Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
May 29, 2020

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

In re:	)	Case No.: 13-12466-MKN
	)	Chapter 13
WILLIE N. MOON and ADNETTE M. GUNNELS-MOON,	)	
	)	Date: April 15, 2020
Debtors.	)	Time: 2:30 p.m.

ORDER ON MOTION FOR ATTORNEY FEES AND COSTS FROM ORDER ON MOTION FOR CONTEMPT (DKT.# 158)[1]

On April 15, 2020, the court heard the Motion for Attorney Fees and Costs From Order on Motion for Contempt (Dkt.# 158) ("Fee Motion"), as amended ("Fee Amendment"), brought in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On March 26, 2013, a joint Chapter 13 petition ("Petition") was filed by Willie N. Moon and Adnette M. Gunnels-Moon ("Debtors") through their initial bankruptcy counsel. (ECF No. 1). The case was assigned to Chapter 13 panel trustee Rick A. Yarnall ("Trustee").

On September 28, 2016, Debtors received their Chapter 13 discharge. (ECF No. 76).

On October 3, 2016, a final decree was entered closing the case. (ECF No. 78).

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq., unless otherwise indicated. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRE" are to the Federal Rules of Evidence.

On January 4, 2019, an order was entered reopening the bankruptcy case. (ECF No. 81).

On January 18, 2019, attorney Christopher P. Burke ("Attorney Burke") filed on behalf of the Debtors a "Motion to Hold Creditor, Rushmore Loan Management in Contempt for Violation of the Automatic Stay…and for Violation of the Discharge Injunction…" ("First Contempt Motion"). (ECF No. 84).

On February 8, 2019, a response in opposition to the First Contempt Motion was filed on behalf of Rushmore Loan Management Services LLC, its assignees and/or successors ("Rushmore"). (ECF No. 90).

On September 16 and 17, 2019, an evidentiary hearing was conducted, and the First Contempt Motion was taken under submission.

On February 25, 2020, a Memorandum Decision After Evidentiary Hearing ("Memorandum Decision") was entered, along with a separate Order After Evidentiary Hearing ("First Contempt Order"). (ECF Nos. 157 and 158). The First Contempt Order awarded to the Debtors under Section 362(k)(1) actual damages of $100,742.10 and punitive damages of $200,000.00 on a finding that Rushmore had willfully violated the automatic stay. The First Contempt Order also denied any award of damages under Sections 524(a)(2) and 105(a) on a finding that Debtors' had not sustained their burden to show a specific date on which Rushmore received notice of the Debtors' discharge. The First Contempt Order further directed that attorney's fees and costs under Section 362(k)(1) are awarded in an amount to be determined by the court. The First Contempt Order directed Attorney Burke to serve and file an itemized billing statement and supporting declaration with respect to attorney's fees and costs incurred in connection with the First Contempt Motion. Rushmore was provided an opportunity to object to the attorney's fees and costs sought by Attorney Burke. Finally, the First Contempt Order specified that the deadline for Rushmore to comply with the payment requirement of the First Contempt Order would be set forth in a supplemental order addressing attorney's fees and costs.[2]

[2] On March 14, 2020, Debtors filed a second motion to hold Rushmore in contempt for violating the plan confirmation order entered in the case and for a continued violation of the automatic stay ("Second Contempt Motion"). (ECF No. 180). Debtors noticed the Second Contempt Motion to be heard on April 15, 2020. (ECF No. 182). Rushmore filed opposition

On March 6, 2020, Debtors timely filed the instant Fee Motion. (ECF No. 169).

On March 11, 2020, Debtors filed the Fee Amendment amending the Fee Motion. (ECF No. 179).

On April 1, 2020, Rushmore filed its opposition to the Fee Motion and Fee Amendment ("Opposition"). (ECF No. 204).

On April 10, 2020, Debtors filed their reply ("Burke Reply"). (ECF No. 212).

DISCUSSION

Attached to the Fee Motion is a copy of Attorney Burke's supporting declaration ("First Burke Declaration") and a billing statement ("Billing Statement") for services rendered to the Debtors from November 7, 2018, through April 8, 2020. During that period, Attorney Burke billed 112.3 hours at $500.00 per hour, resulting in attorney's fees of $56,150. The Billing Statement also lists costs in the total amount of $1,950.30 plus an additional $8,907.64 paid to John Rao as an expert who testified at the evidentiary hearing. Based on the Burke Declaration and the Billing Statement, the Fee Motion seeks total attorney's fees and expenses in the amount of $67,007.94.

Attached to the Fee Amendment are the same First Burke Declaration and the Billing Statement. Pages 4 and 5 of the Fee Amendment, however, include a slightly more detailed legal argument in favor of a "fee enhancement." Attorney Burke requests that his total hourly fees of $56,150 be enhanced through applying a multiplier of 1.5, resulting in total attorney's fees of $84,225.

Attached as Exhibit "A" to the Opposition is a copy of the transcript of the second day of the evidentiary hearing conducted on the First Contempt Motion, held on September 17, 2019. Attached as Exhibit "B" is a copy of the Declaration of Natalie L. Winslow, Esq. in support of the Opposition ("Winslow Declaration").

Rushmore contends that Attorney Burke is not entitled under Section 362(k)(1) to any attorney's fees and costs. Rushmore maintains that (1) Attorney Burke has not complied with

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and the Debtors filed a reply. (ECF Nos. 209 and 211). The Second Contempt Motion was heard in conjunction with the instant Fee Motion and is the subject of a separate order.

Rule 1.5 of the Nevada Rules of Professional Conduct ("NRPC"), Section 329(a) of the Bankruptcy Code, or FRBP 2016(b), (2) that Attorney Burke did not have any fee agreement, with the Debtors, much less one that proscribed an hourly and/or contingency fee in favor of Attorney Burke, (3) that fees should not be awarded on a quantum meruit theory, (4) that the hourly rate charged by Attorney Burke is unreasonable compared to those charged by Rushmore's attorneys, (5) that Attorney Burke is not entitled to a fee enhancement, and (6) that the expert witness fees are excessive. See Opposition at 4:20 to 13:3.

Attached to the Burke Reply as Exhibit "A" is a copy of a Declaration of Jamie K. Combs in Support of Motion for Sanctions dated January 6, 2020 ("Combs Declaration"), filed in a separate bankruptcy case pending in this judicial district, entitled In re Dennis Baham, Case No. 19-15039-abl. Attached as Exhibit "C" to the Burke Reply is a copy of another declaration of Attorney Burke ("Second Burke Declaration"). Attached as Exhibit "B" to the Burke Reply, and apparently authenticated by the Second Burke Declaration, are copies of various materials setting forth the hours billed by the expert witness as well as the out of pocket expenses that the witness incurred.

The court has considered the prosecution of the First Contempt Motion as well as the Billing Statement, supporting declarations, and exhibits submitted by the parties. The court, also having considered the written and oral arguments of counsel, concludes that the hourly fees sought by Attorney Burke and reimbursement of costs advanced are reasonable and appropriate. A fee enhancement, however, is not warranted. Several reasons lead to these conclusions.

First, the "American Rule" contemplates that parties to litigation pay the fees of their own attorneys, unless an applicable statute or contract provision requires another party to pay. See Baker Botts L.L.P. v. ASARCO LLC, 576 U.S. 121, 135 S.Ct. 2158, 2164 (2015). Section 362(k)(1) is a fee-shifting statute that requires an individual who is injured through a willful violation of the automatic stay to "recover actual damages, including costs and attorneys' fees…" See America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1099-1101 (9th Cir. 2015). As the Ninth Circuit observed, en banc:

> That legislative plan can be carried out, of course, only if injured debtors are actually able to sue to recover the damages that

> § 362(k) authorizes. Congress undoubtedly knew that unless debtors could recover the attorney's fees they incurred in prosecuting an action for damages, many would lack the means or financial incentive (or both) to pursue such actions. After all, the very class of plaintiffs authorized to sue—individual debtors in bankruptcy—by definition will typically not have the resources to hire private counsel. And in many cases the actual damages suffered by the injured debtor will be too small to justify the expense of litigation, even if the debtor can afford to hire counsel…Thus, Congress could not have expected § 362(k) to serve as an effective deterrent unless it authorized recovery of the attorney's fees incurred in prosecuting an action for damages. In that respect, § 362(k) is no different from the many statutes Congress has enacted "making it possible for persons without means to bring suit to vindicate their rights." *Perdue v. Kenny A.*, 559 U.S. 542, 559, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010).

803 F.3d at 1100.[3] There is no language in Section 362(k)(1) requiring the injured individual to have a fee contract of any kind with an attorney. There is no language in the statute requiring the injured individual to have an enforceable contract with an attorney. Thus, the presence or absence of any fee contract between Attorney Burke and the Debtors is immaterial to the recovery of "costs and attorneys' fees" under Section 362(k)(1).[4]

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[3] See also Easley v. Collection Servs. of Nev. (In re Easley), 910 F.3d 1286, 1291 (9th Cir. 2018) ("Section 362(k)(1) also serves a deterrent function much like many fee-shifting statutes…Imposition of damages and attorneys' fees and costs is essential to deter creditors from violating an automatic stay and protect debtors' assets for proper adjudication through the bankruptcy process. Recovery of attorneys' fees and costs is especially critical in the bankruptcy context where debtors lack the means to otherwise pursue their damages.").

[4] Rushmore suggests that Attorney Burke was ethically required to have a written fee agreement with the Debtors. See Opposition at 4:20 to 5:8, citing NRPC 1.5(b), 1.5(c), and 1.5(e). Because Attorney Burke is neither seeking a contingency fee, nor seeking to share his fee, NRPC 1.5(c) and 1.5(e) do not apply. NRPC 1.5(b), however, does require that the attorney sufficiently communicate "the basis or rate of the fee and expenses for which the client will be responsible…before or within a reasonable time after commencing the representation…." See generally Dignity Health v. Seare (In re Seare), 493 B.R. 158, 206 (Bankr. D.Nev. 2013). In this instance, the First Contempt Motion filed by Attorney Burke on the Debtors' behalf requests an order "[a]llowing attorney fees against Rushmore…in an amount to be determined at a hearing…." First Contempt Motion at 16:24-25. At the evidentiary hearing, Debtors testified to their understanding that the First Contempt Motion seeks to have Rushmore be responsible for paying the fees charged by Attorney Burke. See Burke Reply at 9:2-7. Under these circumstances, NRPC 1.5(b) appears to be inapplicable because Attorney Burke has apparently never sought to hold the Debtors responsible for the fees and expenses incurred. In any event,

Second, Attorney Burke filed the First Contempt Motion on behalf of the Debtors and has been the attorney of record for the Debtors throughout this proceeding. Court approval of his employment as counsel for the Debtors was unnecessary because the Debtors' claims against Rushmore were not property of the Chapter 13 estate. Debtors were free to choose their own legal counsel, and it appears from the results achieved that they chose wisely. Rushmore does not suggest that causation is absent between the attorney's fees sought and the services rendered by Attorney Burke. Compare Goodyear Tire & Rubber Co. v. Haeger, 137 S.Ct. 1178, 1183 (2017) (attorney's fees awarded under trial court's inherent authority must have been incurred solely because of opposing litigant's bad faith misconduct). Whether Attorney Burke would be barred by Nevada Rules of Professional Responsibility from recovering attorney's fees from the Debtors is irrelevant under Section 362(k)(1).

Third, Section 329(a) does not apply to Attorney Burke. An attorney representing a debtor is required under that provision to disclose a fee contract only if the agreement is made within one year prior to the filing of the bankruptcy petition. See 11 U.S.C. §329(a) ("Any attorney representing a debtor…shall file with the court a statement of the compensation…agreed to be paid, if such…agreement was made after one year before the date of the filing of the [bankruptcy] petition…") (Emphasis added). Debtors filed their bankruptcy petition on March 26, 2013. The First Contempt Motion is based on Rushmore's conduct after that date.[5]

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the record indicates that Attorney Burke was consulted on November 7, 2018, see Billing Statement at 1:6, and the First Contempt Motion was filed on January 18, 2019. Thus, it appears that the basis for any fees sought by Attorney Burke was communicated to the Debtors within a reasonable time after he was consulted.

[5] Because Section 329(a) does not apply to Attorney Burke, FRBP 2016(b) also does not apply to Attorney Burke. See FED. R. BANKR. P. 2016(b) ("Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee…the statement required by §329(a) of the Code….") (emphasis added). Thus, the cases cited by Rushmore denying or reducing compensation to attorneys who fail to comply with FRBP 2016(b) are irrelevant. See Opposition at 5:20-26, citing Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis), 113 F.3d 1040, 1044 (9th Cir. 1997) (Chapter 11 counsel employed to represent individual debtor prior to filing bankruptcy petition); In re Jones, 356 B.R. 39, 45 (Bankr. D.Idaho 2005) (common counsel for individual debtors in five separate Chapter

Fourth, the hourly rate charged by Attorney Burke is reasonable. His educational and practice credentials are undisputed, and his twenty-five years of experience in bankruptcy matters is also undisputed. See First Burke Declaration at ¶¶ 1, 2, 3, and 4. It also is a matter of public record that Attorney Burke is a panel Chapter 7 trustee in this judicial district. See https://www.justice.gov/ust/eo/private_trustee/locator/7.htm#NV. Although the actual outcome of the First Contempt Motion speaks volumes, the gist of Rushmore's argument appears to be that a $500 hourly rate is excessive for prosecuting the First Contempt Motion because Rushmore's own attorneys charged $325 per hour for defending it. See Opposition at 9:19-27, citing Winslow Declaration at ¶2.[6] Rushmore's counsel "specialize in representing lenders/servicers in consumer finance litigation." Winslow Declaration at ¶3. The court has no reason to question that Rushmore's counsel "are all experienced consumer finance attorneys with good reputations in the community." Combs Declaration at ¶10.[7] However, the hourly rates that Rushmore's counsel charge their institutional clients is a marketing decision that is entirely such counsel's choice, and does not establish the market rate that non-institutional clients may or should choose to pay.[8] Based on the evidence presented, as well as the court's observations of

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13 and Chapter 7 cases entered into fee agreement prior to filing petitions). Similarly, FRBP 2016(a) does not apply to Attorney Burke because he is not seeking compensation from the bankruptcy estate. See FED. R. BANKR. P. 2016(a) ("An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application.…") (emphasis added).

[6] Rushmore also cites this court's decision in In re Bush, 2019 WL 5875705 (Bankr. D. Nev. March 1, 2019), in which an attorney with limited experience was allowed to charge $325 an hour in connection with an uncomplicated sanctions motion. Applying a case-by-case approach, the court reduced counsel's proposed hourly rate based, *inter alia*, on counsel's inexperience with rudimentary aspects of bankruptcy practice, including when the automatic stay terminates as a matter of law. Id. at *6. This is not the situation in the present case.

[7] The court takes judicial notice of the Combs Declaration under FRE 201(b). See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); Lawson v. Klondex Mines Ltd., 2020 WL 1557468, at *5 (D. Nev. March 31, 2020); Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

[8] Compare In re Bush, 2019 WL 5875705, at *6 ("Finally, the $395.00 hourly rate charged by [debtor's counsel] also is excessive based on the record before the court. While that hourly rate apparently is the same rate that counsel charges in other bankruptcy matters,…she is free to set her hourly rate according to what her clients are willing to pay. If [debtor's counsel]

counsel in the case, the court finds that the $500 hourly rate charged by Attorney Burke in this matter is reasonable.

Fifth, the time expended by Attorney Burke was reasonable. The time entries in the Billing Statement are in one-tenth hourly increments, and the description of services are sufficiently detailed to ascertain the services performed. None of the time entries are excessive or inappropriate to the services of an attorney, as opposed to a paraprofessional. Moreover, Rushmore identifies no specific times entries as being excessive and offers no explanation why any of the services described are excessive.[9]

Sixth, the total amount of attorney's fees requested is reasonable. The court's conclusion that Attorney Burke charged a reasonable hourly rate for a reasonable number of hours in this matter warrants an award of $56,150 under a "lodestar" approach. See generally Rodriguez v. Nat'l Funding, Inc. (In re Rodriguez), 2020 WL 1672773, at *3 n.2 (B.A.P. 9th Cir. Apr. 2, 2020) ("The lodestar approach requires the bankruptcy court to determine the reasonable amount of fees by multiplying the number of hours reasonably spent by the attorney's reasonable hourly rate."). Application of this approach to the fee shifting language of Section 362(k)(1) is not required but is appropriate. Even if a contingency fee analysis was applicable, the attorney's fees requested by Attorney Burke represents 18.7 percent of the total amount awarded to the Debtors.[10] Not even Rushmore suggests that a contingency fee arrangement for less than 20

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wants to charge a $500.00 flat fee for a simple Chapter 7 case,…she is free to market her services in that fashion. This is not the situation, however, when an attorney's fees must be approved by a court under the lodestar approach. Instead, the court determines on a case by case basis whether the services performed by counsel were completed in a reasonable amount of time at a reasonable hourly rate.").

[9] Instead of identifying a specific time entry, Rushmore inexplicably argues that this court "concluded the [Debtors] did not meet their burden of proving a violation of the discharge order." See Opposition at 10:13-14. This assertion is contrary to the actual decision: "The court also finds under a clear and convincing evidence standard that Rushmore violated the discharge injunction under Section 524(a)(2) but does not award damages for civil contempt under Section 105(a)." Memorandum Decision at 59:13-15 (emphasis added).

[10] Obviously, clients can agree to pay their counsel a percentage of the amount recovered as a result of counsel's representation. In this case, the $56,150.00 in attorney's fees sought by Attorney Burke, divided by the $300,742.10 awarded to the Debtors, is .18670, i.e., 18.7 percent

percent of a recovery would be excessive inside or outside of bankruptcy, much less in highly contested litigation pitted against "experienced consumer finance attorneys with good reputations in the community." More important, even if the $300,742.10 awarded to the Debtors is treated under a "common fund" or similar corollary to the American Rule, no evidence has been offered by Rushmore that the attorney's fees sought in this case exceeds the amounts awarded in similar cases. See, e.g., Nilsen v. York County, 400 F.Supp. 2d 266, 270, 279 (D.sMaine 2005) (discussing an uncontested request for attorney's fees to be distributed from a common fund and adopting a "market-mimicking" approach).[11]

Seventh, the total amount of attorney's fees requested also are reasonable under a quantum meruit theory. Rushmore argues that even if Attorney Burke does not have an enforceable fee agreement, he still cannot recover fees for his services from the Debtors under a quantum meruit theory of unjust enrichment. See Opposition at 6:22-7:4 & n.2. Rushmore maintains the equitable doctrine of unclean hands would be applied to prevent Attorney Burke from pursuing an unjust enrichment claim against the Debtors based on his failure "to do equity by not complying with the statutory, procedural, and ethical rule requirements for fee disclosure in bankruptcy cases." Id. at 6:25 to 7:13, citing Law Offices of Ivan W. Halperin v. Occidental Fin. Grp., Inc. (In re Occidental Fin. Grp., Inc.), 40 F.3d 1059 (9th Cir. 1994) and In re Thorpe, 602 B.R. 906 (Bankr. E.D. Pa. 2019). Under Nevada law, the "'basis of recovery on quantum meruit…is that a party has received from another a benefit which is unjust for him to retain without paying for it.'" Certified Fire Prot. v. Precision Constr., 283 P.3d 250, 258 (Nev. 2012), quoting Thompson v. Herrmann, 530 P.2d 1183, 1186 (Nev. 1975). Under Nevada law, a court

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of the amount awarded. Instead of diluting the amount of damages recovered by the Debtors, the fee-shifting function of Section 362(k)(1) assures that the legal cost of enforcing the automatic stay is born by the party that willfully violated this fundamental bankruptcy protection, i.e., Rushmore.

[11] In his response to Rushmore's objections, Attorney Burke requests an additional $3,500.00 for additional services in connection with the Fee Motion. See Burke Reply at 12:1-5; Second Burke Declaration at ¶¶ 2 and 3. Absent a billing statement specifically describing the additional time and services rendered, however, that additional request is denied without prejudice.

that bars equitable relief based on unclean hands must consider "'(1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm caused by the misconduct.'" Chemeon Surface Tech., LLC v. Metalast Int'l, Inc., 312 F.Supp. 3d 944, 964 (D.Nev. 2018), quoting Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc., 182 P.3d 764, 767 (Nev. 2008). In this instance, there is no dispute that Debtors were awarded $300,742.10 because of the services they requested from Attorney Burke. In this instance, Attorney Burke did not violate any applicable disclosure requirements in bankruptcy,[12] and no apparent harm was caused to the Debtors. Thus, in this instance, the attorney's fees and costs sought by Attorney Burke also appears to be appropriate under a quantum meruit theory to which the unclean hands doctrine under Nevada law would not apply.[13]

Eighth, the requested fee enhancement is unwarranted because the court already has concluded that the fees requested are reasonable under a lodestar approach and on the basis of quantum meruit. As the court observed in Nilsen, "[u]nder binding Supreme Court precedent, lodestar enhancements or multipliers in fee-shifting cases are almost completely unavailable,

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[12] The cases cited by Rushmore are inapposite. In Occidental Fin. Grp., counsel for the Chapter 11 debtor in possession failed to disclose substantial conflicts of interest in his employment application and was denied compensation on a quantum meruit claim based on the doctrine of unclean hands. 40 F.3d at 1063. In Thorpe, former counsel for the Chapter 12 debtors failed to disclose that he had been administratively suspended from the practice of law, leading to a 25 percent reduction of fees awarded on a quantum meruit basis. 602 B.R. at 912.

[13] That Rushmore has attempted to inject itself into the relationship between the Debtors and their counsel is questionable at best. Rushmore attempts to raise and determine the merits of a quantum meruit claim that would be asserted, if at all, by Attorney Burke against his clients. Rushmore identifies no conflict of interest that would prevent Attorney Burke from zealously representing the Debtors. The results of the Contempt Motion are precisely to the contrary. Additionally, Rushmore identifies nothing in the relationship between Attorney Burke and his clients that prejudices Rushmore's ability to respond to the Debtors' claims. When non-clients assert purported ethical violations that have nothing to do with the merits of pending litigation, such assertions raise "a significant possibility of abuse as a tactical advantage." Compare Switch Commc'ns Grp. v. Ballard, 2011 WL 3859725, at *2 (D.Nev. Aug. 31, 2011) (plaintiff's motion to disqualify defendants' attorneys for conflicts of interest under NRPC denied as frivolous where plaintiff never had an attorney-client relationship with defendants' attorney). More important, nothing in the award of attorney's fees and costs against Rushmore under Section 362(k)(1) precludes the Debtors from pursuing the remedies, if any, that they may have against any counsel based on any alleged ethical violation or any other theory.

because many considerations that could lead to enhancement are contained within the lodestar itself." 400 F.Supp. 2d at 271-272 (citations omitted). Attorney Burke's reliance on Perdue v. Kenny A. ex rel Winn, 559 U.S. 542 (2010), see Fee Motion at 4:2-4 and Fee Amendment at 4:4-14, does not detract from that observation. More important, the Court in Perdue, in fact, concluded that a trial court's 75 percent enhancement of a lodestar fee award was arbitrary in the absence of specific evidence that competent counsel would not have been available at the lodestar amount. 559 U.S. at 554, citing Blum v. Stenson, 465 U.S. 886, 897 (1984) ("The legislative history [of 42 U.S.C. §1988] explains that 'a reasonable attorney's fee' is one that is 'adequate to attract competent counsel, but… [that does] not produce windfalls to attorneys.'"). Although Attorney Burke has substantial experience in bankruptcy matters, he has provided no specific evidence that other qualified bankruptcy counsel would not have prosecuted the First Contempt Motion in the absence of a fee enhancement.

Finally, the costs incurred by Attorney Burke for the retention and presentation of the Debtors' expert witness, John Rao ("Rao"), were reasonable. After Rushmore conducted a voir dire of Rao at the evidentiary hearing, the court overruled Rushmore's objection to his testimony inasmuch as the testimony was reliable and relevant. The Billing Statement submitted by Attorney Burke requests $8,907.64 as the cost of Rao's testimony. Rushmore objected that the amount is unsupported by any documentation and is otherwise excessive. See Opposition at 12:23 to 13:3. Copies of Rao's billing summary ("Rao Summary") and receipts were submitted with the Burke Reply. The Rao Summary reflects that he billed 25.50 hours for his services of which 7.5 hours were spent on "Travel and/or Waiting." Those hours were billed at one-half of Rao's hourly rate of $350.00. The remaining 18 hours were spent reviewing documents, drafting his trial declaration, and testifying at the evidentiary hearing. Fees in the amount of $7,612.50 were billed, thereby reflecting an overall blended hourly rate of $299.00 for Rao's expert testimony. Expenses in the total amount of $1,295.14 also were billed reflecting Rao's roundtrip travel between Rhode Island and Nevada, as well as lodging and meals. At the hearing on the instant motion, Rushmore did not object to the court's consideration of these materials, the hours

reflected in the Rao Summary, or the hourly rates charged. Having independently reviewed those documents, the court finds that the amounts sought are not excessive.

Rushmore's remaining argument is that Rao's testimony had less value because some of it focused on the alleged discharge violation and because some of his testimony was in the form of legal conclusions reserved for the court. See Opposition at 12:24-27. As previously discussed at 2 and 8 n.9, supra, the court found that Rushmore violated the discharge injunction but did not award damages due to insufficient proof as to the date Rushmore received notice of the discharge.[14] Moreover, any legal conclusions expressed by Rao did not detract from the relevance of his testimony concerning Rushmore's conduct. See Memorandum Decision at 18 n.20. In other words, Rao's testimony remained reliable and relevant to the prosecution of the First Contempt Motion. Attorney Burke's inclusion of Rao's services are a permissible cost under Section 362(k)(1). Likewise, the other costs set forth in the Billing Statement are reasonable, and no objections having been raised by Rushmore. Those remaining costs also are permissible under Section 362(k)(1).

For the reasons discussed, the court concludes that the Debtors and Attorney Burke have met their burden of proving that the costs and attorney's fees sought in connection with the First Contempt Motion are reasonable.

IT IS THEREFORE ORDERED that the Motion for Attorneys Fees and Costs From Order on Motion for Contempt (Dkt.# 158), Docket No. 169, as amended by Docket No. 179, be, and the same hereby is, **GRANTED**.

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[14] See also Memorandum Decision at 46 n.59 ("Based on the record, the court has found under a preponderance of the evidence standard that Rushmore had notice of the Debtors' bankruptcy and intended its collection efforts while the automatic stay was in effect. While the court can find under a clear and convincing evidence standard that Rushmore intended its collection efforts after the discharge was entered, the court cannot find that Rushmore received notice of the Debtors' discharge on a particular date. Absent sufficient proof of the date when Rushmore received notice of the discharge, the court concludes that there is a 'fair ground of doubt as to the wrongfulness' of Rushmore's post-discharge conduct. See Taggart, 139 S.Ct. at 1801.").

IT IS FURTHER ORDERED that attorney's fees in the amount of $56,150.00 and costs in the amount of $10,857.94 are awarded in favor of Willie N. Moon and Adnette M. Gunnels-Moon, payable by Rushmore Loan Management Services, LLC, pursuant to 11 U.S.C. §362(k)(1).

IT IS FURTHER ORDERED that Rushmore Loan Management Services, LLC, shall pay the amounts specified in this Order, along with the amounts set forth in the Order After Evidentiary Hearing, Docket No. 158, no later than thirty (30) calendar days after the entry of this Order. The total amount shall be payable to the Law offices of Christopher P. Burke in trust for the above-captioned Debtors.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

WILLIE N. MOON
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3391 EAGLE BEND STREET
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