Based on the forgoing, the court reduces Mr. Yazel's requested fees by \$8,225.00, for a total fee award of \$2,905.00. His requested expenses of \$474.03 are approved in full. The total award on a first and final basis is therefore \$3,379.03. The court determined the reasonable value of Mr. Yazel's services in this case based on the following.

First, in part for the reasons set forth in the UST's reply to Mr. Yazel's opposition to the Reasonableness Motion (Dkt. 124), the court disallows in full the following entries from the billing statements:

- (1) 7/15/13: "Travel to Sheldon Acres to meet with clients for signature of petition & meeting" (1.5 hours - \$525.00);
- (2) 8/8/13: "Travel to/from court, attend initial Debtor interview"

(3.0 hours - \$1,050.00);

(3) 9/24/13: "Travel to/from status conference; Pre-conference with client; Conference Dan Egan; Post-Conference with client" (2.0 hours - \$700.00); and

(4) 12/10/13: "Prepare and Attend Status Conference w/ travel to/from Elk Grove" (2.8 hours - \$980.00).

The court cannot determine the reasonableness of the above entries because, in their current form, it is impossible for the court to determine how much time was spent on travel versus work performed. Particularly, the entry on 09/24/13 contains multiple services in a single entry, the exact type of block billing that courts disapprove of. For these same reasons, the entry on 08/15/13 to "Attend 341 meeting and travel" (3.0 hours - \$1,050.00), though not mentioned in the UST's reply brief, is also disapproved.

Second, the court agrees with the UST that the \$560.00 in fees associated with Mr. Yazel obtaining employment in this case should be disapproved because the debtor likely had to pay Abdallah for its own efforts in obtaining employment and revisiting several of the initial tasks needed in order to become familiar with the current case. Specifically, the following entries from the billing statements are disallowed in full:

(1) 8/9/13: "Prepare/Review Application to Employ Counsel; Declaration and Proposed order" (1.5 hours - \$525.00); and

(2) 8/30/13: "Review signed order re: application to employ" (.1 hours - \$35.00).

Finally, for the reasons set forth below, the following entries from the billing statements are disallowed in full:

(1) 7/8/13: "Meeting with Robert DeLisle and Susan Marie Glines-Thompson" (1.0 hours - \$350.00);

(2) 7/9/13: "Meeting with client Susan Marie Glines-Thompson and Bob DeLisle" (.7 hours - \$245.00);

(3) 7/11/13: "Conference with staff" (.2 hours - \$70.00);

(4) 7/11/13: "Review documents" (.1 hours - \$35.00);

(5) 7/11/13: "Meeting with staff" (.5 hours - \$175.00);

(6) 7/15/13: "Conference with staff" (.2 hours - \$70.00);

(7) 7/15/13: "Telephone call to Bob DeLisle" (.1 hours - \$35.00);

(8) 7/15/13: "Telephone call from Susan Glines-Thompson" (.1 hours - \$35.00);

(9) 7/15/13: "Telephone call from Susan Glines-Thompson" (.1 hours - \$35.00);

(10) 7/15/13: "Telephone call from Susan Glines-Thompson" (.1 hours - 35.00);

- (11) 7/15/13: "Call to Bob DeLisle" (.1 hours - \$35.00);
- (12) 7/22/13: "Call from Bob DeLisle" (.2 hours - \$70.00);
- (13) 7/27/13: "Review list of documents outstanding" (.5 hours - \$175.00);
- (14) 8/7/13: "Review additional documents; prepare file for meeting" (1.7 hours - \$595.00);
- (15) 8/7/13: "Meet with Susan Glines-Thompson and Robert DeLisle" (.8 hours - \$280.00);
- (16) 8/9/13: "Conference with staff" (.2 hours - \$70.00);
- (17) 8/13/13: "Prepare/Review Periodic Report; review e-mails and supporting documents" (1.6 hours - \$560.00);
- (18) 8/14/13: "Conference with Concha; review Monthly Operating Report and supporting financial documents" (.9 hours - \$315.00);
- (19) 9/23/13: "Review Documents and status conference report" (.3 hours - \$105.00); and
- (20) 11/18/13: "Call from SBA - Jill Hobby" (.2 hours - \$70.00).

All of the above entries, several of which are pointed out in the UST's reply to the Reasonableness Motion, suffer from similar deficiencies. To start, a vast majority of them are overly vague and ambiguous. For example, entries such as "review documents," without an identification of what documents are actually being reviewed, are insufficient to allow the court to determine the reasonableness of the services. Similarly, several of the entries reference meetings, conferences, and phone calls, but do not provide any specifics as to the nature or subject(s) of the communications. Finally, several entries are forms of block billing, such as numbers 17, 18, and 19. Without specifying how much time was spent on each task, it is impossible for the court to determine whether each task was reasonable and necessary.

Accordingly, the application is approved on a reduced first and final basis in the amount of \$2,905.00 in fees and \$474.03 in expenses, for a total award of \$3,379.03. The balance of the \$10,000.00 retainer funds received by Mr. Yazel in excess of the approved fees and costs (\$6,620.97) is ordered disgorged to the estate.

The court will issue a minute order.