

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 13, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-33804-D-7	RHONDA	MOTION FOR RELIEF FROM
	MBB-1	STIJAKOVICH-SANTILLI	AUTOMATIC STAY
	THE BANK OF NEW YORK MELLON		7-10-14 [62]
	VS.		

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on February 5, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

2. 14-26707-D-7 RYAN QUINNEY

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
6-27-14 [5]

3. 14-23508-D-7 DAVID WALTON
MRE-2

MOTION TO AVOID LIEN OF CALVARY
SPV I, LLC
7-11-14 [20]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

4. 12-40315-D-7 OLUSEGUN/YVONNE LERAMO
DNL-4

CONTINUED MOTION TO ABANDON
6-12-14 [145]

5. 13-28020-D-7 ROGER/BONNIE TURNER
EJS-2

MOTION TO AVOID LIEN OF THE
GOLDEN ONE CREDIT UNION AND FIA
CARD SERVICES, N.A.
6-26-14 [84]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

6. 13-28020-D-7 ROGER/BONNIE TURNER CONTINUED OBJECTION TO DEBTORS'
HSM-7 CLAIM OF EXEMPTIONS
3-31-14 [54]

Final ruling:

The hearing on this objection is continued to September 24, 2014 at 10:00 a.m. per the court's order dated July 31, 2014. No appearance is necessary on August 13, 2014.

7. 13-28020-D-7 ROGER/BONNIE TURNER MOTION TO EXTEND DEADLINE TO
HSM-9 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
7-3-14 [92]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of debtor is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of debtor. Moving party is to submit an appropriate order. No appearance is necessary.

8. 14-26921-D-7 AIDAN MCKENNA MOTION FOR RELIEF FROM
TC-40 AUTOMATIC STAY
FIRST TECHNOLOGY FEDERAL CREDIT UNION VS. 7-14-14 [9]

Final ruling:

This matter is resolved without oral argument. This is First Technology Federal Credit Union's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a) (3). There will be no further relief afforded. No appearance is necessary.

9. 10-47422-D-7 DENNIS/SHERYL LANCASTER MOTION FOR ORDER AWARDING
12-2118 HSM-3 PREJUDGMENT INTEREST
FARRAR V. LEXINGTON 7-14-14 [120]
CONSULTING, INC. ET AL

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for order awarding prejudgment interest is supported by the record. As such the court will grant the motion for order awarding prejudgment interest. Moving party is to submit an appropriate order. No appearance is necessary.

10. 14-26632-D-7 PATRICIA SALOMON
UST-1

MOTION FOR APPOINTMENT OF A
PATIENT CARE OMBUDSMAN
7-10-14 [11]

11. 14-26937-D-7 MARK SWAGERTY

ORDER TO SHOW CAUSE RE WHY THIS
CHAPTER 7 CASE SHOULD NOT BE
DISMISSED
7-17-14 [24]

12. 13-34146-D-7 SHAWNA NOVAK
RMD-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-15-14 [36]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on February 18, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

13. 14-23046-D-7 SHANE/SARA LANTZ
DNL-1

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
6-23-14 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of debtor is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of debtor. Moving party is to submit an appropriate order. No appearance is necessary.

14. 14-24549-D-7 ANNMARIE BITETTO
NLG-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-10-14 [14]

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

15. 14-27151-D-7 ANITA MCMILLON
JKB-1
EQUITY INVESTMENTS GROUP AND
COMPASS ALTERNATIVE
INVESTMENTS, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-11-14 [8]

Final ruling:

This matter is resolved without oral argument. This is Equity Investments Group and Compass Alternative Investments, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

16. 14-23557-D-7 CORY HARPER
PPR-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY, VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-11-14 [12]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay as to the debtor and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

17. 14-25758-D-7 DEAN DENNO
KAZ-1
THE BANK OF NEW YORK MELLON
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-3-14 [15]

Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

18. 09-29162-D-11 SK FOODS, L.P.
DB-28

CONTINUED MOTION TO DISGORGE
FEES
6-24-14 [4885]

This matter will not be called before 10:30 a.m.

Tentative ruling:

This is the motion of the Official Committee of Unsecured Creditors in this case (the "Committee") for an order compelling Farella Braun + Martel, LLP ("FBM") to disgorge the \$710,449.48 it was paid from funds of SSC Farming LLC ("SSC Farming"), an entity, along with certain other entities (the "Related Entities"), now consolidated with the debtor in this case. The chapter 11 trustee has joined in the motion. FBM has filed opposition, and the Committee has filed a reply. For the following reasons, the court intends to continue the hearing to allow FBM to supplement the record and the Committee to file a response to the same.

The court will begin with the observation that both the Committee and FBM have disregarded significant findings made and conclusions reached by the court in its ruling on FBM's fee application, DC No. FBM-3, filed February 5, 2014, found on the court's docket at DN 4671. The court adopts those findings and conclusions herein, and on that basis, rejects with only limited further discussion the following arguments made by the Committee: (1) that FBM "[is] only entitled to compensation from the bankruptcy estate incurred within the parameters of Section 327" (Motion to Compel Disgorgement, filed June 24, 2014 ("Mot."), at 6:2-3); (2) that FBM is not entitled to retain fees because it was not a disinterested person and because it represented interests adverse to the bankruptcy estate, contrary to § 327(a); and (3) that FBM is not entitled to retain the \$710,449.48 because it has not demonstrated that its services were necessary and beneficial to the bankruptcy estate, as required by § 330(a)(4)(A)(ii)(I). The court has previously determined that FBM's compensation would be subject to the court's review under § 329 regardless of the fact that FBM could not qualify for compensation under §§ 327 and 330(a)(4)(A)(ii). The Committee's continuing reliance on those sections as a basis for disgorgement of FBM's fees is misplaced.

The Committee makes another argument that, although not previously addressed directly by the court, is logically controverted by several of the court's rulings,

beginning as early as January 19, 2011 and concluding with the February 5, 2014 ruling cited above. Based on the district court's conclusion in its remand order that this court's preliminary injunction should be amended to allow the Related Entities' counsel "to apply for attorneys' fees and costs in the same manner in which counsel for debtor entities may" (Mot. at 5:20-21 1), the Committee claims FBM was aware that "compensation under Section 327 would be the only type of compensation available to counsel for SSC Farming if the Court granted consolidation." Mot. at 5:22-23. This court implemented the remand order in an amended preliminary injunction issued January 20, 2011, and further, in a second amended preliminary injunction issued September 2, 2011.² In its rulings supporting those injunctions, the court made clear the terms on which the Related Entities' counsel would be entitled to compensation; satisfying the requirements of § 327 was not among them.³

Next, despite the court's earlier conclusion that FBM's compensation would be reviewed under both the amended injunction orders and § 329, the Committee now attempts to circle back to § 327 by way of § 330(a)(1). Thus, the Committee posits that "[t]o the extent payment of fees to debtor's counsel from the bankruptcy estate is permitted under Section 329, the fees awarded must comply with Section 330, which only allows for compensation under Section 327 in Chapter 11 cases." Mot. at 7:6-9. The Committee cites no authority for that proposition, and the court is aware of none. Sections 329 and 330 serve different purposes: the first provides for disclosures by a debtor's attorney regarding his or her compensation and for disgorgement of fees exceeding the reasonable value of his or her services; the second provides for compensation to a trustee or a professional employed under § 327. Section 329 does not incorporate § 330, does not provide for an "award" of fees, and does not require that a debtor's attorney's fees reviewed under § 329(b) "comply with Section 330," as the Committee contends.

Finally, the Committee cites cases holding that the "reasonableness" standard to be applied under § 329 is the standard set forth in § 330,⁴ concluding that FBM must demonstrate that its services were reasonably likely to benefit the bankruptcy estate. See § 330(a)(4). This represents a misunderstanding of § 329(b). As the court reads that subsection and the cases cited by the Committee, in making a determination under § 329(b), the court is to look to the factors set forth in § 330(a)(3) (amount of time spent, rates charged, etc.) to assess the reasonableness of the compensation paid. Nothing in § 329(b) or the cited cases suggests the court must also find, under § 330(a)(4), that the services were reasonably likely to benefit the bankruptcy estate.

FBM, for its part, has disregarded other portions of the court's February 5, 2014 ruling. First, FBM continues to rely on the district court's remand order as mandating that the Related Entities' counsel be paid,⁵ a position this court refuted in some detail in its earlier ruling.

Second, FBM maintains it should be permitted to retain the funds paid by SSC Farming for services FBM allegedly would have rendered to SSC Farming alone if SSC Farming had been its only client, but which FBM actually rendered to SSC Farming and to FBM's 16 other clients (the other Related Entities) as a group, clients that, apparently, had no assets from which to pay FBM. Thus, FBM claims, "[its] work was necessary to the defense of SSC Farming, and the fact that other of FBM's clients may have also benefitted from the work does not lessen its direct benefit to SSC Farming. Indeed, the work would have had to be done even if FBM represented only SSC Farming." Opp. at 15:19-23. For almost all the categories of services described in FBM's opposition, FBM makes a statement similar to the one just quoted.

In this fashion, FBM attempts to justify well over half the total fees and costs it incurred in this case and related adversary proceedings (\$1,525,182 out of \$2,466,870) as attributable to, and therefore, payable by SSC Farming, despite the fact that almost all its services were performed for that entity and some or all of the 16 other Related Entities FBM was also representing.

This position is directly contrary to this court's rulings of January 19, 2011, September 1, 2011, and February 5, 2014, referenced above, as well as another ruling, issued January 25, 2012.⁶ The court's position from the beginning, regarding professional fees and costs paid from SSC Farming's blocked account, has been clear and is specifically laid out in the amended injunction orders: that each particular entity could pay for the services rendered to that particular entity, subject to disclosure, as required by § 329(a), and possible disgorgement, under § 329(b). The first of the listed rulings was issued before FBM even undertook its representation of SSC Farming and the Related Entities, with the result that "[w]hen FBM was first engaged, it was immediately made aware of the terms of the injunction and that it limited payment of attorneys' fees and costs by the enjoined clients to matters on which it was providing services to that specific client." Opp. at 6:6-8 (emphasis added). Nothing in any of the four rulings should have led FBM to believe the court would permit SSC Farming to pay the fees of the other Related Entities that jointly benefitted from FBM's services.⁷

Third, FBM refers to this "extremely fast-paced and aggressively fought litigation" (Opp. at 1:19), to the "extraordinary" challenge of dropping into this case part way through (at 3:10-11), to the "huge undertaking" its representation entailed (Opp. at 3:13), and to the complexity of the issues it addressed. As discussed in the February 5, 2014 ruling, however, FBM voluntarily undertook the representation knowing the court's position that the funds from which FBM stood to be paid were subject to this court's preliminary injunction and the amended injunction orders, and that the court had ordered that those funds could be used only to pay for services rendered to the particular entity to whom the funds belonged. Yet FBM made a choice to represent all 17 of the Related Entities, not just SSC Farming; further, FBM apparently failed from the beginning to segregate its services among its several clients, and has since made no attempt to allocate its fees on some rationale pro rata basis among the clients for whom the fees were incurred.

In attempting to overcome these deficiencies, FBM has plucked from the court's comments at the February 5, 2014 hearing the following: "[T]o the extent there [were] services that benefitted SSC [Farming], . . . if there was a tangential benefit to another entity, so be it, as long as the other entity wasn't the primary target of the benefit" FBM's Ex. 3, at 11:19-22. From this, FBM concludes that "[t]his Court made clear that FBM was entitled to compensation as long as SSC Farming benefitted from its services, regardless of whether other Consolidated Entities also collectively benefitted (unless another entity was the primary beneficiary of such services), rather than limiting compensation for services rendered exclusively to SSC Farming" Opp. at 25:10-13.

The court intended the word "tangential" much more narrowly,⁸ not as encompassing all services performed for the benefit of SSC Farming and as many as 16 other clients, collectively. The court was focused more on SSC Farming as the primary beneficiary of the services, not as simply one among many. In its opposition, FBM refers to SSC Farming as "a primary defendant" because it was "a defendant with assets."⁹ In essence, FBM is suggesting SSC Farming was the one that primarily benefitted from FBM's services because it was the one with assets;

however, the conclusion that SSC Farming should bear the costs for all of them does not follow and is misplaced.

FBM also cites two California cases for the proposition that "[a]llocation [of fees] among jointly represented parties is not required when the liability of the parties is so factually interrelated that it would have been impossible to separate the activities . . . into compensable and noncompensable time units. . . ." Brown Bark III, L.P. v. Haver, 219 Cal. App. 4th 809, 830 (2013), quoting Cruz v. Ayromloo, 155 Cal. App. 4th 1270, 1277 (2007) (internal quotation marks omitted). FBM does not explain how those cases, which concerned contractual attorney's fee awards under Cal. Civ. Code § 1717, have any bearing on this court's task in assessing compensation paid to a debtor's attorney that is only allowed as provided by the amended injunction orders and then subject to further review under § 329(b).

Section 329 and others are "designed to protect the debtor from the debtor's attorney." Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis), 113 F.3d 1040, 1045 (9th Cir. 1997), citing In re Walters, 868 F.2d 665, 668 (4th Cir. 1989), as noting that § 329 and Rule 2017 are designed to protect the creditors and the debtor against overreaching by the attorney.¹⁰ In this case, the court early tailored a remedy for the Related Entities' counsel that would comply with the spirit of the district court's remand order, while at the same time recognizing that the Related Entities' counsel simply could not meet the requirements of § 327(a), as counsel for trustees and debtors-in-possession must. Thus, the court made it clear in its rulings and the amended preliminary injunction orders that each particular one of the Related Entities would only be: (1) permitted to pay reasonable attorney's fees and costs for services rendered to that particular entity, and (2) that the fees and costs would be subject to review and possible disgorgement under § 329(b). In light of those rulings and injunction orders, and of the purposes of that subsection - to protect debtors and creditors, the court rejects FBM's position that SSC Farming should have paid for services rendered on behalf of up to 16 other entities, simply because the services were also rendered some arguable benefit to SSC Farming.

For the most part, FBM has failed to demonstrate that any of its services were performed solely or primarily for SSC Farming, with only tangential benefits to the other Related Entities. One exception is FBM's reference to a contempt motion brought by the trustee against SSC Farming, Robert Pruett, Collins & Associates, and Cary Collins in the substantive consolidation proceeding, Adv. Proc. No. 10-2014, and other adversary proceedings. FBM represented SSC Farming in opposing that motion; it did not represent the other respondents, and none of the other Related Entities that were FBM's clients was a respondent. It appears the defense of this motion would fall within the category of services performed primarily for SSC Farming.

However, FBM has failed to segregate its time billed for those services, instead citing only certain time entries as "examples" and lumping those together with others for work performed in response to, among other things, the trustee's motion for appointment of a receiver, in response to which FBM filed opposition on behalf of SSC Farming and the 16 other Related Entities. When the court issued its February 5, 2014 ruling, it was not in a position to determine from FBM's moving papers what services were provided to SSC Farming in particular, as distinct from those provided to other Related Entities or to SSC Farming and other Related Entities jointly; FBM's papers in response to the present motion merely further obscure the issue. In light of the size of the amount at stake, the court intends to give FBM one last chance to present in readily understandable and comprehensible

form evidence supporting a conclusion as to which of its services were performed specifically or primarily for SSC Farming. If FBM presents sufficient evidence for that determination, the court will then consider whether the fees incurred on SSC Farming's behalf were reasonable. The Committee will have an opportunity to reply as to both issues.

The court will hear the matter.

1 Citing Order dated Dec. 10, 2010 in Sharp v. Salyer, Dist. Ct. Case No. 2:10-cv-00810 ("Remand Order"), at 20:23-24 (emphasis added by Committee).

2 The amended preliminary injunction and the second amended preliminary injunction shall be referred to as the "amended injunction orders."

3 The court adopts herein the findings and conclusions set forth in those two rulings, found on the court's docket at DNs 196 and 288 in Adv. Proc. No. 10-2014.

4 The Committee cites American Law Ctr. PC, v. Stanley (In re Jastrem), 253 F.3d 438, 443 (9th Cir. 2001), and Hale v. United States Trustee (In re Basham), 208 B.R. 926, 931 (9th Cir. BAP 1997).

5 Thus, FBM contends that requiring disgorgement of any fees "would run directly counter to the District Court's ruling that SSC Farming (and the other [Related] Entities) had a right to defend themselves . . . and 'must be represented by counsel' . . . and that it is 'not acceptable' and 'inappropriate' that such counsel not be paid" Opposition of FBM, filed July 30, 2014 ("Opp."), at 2:10-14, citing Remand Order (emphasis added by FBM).

6 See ruling on DC No. FBM-2, at DN 397 in Adv. Proc. No. 10-2014, incorporated herein by this reference.

7 In the last three of those rulings, the court explicitly refused to endorse the concepts, advanced by FBM, that one entity could pay fees incurred on behalf of all of them, that the January 20, 2011 amended preliminary injunction permitted one of the entities to pay its attorneys if those attorneys were also representing others of the Related Entities toward a common purpose, and that the attorneys did not need to segregate their time among their various clients.

8 The word has been defined as "merely touching; slightly connected," and as "of superficial relevance only." Dictionary.com, definition of "tangential," <http://dictionary.reference.com/browse/tangential?s=t> (last visited Aug. 8, 2014).

9 Specifically, "SSC Farming was a primary defendant (i.e., a defendant with assets) in two of these three key adversary proceedings." Opp. at 4:4-5.

10 "The reports [in the legislative history] discussing § 329 state that 'payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.'" In re 268, Ltd., 789 F.2d 674, 677 (9th Cir. 1986) (citations omitted).

19. 09-29162-D-11 SK FOODS, L.P.
SH-260

OMNIBUS OBJECTION TO CLAIMS
6-30-14 [4895]

This matter will not be called before 10:30 a.m.
Tentative ruling:

This is the trustee's omnibus objection to certain claims filed by certain alleged insiders and affiliates of the debtor. As to Claim Nos. 68 and 278, filed by Carmel Wine Merchants, LLC, in Case Nos. 09-29161 and 09-29162, respectively, the court intends to overrule the objection because the moving party failed to serve the claimant at the address on its filed proofs of claim, as required by LBR 3007-1(c). As to Claim No. 74, filed by Salyer American Cooling in Case No. 09-29161, the objection will be overruled as moot because the claimant withdrew the claim on September 23, 2009 (see DN 442 in Case No. 09-29161).

As to the remainder of the objection, the court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, except as set forth above, the objection will be sustained.

The court will hear the matter.

20. 09-29162-D-11 SK FOODS, L.P.
SH-261

OMNIBUS OBJECTION TO CLAIMS
6-30-14 [4898]

This matter will not be called before 10:30 a.m.
Tentative ruling:

This is the trustee's omnibus objection to certain claims filed by certain alleged insiders and affiliates of the debtor. As to Claim No. 278, filed by Carmel Wine Merchants, LLC, the court intends to overrule the objection because the moving party failed to serve the claimant at the address on its filed proof of claim, as required by LBR 3007-1(c). As to the remainder of the objection, the court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, except as set forth above, the objection will be sustained.

The court will hear the matter.

21. 09-29162-D-11 SK FOODS, L.P.
SH-263

OMNIBUS OBJECTION TO CLAIMS
6-30-14 [4904]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's omnibus objection to the thirteen different claims of GMAC. The trustee is to submit an appropriate order. No appearance is necessary.

22. 09-29162-D-11 SK FOODS, L.P.
SH-264

OMNIBUS OBJECTION TO CLAIMS
6-30-14 [4908]

This matter will not be called before 10:30 a.m.

Tentative ruling:

This is the trustee's omnibus objection to certain claims filed by Toyota Motor Credit Corporation ("Toyota"). The court intends to overrule the objection because the moving party failed to serve Toyota at the address on its filed proofs of claim, as required by LBR 3007-1(c). The moving party served Toyota at 19001 S. Western Ave., EF-12, in Torrance, California, whereas the address on the proofs of claim is 19001 S. Western Ave., WF-21. Alternatively, the court will continue the hearing to allow the trustee to cure this service defect.

The court will hear the matter.

23. 09-29162-D-11 SK FOODS, L.P.
SH-265

OMNIBUS OBJECTION TO CLAIMS
6-30-14 [4912]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's omnibus objection to the claims of SK Frozen Food, LLC. The trustee is to submit an appropriate order. No appearance is necessary.

24. 13-23371-D-11 JUAN/MARGARITA RAMIREZ
TCS-8

CONTINUED CONFIRMATION OF
SECOND PLAN OF REORGANIZATION
FILED BY DEBTORS
12-24-13 [138]

25. 14-26071-D-11 JINTANA SHAW
KAZ-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-10-14 [16]

CASE DISMISSED 6/25/14

26. 14-25974-D-7 MICHAEL DORAN

AMENDED MOTION TO DISCHARGE
STUDENT LOANS
6-20-14 [16]

Final ruling:

This is a "petition" by the debtor to discharge student loans based on allegations of undue hardship. The motion will be denied because this type of relief must be sought by way of an adversary proceeding. Fed. R. Bankr. P. 7004(6). Due to this procedural defect the motion will be denied by minute order. No appearance.

27. 14-23677-D-7 RHONDA WIMBERLY-BRAGG
MRE-2

MOTION TO AVOID LIEN OF MIDLAND
FUNDING, LLC
7-11-14 [24]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

28. 14-24382-D-7 GILBERT GUINA
GRF-1

MOTION TO EMPLOY FIRST CAPITOL
AUCTION, INC. AS AUCTIONEER(S)
7-2-14 [13]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ First Capitol Auction, Inc.'s is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

29. 14-24382-D-7 GILBERT GUINA
GRF-2

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR FIRST
CAPITOL AUCTION, INC.,
AUCTIONEER(S)
7-2-14 [19]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to sell a 1994 Ford Ranger and a 1997 Plymouth Grand Voyager, SE is supported by the record. As such the court will grant the motion and authorize the sale of the 1994 Ford Ranger and the 1997 Plymouth Grand Voyager, SE pursuant to § 363(b) of the Bankruptcy Code. Moving party is to submit an appropriate order. No appearance is necessary.

30. 14-26782-D-7 MICHAEL ERICKSON

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
6-30-14 [5]

31. 11-22685-D-7 BLUE RIBBON STAIRS, INC.
JME-9
K. HOVNANIAN FORECAST HOMES,
INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-17-14 [1169]

Final ruling:

This matter is resolved without oral argument. This is K. Hovnanian Forecast Homes, Inc.'s motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

32. 14-24086-D-7 COURTNEY VACEK
RCO-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-11-14 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on July 22, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

33. 14-26304-D-11 THERESA SIMMONS
TBS-8

MOTION TO DISMISS CASE
7-22-14 [60]

Final ruling:

This is the debtor's motion to dismiss this chapter 11 case. As the case was dismissed by order dated July 25, 2014, this motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

34. 13-24507-D-7 DKW PRECISION MACHINING CONTINUED MOTION TO SELL
CWS-4 INC. 7-2-14 [150]

Final ruling:

This motion has been granted by an order entered August 6, 2014. As such, the matter is removed from calendar. No appearance is necessary.

35. 13-24507-D-7 DKW PRECISION MACHINING CONTINUED MOTION TO ABANDON
CWS-5 INC. 7-2-14 [156]

Final ruling:

This motion has been granted by an order entered August 6, 2014. As such, the matter is removed from calendar. No appearance is necessary.

36. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO APPROVE
DNL-3 FORM AND MANNER OF NOTICE BY
PUBLICATION OF CLAIMS BAR DATE
7-16-14 [81]

This matter will not be called before 10:45 a.m.

37. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION TO EMPLOY BACHECKI, CROM
DNL-5 & CO., LLP AS ACCOUNTANT(S)
7-22-14 [97]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the trustee's application to employ Bachecki, Crom & Co., LLP, as his accountants. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling. First, the moving party served only the notice of hearing, and not the motion or supporting documents, on the creditor body, as permitted by LBR 9014-1(d)(4), but also served only the notice of hearing on the debtor and the debtor's attorney. (The debtor and debtor's attorney were also omitted from the service list for all documents for the other motions on this calendar.) As the court reads the local rule, the parties "who are directly affected by the requested relief" are generally considered to include the debtor and the debtor's attorney. The court will hear the matter to determine whether the

moving party had a reason for excluding the debtor and debtor's attorney from service of the motion and supporting documents. If he did not, the court will continue the hearing to allow the moving party to serve all documents on the debtor and the debtor's attorney.

In addition, the court will require the moving party to supplement the record. The supporting declaration of Jay D. Crom addresses the matter of connections between the members of Crom, on the one hand, and the persons and entities listed in Fed. R. Bankr. P. 2014(a), but does not address connections, if any, of the employees of Crom.

The court will hear the matter.

38.	14-25816-D-11	DEEPAL WANNAKUWATTE	MOTION TO APPROVE AGREEMENT
	DNL-6		REGARDING HANDLING MAIL
			ADDRESSED TO DEEPAL SUNIL
			WANNAKUWATTE AND ASSOCIATED
			ENTITIES
			7-30-14 [114]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the trustee's motion for approval of an agreement with the trustee for International Manufacturing Group, Inc., regarding the handling of mail addressed to the debtor and entities with which the debtor is associated. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling. The moving party served only the notice of hearing, and not the motion or supporting documents, on the debtor and the debtor's attorney. Unless the debtor's attorney affirmatively waives service, the court intends to continue the hearing to allow the moving party to serve the motion and all supporting documents on the debtor and the debtor's attorney.

The court will hear the matter.

39.	14-25816-D-11	DEEPAL WANNAKUWATTE	MOTION TO ESTABLISH NOTICE AND
	DNL-7		ADMINISTRATIVE PROCEDURES
			7-30-14 [119]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the trustee's motion for an order establishing notice and administrative procedures such that notice of those proceedings described in Fed. R.

Bankr. P. 2002(a)(2), (3), and (6) shall be limited to those persons and entities on a limited service list. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling. The moving party served only the notice of hearing, and not the motion or supporting documents, on the debtor and the debtor's attorney. The court intends to continue the hearing to allow the moving party to serve the motion and all supporting documents on the debtor and the debtor's attorney.

Once that has been accomplished, or if the debtor's attorney appears at the hearing and waives service of the motion and supporting documents, and assuming there are no objections to the motion, the court intends to issue an order similar to the Order Establishing Notice and Administrative Procedures, dated July 30, 2014, in In re International Manufacturing Group, Inc., Case No. 14-25820, DN 161.

The court will hear the matter.

40.	14-25820-D-11 FWP-8	INTERNATIONAL MANUFACTURING GROUP, INC.	CONTINUED MOTION FOR ORDER AUTHORIZING FORM AND MANNER OF PUBLICATION NOTICE OF BAR DATE 7-16-14 [114]
-----	------------------------	--	---

This matter will not be called before 10:45 a.m.

41.	14-25820-D-11 FWP-9	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION TO SELL FREE AND CLEAR OF LIENS 7-23-14 [133]
-----	------------------------	--	--

This matter will not be called before 10:45 a.m.

42. 12-40828-D-7 KEITH/SHANTEL LIVINGSTON MOTION TO AVOID LIEN OF ASSET
JCK-5 ACCEPTANCE, LLC
7-30-14 [64]

43. 11-36435-D-7 DAVID ROSS MOTION TO VACATE DISMISSAL OF
TBK-9 CASE
7-25-14 [173]
CASE DISMISSED 7/22/14

44. 14-26146-D-7 MICHELE MCENTIRE MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 7-21-14 [9]

45. 12-32054-D-11 AJW PROPERTIES, LLC CONTINUED MOTION TO CONVERT
UST-2 CASE FROM CHAPTER 11 TO CHAPTER
7 (FILING FEE NOT PAID OR NOT
REQUIRED), MOTION TO DISMISS
CASE
6-27-14 [123]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar. No appearance is necessary.

46.	09-29162-D-11	SK FOODS, L.P.	MOTION FOR ORDER SETTING
	SH-289		DEADLINE TO FILE PROOFS OF
			CLAIM IN RESPONSE TO AMENDED
			SCHEDULE E
			7-23-14 [5038]

This matter will not be called before 10:30 a.m.

47.	14-26469-D-7	GERARDO CHAVEZ	MOTION TO COMPEL ABANDONMENT
	DCN-1		7-18-14 [30]

48.	14-27069-D-7	DONNA FENLEY	MOTION FOR RELIEF FROM
	EGS-1		AUTOMATIC STAY
	GUILD MORTGAGE COMPANY VS.		7-28-14 [9]

49.	13-23371-D-11	JUAN/MARGARITA RAMIREZ	MOTION TO APPROVE STIPULATION
	KMR-1		ON PLAN TREATMENT WITH REGARD
			FIRST LIEN ON REAL PROPERTY
			7-28-14 [207]

Final ruling:

This is the motion of Bank of New York Mellon for approval of its stipulation with the debtors for plan treatment of the Bank's claim secured by certain real property of the debtors. The motion will be denied for the following reasons. First, there is no proof of service on file, and any proof of service filed hereafter will not be timely filed. See LBR 9014-1(e) (2). Second, the notice of

motion gives the hearing date and time as August 13, 2014, at 10:00 a.m. in the caption, but as June 25, 2014, at 1:00 p.m. in the text (in bold and underlined). As the notice is given pursuant to LBR 9014-1(f)(2) (opposition may be presented at the hearing), it is particularly important that the hearing date and time be unambiguously stated. Finally, the notice of motion and motion are filed as a single document, contrary to LBR 9014-1(d)(2). As a result of these procedural defects, the motion will be denied by minute order. No appearance is necessary.

50. 13-35671-D-11 CARLYLE STATION LLC
TMP-5

CONTINUED MOTION TO DETERMINE
REASONABLE VALUE FOR
PRE-PETITION AND POST-PETITION
FEES AND EXPENSES
5-13-14 [154]

CASE DISMISSED 5/29/14
CASE CLOSED 6/16/14

Tentative ruling:

This is the motion of T M Pankopf, PLLC ("Counsel") to determine the reasonable value of its services rendered to the debtor as debtor-in-possession in this chapter 11 case. The United States Trustee ("UST") has filed opposition. For the following reasons, the motion will be granted in part.

Section 330 of the Bankruptcy Code sets out the standards by which courts should determine the reasonableness of compensation of professional persons; reasonableness is determined by considering the nature, extent, and value of the services rendered. The court is to take account of all relevant factors, including the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial at the time they were rendered toward the completion of, the case; 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; whether the professional is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and whether the compensation is reasonable based on the customary compensation of comparably skilled attorneys in other types of cases. § 330(a)(3); see also In re Eliapo, 298 B.R. 392, 401 (9th Cir. BAP 2003). The applicant has the burden of proof to demonstrate that it is entitled to the fees and costs requested. Roderick v. Levy (In re Roderick Timber Co.), 185 B.R. 601, 606 (9th Cir BAP 1995).

Counsel seeks approval of fees in the amount of \$55,575 and costs of \$3,731.72, for a total of \$59,306.72. The UST makes several arguments, first, that the requested fees exceed the flat fee of \$30,000 that Counsel agreed to in its fee agreement with the debtor. Counsel's motion for approval of its employment gave conflicting information about the terms of Counsel's employment. On the one hand, it stated that Counsel would be paid a flat fee of \$30,000 regardless of actual time spent.¹ On the other hand, the motion stated Counsel would be paid based on its hourly rates and the amount of time spent.² Although the present motion is not as clear as it could be, it appears Counsel seeks a determination that, based on its hourly rate and the actual time spent, the reasonable value of Counsel's services exceeds the amount it has been paid to date, \$20,000. In other words, although in the prayer, Counsel seeks a determination that attorney's fees of \$55,575 and costs of \$3,731.72 are reasonable, it also appears that Counsel seeks such a determination solely for the purpose of not having to disgorge the amount it has already been

paid, \$20,000. On the other hand, the motion could also be read as requesting approval of the full amount of \$59,306.72 for the purpose of Counsel seeking to collect that amount from the debtor. The court will in no event approve compensation exceeding the flat fee of \$30,000 plus costs because the ambiguity in the fee agreement and employment motion should be construed against Counsel, who presumably drafted both.

In any event, the court will begin with Counsel's hourly rates - for attorney Tory Pankopf, \$400 for office time, \$450 for court appearances, and \$150 for travel time, and for law clerk Jeanne Metzger, \$150. The moving papers provide virtually no information about Mr. Pankopf's qualifications and experience in bankruptcy, stating only that he was admitted to practice law in California in 1999, and is the senior attorney and managing member of the Law offices of T M Pankopf, PLLC. However, based on the skills he has exhibited in this case and others filed in this court, the court concludes that \$400 and \$450 are not reasonable hourly rates for his services, and finds that \$325 is a reasonable hourly rate.³ Multiplying the time charged at \$400 and \$450 by \$325 instead yields a total of \$32,743.75. This amount will be further considered below.

Next, Mr. Pankopf billed for 22.5 hours of travel, which consisted entirely of traveling from his office in Reno to Sacramento for the meeting of creditors, the initial chapter 11 status conference, a Rule 2004 examination, and hearings on various motions. The debtor, of course, was free to hire out-of-town counsel, and Mr. Pankopf, of course, was free to accept the employment. However, given that there is no evidence the debtor would have had difficulty finding or retaining qualified local counsel, the court has no basis on which to conclude that any of Mr. Pankopf's travel charges, regardless of the hourly rate, were reasonable. Thus, those charges, a total of \$3,375, will be disallowed.

The moving papers provide no information about the education, skills, qualifications, or experience of Ms. Metzger. Thus, the court has no basis on which to conclude that \$150 per hour - or any other rate - is reasonable based on the customary compensation charged by comparably skilled practitioners (see 11 U.S.C. 330(a)(3)(F)), and the charges for those services, a total of \$11,400, will be disallowed.⁴

The court returns, then, to the \$32,743.75 representing Mr. Pankopf's time spent, at \$325 per hour. First, Counsel billed its time in quarters of an hour rather than in tenths of an hour, as is customary in this district. The court finds that this resulted in overbilling, because many of the services billed at one-quarter of an hour, or 15 minutes, were services that were likely completed in just a couple of minutes. For example, Mr. Pankopf billed one-quarter hour, or \$100, for each of the following: reviewing a request for special notice, reviewing the United States Trustee's report of the meeting of creditors, leaving a voicemail message, reviewing a signed order shortening time, and reviewing the CM/ECF notice of filing of a declaration in support of a motion to value collateral filed by Counsel. (Mr. Pankopf routinely billed \$100 each to review CM/ECF notices of filing of documents filed by his office, which charges the court finds were not reasonable in any amount.) Based on those examples, and absent evidence to the contrary, the court finds that Counsel's choice to bill in increments of one-quarter of an hour resulted in overbilling for all the services billed. As a result, an across-the-board reduction is appropriate.

Evaluation of a professional's fee application under § 330 begins with a determination of the "lodestar" - multiplying the number of hours reasonably spent

by a reasonable hourly rate. Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 598 (9th Cir. 2006) (citation omitted). But the lodestar approach is not mandatory. Id. "[I]f a fee application is inadequate, the court should not be forced to wade through it in order to calculate the 'lodestar.'" Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc., 924 F.2d 955, 961 (9th Cir. 1991). Further, "the court may abandon the lodestar approach when the court cannot reasonably quantify to numerical precision the amount of the fee award." Lobel & Opera v. United States Trustee (In re Auto Parts Club), 211 B.R. 29, 36 (9th Cir. BAP 1997).⁵ In this instance, the court finds an across-the-board reduction of 25% to be appropriate to compensate for Counsel's decision to bill in increments of one-quarter of an hour. Accordingly, the \$32,743.75 figure will be reduced to \$24,557.81.

Counsel also has a problem under In re THC Fin. Corp., 837 F.2d 389 (9th Cir. 1988), in that Counsel is essentially seeking retroactive approval of its employment. This case was filed December 13, 2013; Counsel filed its first application for approval of its employment on January 9, 2014. Counsel withdrew that application on January 15, 2014.⁶ Counsel filed a second application on January 29, 2014, which was denied on March 19, 2014. Awards of compensation for services rendered without court approval of compensation "should be limited to exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefited the bankrupt estate in some significant manner." Id. at 392. Counsel did not address either of those requirements in the present motion. The UST contends Counsel has satisfied neither requirement.

In response, Counsel contends the following circumstances provide a satisfactory explanation for its failure to obtain court approval of its employment. First, Counsel filed its initial employment application within a month from the commencement of the case. Counsel claims that application was inadvertently withdrawn, and that a second application was filed within a reasonable time after the commencement of the case. When that application was denied, Counsel did not file another because by that time, or very shortly thereafter, the debtor's principal had decided to hire replacement counsel. Counsel concludes that the fact that its employment application was denied "was not, in any way, a result of failures on [its] part." Counsel's Reply, filed July 15, 2014, at 6:1-2. The court cannot agree. The application was denied for failure to serve all required parties, failure to state the terms of the employment in a manner that allowed those terms to be understood, and failure to clearly disclose the connections, if any, between Counsel and the relevant parties, as required by Fed. R. Bankr. P. 2014(a).

On the other hand, Counsel did make some effort to obtain approval of its employment in a reasonably timely fashion. And Counsel's services did result in some benefit to the estate in that the court, on a motion filed by Counsel, approved the use of cash collateral on a limited basis and for a limited time period.⁷ This allowed the debtor a period of time in which to assess its options and formulate a plan of reorganization.⁸ The court concludes that Counsel has provided a satisfactory explanation, albeit weak, of its failure to obtain court approval of its employment in a timely fashion, and that Counsel's services in prosecuting the case - in preparing the schedules and statements, appearing at the initial status conference and meeting of creditors, and preparing and prosecuting the cash collateral motion - conferred a significant benefit on the estate in the form of the breathing room the debtor was seeking when it filed this case.⁹

However, the record is not sufficient to allow the court to conclude that the

full \$24,557.81, as calculated above, was incurred in conferring a significant, as opposed to a routine, benefit on the estate. As another judge in this district has put it, in the context of retroactive approval of employment, "exceptional means exceptional." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 231 (Bankr. E.D. Cal. 1988). The court notes in this regard that the \$24,557 figure is 81% of the full amount Counsel agreed to be paid for all of its pre- and post-petition services; that is, at least through plan confirmation,¹⁰ whereas Counsel never even filed a proposed plan and disclosure statement. The court concludes that a fee of one-half the total flat fee, or \$15,000, is appropriate and meets the THC Financial factors, particularly where, as here, the case has been dismissed, and thus, there is no estate to consider, and where Counsel's services were performed at the behest of a very determined principal of the debtor. ¹¹ Accordingly, the court will grant the motion in part and determine that the reasonable value of the services performed is \$15,000.

As for costs, the court will disallow the following as unnecessary, unreasonable, or both:

Mileage for Mr. Pankopf's travel to Sacramento (5 trips @ \$170.63)	\$ 853.15
1/1/14 Downloading debtor's own documents from PACER	44.50
1/3/14 Copies of 341 meeting notice (unnecessary: served by Bankruptcy Noticing Center)	26.10
1/14/14 Postage (duplicative of 1/13/14 entry)	45.00
1/22/14 Copies (duplicative of 1/3/14 entry)	49.50
1/22/14 Postage (duplicative of 1/3/14 entry)	15.18
2/7/14 Postage - amended schedules to all creditors	62.72
2/11/14 Charge to receive fax @ \$1.00 per page	11.00
2/27/14 Copies of proof of service (for service on all creditors)	13.20
2/27/14 Postage (duplicative of 1/14/14 entry)	10.56
3/4/14 34 copies of proof of service	40.80

Thus, the court will disallow costs totaling \$1,171.71, and allow the balance, \$2,560.01. In total, the court will allow compensation totaling \$17,560.01 (\$15,000 in attorney's fees and \$2,560.01 in costs). Counsel will be ordered to return the balance of its \$20,000 retainer, \$2,439.99, to the debtor.

The court will hear the matter.

¹ Counsel received \$20,000 pre-petition, and was to receive another \$10,000 post-petition.

2 The fee agreement, presumably drafted by Mr. Pankopf, contained the same diametrically opposed terms for Counsel's compensation.

3 Many of the best attorneys in the Sacramento area charge \$400 to \$500 per hour.

4 The court notes also that many of Ms. Metzger's charges appear to be for services that were clerical in nature, and therefore, not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). Examples include arranging the rescheduling of the meeting of creditors, directing the firm's legal assistant to send creditors notice of various continuances, preparing proofs of service, converting documents to .pdf and filing them with the court, research to find the correct form for the monthly operating report, reviewing the local rules to determine the amount of notice required for various motions, printing out documents and faxing them to opposing counsel, calendaring hearing dates, and so on. Because the court simply has no basis on which to determine a reasonable hourly rate for Ms. Metzger's services, and thus, will disallow all of her fees, the court need not determine the amount charged for clerical services.

5 See also In re Pacific Express, Inc., 56 B.R. 859, 866 (Bankr. E.D. Cal. 1985) (concluding "that an across-the-board reduction is a necessary and fair expedient to correct for excessive hourly rates, duplicative hours billed and services that were not reasonably necessary").

6 Counsel states in its reply to the UST's opposition that it inadvertently withdrew the first application.

7 The court notes that the virtually everything Counsel attempted to do in this case was strongly opposed by the debtor's major secured creditor.

8 This the debtor did not do or was unable to do, nor was the debtor able to persuade the court that there was an effective reorganization in prospect within a reasonable time; accordingly, relief from stay was granted in favor of the debtor's principal secured creditor on March 19, 2014.

9 The UST argues that Counsel's effort did not benefit the estate in a significant way because (1) Counsel filed a late opposition to the secured creditor's motion for relief from stay, (2) failed to provide evidence supporting a conclusion that an effective reorganization was in prospect within a reasonable time, and (3) failed to file a plan. However, first, the court concluded that Counsel's late-filed opposition, even if considered, would not change the outcome of the relief from stay motion. Further, that a plan was not filed, and that an effective reorganization was not reasonably in prospect by the time of the relief from stay hearing does not necessarily mean the services rendered prior to that time did not provide a benefit to the estate.

10 As indicated above, the fee agreement is ambiguous in that it first refers to "the hourly basis for the Firm's fee" and later to the \$30,000 flat fee. In the latter section, the fee agreement states unequivocally, regarding the \$30,000 fee, that "[t]his is the Fee Client shall pay regardless of whether total hours spent by the Firm exceed the Retainer." Counsel's Ex. A, filed May 13, 2014, ¶ 4. The ambiguity will be construed against Counsel, as the drafter of the fee agreement.

11 See Atkins v. Wain, 69 F.3d 970, 978 (9th Cir. 1995) (citing whether the debtor would receive a windfall if compensation is denied as a factor the court may, but need not, consider).

51. 13-35671-D-11 CARLYLE STATION LLC
UST-3

CASE DISMISSED 5/29/14
CASE CLOSED 6/16/14

CONTINUED MOTION FOR
DETERMINATION OF THE REASONABLE
VALUE OF THE SERVICES OF TORY
M. PANKOPF, ESQ.
4-16-14 [129]

Tentative ruling:

This is the United States Trustee's motion for the court (1) to review the legal services provided by attorney Tory Pankopf ("Counsel") in this case, (2) to determine the reasonable value of those services, and (3) to order any excessive fees disgorged. In response to the motion, Counsel filed a motion to determine the reasonable value of his services in this case, DC No. TMP-5, Item 50 on this calendar. The court has issued a tentative ruling on that motion, in which the court indicates its intention to grant that motion in part, determining the value of Counsel's services to be \$17,560.01, and ordering Counsel to return the balance of its \$20,000 retainer, \$2,439.99, to the debtor. Thus, the court will also grant the United States Trustee's motion in part, and will ask the United States Trustee to submit a proposed order covering both motions, to be approved by Counsel as to form, if desired. The court will hear the matter.

52. 09-91476-D-7 KARLA CHANCELLOR
JCK-6

MOTION TO AVOID LIEN OF
FINANCIAL PACIFIC LEASING, LLC
7-21-14 [49]

53. 14-25894-D-7 KREG KEYES
SW-1
WELLS FARGO BANK N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-29-14 [38]

54. 14-25820-D-11 INTERNATIONAL
FWP-10 MANUFACTURING GROUP, INC.

MOTION FOR AUTHORITY TO OPEN
MAIL OF RELATED ENTITIES
7-30-14 [163]

This matter will not be called before 10:45 a.m.