



1 consumer Chapter 13 case in this district, which was \$2,800 at  
2 the time of the bankruptcy filing.

3 After a hearing, the Court invited supplemental information  
4 from counsel, which was provided in the form of supplemental  
5 declarations from Mr. Doan and Mr. Larkin. Thereafter, the  
6 matter was taken under submission.

7 The Court has subject matter jurisdiction over the  
8 proceeding pursuant to 28 U.S.C. § 1334 and General Order  
9 No. 312-D of the United States District Court for the Southern  
10 District of California. This is a core proceeding under  
11 28 U.S.C. § 157(b)(2)(A), (B).

#### 12 Discussion

13 This application for fees was filed at a time when this  
14 district's judges were gathering information and considering  
15 revisions to the presumptive fees allowed to chapter 13 debtors'  
16 attorneys without the necessity of a formal fee application. The  
17 desirability of such a procedure has long been recognized, In re  
18 Geraci, 138 F.3d 314 (7<sup>th</sup> Cir. 1998), and more recently approved  
19 in In re Eliapo, 468 F.3d 592 (9<sup>th</sup> Cir. 2006). A significant  
20 goal of the instant application was to use it to advance the Doan  
21 firm's views on the subject. The Application argues that the  
22 presumptive fees are "wholly inadequate to provide reasonable  
23 compensation to this Firm" at the rates then set, and they even  
24 argued they could have "forum-shopped" by filing in Los Angeles  
25 where the presumptive fee is \$4,000 for a consumer case. They  
26 recognize that in jurisdictions that do utilize a presumptive fee

1 approach, the presumptive fee is the usual maximum allowed unless  
2 the applicant can show that the services provided were  
3 "extraordinary or unusual". The Doan firm also attached to its  
4 application a copy of a commercial matrix purporting to show the  
5 average hourly rates charged by attorneys based on their years of  
6 practice, and a copy of the results of a KPMG study ranking large  
7 cities in terms of the cost of doing business.

8 Outside of the Bankruptcy arena, lawyers and clients are  
9 relatively unfettered in the agreements they may make for  
10 representation, subject to unconscionability. In the bankruptcy  
11 context, and especially in Chapter 13 cases, however, it is  
12 different. The concept of Chapter 13 is that a debtor's earnings  
13 over time will be used to repay creditors. In Chapter 13, a  
14 debtor's post-petition earnings are property of the bankruptcy  
15 estate (11 U.S.C. § 1306), and all available projected disposable  
16 income (11 U.S.C. § 1322(a)(4)) is to be paid to the Chapter 13  
17 trustee to distribute to the debtor's creditors over the life of  
18 the plan proposed by the debtor and confirmed by the court.

19 It is both interesting and appropriate to note that in the  
20 calculation of "current monthly income" (defined at 11 U.S.C.  
21 § 101(10A)) using Form B22C, and projected disposable income,  
22 including Schedule J of a debtor's expenses, (see In re Pak, 378  
23 B.R. 257 (9<sup>th</sup> Cir. BAP 2007) no provision is made for attorneys'  
24 fees, in any amount. So, in the large number of cases where a  
25 debtor proposes to pay less than all debt, the debtor must  
26 promise to pay all projected disposable income over the required

1 applicable commitment period of the plan. Theoretically, at  
2 least, that leaves no income over the life of the plan to pay  
3 attorneys' fees, whether up through confirmation or for post-  
4 confirmation events such as defending against relief from stay  
5 motions, motions to dismiss, pressing claims objections, or  
6 prosecuting adversary proceedings. It can become even more  
7 confusing because 11 U.S.C. § 1322(a)(2) requires that any plan  
8 provide for payment in full of all priority claims under 11  
9 U.S.C. § 507. Section 507(a)(2) provides for priority status for  
10 administrative expenses allowed under § 503(b), which includes  
11 attorneys' fees awarded under § 330(a). Section 330(a)(4)  
12 provides in full:

13 (4) (A) Except as provided in subparagraph (B)  
14 the court shall not allow compensation for -

15 (I) unnecessary duplication of service;  
16 or

17 (ii) services that were not -  
18 (I) reasonably likely to benefit  
19 the debtor's estate; or

20 (II) necessary to the  
21 administration of the case.

22 (B) In a chapter 12 or chapter 13 case in  
23 which the debtor is an individual, the court  
24 may allow reasonable compensation to the  
25 debtor's attorney for representing the  
26 interests of the debtor in connection with  
the bankruptcy case based on a consideration  
of the benefit and necessity of such services  
to the debtor and the other factors set forth  
in this section.

27 This Court favors the policy embodied in § 330(a)(4) because  
28 case administration is well served by competent representation of

1 Chapter 13 debtors, as routinely provided by the Doan firm. The  
2 process is, however, in a sense hydraulic, where siphoning off  
3 funds to pay attorneys which would otherwise be distributed to  
4 creditors means that payments to creditors are delayed, plan life  
5 is extended, the funds have to be replaced from some source not  
6 identified at plan confirmation, or the debtor's ability to  
7 successfully perform the plan is compromised. And, with  
8 attorneys' fees accorded priority status, they are paid earlier  
9 in the process than most creditors unless the attorney agrees to  
10 some other treatment. All of the foregoing reflects the tension  
11 between payment of creditors and drawing off funds to pay  
12 attorneys' fees and costs, and in Chapter 13 cases firms are not  
13 operating in a free market environment unfettered by restraints  
14 such as "necessity", "benefit", and reasonableness. Against that  
15 backdrop, presumptive or no-look fees are an important process  
16 and result in substantial economies in Chapter 13 cases in part  
17 because the time and expense of formal fee applications are  
18 avoided in the routine cases.

19 As noted, the Doan firm filed an "Exhibit A", which was a  
20 stock description of possible events (plus some argument about  
21 Code requirements) in the form of a template which could be used  
22 in any Chapter 13 case, and the only variable might be the amount  
23 of time expended on a particular box for a particular debtor. By  
24 way of example, one box is captioned "New Notice Requirements to  
25 Creditors". The task description recites:

26 Under 342(f), creditors can request that all

1 notices to be sent to such creditor  
2 nationwide will be sent to a specific  
3 address. 342(g)(2) states we can get NO  
4 monetary penalty for stay violations unless  
5 proper notice address is used. Stay  
6 violation time increases, particularly among  
7 small businesses (small auto dealers, for  
8 example), because we have a harder time  
9 getting sanctions. We documented proper  
10 addresses per pulling a credit report and  
11 recent billing statements so that notice was  
12 sent to the proper address.

13 In the instant case, the Doan firm claimed 30 minutes of time was  
14 spent on that "activity".

15 Another example: The task description is:

16 Attorney certification now places higher duty  
17 of care on attorney certifying the petition  
18 and also certifying that [sic] has no  
19 knowledge after inquiry that schedules are  
20 incorrect. In this regard, Mr. Doan was held  
21 to a higher standard of care and had to  
22 provide further review and supervision to the  
23 case being filed. Mr. Doan provided final  
24 review prior to filing the case.

25 The time claimed for the "activity" was 60 minutes, and  
26 presumably was performed by Mr. Doan as the description  
indicates.

The Chapter 13 trustee objected to the utility of "Exhibit  
A" on multiple grounds, central to which was that a person  
reviewing it could not tell what specific task was performed in  
this case, when it was performed, or by whom it was performed.

In addition to the trustee's concerns, which the Court  
shares, the Court has difficulty with the time claimed by the  
firm as attorney time for certain events. An example is  
"Attorney Review with Debtor Prior to Filing" which states:

1                   This includes time spent reviewing the  
2                   petition with the debtor to ensure accuracy,  
3                   answering questions, making corrections to  
4                   draft petition, explanation of the schedules  
5                   and statement of financial affairs, chapter  
6                   13 calculations and for filing the case and  
7                   uploading 3-docs to the trustee.

8 Two full hours of attorney time are claimed for that "activity".

9                   The total time claimed for Doan firm attorneys on "Exhibit  
10                   A" in support of this "final" application was 60 minutes for  
11                   Mr. Doan and 955 minutes for Mr. Larkin (the latter included  
12                   2 hours for preparing the fee application and 2 more hours for  
13                   the hearing to be held on it).

14                   Prior to the hearing on the application, the Chapter 13  
15                   trustee filed a supplemental objection, and a supporting  
16                   declaration. The trustee argued that the Court should consider  
17                   factors utilized by other courts, such as the novelty and  
18                   difficulty of any legal question, fees charged in the community  
19                   for similar work, the degree of risk taken by the firm, and time  
20                   and labor actually required. The supporting declaration of  
21                   Mr. Murdock was a compilation of confirmation orders in 638 cases  
22                   all filed after BAPCPA and all assigned to the Chapter 13 trustee  
23                   in this case. The fees approved in those cases upon confirmation  
24                   averaged \$2,591.47. Here, the Doan firm seeks \$4,000.

25                   As noted, the Court asked for more specific information  
26                   after the hearing on the fee application. Both Mr. Doan and  
27                   Mr. Larkin filed supplemental declarations in which they stated  
28                   they had "further reviewed" their "time in the aforementioned  
29                   case and converted the same from our files and Bestcase Software

1 to our new 'Bankruptcy Pro/Doing Time' Software." They  
2 discovered that the time asserted in "Exhibit A" was misallocated  
3 between them, and that Mr. Doan had put 4.45 hours in on the case  
4 and Mr. Larkin's were reduced to 12.45 from 15.9 hours. They  
5 both then added time for events subsequent to the time period  
6 covered by "Exhibit A", which are not part of the instant,  
7 noticed, fee application.

8 After detailed review of both the original application and  
9 the Doan firm's supplemental information (insofar as it related  
10 to the time frame covered by the fee application), the Court  
11 finds that the fees sought are unreasonably high and do not  
12 reflect the sound billing judgment required in bankruptcy cases.  
13 The supplemental declarations have attorneys doing work that is  
14 sometimes ministerial and should be relegated to lower billing  
15 staff or paralegals. Mr. Doan's claimed hourly rate of \$450 is  
16 not appropriate in a routine consumer Chapter 13 case which, to  
17 this point, this is. The Court is aware there are adversary  
18 proceedings involving the IRS, but they are not part of this fee  
19 application time period and are not considered in this  
20 application. Whether such a billing rate is appropriate in that  
21 context is for another day.

22 As the firm recognized, it has the burden of showing that  
23 this case is "extraordinary or unusual" in some meaningful way in  
24 order to depart from the presumptive fee and to add to the cost  
25 of the debtor's estate both in fees generally and fees for filing  
26 and defending a fee application. The firm has made no effort

1 whatsoever to show that this case is outside the ordinary  
2 consumer Chapter 13 case. To the extent the firm's goal was to  
3 provide additional information to the court in support of  
4 increases to the presumptive fees in this district, the firm has  
5 been successful. The firm's arguments were shared, and  
6 considered in the increases the court as a whole adopted  
7 subsequent to the hearing and supplemental briefing in this case.  
8 However, the firm was afforded opportunities to do that directly,  
9 as was the rest of the Chapter 13 bar, and the associated costs  
10 should not be borne by the creditors of this bankruptcy estate.

11 Conclusion

12 For all the foregoing reasons, the Court finds and concludes  
13 that through confirmation in this case this is a routine consumer  
14 Chapter 13 case and the presumptive or no-look fee of \$2,800 is  
15 the appropriate fee. The Court further finds and concludes that  
16 the template proffered by the firm as "Exhibit A" is of little  
17 utility to the court in the context of a fee application because  
18 it does not reveal what was done, when it was done, or by whom.  
19 Because the firm has already received \$200 directly from the  
20 debtor, the balance due to the Doan firm from the debtor's  
21 payments to the trustee is \$2,600.

22 IT IS SO ORDERED.

23 DATED: FEB - 6 2008

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PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court