

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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3 ENTERED 2/12/09  
4 FILED  
5 **FEB 10 2009**  
6 CLERK, U.S. BANKRUPTCY COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
8 BY *[Signature]* DEPUTY

8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 In re ) Case No. 08-09313-LA13  
12 )  
12 MARCIANO BINARAO PAJARITO and ) ORDER ON CHAPTER 13  
13 JOCELYN PASCUA PAJARITO, ) TRUSTEE'S OBJECTION TO  
14 Debtors. ) FEE REQUEST  
\_\_\_\_\_ )

15 This matter has come on for resolution of the objection of  
16 the Chapter 13 trustee to the request of debtors' attorneys, the  
17 Price Law Group, APC for \$3,300 in fees for handling the debtors'  
18 Chapter 13 case through confirmation of their plan, which has  
19 occurred.

20 This district utilizes a fee process for routine Chapter 13  
21 cases, sometimes referred to as a presumptive or "no-look" fee.  
22 Participation is dependent upon the debtors and their attorney  
23 executing a Rights and Responsibilities agreement in which both  
24 sides understand their respective obligations and entitlements.  
25 The Price Law Group and the debtors executed such an agreement,  
26 and the presumptive fee in this district for a routine non-

*Rec'd 2/12/09 - MYR*

1 business Chapter 13 is \$3,300, which is the amount the firm has  
2 requested (before applying a credit for the funds the debtors  
3 already paid directly).

4       The essence of the trustee's objection to part of the fee  
5 request is that because the Price Law Group is out of the  
6 district, they were not realistically in a position to meet face-  
7 to-face with the debtors. Rather, all communications were by  
8 phone, e-mail, or mail. Because there was no face-to-face, the  
9 trustee argues, the firm and the debtors failed to recognize that  
10 the debtors' expenses on Schedule J included the amounts due on  
11 their second and third trust deeds even though their purpose in  
12 filing was to strip those off and not pay them. Because the home  
13 mortgage line item was so high, it adversely impacted the bottom  
14 line in terms of net income available to pay each month as a plan  
15 payment. Another error in the mortgage payment amount was that  
16 it did not take into consideration the property tax payments  
17 required annually.

18       At the conclusion of the first meeting of creditors on  
19 November 7, 2008 the trustee filed his objection to confirmation  
20 and noticed it for hearing. Meanwhile, the Debtors were  
21 represented at the first meeting by so-called "appearance  
22 counsel", who acknowledged the need to amend Schedules I and J,  
23 as well as the plan. Those changes were made, filed and served  
24 on December 5. Those changes resolved the trustee's objection  
25 and the plan was confirmed, reserving only the objection to fees.  
26 At the confirmation hearing, the Court set a briefing schedule on

1 the fee issue which gave Price Law Group until January 12, 2009  
2 to file a brief fee application, after which the trustee could  
3 respond. Both sides did so.

4 Then, on February 9, 2009, the Price Law Group filed an  
5 untimely declaration of one of its attorneys, which also attached  
6 a declaration of the debtors. The latter declaration sets out  
7 not only that the debtors found it more convenient to communicate  
8 by phone or e-mail than to go to the firm's San Diego office, but  
9 also there were other changes to the Schedule I and J that arose  
10 after the first meeting of creditors which were included in the  
11 amendments which resulted in the confirmed plan.

12 The trustee's objection to the presumptive fee sought by the  
13 Price Law Group raises serious questions of great concern to the  
14 Court. Those questions center around what constitutes adequate  
15 performance of each of the obligations an attorney undertakes in  
16 executing the Rights and Responsibilities agreement. It is not  
17 difficult to envision a hypothetical lawyer or firm looking to  
18 streamline operations or make them more cost efficient becoming  
19 more like a petition preparation operation with little or no  
20 attorney involvement or contact with the actual case.

21 The Court will not say that to comply with the Rights and  
22 Responsibilities Agreement an attorney must always meet face-to-  
23 face with a client. While it is certainly preferable that at  
24 least one occur, there are too many instances when it is not  
25 reasonable to arrange in a timely way. Moreover, in this case,  
26 the debtors' belated declaration makes clear it was offered and

1 they preferred otherwise. Moreover, in this case, the trustee's  
2 argument has been that a face-to-face might have revealed the  
3 inconsistencies in listing the second and third mortgage payments  
4 on Schedule J while having no intent to make those payments and  
5 might have led to recognition that the property taxes had been  
6 omitted. That may well be correct, but the debtors' belated  
7 declaration indicates there were changes in income that occurred  
8 post-petition which necessitated amendments to the Schedules and  
9 modification of their proposed plan.

10 One other element which mitigates in the firm's favor is  
11 that included in the work for which it seeks the presumptive fee  
12 of \$3,300 is the adversary proceedings which resulted in a  
13 judgment that stripped off the second and third trust deeds  
14 because they were totally unsecured by any value in the subject  
15 property.

16 As noted, the Court believes the trustee's objection to fees  
17 raises serious questions of ongoing concern in the Chapter 13  
18 process. Information which has been tardily provided by the firm  
19 has to a large extent allayed those concerns in this case. Two  
20 which remain (but do not require a fee reduction in this case)  
21 are, first, the use of an appearance attorney at the first  
22 meeting of creditors, rather than the attorney who supposedly  
23 prepared and filed the petition, is theoretically more  
24 knowledgeable, and importantly, has the confidence of the clients  
25 in their first hearing on their case in an alien setting.  
26 Second, the first entry in the firm's time records, for 9/15/08,

1 says "Attorney of record met with Debtors, discussed ch. 13  
2 Bankruptcy, income and expenses, and possible elimination of the  
3 second deed of trust. Completed consultation. . . ." That entry  
4 is troubling because the debtors testified they did not meet with  
5 the attorney, but rather communicated by phone. On other  
6 occasions when a phone communication occurred, the time records  
7 report "Attorney of record met with Debtors via phone . . ."  
8 9/16, 10/30, 11/24. Those inconsistencies make the first entry  
9 at least misleading.

10 Under all the circumstances set out above, especially the  
11 information provided by the debtors and the firm belatedly on  
12 February 9, and because the fees the firm seeks includes their  
13 compensation for the lien strip adversary proceeding, the Court  
14 finds and concludes that the presumptive fee of \$3,300 is  
15 reasonable in this case and is approved. Debtors have already  
16 paid \$1,900 of that, plus their filing fee, leaving a net award  
17 of \$1,400 to be paid through plan payments made to the trustee.

18 IT IS SO ORDERED.

19 DATED: FEB 10 2009

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21   
22 PETER W. BOWIE, Chief Judge  
23 United States Bankruptcy Court  
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