

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 21, 2020 at 1:30 p.m.

1.	<u>19-25356-E-13</u> JARNAIL SINGH MINHAS <u>HRH-1</u> Patrick Riaz	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-7-20 [77]
 TRANSPORTATION ALLIANCE BANK, INC. VS.		

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 7, 2020. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion for Relief from the Automatic Stay is XXXXX.

Transportation Alliance Bank, Inc. (“Movant”) seeks relief from the automatic stay with respect to assets identified as a 2019 Wabash DVHDHPG Trailer, VIN ending in #5711 and a 2019 Wabash DVHDHPG Trailer, VIN ending in #5709 (collectively, “Property”). The moving party has provided the

Declaration of Leigh Anne Bishop to introduce evidence to authenticate the Business Loan Agreement, Promissory Note, Commercial Security Agreement, and Commercial Guaranty (collectively, “Loan Documents”), upon which it bases the claim and the obligation owed by Jarnail Singh Minhas (“Debtor”).

On March 15, 2018, Movant and Debtor, as President of JM Trucklines, Inc. (“JM”), executed a loan agreement in the amount of \$64,959.00 with an annual interest rate of 9.5%. Note, Exhibit 2, Dckt. 81. To secure the Note, JM granted Movant a security interest in the Property. Security Agreement, Exhibit 2, Dckt. 81. Debtor also executed a Commercial Guaranty to induce Movant to make the loan to JM. Exhibit 5, Dckt. 81.

On or about May 1, 2018, JM breached the terms of the Loan Documents. A demand was made on JM to cure the default, and the demand was rejected. On July 15, 2019, prior to Debtor’s voluntary petition filing, the California Superior Court for Colusa County entered a judgment (Case No.CV24376) against Debtor and JM, in favor of Movant in the amount of \$84,888.50 and for the possession of the Property. Exhibit 6, Dckt. 81. The judgment also stipulates that in the event Movant recovers the Property, Movant will sell the Property in a commercially reasonable manner and file a partial satisfaction of judgement in the amount of the net proceeds from the sale. *Id.*

DISCUSSION

11 U.S.C. § 362(d)(1)

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Non-Existence of Automatic Stay

Movant demonstrates exercising a variant of the adage “Discretion is the better part of valor” when dealing with the automatic stay. Given the application of 11 U.S.C. § 362(a) rendering acts in violation of the stay void and sanctions for violation of the stay being swiftly applied when a creditor is aware of the bankruptcy and gambles on a assertion that the creditor did not “think” the stay applied, seeking relief or confirmation there is not a stay is appropriate.

In this case, Movant seeks to exercise its lien rights pursuant to the terms of the pre-petition judgment obtained against JM Trucklines, Inc. as the obligor on the note and Debtor as guarantor of JM

Trucklines, Inc.'s obligation on the Note. The lien rights are to be exercised against two items of personal property consisting of two 2019 Wabash DVHDHPG Trailers. The lien documentation demonstrates that the trailers were owned by JM. On Schedule A/B Debtor states under penalty of perjury having no interest in the two Trailers. Schedule A/B, Dckt. 11 at 3-8. Debtor does list owing 100% of the stock of JM Trucklines, Inc., which is identified as the owner of seven (7) "Dry Van Trailers." Schedule A/B, Question 19, Dckt. 11.

While owning the stock of JM, the Debtor does not own the assets of JM, a separate corporation for which Debtor owns the stock. As defined by federal law, property of the bankruptcy estate consists of:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, **all legal or equitable interests of the debtor in property** as of the commencement of the case.

(2) All **interests of the debtor and the debtor's spouse in community property** as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the

case.

11 U.S.C. § 541(a).

JM is a California corporation.^{FN. 1} As provided by California law, a corporation has “all of the powers of a natural person in carrying out its business activities. . . ,” which includes ownership of its assets. Cal. Corp. § 207; *Dominguez Land Corp. v. Daugherty*, 196 Cal. 468, 481 (Cal. 1925).

FN. 1. <https://businesssearch.sos.ca.gov/CBS/Detail>

The provisions of the automatic stay do not include property owned by a corporation or partnership in which the Debtor has an interest or ownership of stock.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or **continuation**, including the issuance or employment of process, **of a judicial**, administrative, or other action or **proceeding against the debtor** that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the **enforcement, against the debtor or against property of the estate, of a judgment** obtained before the commencement of the case under this title;

(3) any **act to obtain possession of property of the estate or of property from the estate** or to exercise control over **property of the estate**;

(4) any **act to create, perfect, or enforce any lien against property of the estate**;

(5) any act to create, perfect, or **enforce against property of the debtor any lien** to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any **act to collect, assess, or recover a claim against the debtor** that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period

the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362.

The evidence presented by Movant demonstrates Debtor has “only” personally guaranteed the obligation of JM Trucklines Inc., which JM Trucklines, Inc. secured with a lien on two Trailers owned by JM Trucklines, Inc.

In enforcing the judgment against JM Trucklines, Inc., Movant is not taking any act that would be in violation of the automatic stay.

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

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

The Motion for Relief from the Automatic Stay filed by Transportation Alliance Bank, Inc. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to the 2019 Wabash DVHDHPG Trailer, VIN ending in #5711 and a 2019 Wabash DVHDHPG Trailer, VIN ending in #5709 which JM Trucklines, Inc. pledged to secured an obligation owed to Movant, which obligation Debtor provided an unsecured personal guaranty.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 12, 2020. By the court's calculation, 9 days' notice was provided. The court set the hearing for July 21, 2020. Dckt. 27.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion to Dismiss Shawn Patrick Caesar is XXXXX.

The co-debtor, Shawn Caesar ("Movant") seeks dismissal from the instant Chapter 13 case (Case No. 18-25678). Movant and his spouse, Kayla Caesar, (collectively, "Debtors") commenced a voluntary Chapter 13 case on September 7, 2018. Dckt. 1. On June 29, 2020, Movant requested the court to dismiss him from the instant case as he is separated from his spouse, wants to manage his financial affairs independently, and no longer wants to participate in the case. Declaration, Dckt. 25. Upon Movant's request, the court issued an order to set a hearing date on July 21, 2020. Dckt. 26.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on July 14, 2020. Dckt. 29. Trustee requests the court to consider the following:

Mortgage and Real Property

Both debtors have an interest in real property listed on their Schedules with a value of

\$460,000.00. Dckt. 1. Based on the Proof of Claim filed by Wells Fargo Bank, N.A., the property appears likely to be the sole and separate property of Kayla Caesar, but Movant may have some interest. Debtors are current in mortgage and plan payments to date. As such, Trustee does not believe any issue exists to the real property and the requested dismissal of Movant, absent him trying to enforce an interest in the real property without permission of the bankruptcy estate.

Student Loans

There is one student loan claim for \$37,367.67 (Proof of Claim No. 2), which has been paid \$676.46 to date and Debtors' plan proposes to pay no less than 7% of unsecured claims (Plan, Dckt. 2). The claim appears to be for a debt owed by Movant based on the account number and schedules. Dckt. 1. Unless the plan is modified, Trustee must continue paying this claim. Additionally, there are other unsecured claims scheduled as owed by Movant, specifically creditors Trustee listed as Creditors 4.1, 4.2, 4.4, 4.23, 4.24, 4.25, 4.32, 4.34. As nineteen (19) unsecured claims have been filed, if the plan is modified, the debtor should specify which particular claim, if any, should no longer be paid. Trustee also believes that creditors holding unsecured claims may seek to collect from Movant upon his dismissal.

Alternatives

Trustee notes that there are at least three alternatives to Movant's dismissal that will accomplish his goal:

1. Conversion to a Chapter 7 case,
2. Bifurcation of the instant case to a separate chapter 13 case, or
3. Filing of a joint modified plan specifying explicit payments from each debtor in order to protect each debtor if the other defaults.

Debtors are 22 months into a confirmed plan of 60 months, and only have unsecured debt left to pay. Debtors may also extend the plan up to 84 months within the next 8 months, or shorten the plan to 36 months.

Potential Conflict of Interest

Debtors' counsel may have a conflict of interest in being able to represent either debtor. Movant may want to consult with his current counsel to determine if outside counsel is needed.

Feasibility

Given the current situation, Debtors' current plan may not be feasible based on Schedules I and J (Dckt. 1). However, Debtor's Schedules shows eight (8) dependents, but three (3) are adults.

DISCUSSION

As the court noted in its order to hear the Motion (Dckt. 26), 11 U.S. Code § 1307(b) provides that on the request of a debtor, at any time, the court shall dismiss a case under Chapter 7. As determined by

the Ninth Circuit Court of Appeals in *Rossen v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 773-774 (9th Cir. 2008), the right of a debtor to dismiss a Chapter 13 case is qualified,

We agree, and accordingly we conclude that the Court's rejection of the 'absolute right' theory as to § 706(a) applies equally to § 1307(b). Therefore, in light of *Marrama [Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007)]*, we hold that the debtor's right of voluntary dismissal under § 1307(b) is not absolute, but is qualified by the authority of a bankruptcy court to deny dismissal on grounds of bad-faith conduct or 'to prevent an abuse of process.' 11 U.S.C. § 105(a).

Though the court does not note the scent of bad faith conduct or abuse of process, one debtor exiting a bankruptcy case may not result in that person being "free of" the bankruptcy cases. A bankruptcy estate was created when the case was filed, into which all of each debtor's separate and their community property was transferred by operation of law. In this case, it appears that of each of the two Debtors' assets are community property. Amended Schedule A/B, Dckt. 16 at 1-7.

Under the Chapter 13 Plan, the two Debtors surrendered three of their vehicles and do not provide for paying any secured claim in Class 2. Plan, Dckt. 2. For Class 1, Debtors provide for paying the current monthly installments and curing a \$4,000.00 arrearage. *Id.* There is a small (7%) dividend provided for creditors with unsecured claims. *Id.* Substantially all of the monthly plan payments go to pay the Class 1 claim.

Out of an abundance of caution, the court set the instant hearing to allow Trustee to address any issues arising from this request.

At the hearing, **xxxxxxxxxxxxxx**.

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

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

The Motion to Dismiss the Shawn Patrick Caesar joint Case No. 18-25678 requested by co-debtor Shawn Patrick Caesar ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss Shawn Patrick Caesar from Case No. 18-25678 is **xxxxxxx**.

Tentative Ruling: The Omnibus Motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Thomas O. Gillis parties requesting special notice, and Office of the United States Trustee on June 4, 2020. By the court's calculation, more than the required 28 days' notice has been provided.

The Motion Under 11 U.S.C. Sections 329 and 105 and Federal Rule of Bankruptcy Procedure 2016 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion requesting the application of the Fee Rubric to all of the pending Chapter 13 cases filed by Thomas O. Gillis assigned to Chapter 13 Trustee Michael Meyer is granted, the amount of compensation fees in excess of that allowed by the Fee Rubric for those cases determined, and Thomas O. Gillis ordered to return (disgorgement) the excessive fees, which shall be paid directly to the Clerk of the Bankruptcy Court, to be held pending further order of the court for the disbursement thereof to Mr. Gillis' former clients and their respective bankruptcy estates.

All other requested relief is denied without prejudice.

Thomas O. Gillis is an attorney who had a very prolific practice in the Eastern District of California Bankruptcy Court for a number of years. When the undersigned judge Chief Judge first came on the bench, Mr. Gillis focused on doing Chapter 11 and 12 cases. That evolved into a Chapter 13 practice in which his office focused on providing legal services in Chapter 13 consumer restructures and Chapter 7 liquidation for Hispanic clients who had limited or nonexistent English language skills.

In the late 2010's that practice ceased when Mr. Gillis was suspended by the State Bar of California. Mr. Gillis signed a stipulation on April 30, 2019, with the State Bar for a two-year suspension from the practice of law. The Chief Justice of the California Supreme Court issued her order for his suspension on November 1, 2019, with the suspension effective December 1, 2019. Mr. Gillis made a request for a continuance to allow him additional time to assist his clients in obtaining replacement counsel. Pursuant to that request the State Bar Court delayed the suspension until January 31, 2020. On January 28, 2020, Mr. Gillis made a second request for the extension of the start of his suspension until March 15, 2020, so that he could have additional time for assisting his clients. The State Bar granted a final delay in Mr. Gillis suspension, ordering that is commenced on February 15, 2020, and ordering Mr. Gillis not to accept any new clients. ^{FN. 1.}

FN. 1. Ruling on Chapter 13 Trustee Objections to Attorney Fee Compensation, 19-12274, Dckt. 42; Supreme Court Order of Suspension, S256770 (State Bar Court Nos. 16-O-10780 (17-O-02624; 17-O-04790)), Filed November 1, 2019; Order Filed February 7, 2020, State Bar Court of California, *In re Gills*, 16-O-10780; Order Filed November 27, 2019, State Bar Court of California, *In re Gills*, 16-O-10780.

With Mr. Gillis' suspension, the issue arose as to what fees Mr. Gillis was allowed to be paid for the partial representation of his clients in Chapter 13 cases, Mr. Gillis being unable to complete that representation in those cases due to his suspension. 11 U.S.C. § 329, L.B.R. 2016-1. To provide consumer attorneys and consumer debtors a cost effective method of having the court determine reasonable fees for representing debtors in Chapter 13 cases, the judges of the Eastern District of California adopted Local Bankruptcy Rule 2016-1 which allows the attorney and consumer to elect a "flat fee" (or commonly called a "no-look" fee) of \$4,000.00 in which the debtor's obligations are primarily consumer debts and \$6,000.00 in which the debtor's obligations are primarily non-consumer

debts (such as debts from a sole proprietorship).

Mr. Gillis and his consumer debtor clients elected to have Mr. Gillis' fees allowed as a fixed fee as provided in Local Bankruptcy Rule 2016-1.

With Mr. Gillis suspension there were four hundred and eighty-one (481) open Chapter 13 cases in various stages of prosecution, but which have not been completed for which the full flat fee provided under Local Bankruptcy Rule 2016-1. The provisions of Local Bankruptcy Rule 2016-1 provide that the court may allow compensation different than the fixed fee amount "if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation. L.B.R. 2016-1(c)(5). This commonly occurs on a "one-off" basis, and the court requires a motion for determination of fees in the same manner as an attorney requesting the allowance of fees pursuant to 11 U.S.C. § 330 or requiring the presentation of the same type of evidence as part of a motion to disallow fees filed by a debtor or other party in interest. Such practice is reasonable for such one-off issues which rarely arise in this District.

However, with Mr. Gillis' Chapter 13 debtor client cases, there could be as many as 481 motions or objections that would be required. Such would be inconsistent with the premise of Local Bankruptcy Rule 2016-1 providing the fixed fee as a device to allow financially stressed parties a cost efficient method for compliance with 11 U.S.C. § 329 (court to determine reasonableness of a debtor's attorney's fees relating to the bankruptcy if determined excessive).

To address this conundrum, the bankruptcy judges in the Eastern District conducted a joint proceeding with two exemplar cases, conducted by the Hon. Frederick E. Clement and the Hon. Rene Lastreto, with the Chief Bankruptcy Judge also participating. A Joint Ruling was issued therefrom adopting a "'Fee Rubric" which set a percentage amount of the fixed fee for the legal services provided based on the status of the case. Ruling on Chapter 13 Trustee Objection to Attorney Fee Compensation; *In re Cervantes* and *In re Chinchilla*; 19-12274, Dckt. 42 ("Joint Ruling").

The Fee Rubric has been adopted by all bankruptcy judges in this District for Mr. Gillis' cases and ordered effective in all such cases. Adoption Order, *In re Matter of Thomas Oscar Gills*, 20-202, Dckt. 150. Mr. Gillis has agreed to the application of the Fee Rubric (rather than having 148 separate fee motions), with one issue that is the subject of an appeal to the Bankruptcy Appellate panel about whether the Phase III percentage should be 80% or 90%. *Id.*

A second important part of the Adoption Order is that any further payments to which Mr. Gillis is entitled to under the Fee Rubric are deposited directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and their bankruptcy estates.

Mr. Gillis expressly agreed on the record to this payment of any further amounts due into a common fund for the benefit of his former clients for cases in which Mr. Gillis is overpaid under the Fee Rubric and as it may properly be adjusted for specific cases.

The Joint Ruling adopted by all Bankruptcy Judges in this District established the following

Fee Rubric for determination of Mr. Gillis' fees in his Chapter 13 cases:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
Phase I	Pre-petition through meeting of creditors	30%
Phase II	Meeting of Creditors through initial confirmation	60%
Phase III	Confirmation to 90 days after Notice of Filed Claims	80% ^{FN. 2}
Phase IV	Discharge, closure, certifications, necessary lien clearances	100%

FN. 2. It is this percentage amount that Mr. Gillis has identified as being the subject of the pending appeal before the Bankruptcy Appellate Panel, with Mr. Gillis asserting it should be 90%.

**OMNIBUS MOTION FOR APPLICATION OF FEE RUBRIC
TO GILLIS CHAPTER 13 CASES FOR WHICH
RUSSELL D. GREER IS THE CHAPTER 13 TRUSTEE**

Consistent with the spirit and intent of Local Bankruptcy Rule 2016-1 and the Fee Rubric adopted by the bankruptcy judges in this District, the U.S. Trustee has filed an Omnibus Motion (Dckt. 20) for the court to apply the Fee Rubric to all of Mr. Gillis' pending Chapter 13 cases that are assigned to Chapter 13 Trustee Michael Meyer. This provides the court, Mr. Gillis, the U.S. Trustee with a single focused proceeding in which the Fee Rubric can be applied to Mr. Meyer's Chapter 13 cases. Filed as Exhibit A in support of the Motion is a chart identified as having been prepared by Mr. Meyer's office computing the fees pursuant to the Fee Rubric.

The Omnibus Motion then requests further relief. The U.S. Trustee states that the Fee Rubric is subject to modification on a case by case basis depending upon specific facts and circumstances in a specific case.

First, the U.S. Trustee requests that the court order Mr. Gillis certify under penalty of perjury in each of the one hundred and seventy-six (176) Chapter 13 cases assigned to Chapter 13 Trustee Meyer that he has "performed all services contemplated under the 'Rights and Responsibilities' [statement filed by debtor and debtor's counsel setting forth attorney fee agreement], specifically addressing what, if any, consultation services were provided by Mr. Gillis; whether the debtor(s) has been asked to pay additional fees, including in connection with the filing of a new case; and whether the transaction was properly disclosed." ^{FN. 3}

FN. 3. As discussed further below, the reason that the Fee Rubric is necessary is because Mr. Gillis

cannot perform all of the services contemplated under the Rights and Responsibilities (EDC Form 3-096), thus such a requirement appears to provide no additional information.

Next, the U.S. Trustee seeks to have the court order Mr. Gillis provide a status report of substitutions for his former clients who have not yet obtained new counsel, which information is to include:

- A. What efforts have been made to find substitute counsel;
- B. Whether substitute counsel exists;
- C. What remaining legal services need to be performed and when;
- D. Whether additional fees have been requested or paid;
- E. Whether Mr. Gillis has complied with State Bar Rule 9.02, and if so, provide evidence of the same as to each debtor; and
- F. Explain why substitute counsel has not been obtained.

Motion, p. 4:3-9; Dckt. 20.

Then, only after the court has received the additional information that can be “discovered” from such information from Mr. Gillis, that the court adjust the Fee Rubric (presumably for each and every of the 176 cases assigned to Mr. Meyer).

The U.S. Trustee then state that she reserves the right to seek additional relief based upon what she “discovers” from the responses given by Mr. Gillis pursuant to the order of the court.

Additional Factors Identified by the U.S. Trustee

In the Motion, the U.S. Trustee states with particularity (Fed. R. Bankr. P. 9013) specific grounds for the court to consider in connection with the relief requested. These grounds include the following (identified by the paragraph number in the Motion).

Cases in Which Debtors Are Unrepresented

14. Thus, as early as April 30, 2019, Mr. Gillis was aware that he would be suspended and would not be able to provide services to chapter 13 debtors whose cases normally last three to five years. *Id.* [See Spyksma Decl., ¶¶ 4, 6 and Exhibit D, p. 4 and Exhibit M, p. 25.]

15. Of the 176 Meyer Cases, 167 of those have not had a substitution of attorney filed to replace Mr. Gillis. Vargas Decl., ¶ 3. Mr. Gillis was aware of the impact his suspension would have on his clients, and in fact sought relief from the State Bar to delay the effective date of his suspension so that he could find substitute

counsel for debtors who have cases lasting three to five years. See Exhibit C, Addendum C.

Issues of Mr. Gillis' Underperformance

17. Issues of Mr. Gillis' underperformance have arisen as set forth below.

a. *In re Cervantes*, Case No. 18-10306-B-13. In this case, the debtor required legal services to modify his plan. Contrary to LBR 2016-1, Mr. Gillis sought additional fees above the flat fee amount, failed to modify the plan and did not seek to modify the "Rights and Responsibilities" as required under LBR 2016-1. One other example of the breach of the "Rights and Responsibilities" was debtor's testimony that he did not meet Mr. Gillis until the section 341(a) meeting of creditors and had not received pre-bankruptcy consultation. The Court heard disputed testimony, ruled in favor of the Debtor, and ordered fees disgorged. Exhibit J, *In re Cervantes*, Case No. 18-10306-B-13, ECF No. 109. b.

b. *In re Islas Gonzalez*, Case No. 17-14157. In this case, the debtors required legal services to modify the plan. Mr. Gillis declined to provide the services and instead counseled the debtors to get their case dismissed and file a new case. In doing so, Mr. Gillis asked for additional fees. When notified of Mr. Gillis' suspension, debtors obtained substitute counsel and have alleged that the previously awarded flat fee award under the "opt in" procedure was excessive. In addition, the debtors filed a declaration stating that they met Mr. Gillis for the first time to get their first case modified, in addition to meeting him at "the courthouse." Mr. Gillis's response does not deny that the first time he met the debtors was at a section 341(a) meeting. That matter is set for hearing on June 24, 2020. See Exhibit K, *In re Islas and Gonzalez*, Case No. 17-14157 and ECF Nos. 133, 135, 145, 148-149, and 170-173 in Case No. 17-14157.

c. *In re Lopez*, Case No. 19-22211. In this case, the United States Trustee has alleged that Mr. Gillis failed to adequately represent the Debtor by his failure to timely prepare schedules, failure to attend adjourned section 341(a) meetings, and inadequate prosecution of the case prejudicial to the debtor. That matter is set for hearing on June 2, 2020. See Exhibit L, *In re Lopez*, Case No. 19-22211, ECF No. 126.

Dckt. 4.

The U.S. Trustee has provided four declarations in support of this Motion. The first is provided by Michael Meyer, the Chapter 13 Trustee to one hundred and seventy-six (176) of the currently pending Chapter 13 cases filed by Mr. Gillis are assigned. Mr. Meyer testifies that he is the Chapter 13 trustee in these Gillis filed cases. Dckt. 9.

Mai Ko Vang ("Vang"), an Administrator employed by Mr. Meyer, testifies that Vang has prepared a spreadsheet regarding Mr. Gillis' cases and the information pertinent to the Fee Rubric

calculation, which spread sheet is provided as Exhibit A in support of the Motion. Vang Declaration, Dckt. 42.

The second Declaration is provided by Patricia Vargas, a Paralegal Specialist for the U.S. Trustee. Ms. Vargas testifies that she has reviewed the eight-four cases assigned to Chapter 13 Trustee Cusick (presumably has reviewed the court docket for each of the cases) and determined that Mr. Gillis' former clients have obtained substitute counsel in only nine (9) of the one hundred and seventy-six cases filed by Mr. Gillis. Vargas Declaration, Dckt. 7.

The third Declaration is provided by Tina Spyksma, another paralegal specialist for the U.S. Trustee. Ms. Spyksma's testimony is to authenticate Exhibits B through M, many of which are from various files of this court for Chapter 13 cases filed by Mr. Gillis. Dckt. 8.

RESPONSE FILED BY THOMAS O. GILLIS

Mr. Gillis filed his Response to the Trustee's Motion. Dckt. 163. Mr. Gillis does not provide his Declaration in support of the Response. Mr. Gillis advances his theory on why the multi-judge panel heard and the Joint Ruling was issued.

Mr. Gillis' Response begins with an affirmation of the Joint Ruling process and the Fee Rubric adopted by the bankruptcy judges:

The hearing was not adversary in nature. The Judges were interested in a solution to avoid me filing 200 to 300 fee applications.

The meeting [hearings] was cordial and informative. I told them it takes two days for me to prepare a proper fee application and I would have to breakdown each file to file a fee application. It would take one year to file all fee applications.

...

The Judges emerged with a well reasoned solution. They would conduct another hearing to arrive at a "Rubric" to apply to all cases. The Rubric would replace a fee application by fixing a percentage of fees earned based on the task performed.

They asked for my agreement on setting a Rubric to be applied to all cases. I agreed. I thought and still think that the idea of the use of a Rubric was both innovative and "fit for the purpose".

Another hearing to set the Rubric was scheduled by the Court. At the new hearing, after hearing evidence, the Court set a Rubric on page 22 of their Ruling on March 31, 2020. At that hearing I was asked by Judge Clement if I would agree to abide by the Rubric in all cases. I said I would.

The Rubric the Court set, in my opinion, was incorrect in setting 20% as work remaining after confirmation. David Johnston, Esq. and I offered the only expert proof and we testified that it should be 10%

Response, p.2:14-26, 3:1-13; Dckt. 61. Mr Gillis then states that he has filed an appeal of the Joint Decision to address the 20%/10% disagreement for the Phase III fee percentage.

Mr. Gillis states that the Fee Rubric was adopted for general application in the pending cases he filed, with there being left an avenue for adjusting the Fee Rubric for specific cases. *Id.*, p. 3:22-27.

**Response to Request For Order Requiring
Mr. Gillis to Provide the Rights and Responsibility Certification
and Substitution of Counsel Information**

Mr. Gillis approaches the requests for the Rights and Responsibilities Certifications and the Substitution of Counsel information as a request for a mandatory injunction. Response, starting on page 3; *Id.* Mr. Gillis reviews the legal standards for the issuance of a mandatory injunction.

The Response then reviews the three specific cases cited in the Motion in support of the U.S. Trustee requesting the court to adjust the Fee Rubric. The Response includes many factual allegations, specific to each of the cases.

The Response then discusses the burdens that providing the Rights and Responsibilities certifications and the status of substitutions report. This includes Mr. Gillis' health, medical conditions, and a physical inability to do such work, including the statement that Mr. Gillis' health conditions limit his ability to work only a few hours a day. Response, p. 12:15-18; *Id.*

The Response concludes with an assertion that requiring him to certify that he has complied with the Rights and Responsibilities imposed on debtor counsel as a condition of the Local Bankruptcy Rule 2016-1 fixed fee and reporting the status of the substitutions of counsel that he reported were in process as requests to delay the commencement of his suspension is not a "core proceeding" and beyond the scope of these federal court proceeding. *Id.*, p. 13.

REPLY OF THE U.S. TRUSTEE TO GILLIS RESPONSE

The U.S. Trustee filed a Reply on June 15, 2020. Dckt. 85. The U.S. Trustee first reports that this court issued an order adopting the Fee Rubric District-wide. The Reply specifically addresses the assertions in Mr. Gillis' Response. This includes discussing case specific factors in adjustments to the Fee Rubric.

The U.S. Trustee disputes that requesting the certification of completion of the duties required under the Rights and Responsibilities documents filed in each case and providing a status of the substitutions is not a mandatory injunction. Additionally, the U.S. Trustee addresses the issue of whether requiring the certifications and providing the substitution information is a core proceeding.

DECISION

The court begins with the last assertion by Mr. Gillis that obtaining certification from Mr. Gillis that he actually performed the services and what Mr. Gillis has done for his former clients in commencing federal court proceedings is beyond the scope of federal court jurisdiction. In short, the court does not so agree with Mr. Gillis.

At issue before this court is what are the reasonable, not excessive fees for the services he has provided to his Chapter 13 debtor clients. The court begins with 11 U.S.C. § 329 (emphasis added), a federal statutory section as part of the Bankruptcy Code, which provides:

§ 329. Debtor's transactions with attorneys

(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.

(b) **If such compensation exceeds the reasonable value of any such services**, the court may cancel any such agreement, or **order the return of any such payment**, to the extent excessive, to—

(1) **the estate**, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) **the entity that made such payment**.

As a matter of federal law, arising under the Bankruptcy Code, Mr. Gillis is required to provide a statement of the compensation paid and agreement to pay compensation for services relating to the bankruptcy filing, petition, case, and in connection with the case. Then, as a matter of federal law arising under the Bankruptcy Code, the federal judge is given the power to review, consider, cancel the attorney's agreement with the debtor (or possible debtor), and order the repayment of monies from the attorney.

The review of Mr. Gillis' fees, conducting proceedings relating to consideration of those fees, and requiring information necessary to determine the fees that may properly be paid to or retained by an attorney for a debtor is a core proceeding arising under the Bankruptcy Code itself. Further, it relates to Mr. Gillis conduct as an attorney admitted to practice in the federal courts of this District.

Request for Certification of Rights and Responsibilities and Report of Status of Substitutions

In considering this request, the court begins with the Fee Rubric itself. As discussed in this and the related proceedings, this court and the bankruptcy judges in this District have adopted the Fee Rubric as a refinement of the fixed fee provided in Local Bankruptcy Rule 2016-1. As set forth in the Joint Decision, the judges recognize that the Fee Rubric is subject to adjustment on a case by case basis. But the Fee Rubric determines the reasonable, non-excessive fees in general for the stage of the representation that Mr. Gillis was able to get his former client.

It is important to remember that the U.S. Trustee and Mr. Gillis were able to provide for any further payments to which Mr. Gillis is entitled to under the Fee Rubric to be deposited into a fund for the benefit of Mr. Gillis' former clients. This is a now self-executing execution or offset against Mr. Gillis' obligation to pay back monies he has been overpaid for services. The court's Order (Dckt. 150) requires that said payments from the Chapter 13 Trustees shall be disbursed directly with the Clerk of the Court and held pending order of the court how such monies are distributed to the cases in which Mr. Gillis has been overpaid or to former clients whose cases have been dismissed who overpaid Mr. Gillis. Thus, as monies for any fees allowed under the Fee Rubric are to be disbursed by the Chapter 13 Trustee, they will go directly to the Clerk of the Court for the benefit of Mr. Gillis' former clients and they bankruptcy estates.

The Fee Rubric has been established to provide for a determination of reasonable, non-excessive fees based upon objective factors - the status of the bankruptcy case. These are consistent with Local Bankruptcy Rule 2016-1(c)(4) which has a similar provision in the event that a bankruptcy case is dismissed prior to confirmation of a Chapter 13 plan.

Given that the Fee Rubric is based on objective factors, the court concludes that requiring the preparation of four hundred and eighteen (418) statements that Mr. Gillis has not provided all of the legal services required under the Rights and Responsibilities statements filed in each of the four hundred and eighteen cases. The Fee Rubric provides for reducing the fees allowed that are reasonable and not excessive (subject to a case by case specific adjustment) for those cases that Mr. Gillis cannot provide all of the required services for Mr. Gillis to be entitled to the full fixed fee.

The court cannot identify any benefit in the court fulfilling its obligations arising under the Bankruptcy Code, including 11 U.S.C. § 329, to determine the reasonable, non-excessive fees that Mr. Gillis is entitled to as a matter of Federal, Bankruptcy Law. It is indisputable that Mr. Gillis has not been able to provide all of the required services.

With respect to the second request, ordering Mr. Gillis to provide hundreds and hundreds of reports on the status of the substitutions and hold up fee payments to the Clerk of the Court under the Fee Rubric, the court views this as discovery that the U.S. Trustee can undertake, as the U.S. Trustee deems appropriate.

With respect to substitutions, it has been represented to this court that Mark Hannon, Esq., who is identified as the current shareholder of Latino Law, Inc., is to substitute in as counsel in the place of Mr. Gillis in the cases pending in this District. It has also been reported that Mr. Hannon has hired Mr. Gillis as a paralegal who is working at Latino Law, Inc. for Mr. Hannon.

In the pleadings filed in connection with the Joint Decision proceeding to establish the Fee Rubric, Mr. Gillis filed a response stating:

Respondent has attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

19-12274; Gillis Response, Dckt. 29. The Exhibit C reference in the above is filed in case 19-12274, Dckt. 33, and identifies forty-two (42) Chapter 13 cases in which Mr. Hannon has agreed to be substitute counsel in the place of Mr. Gillis.

Provide as Exhibit B reference above is the Letter Agreement for Mr. Hannon to substitute in as counsel in Mr. Gillis cases. The Letter Agreement states:

This will confirm that I agree to substitute in as attorney on your confirmed Chapter 13 cases as soon as proper substitutions can be signed and filed. We have been friends for 30 years. I will do this in honor of our friendship.

...

I will service them free and will only apply for a fee if a particular case needs considerable legal work.

Also there are less than 35 cases that remain unconfirmed. I will substitute in on those cases and prosecute them to discharge. I may apply for a fee if the case requires a great deal of legal work.

Id., Exhibit B. This Letter Agreement appears to say that Mark Hannon has agreed to (as this court understood from representations at hearings) to substitute in on all cases, not merely those listed on Exhibit C.

Mr. Gillis confirms this in his Declaration filed with the Gillis Response in 19-12274, in which he testifies:

16. Mark Hannon has agreed to service my Chapter 13 cases that have paid in full, without a fee (see list of unconfirmed Gillis cases to be taken over by Mark Hannon, Exhibit B).

17. I have attached a list of the pending cases that are yet unconfirmed (Exhibit C). Mark J. Hannon has agreed to substitute into those cases and protect them to confirmation and beyond (see Agreement of Mark J. Hannon, Exhibit B).

Id.; Declaration, p. 4:11-18, Dckt. 30.

It appears that there is little utility in having Mr. Gillis prepare a report as to the status of the substitutions, as Mr. Hannon and Mr. Gillis have already provided the court and all parties in interest as to who is the attorney who is to be substituting in (assuming that Mr. Gillis' former clients choose to accept Mr. Hannon as their counsel).

The Trustee also wants the court to order that Mr. Gillis provide information about fees, what has been requested, what has been paid to whom, and the like. This is in the nature of discovery to be taken by a party in interest as part of determining what, if any, cases should be the subject of a case by case requested adjustment to the Fee Rubric.

The court leaves discovery to be conducted by the U.S. Trustee and not undertake "judicial discovery."

**Fee Rubric Application and Determination of
Non-Excessive Fees and Overpayment
Repayment Amounts for Michael Meyer, Trustee
Chapter 13 Case**

Exhibit A provided by the U.S. Trustee is the analysis under the Fee Rubric in the cases for which Michael Meyer is the Chapter 13 Trustee. Dckt. 11 at 3-5.

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid To Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
19--11113	II	\$4,000.00	\$2,000.00	\$2,000.00	\$2,400.00		\$1,600.00
19-11359	II	\$4,000.00	\$1,500.00	\$2,500.00	\$2,400.00		\$1,600.00
19-11428	II	\$4,000.00	\$2,000.00	\$1,800.00	\$2,400.00		\$1,400.00
19-11701	II	\$4,000.00	\$2,000.00	\$1,800.00	\$2,400.00		\$1,400.00
19-11713	II	\$4,000.00	\$2,000.00	\$900.00	\$2,400.00		\$500.00
19-11782	II	\$4,000.00	\$2,000.00	\$900.00	\$2,400.00		\$500.00
19-11783	II	\$4,000.00	\$2,000.00	\$900.00	\$2,400.00		\$500.00
19-12265	II	\$4,000.00	\$2,000.00	\$800.00	\$2,400.00		\$400.00
19-12272	II	\$4,000.00	\$2,000.00	\$1,480.00	\$2,400.00		\$1,080.00
19-12274	II	\$4,000.00	\$4,000.00	\$0.00	\$2,400.00		\$1,600.00
19-12277	II	\$4,000.00	\$2,000.00	\$800.00	\$2,400.00		\$400.00
19-12670	II	\$6,000.00	\$3,000.00	\$3,000.00	\$3,600.00		\$2,400.00
19-13001	II	\$4,000.00	\$2,000.00	\$500.00	\$2,400.00		\$100.00
19-13002	II	\$4,000.00	\$2,000.00	\$800.00	\$2,400.00		\$400.00
19-13003	II	\$4,000.00	\$2,000.00	\$600.00	\$2,400.00		\$200.00
19-13248	II	\$4,000.00	\$2,000.00	\$1,200.00	\$2,400.00		\$800.00
19-13249	II	\$4,000.00	\$2,000.00	\$600.00	\$2,400.00		\$200.00
19-13250	II	\$4,000.00	\$2,500.00	\$600.00	\$2,400.00		\$700.00
19-13726	II	\$4,000.00	\$2,000.00	\$500.00	\$2,400.00		\$100.00
19-13732	II	\$4,000.00	\$1,000.00	\$2,500.00	\$2,400.00		\$1,100.00
19-13760	II	\$4,000.00	\$2,000.00	\$500.00	\$2,400.00		\$100.00
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0.00	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$17,080.00

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid To Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
13-17712	III	\$4,000.00	\$1,700.00	\$2,300.00	\$3,200.00		\$800.00
15-11610	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
15-11649	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
15-11829	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
15-11912	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
15-12347	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
15-13975	III	\$4,000.00	\$1,150.00	\$2,550.00	\$3,200.00		\$500.00

15-14241	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
15-14766	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-10189	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
16-10202	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-11040	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
16-11336	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
16-12324	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-12325	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-12326	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
16-12736	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-13156	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-1316-1	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-13415	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
16-13705	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
16-14237	III	\$4,000.00	\$1,500.00	\$2,044.24	\$3,200.00		\$344.24
16-14351	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
16-14415	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
16-14612	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10282	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10291	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10295	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10480	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10650	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-10907	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-11129	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
17-11135	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
17-11690	III	\$4,000.00	\$1,500.00	\$2,500.00	\$3,200.00		\$800.00
17-11691	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-11695	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12010	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12023	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12133	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12141	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12244	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
17-12276	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		\$1,200.00
17-12436	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12539	III	\$6,000.00	\$2,500.00	\$3,500.00	\$4,800.00		\$1,200.00
17-12639	III	\$6,000.00	\$2,000.00	\$3,000.00	\$4,800.00		\$200.00
17-12813	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12814	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12884	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-12944	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
17-12945	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13150	III	\$6,000.00	\$3,000.00	\$2,900.00	\$4,800.00		\$1,100.00
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0.00	=====

		Overpayment to be Returned by \$32,444.24 (Disgorged) from Gillis to Clerk of the Court
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Case No.	Fee Rubric Phase	Fixed Fee Amount (FN.2)	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
17-13331	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
17-13339	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13508	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13618	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13704	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
17-13706	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13708	III	\$4,000.00	\$3,000.00	\$1,000.00	\$3,200.00		\$800.00
17-13709	III	\$4,000.00	\$2,000.00	\$1,435.40	\$3,200.00		\$235.40
17-13747	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13987	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-13991	III	\$6,000.00	\$3,000.00	\$2,700.00	\$4,800.00		\$900.00
17-14012	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14013	III	\$4,000.00	\$2,000.00	\$1,500.12	\$3,200.00		\$300.12
17-14157	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14383	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14414	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14507	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14509	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14516	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14518	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14735	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14815	III	\$6,000.00	\$3,000.00	\$2,500.00	\$4,800.00		\$700.00
17-14816	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14874	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
17-14875	III	\$4,000.00	\$1,800.00	\$2,200.00	\$3,200.00		\$800.00
17-14888	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10190	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10192	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10210	III	\$4,000.00	\$1,500.00	\$2,400.00	\$3,200.00		\$700.00
18-10219	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10228	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10233	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
18-10306	III	\$4,000.00	\$2,000.00	\$1,400.00	\$2,720.00	(FN. 1)	\$680.00
18-10405	III	\$2,500.00	\$1,500.00	\$1,000.00	\$2,000.00		\$500.00
18-10416	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10440	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10630	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10631	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00

18-10635	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10902	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-10984	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11032	III	\$4,000.00	\$1,700.00	\$2,300.00	\$3,200.00		\$800.00
18-11047	III	\$4,000.00	\$1,500.00	\$2,000.00	\$3,200.00		\$300.00
18-11131	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11132	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11137	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11138	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11488	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11890	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11891	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
18-11892	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0.00	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$38,715.52

FN.1. The Court by separate order in the *Cervantes* case reduced the allowed compensation below the Fee Rubric amount.

Case No.	Fee Rubric Phase	Fixed Fee Amount (FN.2)	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
1811894	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1811895	III	\$4,000.00	\$2,000.00	\$1,900.00	\$3,200.00		\$700.00
1812145	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812147	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1812148	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812149	III	\$6,000.00	\$3,000.00	\$2,000.00	\$4,800.00		\$200.00
1812151	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1812173	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812187	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812226	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812228	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1812594	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1812601	III	\$4,000.00	\$2,000.00	\$1,900.00	\$3,200.00		\$700.00

1812630	III	\$4,000.00	\$2,000.00	\$1,748.00	\$3,200.00		\$548.00
1812631	III	\$4,000.00	\$2,000.00	\$1,900.00	\$3,200.00		\$700.00
1812674	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1812675	III	\$4,000.00	\$2,000.00	\$1,900.00	\$3,200.00		\$700.00
1812702	III	\$4,000.00	\$2,000.00	\$1,860.86	\$3,200.00		\$660.86
1813126	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1813127	III	\$4,000.00	\$2,000.00	\$1,800.00	\$3,200.00		\$600.00
1813129	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1813436	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1813561	III	\$4,000.00	\$2,000.00	\$1,700.00	\$3,200.00		\$500.00
1813595	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1813602	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1813679	III	\$4,000.00	\$2,000.00	\$1,600.00	\$3,200.00		\$400.00
1813681	III	\$6,000.00	\$2,000.00	\$4,000.00	\$4,800.00		\$1,200.00
1813940	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1813941	III	\$4,000.00	\$2,000.00	\$1,600.00	\$3,200.00		\$400.00
1813980	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1814359	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1814402	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1814403	III	\$4,000.00	\$2,000.00	\$1,500.00	\$3,200.00		\$300.00
1814602	III	\$4,000.00	\$1,000.00	\$3,000.00	\$3,200.00		\$800.00
1814605	III	\$4,000.00	\$2,000.00	\$1,400.00	\$3,200.00		\$200.00
1814658	III	\$4,000.00	\$2,000.00	\$1,400.00	\$3,200.00		\$200.00
1814659	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1814661	III	\$4,000.00	\$1,500.00	\$2,100.00	\$3,200.00		\$400.00
1814665	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1815110	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1815111	III	\$4,000.00	\$2,000.00	\$1,300.00	\$3,200.00		\$100.00
1815113	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1815114	III	\$4,000.00	\$2,000.00	\$1,300.00	\$3,200.00		\$100.00
1815115	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1815149	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1910039	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1910223	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1910251	III	\$4,000.00	\$1,500.00	\$2,400.00	\$3,200.00		\$700.00
1910306	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1910708	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1910721	III	\$4,000.00	\$4,000.00	\$0.00	\$3,200.00		\$800.00
1911031	III	\$4,000.00	\$2,000.00	\$2,000.00	\$3,200.00		\$800.00
1911111	III	\$6,000.00	\$3,000.00	\$3,000.00	\$4,800.00		
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$0.00	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$34,908.86

In addition to the above cases, a review of the court's files discloses the existence of the following cases not identified above for which the Fee Rubric must be applied and payment amounts, some from the Trustee and some from Mr. Gillis computed.

On the following chart there are five cases in which Mr. Gillis did not file the required Disclosure of Compensation resulting in the court not yet being able to determine the Fee Rubric amount and the disgorgement (anticipated in light of there not being First Meetings of Creditors completed in those cases) that Mr. Gillis will have to pay.

These additional cases are:

Case No.	Fee Rubric Phase	Fixed Fee Amount	Fees Paid To Gillis By Client	Fees Paid to Gillis by Trustee	Fees Permitted Under Fee Rubric	Balance Due Gillis For Deposit With Clerk of the Court	Overpayment to be Returned by Gillis to Clerk of the Court
19-13972	II	\$4,000.00	\$1,000.00		\$2,400.00	\$1,400.00	
19-13972	II	\$4,000.00	\$1,000.00		\$2,400.00	\$1,400.00	
19-14080	II	\$4,000.00	\$2,000.00		\$2,400.00	\$400.00	
19-14131	II	\$4,000.00	\$2,000.00		\$2,400.00	\$400.00	
19-14129	II	\$4,000.00	\$2,000.00		\$2,400.00	\$400.00	
19-14379	I	\$4,000.00	\$2,000.00		\$1,200.00		\$800.00
19-14377	I	\$4,000.00	\$2,000.00		\$1,200.00		\$800.00
19-14375	I	\$4,000.00	\$4,000.00		\$1,200.00		\$2,800.00
19-14374	I	\$4,000.00	\$0.00		\$1,200.00	\$1,200.00	
19-14371	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14427	I	\$4,000.00	\$4,000.00		\$1,200.00		\$2,800.00
19-14425	None (FN. 1)	\$4,000.00	\$1,000.00		\$0.00		\$1,000.00
19-14442	None	\$4,000.00	\$2,000.00		\$0.00		\$2,000.00
19-14470	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14592	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14574	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14556	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14956	None	\$4,000.00	\$2,000.00		\$0.00		\$2,000.00
19-14955	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14954	None	\$6,000.00	\$2,000.00		\$0.00		\$2,000.00
19-14938	I	\$4,000.00	\$1,000.00		\$1,200.00	\$200.00	
19-14935	I	\$4,000.00	\$4,000.00		\$1,200.00		\$2,800.00
19-14934	None	Not Disclosed					
19-14933	None	\$4,000.00	\$2,000.00		\$0.00		\$2,000.00
19-14986	None	Not Disclosed					
19-14983	None	Not Disclosed					
19-14981	None	Not Disclosed					
19-14976	None	Not Disclosed					
19-14971	None	\$4,000.00	\$1,000.00		\$0.00		\$1,000.00

19-14969	None	Not Disclosed					
19-14967	I	\$4,000.00	\$4,000.00		\$1,200.00		\$2,800.00
19-15368	None	\$4,000.00	\$2,000.00		\$0.00		\$2,000.00
19-15366	None	\$4,000.00	\$1,000.00		\$0.00		\$1,000.00
						=====	
Balance Due Gillis For Deposit With Clerk of the Court						\$6,600.00	=====
		Overpayment to be Returned by (Disgorged) from Gillis to Clerk of the Court					\$25,800.00

For the above identified cases, computing the attorney's fees permitted Mr. Gillis under the Fee Rubric, the amount of monies that Mr. Gillis must repay (disgorge) and the monies due Mr. Gillis under the Fee Rubric to be paid in the future are:

Amount Thomas Gillis Must Repay (disgorge) to the Clerk of the Court.....**\$148,423.50**

Amount Due Thomas Gillis in Chapter 13 Cases that Michael Meyer, the Chapter 13 Trustee shall disburse Directly to the Clerk of the Court.....**\$6,600.00**

The above amounts are subject to adjustment with respect to whether for Phase III it is 80% of the fixed fee or 90% if Mr. Gillis pursues his appeal.

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

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

The remaining issues in the Omnibus Motion of the United States Trustee, DCN: UST-1, having been presented to the court, and upon review of the US Trustee's Omnibus Motion, the arguments of counsel, the files in this case, the Fee Rubric adopted in this District to determine the allowable, compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases, and good cause appearing.

IT IS ORDERED that the Motion is Granted and the allowable reasonable compensation for Thomas O. Gillis as counsel for the debtor in the Chapter 13 cases pursuant to Local Bankruptcy Rule 2016-1 and 11 U.S.C. § 329 for each of the Chapter 13 cases listed Addendum A hereto are the amounts specified for each case in said Addendum A, which is incorporated herein by this reference.

~~**IT IS FURTHER ORDERED** the specific amount of overpayments to Thomas O. Gillis in excess of the allowed amount in each Chapter 13 case is~~

stated in Addendum A, the amount that Thomas O. Gillis must repay (disgorge) for amounts received in excess of the allowed compensation for each case, and the compensation to which Mr. Gillis is to be paid in the future from specific Chapter 13 cases that shall be disbursed by the Chapter 13 Trustee directly to the Clerk of the Court pursuant to this court's prior order adopting the Fee Rubric for all of Mr. Gillis' cases in this District (Corrected Order, Dekt. ~~Xxxx~~):

~~IT IS FURTHER ORDERED~~ that Thomas O. Gillis shall immediately repay directly to the Clerk of the Court, to be deposited with the other monies relating to Mr. Gillis' fees the excessive fee amounts specified on Addendum A for each case, which amount totals ~~\$148,423.50~~, which amounts are due upon the entry of this order.

~~This Order is without prejudice to the pending appeal by Thomas O. Gillis of whether the Phase III percentage of the Fee Rubric should be 80% or 90%, and the rights of any party in interest to seek an adjustment of the Fee Rubric based upon specific facts and circumstances of a specific case or common unique facts of a group of cases.~~

~~IT IS FURTHER ORDERED~~ that all other relief in the Motion which is not the subject of the separate Order Adopting the Fee Rubric issued by the court is denied without prejudice.

~~This Order constitutes a monetary judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) for which the monetary obligation is due, payable, and enforceable upon issuance of this Order, and the monetary obligation may be enforced by Michael Meyer, the Chapter 13 Trustee, and the U.S. Trustee for Region 17 pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).~~