

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
1200 I Street, Suite 200  
Modesto, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 15, 2022**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
**Modesto, California**

**November 15, 2022 at 1:00 p.m.**

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1.    [22-90093](#)-B-13    JAMES RIDDLE    MOTION TO CONFIRM PLAN  
         [JNV](#)-5            Jason N. Vogelpohl    9-27-22 [[68](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). However, a plan was not filed to accompany the motion. Therefore, the motion to confirm plan is denied without prejudice.

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

The court will issue an order.

**November 15, 2022 at 1:00 p.m.**

2.     [22-90095](#)-B-13    CHERYL PORTER  
                             SCHIMMELFENNIG  
                             Gordon G. Bones

CONTINUED OBJECTION TO CLAIM OF  
SPECIALIZED LOAN SERVICE, CLAIM  
NUMBER 1  
7-6-22 [[49](#)]

**Final Ruling**

No appearance at the November 15, 2022, hearing is necessary. The parties filed a stipulation resolving the debtor's objection to claim on November 14, 2022.

The court will issue an order.

3. [19-90707](#)-B-13 JUAN MUNOZ-GALVEZ AND  
[MSN](#)-3 LINDA MUNOZ  
Mark S. Nelson

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LAW OFFICES OF  
MARK S. NELSON FOR MARK S.  
NELSON, DEBTORS ATTORNEY(S)  
9-26-22 [[54](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for compensation.

### **Fees and Costs Requested**

Mark Nelson ("Movant") substituted into this case on August 31, 2022, to represent Juan Munoz-Galvez and Linda Munoz ("Debtors") after the death of late attorney Randall Walton. Mr. Walton had filed a Disclosure of Compensation of Attorney for Debtor on July 31, 2019, listing total attorney fees in the amount of \$6,000.00, of which \$900.00 had been paid prior to filing and \$5,100.00 was to be paid through the Debtors' plan pursuant to Local Bankr. R. 2016-1(c).

Movant received no payments directly by the Debtors and accepted only a portion of the remaining attorney's fees paid through the plan - although the amount Movant has not specified. Now Movant requests fees in the amount of \$2,000.00 to be paid through the plan. Movant states that he has provided services included filing Amended Disclosure Compensation of Attorney for Debtor(s), Amended Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, amended schedules, a Motion to Modify Chapter 13 Plan (which was set for hearing and granted on November 8, 2022), and a Motion to Sell Property (which was set for hearing and granted on November 8, 2022).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

Here, Movant's services included: (1) legal advice and rendering legal services to the Debtors, (2) filing amended schedules, (3) filing, serving, and setting a modified plan and motion to confirm it, and (4) filing, serving, and setting a motion to sell personal property. The court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion.

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

Fees	\$2,000.00
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The motion is ORDERED GRANTED for fees of \$2,000.00.

The court will issue an order.

4. [22-90174](#)-B-13 JUSTIN CARLOTTI  
[EJV](#)-1 Eric J. Gravel

MOTION TO AVOID LIEN OF GOLDEN  
STATE LUMBER  
9-28-22 [[28](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Golden State Lumber, Inc. ("Creditor") against the Debtor's property commonly known as 325 J Street, Patterson, California ("Property").

Creditor holds a judicial lien against Debtor in the amount of \$33,098.93 based on Claim No. 10 filed by Creditor. An abstract of judgment was recorded with Stanislaus County on May 6, 2021, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$398,700.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$183,448.00 on Schedule C. All other liens recorded against the Property total \$213,750.90.

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

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

The court will issue an order.

5. [22-90153](#)-B-13 DIANE DOKKHAM  
[CRG](#)-8 Carl R. Gustafson

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LINCOLN LAW, LLP  
FOR CARL R. GUSTAFSON, DEBTORS  
ATTORNEY(S)  
9-23-22 [[74](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. See Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee. Applicant filed as reply.

The court has reviewed the application, response, reply, and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c). The court has determined that oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 9014-1(h), 1001-1(c). The application will be decided on the papers. No appearance at the hearing is required.

The court's decision is to grant, in part, the motion for compensation.

### **Fees and Costs Requested**

Carl R. Gustafson ("Applicant"), as the attorney to Chapter 13 debtor, requests additional compensation in the amount of \$7,000.00 in attorney's fees and \$0.00 in expenses.

Applicant opted out of the "no-look" fee permitted in this district and instead elected to request compensation under 11 U.S.C. § 330. Debtor paid Applicant \$1,651.00 prior to the filing of this Chapter 13 case. Applicant now requests an additional \$7,000.00. The request is itemized as follows:

Attorney @ \$475/hr @ 13.00 hours	\$ 6,175.00
Paralegal @ \$185/hr @ 22.40 hours	\$ 4,144.00
Total 35.40 hours	\$10,319.00
Less: Fees Paid Prepetition	\$ 1,651.00
Less: Discount	\$ 1,668.00
Additional Comp.	\$ 7,000.00

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 78.

The Trustee objects to the additional compensation requested. More precisely, the Trustee objects to Applicant's hourly rate of \$475.00. The Trustee asserts that the hourly rate is not reasonable. See 11 U.S.C. §§ 330(a)(3)(B) and 330(a)(4)(B). The court agrees.

### **Statutory Basis for Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses.]" *Id.* at 958.

A review of the application shows that the services provided relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate. The court, however, takes issue with the reasonableness of Applicant's hourly rate.

### **Reasonableness of Hourly Rate**

The customary method in the Ninth Circuit for ascertaining a reasonable fee in a bankruptcy case is the lodestar method, which is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate for the person providing the services. *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 598 (9th Cir. 2006); *The Margulies Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (9th Cir. BAP 2011).

The lodestar method is not the exclusive method or mandatory and a court may depart from it when appropriate. *Eliapo*, 468 F.3d at 598-99; *Unsecured Creditors' Committee*, 924 F.2d at 960-61; *Placide*, 459 B.R. at 73; *In re South Dairy Farm*, 2014 WL 271635, \*2 (Bankr. E.D. Cal. Jan. 22, 2014). Departure is appropriate when billing judgment is not prudent. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

Applicant's \$475.00 hourly rate exceeds the reasonable hourly rate of consumer attorneys in the Eastern District of California. See *Hall v. FCA US LLC*, 2018 WL 2298431, \*7 (E.D. Cal. May 21, 2018) (finding that a rate of between \$280.00 and \$350.00 reasonable with the higher end reserved for attorneys with excess of 20 years experience);<sup>1</sup> *Lyon v. Bergstrom Law, Ltd.*, 2017 WL 3913375, \*3 (E.D. Cal. Sept. 7, 2017) (finding \$295.00 a reasonable hourly rate).<sup>2</sup> It also exceeds reasonable hourly rates charged by bankruptcy attorneys who have substantially more experience than Applicant. See *In re Hsin-Shawn Cindi Sheng*, 2019 WL 6033212, \*4 (Bankr. E.D. Cal. Nov. 8, 2019) (\$425.00 an hour reasonable for bankruptcy practitioner with excess of 30 years' experience reasonable).<sup>3</sup>

Also noteworthy is that Applicant acknowledges that "some other practitioners may charge slightly less in consumer Debtor [sic] cases." Dkt. 101 at 2:5-6.

Applicant attempts to justify his excessive \$475.00 hourly rate on the basis the rate has been approved by other bankruptcy judges in this district, *id.* at 1:23-28, and is warranted "due to rising costs." *Id.* at 2:1. Neither argument is persuasive.

Decisions by other bankruptcy judges in this district, with regard to reasonable hourly attorney fee rates or otherwise, are not binding on this court.<sup>4</sup> And the statement that a \$475.00 hourly rate is reasonable due to rising costs is unsupported and unsubstantiated as to what costs are supposedly rising to justify attorney's fees at an hourly rate that Applicant acknowledges exceeds the hourly rates charged by other consumer and bankruptcy attorneys.

The court also reminds Applicant that it previously reduced his \$450.00 hourly rate as unreasonable. See *In re Dawson*, 20-22306, dkt. 93 & 94 (reducing hourly rate from \$450.00 to \$350.00 per hour).

Based on the foregoing, the court makes the following adjustment to the attorney's fees and total compensation allowed:

Attorney @ \$375/hr @ 13.00 hours	\$ 4,875.00
Paralegal @ \$185/hr @ 22.40 hours	\$ 4,144.00
Total 35.40 hours	\$ 9,019.00
Less: Fees Paid Prepetition	\$ 1,651.00
Less: Discount	\$ 1,668.00
Additional Comp.	\$ 5,700.00

The motion is ORDERED GRANTED IN PART for attorney's fees in the amount of \$5,700.00 and costs and expenses in the amount of \$0.00.

The court will issue an order.

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<sup>1</sup>Adjusted for inflation, \$280.00 in 2018 equals \$317.00 in 2022 whereas \$350.00 in 2018 equals \$396.00 2022.

<sup>2</sup>Adjusted for inflation, \$295.00 in 2017 equals \$340.66 in 2022.

<sup>3</sup>Adjusted for inflation, \$425.00 in 2019 equals \$472.00 in 2022.

<sup>4</sup>For future reference, the argument that "other judges allow it" or "other judges do it this way" are some of the most offensive arguments that an attorney can make before this court.



6. [22-90153](#)-B-13 DIANE DOKKHAM  
[CRG](#)-7 Carl R. Gustafson

CONTINUED MOTION TO CONFIRM  
PLAN  
9-21-22 [[68](#)]

### **Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the second amended plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that Section 3.06 of the plan does not provide a dividend for the payment of attorney's fees and instead states that the dividend amount is TBD.

The court has granted in part attorney Carl Gustafson's request for additional fees in the amount of \$5,700.00. See [CRG-8](#). However, a dividend amount that accounts for these additional fees must be included in the plan for the court to determine whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.