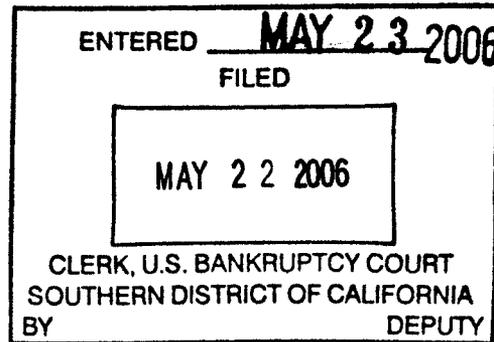


1 **WRITTEN DECISION NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 03-06001-B7
12)
13 RAFAEL AYALA,) ORDER ON APPLICATION OF
14) TRUSTEE KIPPERMAN FOR FEES
15 Debtor.) AND EXPENSES
16)

17 Mr. Kipperman, a recognized panel trustee for this court,
18 filed his first and final fee application. He requested fees in
19 the amount of \$5,321.37 and reimbursement of expenses of \$29.51.
20 The fees were calculated using the formula of 11 U.S.C. § 326.

21 This Court has subject matter jurisdiction over the
22 proceeding pursuant to 28 U.S.C. § 1334 and General Order No.
23 312-D of the District of California. This is a core proceeding
24 under 28 U.S.C. § 157(b)(2)(A), (B).

25 In his application, Mr. Kipperman "estimates" he had spent
26 in excess of 6 hours administering the estate, and that his staff
had spent more than 4 hours. He indicated, however, that only
four claims were filed against the estate, and all were valid and

1 allowable. The debtor had scheduled four assets, three of which
2 had no value for creditors. The remaining asset, a 2003 Hummer
3 H2, became valuable to the estate when it appeared the lienholder
4 had not timely perfected its security interest in the vehicle.

5 To deal with the vehicle-related issues, Mr. Kipperman
6 employed a law firm which, according to its fee application, was
7 the entity that discovered the defect in perfection. The firm
8 paid to obtain DMV records, and was awarded fees of \$2,188.50 and
9 costs of \$239.51.

10 Once the title issue was resolved, the trustee arranged for
11 the sale of the vehicle through an auction house. The report of
12 sale reflected that the gross sale price was \$45,500. The
13 standard 10% commission was \$4,550 and the costs were \$350, so
14 the net proceeds from the sale were \$40,600.

15 Mr. Kipperman also employed an accountant to prepare federal
16 and state tax returns for the period of the Chapter 7 estate, for
17 which the accountant was compensated \$1,008 in fees and \$83.63 in
18 costs.

19 According to the trustee's fee application, the foregoing is
20 a complete summary of the activity in the case to date, and much
21 of it was performed by other professionals and for which they
22 have been separately compensated. This case was filed in 2003,
23 so the new provision of § 330(a)(7) does not apply. Rather, the
24 earlier version of § 330 applies, and as Mr. Kipperman knows, it
25 has long been this Court's view that the formula of § 326 is used

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1 to determine the cap or ceiling on allowable fees, not simply to
2 calculate the allowable amount.

3 Section 330(a) of Title 11, United States Code, provides in
4 pertinent part:

5 (a)(1) After notice . . . and a hearing,
6 and subject to sections 326, 328, and
7 329, the court may award to a trustee
8 . . . --

9 (A) reasonable compensation for
10 actual necessary services
11 rendered by the trustee . . . ;
12 and

13 (B) reimbursement for actual,
14 necessary expenses.

15 (2) The court may, on its own motion or on
16 the motion of . . . any other party in
17 interest, award compensation that is less
18 than the amount of compensation that is
19 requested.

20 (3) In determining the amount of reasonable
21 compensation to be awarded, the court shall
22 consider the nature, the extent, and the
23 value of such services, taking into account
24 all relevant factors, including -

25 (A) the time spent on such services;

26 (B) the rates charged for such
services;

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

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

1 (E) whether the compensation is
2 reasonable based on the customary
3 compensation charged by comparably
4 skilled practitioners in cases
5 other than cases under this title.

6 What is of concern is how do we compensate bankruptcy
7 professionals fairly, commensurate with the needs and
8 complexities of the case, and commensurate with what those same
9 professionals otherwise might have earned over the same time in
10 the non-bankruptcy arena. The focus is on what the trustee would
11 be paid outside of bankruptcy - not on any hypothetical savings
12 the estate may ultimately have incurred due to the trustee's
13 employment decisions.

14 Time spent is, by statute, one factor. Mr. Kipperman
15 estimated he has spent 6 hours on this case, and may consume
16 another 1.5 hours in wrapping up the remaining loose ends. He
17 also estimates his staff has expended about 4 hours, and may
18 expend another 1.5 hours on wrap-up. He has made no showing that
19 other clients are regularly billed for staff time, and from other
20 cases he has not sought separate fees for the time of his staff.
21 Generally, such fees are subsumed in an hourly rate for the
22 professional.

23 The next factor is the rates charged for services.
24 Mr. Kipperman provides no information concerning an hourly, or
25 project rate for the type of services he performed in this case.
26 There appears to be no argument over the third factor, whether
the services were beneficial, nor whether they were timely
performed. The last of the statutory factors concerns what other

1 comparably skilled professionals might charge in cases other than
2 bankruptcy cases.

3 After review of the applicable factors under § 330, in the
4 context of this specific case, the Court finds and concludes that
5 an hourly rate is the most appropriate measure in this case.

6 Mr. Kipperman has not provided any evidence of what a customary
7 hourly rate should be in this case, or one like it, although he
8 has provided similar evidence in other cases in years past.

9 Based on that earlier testimony, as extrapolated for the
10 intervening years, coupled with the Court's knowledge of hourly
11 fees claimed by other panel trustees in similar cases, the Court
12 finds \$350 per hour a reasonable rate for Mr. Kipperman's
13 services, and that rate subsumes the time expended by his staff.
14 This finding is without prejudice to Mr. Kipperman presenting
15 competent evidence of some other hourly rate more accurately
16 reflective of the value of his time under the standards of § 330.

17 Absent such a showing by Mr. Kipperman, fees shall be, and
18 hereby are allowed at \$350 per hour for 7.5 hours, for a total of
19 \$2,625. Costs are allowed in the amount of \$29.51.

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1 Mr. Kipperman shall prepare and submit a separate form of
2 judgment consistent with the foregoing within thirty (30) days of
3 the date of entry of this Order.

4 IT IS SO ORDERED.

5 DATED: MAY 22 2006

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8 
9 PETER W. BOWIE, Chief Judge
10 United States Bankruptcy Court
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