



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 05, 2026

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 24-14209-MKN
)	Chapter 7
ADAM J. GILMORE,)	
)	
Debtor.)	Date: June 25, 2025
)	Time: 2:30 p.m.
)	

ORDER ON AMENDED MOTION FOR REVIEW AND DISGORGEMENT OF ATTORNEY FEES UNDER 11 U.S.C. § 329, REQUESTING REFUND TO DEBTOR¹

On June 25, 2025, the court heard the Amended Motion for Review and Disgorgement of Attorney Fees Under 11 U.S.C. § 329, Requesting Refund to Debtor (“Motion”) brought in the above-referenced proceeding. The appearances of the parties were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On August 16, 2024, a voluntary Chapter 7 petition (“Petition”) was filed by Adam J. Gilmore (“Debtor”). (ECF No. 1). The case was assigned for administration to Chapter 7 bankruptcy trustee Troy S. Fox (“Trustee”). A Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline (“Bankruptcy Notice”) was issued, initially scheduling a meeting of creditors

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. In this Order, all references to “Section” are to provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure.

1 for September 18, 2024. The Bankruptcy Notice further announced a deadline of November 18,
2 2024, for interested parties to object to the Debtor’s Chapter 7 discharge or to object to the
3 discharge of a particular debt. (ECF No. 5).

4 On September 20, 2024, after completion of the meeting of creditors, the Trustee reported
5 that there were no assets available for distribution. (ECF No. 13).

6 On November 19, 2024, an Order of Discharge was entered granting the Debtor a
7 Chapter 7 discharge. (ECF No. 14).

8 On November 22, 2024, a final decree was entered discharging the Trustee and closing
9 the case. (ECF No. 16).

10 On March 21, 2025, Debtor filed *in pro se* the instant Motion along with a Motion to
11 Reopen that Chapter 7 Case. (ECF Nos. 18 and 19). Debtor attached to the Motion copies of
12 documents marked as Exhibits A-E. The Motion was not noticed for hearing.

13 On May 1, 2025, Debtor filed an amended version of the instant Motion to which was
14 attached Exhibit A-E.² (ECF No. 26). A Notice of Hearing was filed, scheduling the Motion to
15 be heard on June 4, 2025. (ECF No. 28). A Certificate of Service (“COS”) was filed along with
16 the Motion. (ECF No. 30).

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19 ² Exhibit A is a copy of correspondence dated October 21, 2020, from attorney Taylor L.
20 Randolph (“Attorney Randolph”) of the Randolph Law Firm to Debtor, which includes “Policies
21 Relating to Professional Fees and Services” (“First Representation Agreement”). The
22 correspondence was “READ, APPROVED, AND ACCEPTED” which is signed by Debtor on
23 October 26, 2020. This same correspondence is not signed by Attorney Randolph. Exhibit B is
24 a copy of correspondence dated March 16, 2021, from Attorney Randolph to Debtor regarding
25 “IRS and Bankruptcy Representation” and which also includes another “Policies Relating to
26 Professional Fees and Services” (“Second Representation Agreement”). The correspondence
27 was “READ, APPROVED, AND ACCEPTED” which is signed by Debtor on March 19, 2021,
28 and also signed by Attorney Randolph. Exhibit C is a copy of an email exchange initiated on
January 26, 2025, by Debtor to Donovan Bosque at the Randolph Law Firm regarding Debtor’s
“Request for Itemized Invoice of Attorney Fees for Ch. 7 Bankruptcy.” Exhibit D is a copy of a
“Statement” from the Randolph Law Firm to Debtor dated February 4, 2025, of attorney fees
charged and payments made from October 26, 2020 through July 26, 2024. Exhibit E is a copy
of the Debtor’s Schedule “D,” Schedule “E/F,” and “Disclosure of Compensation of Attorney for
Debtor(s)” filed on August 16, 2024 (“Compensation Disclosure”).

1 On May 21, 2025, an opposition to the instant Motion (“Opposition”) was filed by
2 attorney Taylor L. Randolph (“Attorney Randolph”).³ (ECF No. 32).

3 On May 23, 2025, Debtor, *in pro se*, filed an “Ex Parte Emergency Motion to (1) Redact
4 Confidential Medical Information and (2) for Amonition (sic)” (“Motion to Redact”) to which is
5 attached an “Affidavit of Adam J. Gilmore,” pertaining to the Opposition filed by Attorney
6 Randolph. (ECF No. 33).

7 On May 27, 2025, an order was entered granting Debtor’s Motion to Redact. (ECF No.
8 34).

9 On May 28, 2025, Debtor filed a “Reply to Opposition to Amended Motion for Review
10 and Disgorgement of Attorney Fees Under U.S.C. Section 329” (“Reply”). (ECF No. 35). The
11 Reply included a log of Attorney Randolph’s hours billed to Debtor’s matters (“Billable Hours
12 Log”).

13 On June 13, 2025, Attorney Randolph filed “Supplemental Points And Authorities To
14 Opposition To Amended Motion For Review And Disgorgement of Attorney Fees Under U.S.C.
15 Section 329.” (ECF No. 44).

16 DISCUSSION

17 The court has considered the materials presented as well as the arguments raised by the
18 parties. Based on the following considerations, the court concludes that the instant Motion
19 should be denied.

20 I. Jurisdiction

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23 ³ Attached to the Opposition are copies of various documents marked as Exhibits “1”
24 through “6.” Exhibit 1 appears to be correspondence dated October 21, 2020, from Attorney
25 Randolph to the Debtor. Exhibit 2 appears to be correspondence dated March 16, 2021, from
26 Attorney Randolph to the Debtor. Exhibit 3 appears to be copies of billings statements from
27 Attorney Randolph to the Debtor for payments received from October 25, 2020 through July 26,
28 2024. Exhibit 4 appears to be a billing log from Attorney Randolph to the Debtor for “Phase I”
services rendered from October 26, 2020 through March 1, 2021, and “Phase II” services
rendered from March 16, 2021 through August 16, 2024. Exhibit 5 appears to be a copy of an
undated comment posted by the Debtor regarding Attorney Randolph’s legal services. Exhibit 6
appears to be a copy of an email exchange between the Office of the United States Trustee and
Attorney Randolph occurring from February 19, 2025, and March 24, 2025.

1 Because the Debtor requests disgorgement of attorney’s fees for legal work that is not
2 purely bankruptcy, the court must decide whether it has jurisdiction over the entirety of Attorney
3 Randolph’s fees.

4 Under 28 U.S.C. § 157(b)(1), “[b]ankruptcy judges may hear and determine all cases
5 under title 11 and all core proceedings arising under title 11[] or arising in a case under title 11.”
6 “The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a
7 party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is
8 otherwise related to a case under title 11.” 28 U.S.C. § 157(b)(3).

9 Since Sections 329 and 330, specifically give the bankruptcy court power to award
10 attorneys’ compensation, a disgorgement of attorney’s fees for bankruptcy work clearly falls
11 within this court’s jurisdiction. However, this court does not necessarily have jurisdiction over
12 the fees charged for tax work.

13 Debtor argues that under Section 329(a), this court has jurisdiction over all of Attorney
14 Randolph’s fees. Section 329(a), however, is largely inapplicable to this case.

15 Section 329(a) requires that an attorney representing a debtor must “file with the court a
16 statement of compensation paid or agreed to be paid, if such payment or agreement was made”
17 within the year before filing the petition. Debtor filed the Petition on August 16, 2024, meaning
18 the window for Section 329(a) to apply started August 16, 2023. (ECF No. 1). Debtor and
19 Attorney Randolph entered the First Representation Agreement on October 21, 2020, and the
20 Second Representation Agreement on March 16, 2021. (ECF Nos. 26 and 32). See note 2,
21 supra. Debtor made the final payment for those Representation Agreements on July 3, 2023.
22 (ECF Nos. 26 and 32). The only payment that falls within the Section 329(a) window is
23 Debtor’s payment to Attorney Randolph for the filing fee on July 26, 2024. (ECF No. 32).
24 Therefore, Section 329(a) limits this court’s jurisdiction to that \$435 filing fee since the other
25 payments and agreements do not fall within the statutory window.

26 Debtor also argues that this court has jurisdiction over all the fees paid to Attorney
27 Randolph under Section 329(b). The court agrees that Section 329(b) gives this court
28 jurisdiction over the fees for bankruptcy services.

1 Under Section 329(b), the court can order a debtor’s attorney to return any payment that
2 exceeds the reasonable value of the attorney’s services. The court, by motion of the U.S. Trustee
3 or on its own, may determine whether the amount the debtor paid to their attorney is excessive
4 after an order for relief is entered regardless of whether payment has been made. See
5 FED.R.BANKR.P. 2017(b). This authority is well recognized in the Ninth Circuit. See e.g., Am.
6 L. Ctr. PC v. Stanley (In re Jastrem), 253 F.3d 438, 443 (9th Cir. 2001) (“The bankruptcy court
7 had authority under 11 U.S.C. § 329(b) and Federal Rule of Bankruptcy Procedure 2017(b) to
8 order [the attorney] to return to [the debtor] any attorneys’ fees that exceeded the reasonable
9 value of the services provided.”). Additionally, the bankruptcy court has “inherent authority
10 over the debtor’s attorney’s compensation.” L. Offs. of Nicholas A. Franke v. Tiffany (In re
11 Lewis), 113 F.3d 1040, 1045 (9th Cir. 1997); In re Gilsvik, 63 B.R. 745, 751 (B.A.P. 9th Cir.
12 2025).

13 This court granted the Debtor a Chapter 7 discharge on November 19, 2024. (ECF No.
14 14). The court can thereby review whether the amount Debtor paid to Attorney Randolph was
15 excessive at any time after that. See In re Bell, 212 B.R. 654, 658 (Bankr. E.D. Cal. 1997)
16 (“Neither Rule 2017, nor Section 329(b), nor the court’s inherent power is subject to a two-year
17 limitation period.”).

18 The question remains whether the court has authority over the fees paid to Attorney
19 Randolph for tax work. This court holds that it does under Bankruptcy Rule 2017(a).

20 “On a party in interest’s motion... the court may... determine whether a debtor's direct...
21 payment of money... to an attorney for services rendered or to be rendered was excessive if it
22 was made in contemplation of the filing of a bankruptcy petition by... the debtor.” Bankruptcy
23 Rule 2017(a)(1) (emphasis added). “As to the jurisdiction to re-examine, the controlling
24 question is with respect to the state of mind of the debtor and whether the thought of bankruptcy
25 was the impelling cause of the transaction.” Conrad, Rubin & Lesser v. Pender, 289 U.S. 472,
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1 477 (1933).⁴ The court thereby has authority to review the fees for the tax work if the Debtor
2 agreed to those services “in contemplation of the filing of a bankruptcy petition.”

3 “[I]t does not matter what the nature of [the] legal services are,” it matters whether the
4 attorney was hired in contemplation of bankruptcy. Rheuban, 121 B.R. at 378. Two other
5 bankruptcy courts in the Ninth Circuit found that the debtors hired attorneys in contemplation of
6 bankruptcy when the representation agreements explicitly mentioned bankruptcy representation.
7 Id. at 378-79; Douglas V. Stringer & Norman Sepenuk, P.C. v. Mitchell (In re Stein), 261 B.R.
8 680, 685 and 694 (Bankr. D. Or. 2001). Stein is particularly persuasive as the debtor entered a
9 representation agreement with an attorney for representation of IRS claims and any bankruptcy
10 services those claims require. 261 B.R. at 685. The bankruptcy court also noted that the fact that
11 the debtor was insolvent at the time of the representation agreement provided additional evidence
12 that the debtor was contemplating bankruptcy. Id. at 694. “It makes no difference if Debtor was
13 contemplating the avoidance of bankruptcy in hiring [the attorneys].” Rheuban, 121 B.R. at 379.

14 In the instant case, it seems that Debtor was contemplating bankruptcy when Debtor
15 contracted for representation with Attorney Randolph. The Second Representation Agreement
16 clearly states that the representation covers “IRS and Bankruptcy Representation.” (ECF Nos.
17 26 and 32). The court has no problem finding that those services were contracted for in

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19 ⁴ While this case discusses the previous Section 60(d) of the Bankruptcy Code, the
20 analysis is still applicable because “Subsection (b) of § 329 is derived from former Bankruptcy
21 Rule 220 which revised and superseded § 60(d) of the Bankruptcy Act.” In re Rheuban, 121
22 B.R. 368, 375-76 (Bankr. C.D. Cal. 1990), rev’d in part on other grounds, 124 B.R. 301 (C.D.
23 Cal. 1990), on remand, 128 B.R. 551 (Bankr. C.D. Cal. 1991). “[D]ecisions interpreting and
24 applying the predecessors of § 329 and Bankruptcy Rule 2017(a) remain persuasive and, in
25 certain instances, are controlling in [the] interpretation and construction of § 329 and Bankruptcy
26 Rule 2017(a).” Id. at 376. The term “in contemplation of the filing” should also be given the
27 same meaning between Section 329 and Bankruptcy Rule 2017. “[T]here is a presumption that a
28 given term is used to mean the same thing throughout a statute.” Brown v. Gardner, 513 U.S.
115, 118 (1994), citing Atl. Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433 (1932).
“Rules 2016 and 2017 are designed to implement § 329.” Hessinger & Assocs. v. U.S. Tr. (In re
Biggar), 110 F.3d 685, 687 (9th Cir. 1997). Because Bankruptcy Rule 2017 and Section 329 are
explicitly connected, it makes sense to apply the same logic as in Brown and give their terms the
same meaning as if they were one statute. Therefore, cases analyzing “in contemplation of the
filing” in the context of Section 329 are also persuasive, if not binding, in analyzing Bankruptcy
Rule 2017.

1 contemplation of bankruptcy. The First Representation Agreement claims to be for “Transcript
2 Review and Analysis and Correspondence to CP2000 IRS Notice,” but it explicitly notes in the
3 main body of the agreement that there will be “additional fees for the execution of any resolution
4 options... such as... bankruptcy... representation.” (ECF Nos. 26 and 32). The policies of the
5 First Representation Agreement also include “Bankruptcy specific terms” and “Client
6 responsibilities for Bankruptcy service.” (ECF Nos. 26 and 32). Such language and terms give
7 clear indication that Debtor agreed to the First Representation Agreement in contemplation of
8 bankruptcy since they explicitly mention the possibility of bankruptcy.

9 Accordingly, this court holds that it has the authority to review all \$27,935 in fees that
10 Debtor paid to Attorney Randolph because they were incurred in contemplation of filing for
11 bankruptcy under Bankruptcy Rule 2017(a).

12 **II. Disclosure**

13 “[F]ailure to comply with the disclosure rules is a sanctionable violation, even if proper
14 disclosure would have shown that the attorney had not actually violated any Bankruptcy Code
15 provision or any Bankruptcy Rule.” Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-
16 Helena Corp.), 63 F.3d 877, 880 (9th Cir. 1995), cert. denied, 516 U.S. 1049 (1996). See also
17 Lewis, 113 F.3d at 1045 (“An attorney's failure to obey the disclosure and reporting
18 requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to
19 order disgorgement of attorney's fees.”). “No section within the Bankruptcy Code, however,
20 requires such a sanction, rather it is imposed because of the need to deter attorneys from general
21 nonobservance of the Bankruptcy Code.” Cristopher v. Mir (In re Boh! Ristorante, Inc.), 99 B.R.
22 971, 973 (B.A.P. 9th Cir. 1989); see also Film Ventures Int’l, Inc. v. Asher (In re Film Ventures
23 Int’t, Inc.), 75 B.R. 250, 253 (B.A.P. 9th Cir. 1987) (“[T]he Bankruptcy Court was
24 not *required* to deny legal fees for the work actually performed”); Sundquist v. Bank of Am.,
25 N.A. (In re Sundquist), 576 B.R. 858 (Bankr. E.D. Cal. 2017) (“Accordingly, this court will
26 exercise its discretion to refrain from using Park–Helena to reduce the \$70,000.00 to zero or to
27 some intermediate sum.”), aff’d, Henderson v. Sundquist (In re Sundquist), 2019 WL 994027
28 (B.A.P. 9th Cir. Feb. 27, 2019), aff’d, 827 Fed.Appx. 763 (9th Cir. Oct. 27, 2020).

1 “The disclosure rules are applied literally, even if the results are sometimes harsh.
2 Negligent or inadvertent omissions do not vitiate the failure to disclose. Similarly, a disclosure
3 violation may result in sanctions regardless of actual harm to the estate.” Park-Helena, 63 F.3d
4 at 881.

5 “The disclosure requirements imposed by § 329 are mandatory, not permissive, and an
6 attorney who fails to comply with the disclosure requirements forfeits any right to receive
7 compensation.” Hale v. U.S. Tr. (In re Basham), 208 B.R. 926, 931 (B.A.P. 9th Cir. 1997),
8 citing Peugeot v. U.S. Tr. (In re Crayton), 192 B.R. 970, 981 (B.A.P. 9th Cir. 1996), aff’d sub
9 nom., Hale v. U.S. Tr. (In re Byrne), 152 F.3d 924 (9th Cir. 1998). “Once the bankruptcy court
10 determines that an attorney has violated § 329 and Rule 2016, the bankruptcy court has the
11 authority to order the attorney to disgorge all of his fees.” Id.

12 On several occasions in the Ninth Circuit, courts have found it sufficient to disgorge fees
13 for presenting false information or failing to include material information in compensation
14 disclosure statements required under Section 329 and Bankruptcy Rule 2016. See, e.g., Lewis,
15 113 F.3d at 1044-45; In re Silva Dairy, LLC, 552 B.R. 847, 854 (Bankr. D. Ida. 2016); In re
16 Blackburn, 448 B.R. 28, 42 (Bankr. D. Ida. 2011); In re Campbell, 176 B.R. 558, 562-63 (Bankr.
17 D. Ida. 1994).

18 Debtor argues that Attorney Randolph’s Compensation Disclosure is false or materially
19 incomplete because it only lists \$1,500 instead of the total \$27,935 allegedly charged in
20 contemplation of bankruptcy. Debtor might be correct if the Representation Agreements were
21 made or the fees paid after August 13, 2023. However, Section 329(a) only requires disclosures
22 for payments or agreements within that specific window of a year before the Petition date. As
23 discussed above, almost all payments and Representation agreements were made by July 3, 2023,
24 with the only exception of the filing fee paid July 24, 2024. Therefore, Section 329(a), at most,
25 required that Attorney Randolph disclose the filing fee.⁵

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27 ⁵ It is not entirely clear whether reimbursement of a filing fee is “compensation paid or
28 agreed to be paid” within the meaning of Section 329(a) or Bankruptcy Rule 2017(a).

1 While the court acknowledges that the fees for tax work would be included in the grasp
2 of Section 329(a) because they were in contemplation of bankruptcy, they are not in this case
3 because they occurred too far in advance of commencement of the Chapter 7 proceeding for
4 required disclosure. Additionally, the value of the bankruptcy representation is severable from
5 the tax representation based on the Billable Hours Log, so Attorney Randolph can reasonably
6 represent that he was paid \$1,500 for the bankruptcy work.

7 Furthermore, this court has no interest in and flatly refuses to penalize the good behavior
8 of Attorney Randolph disclosing more information than he was statutorily obligated to disclose.
9 The court would much rather have the attorney disclose the full amount paid for bankruptcy
10 specific work even if the scope of disclosure falls outside the reach of Section 329(a).

11 Therefore, the court will not order disgorgement based on an allegedly false or materially
12 incomplete Compensation Disclosure.

13 **III. Reasonable Value**

14 “Section 330 sets out the standard by which courts should determine the reasonableness
15 of fees under § 329.” Jastrem, 253 F.3d at 443; Basham, 208 B.R. at 931 (“The standard applied
16 under § 329(b) to determine the reasonable value of fees is set forth in § 330.”); Nakhuda, 544
17 B.R. at 902; Gilsvik, 63 B.R. at 751 (“When assessing the reasonable value of the services
18 rendered by an attorney to a debtor, the court is directed to consider the same criteria set forth for
19 determining the proper amount of compensation for estate professionals under § 330(a).”).
20 The court may award an attorney “reasonable compensation for actual, necessary services
21 rendered” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). The
22 court can also “award compensation that is less than the amount of compensation that is
23 requested.” 11 U.S.C. § 330(a)(2). “In determining the amount of reasonable compensation” the
24 court should consider:

- 25 (A) the time spent on such services;
26 (B) the rates charged for such services;
27 (C) whether the services were necessary to the administration of, or beneficial at
28 the time at which the service was rendered toward the completion of, a case under
this title;

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

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

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

9 11 U.S.C. § 330(a)(3).

10 The Ninth Circuit expresses the test for a reasonable fee allowance in five questions:

- 11 1. Were the services authorized?
- 12 2. Were the services necessary or beneficial to the administration of the estate at
13 the time they were rendered?
- 14 3. Are the services adequately documented?
- 15 4. Are the fees requested reasonable including consideration of the factors in
16 Section 330(a)(3)?
- 17 5. Did the professional exercise reasonable billing judgement?

18 Leichty v. Neary (In re Strand), 375 F.3d 854, 860 (9th Cir. 2004), citing Roberts, Sheridan &
19 Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet, MPC Corp.), 251 B.R. 103, 108 (B.A.P.
20 9th Cir. 2000).

21 The reasonable value of services rendered by a debtor's attorney depends on the
22 particular circumstances of each case. See Nakhuda, 544 B.R. at 902; Gilsvik, 63 B.R. at 751
23 (“[T]he reasonable value of services rendered by a debtor's attorney is a question of fact to be
24 determined by the bankruptcy court.”); Lobel & Opera v. U.S. Tr. (In re Auto Parts Club), 211
25 B.R. 29, 33 (B.A.P. 9th Cir. 1997).

26 The bankruptcy court has wide discretion in interpreting the criteria of Section 330(a) and
27 has discretion to award reasonable fees to an attorney. See Gill v. Wittenburg (In re Fin. Corp.
28 of Am.), 114 B.R. 221, 224 (B.A.P. 9th Cir. 1990), aff'd, 946 F.2d 689 (9th Cir. 1991); Gilsvik,
63 B.R. at 751 (“As the fact finder, the bankruptcy court has great discretion in evaluating the
sufficiency of the evidence provided by an attorney in support of the fees being requested.”)
(citation omitted); First Interstate Bank of Nev., N.A., v. CIC Inv. Corp. (In re CIC Inv. Corp.),
192 B.R. 549, 554 (B.A.P. 9th Cir. 1996) (“As the fact finder, the bankruptcy court must
evaluate the sufficiency of the evidence.”); cf. Hastings v. U.S. Tr. (In re Agyekum), 225 B.R.

1 695, 699 (B.A.P. 9th Cir. 1998) (“A trial court has the power to establish a presumptive
2 ‘reasonable value’ of legal fees in consumer bankruptcies, and to limit fees to a certain level.”).

3 “The burden is upon the applicant to demonstrate that the fees are reasonable.” Basham,
4 208 B.R. at 931-32; Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) (“[F]ee applicant bears the
5 burden of establishing entitlement to an award and documenting the appropriate hours expended
6 and hourly rates.”); Gilsvik, 63 B.R. at 751; In re Las Vegas Monorail Co., 458 B.R. 553, 557
7 (Bankr. D. Nev. 2011) (“[T]he fee applicant must submit detailed evidence supporting the fee
8 application.”).

9 Because Attorney Randolph submitted the Billable Hours Log, the court can analyze the
10 reasonableness of the fees according to the test in Strand.

11 **1. Were the services authorized?**

12 Debtor clearly authorized the services by signing the Representation Agreements. The
13 court thereby holds that the services were authorized.

14 **2. Were the services necessary or beneficial to the administration of the**
15 **estate at the time they were rendered?**

16 “[A] bankruptcy court may award compensation if the services rendered were not
17 unnecessarily duplicative and if the services rendered were both reasonably likely to benefit the
18 debtor's estate and were necessary for the administration of the case.” Smith v. Edwards & Hale,
19 Ltd. (In re Smith), 317 F.3d 918, 926 (9th Cir. 2002), abrogated on other grounds by Lamie v.
20 U.S. Tr., 540 U.S. 526 (2004).

21 “[S]ervices that are reasonably likely to provide an identifiable, tangible and material
22 benefit to the debtor’s estate can be compensated, even if they do not actually provide such a
23 benefit.” Id. See also Las Vegas Monorail, 458 B.R. at 556. This is because the court cannot
24 rely on hindsight in the analysis. “[A] professional need demonstrate only that the services were
25 reasonably likely to benefit the estate at the time rendered.” Ferrette & Slater v. U.S. Tr. (In re
26 Garcia), 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005); Mednet, 251 B.R. at 108; Las Vegas
27 Monorail, 458 B.R. at 556; see also Barron & Newburger, P.C. v. Texas Skyline (In re Woerner),
28 783 F.3d 266, 276 (5th Cir. 2015); Hellring Linderman Goldstein & Siegal LLP v. Top Grade
Sausage, Inc. (In re Top Grade Sausage, Inc.), 227 F.3d 123, 132 (3d Cir. 2000), abrogated on

1 other grounds by Lamie, 540 U.S. 526; Arthur Winer, Inc. v. Aimen (Matter of Taxman Clothing
2 Co.), 49 F.3d 310, 316 (7th Cir. 1995); Rubner & Kutner, P.C. v. U.S. Trustee (In re Lederman
3 Enters., Inc.), 997 F.2d 1321, 1323 (10th Cir. 1993); In re Miller Auto. Grp., Inc., 521 B.R. 323,
4 327 (Bankr. W.D. Mo. 2014), aff'd, Needler v. Casamatta (In re Miller Auto. Grp., Inc.), 536
5 B.R. 828 (B.A.P. 8th Cir. 2015).

6 “Benefit to the estate is not restricted to only monetary benefit.” In re Crown Oil, Inc.,
7 257 B.R. 531, 540 (Bankr. D. Mont. 2000); In re Berg, 268 B.R. 250, 260 (Bankr. D. Mont.
8 2001). “Another important consideration is whether the services rendered” complied with the
9 Bankruptcy Code and procedures to allow “for the orderly and prompt disposition of the
10 bankruptcy cases and related adversary proceedings.” Crown Oil, 257 B.R. at 540; Berg, 268
11 B.R. at 260-61.

12 While the court will consider the totality of the circumstances, it need not
13 “microscopically examine and weigh every strategic decision made by [an attorney] throughout
14 the [bankruptcy] case.” In re A.W. Logging, Inc., 356 B.R. 506, 516 (Bankr. D. Ida. 2006).
15 “The Court does not expect the attorney to succeed in every endeavor he undertakes on behalf of
16 the client. But the endeavor for which the estate is expected to pay must be reasonably
17 calculated to produce a benefit to the estate.” Crown Oil, 257 B.R. at 541; Berg, 268 B.R. at
18 261. The Fifth Circuit stated the test as:

19 In assessing the likelihood that legal services would benefit the estate, courts
20 adhering to a prospective standard ordinarily consider, among other factors,
21 the probability of success at the time the services were rendered, the
22 reasonable costs of pursuing the action, what services a reasonable lawyer or
23 legal firm would have performed in the same circumstances, whether the
attorney's services could have been rendered by the Trustee and his or her
staff, and any potential benefits to the estate (rather than to the individual
debtor).

24 Woerner, 783 F.3d at 276.

25 Accordingly, no matter what services the attorney undertook, “the fact that [the attorney]
26 did not ultimately prevail is not dispositive.” Mohsen v. Wu (In re Mohsen), 506 B.R. 96, 108
27 (N.D. Cal. 2013); Woerner, 783 F.3d at 276 (“Whether the services were ultimately successful is
28 relevant to, but not dispositive of, attorney compensation.”).

1 Debtor essentially argues that Attorney Randolph's tax services were not reasonable or
2 necessary because the Debtor ended up with an IRS levy, a Chapter 7 discharge, and no IRS
3 reduction. (ECF No. 35). The court finds this unpersuasive.

4 The test is not whether the attorney ultimately prevailed; the test is whether the services
5 were reasonably likely to benefit and necessary to the estate at the time rendered. Debtor entered
6 the First Representation Agreement explicitly to have Attorney Randolph review the Debtor's
7 tax situation and determine the next logical steps. Assessing the situation and developing a plan
8 to resolve it are necessary to effective representation and were reasonably likely to benefit the
9 estate because it could reasonably reduce the Debtor's tax liabilities in the most efficient way
10 possible. Resolving the tax liabilities efficiently would preserve money in the estate. Therefore,
11 the court finds that the services under the First Representation Agreement were beneficial and
12 necessary to the estate.

13 Debtor entered the Second Representation Agreement for tax and bankruptcy
14 representation. Based on the existence of that agreement, Attorney Randolph prudently
15 attempted to reduce or eliminate the IRS debt before attempting to discharge it in bankruptcy.
16 The court has no issue with that strategy.

17 If Attorney Randolph had effectively reduced the IRS debt, it could have avoided the
18 bankruptcy altogether. Furthermore, such a reduction would have meant that there would be
19 more money in the estate and that other creditors would get proportionally more money because
20 of it. Either way, Attorney Randolph's services were reasonably likely to benefit the Debtor or
21 the estate. As Attorney Randolph has stated, he is an experienced tax attorney with a master's
22 degree in taxation who presumably has managed to reduce IRS debt in the past, and the court
23 sees no reason to question Attorney Randolph's ability to do so in this case when viewing the
24 situation prospectively instead of retrospectively.

25 The court will not punish Attorney Randolph for failing to effectively negotiate with the
26 IRS when it made sense for Attorney Randolph to do so to avoid Debtor's bankruptcy or increase
27 the amount of money available to the potential estate. Accordingly, the court holds that Attorney
28 Randolph's tax services were beneficial and necessary to the bankruptcy case.

1 **3. Are the services adequately documented?**

2 “A starting point for an evaluation of the reasonableness of the fees is an explanation that
3 discloses what was done, when it was done, by whom it was done, and how long it took (*i.e.*, a
4 description of the ‘actual ... services rendered’).” In re Castorena, 270 B.R. 504, 515 (Bankr. D.
5 Ida. 2001); Crown Oil, 257 B.R. at 538-39. “Under Rule 2016(a), a ‘detailed statement’ of
6 services rendered is required.” A.W. Logging, 356 B.R. at 518, citing CIC Inv. Corp., 192 B.R.
7 549 and In re Roderick Timber Co., 185 B.R. 601 (B.A.P. 9th Cir. 1995); Las Vegas Monorail,
8 458 B.R. at 557. The list of services need not be perfect, but it must be “sufficiently descriptive
9 of the services rendered and the expenses incurred.” CIC Inv. Corp., 192 B.R. at 554.

10 If the attorney does not provide sufficient evidence such as contemporaneous time
11 records, its fee claim will likely be denied. See Jastrem, 253 F.3d at 443. “If the evidence
12 supporting a fee application ‘is too vague or insufficient to allow for a fair evaluation of the work
13 done and the reasonableness and necessity for such work, the court should disallow
14 compensation for such services.’” Las Vegas Monorail, 458 B.R. at 557 (citation and internal
15 quotation marks omitted). Descriptions such as “telephone conversation with [person],”
16 “meeting with [attorney],” or “email to [person]” are not sufficient. A.W. Logging, 356 B.R. at
17 518.

18 The court finds that the services were adequately documented based on the Billable
19 Hours Log. Each entry of the Billable Hours Log shows what was done, when it was done, and
20 how long it took. While the entries do not say exactly who performed the service, the billing
21 rates allow the court to determine whether the work was performed by an attorney, tax
22 professional, or legal staff, and that is sufficient. Since the Billable Hours Log is sufficiently
23 detailed and contemporaneous, the court holds that Attorney Randolph adequately documented
24 the services rendered.

25 **4. Are the fees requested reasonable including consideration of the factors**
26 **in Section 330(a)(3)?⁶**

27 _____
28 ⁶ If the attorney’s transgressions analyzed in question two are sufficiently severe, the
court is not required to perform an inquiry into the reasonableness or excessiveness of the fee

1 “Pursuant to 11 U.S.C. § 329(b), this court has the discretion to review any pre-petition
2 fee agreement to assure that the compensation does not exceed the reasonable value of the
3 services rendered.” In re Dorsett, 297 B.R. 620, 623 (Bankr. E.D. Cal. 2003); Sundquist, 576
4 B.R. at 877; In re Alvarado, 496 B.R. 200, 212 (N.D. Cal. 2013). The question is not how much
5 time the attorney spent on the case but whether what “he was paid was excessive for what he
6 accomplished for debtor in this case.” Nakhuda, 544 B.R. at 903; Digesti & Peck v. Kitchen
7 Factors, Inc. (In re Kitchen Factors, Inc.), 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992); In re
8 Sponhouse, 477 B.R. 147, 155 (Bankr. D. Nev. 2012); Matter of Geraci, 138 F.3d 314 (7th Cir.
9 1998); Castorena, 270 B.R. at 522; Dean, 401 B.R. at 923.

10 “[O]ne of the important purposes of § 329 is to ensure that attorneys provide competent
11 representation to debtors.” Dean, 401 B.R. at 923. If “the Court determines that the services
12 were incompetently performed and therefore have no value, then such services cannot be
13 compensated.” In re Wilde Horse Enters., Inc., 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991). “If a
14 bankruptcy court finds that an attorney fails to competently perform his or her duties, an order
15 requiring the attorney to disgorge fees pursuant to § 329(b) is proper.” Dean, 401 B.R. at 923;
16 Dignity Health v. Seare (In re Seare), 493 B.R. 158, 224-25 (Bankr. D. Nev. 2013) (sanctioning
17 debtor’s attorney that failed to competently represent debtor); In re Smith, 436 B.R. 476 (Bankr.
18 N.D. Ohio 2010) (“Services charged by a debtor’s attorney which are of poor quality and/or
19 which do not comply with an attorney’s ethical duties are not reasonable and provide grounds for
20 the disgorgement of fees for purposes of § 329(b).”).

21 On several occasions, bankruptcy courts in this district have evaluated the competence of
22 various debtors’ attorneys in determining reasonable attorney’s fees.

23 For example, in In re Spickelmier, 469 B.R. 903 (Bankr. D. Nev. 2012), this court
24 concluded that the work of a debtor’s bankruptcy counsel “reflects a lack of competence and
25 diligence that does not deserve to be compensated.” Id. at 914. The attorney committed a
26 laundry list of blunders. First, the attorney filed a Chapter 13 bankruptcy case for which the
27 _____
28 itself. Lewis, 113 F.3d at 1046; Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-
Helena Corp.), 63 F.3d 877, 882 (9th Cir. 1995).

1 debtors were not eligible because their debt limit exceeded the statutory limit. Id. The attorney
2 then negotiated a stipulation for conversion or dismissal with the Chapter 13 Trustee and failed
3 to comply with it. Id. The failure to comply led to the dismissal of the case. Id. The attorney
4 sought reconsideration but failed to appear at the hearing on the motion. Id. Making matters
5 worse, the attorney moved to shorten the time on a motion by using a motion the court had
6 already denied and cited no additional authority in support of the new motion. Id. When asked
7 to show cause for these actions, the attorney provided no support at the hearing. Id. Given these
8 transgressions, the court found the attorney's services to be of such poor quality that their
9 reasonable value was \$0.00. Id.

10 In Sponhouse, this court held that the attorney's "representation of the Debtors reflects
11 both a lack of competence and diligence." 477 B.R. at 155. The debtor paid the attorney \$1,500
12 to file a Chapter 7 bankruptcy case despite the attorney having never filed a bankruptcy case. Id.
13 The attorney outsourced the filing to an experienced bankruptcy paralegal which resulted in a
14 skeletal petition and delayed schedules. Id. Neither the attorney nor the debtors reviewed the
15 first filing, nor did the debtors review or sign the filings in a second Chapter 7 case. Id. The
16 attorney was allegedly fired but did not attempt to withdraw from the case or advise the court of
17 any issues with the debtors. Id. Compounding the situation, the attorney did not respond to or
18 appear at the hearing on the assigned trustee's dismissal motion. Id. Given all of that, this court
19 had no issue finding that the compensation exceeded the reasonable value of the services
20 rendered to the debtor in the Chapter 7 cases that the attorney should never have filed. Id.

21 Debtor argues that Attorney Randolph did not perform the tax services competently
22 because Attorney Randolph only engaged in settlement negotiations with creditors over the
23 phone, failed to achieve an IRS reduction, failed to prevent an IRS levy, and procured a Chapter
24 7 discharge.

25 The court fails to see what standard of competence has been breached in this case.
26 Nothing in the record shows that a different attorney would have achieved a different result.
27 Likewise, Debtor offers no such standard for what another tax attorney would have achieved
28

1 under the same circumstances.⁷ Without any applicable standard, the court cannot find that
2 Attorney Randolph performed the IRS representation incompetently.⁸ The task now becomes the
3 determination of a reasonable value for the tax services rendered by counsel.

4 In the Ninth Circuit, the primary method for determining whether an attorney's fee is
5 reasonable is the "lodestar" method. See Burgess v. Klenske (In re Manoa Fin. Co., Inc.), 853
6 F.2d 687, 691 (9th Cir. 1988). Basically, "[a] compensation award based on a reasonable hourly
7 rate multiplied by the number of hours actually and reasonably expended is presumptively a
8 reasonable fee." Id. In setting the lodestar, the bankruptcy court may consider fees awarded to
9 others in the same locality for similar cases and may rely on its 'own knowledge of customary
10 rates and [its] experience concerning reasonable and proper fees.'" Gilsvik, 63 B.R. at 751,
11 quoting Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011). Likewise, the attorney "may
12 include proof 'that the requested rates are in line with those prevailing in the community for
13 similar services by lawyers of reasonably comparable skill, experience and reputation.'" Id. at
14 751-52, quoting Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Even if the court utilizes the
15 lodestar method, "[t]he product of reasonable hours times a reasonable rate does not end the
16 inquiry" as it can still adjust the value based on the Section 330 factors. See Hensley, 461 U.S.
17 at 434.

18 The court is not required to apply the lodestar method, however, especially in cases
19 where the court cannot reasonably quantify the fee award with numerical precision. See
20 Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc., 924 F.2d 955, 958 (9th Cir. 1991);
21 Kitchen Factors, 143 B.R. at 562; Auto Parts, 211 B.R. at 34. The court does not see a reason to
22 employ a different method, however, so it will apply the lodestar.

23
24
25
26 ⁷ In fact, Debtor wrote in a five-star Google Review that Attorney Randolph's "expertise
27 and support led to a favorable outcome." (ECF No. 32). The court cannot fathom how Debtor
28 could claim that such an incompetent attorney could have achieved such a favorable outcome.

⁸ Whether the Debtor can pursue other relief against counsel in another court is not
addressed or determined by the instant order.

1 The court finds Attorney Randolph's billable rate of \$750 to be reasonable based on his
2 experience and qualifications. There is no evidence in the record of different hourly rates being
3 charged by counsel in the community having comparable experience and qualifications.

4 The court does not find that the services were performed incompetently, and the court
5 sees no other reason to deduct any of the entries from the Billable Hours Log. Thus, the
6 reasonable value of the services is the value calculated in the Billable Hours Log which is
7 \$3,232.50 for the First Representation Agreement work and \$26,821.25 for the Second
8 Representation Agreement work. That yields a total of \$30,053.75 in legal services. It seems
9 reasonable that the Debtor got those services for a total of \$27,500.⁹ Accordingly, the court
10 holds that the \$27,935 fee was reasonable.¹⁰

11 **5. Did the professional exercise reasonable billing judgement?**

12 "A finding of compensability merely means the services performed were properly
13 charged as legal services, as opposed to administrative or otherwise nonlegal services." Puget
14 Sound Plywood, 924 F.2d at 958. This question largely goes to whether the hours invoiced went
15 to performing actual legal work that should be compensable at professional rates. See Castorena,
16 270 B.R. at 516.

17 The court finds that Attorney Randolph only included appropriately compensable service
18 in the Billable Hours Log and thereby holds that Attorney Randolph exercised reasonable billing
19 judgment.

20 Moreover, since the court has found that Attorney Randolph's services provided
21 reasonable value to the Debtor, the court will not order any disgorgement.

22 **IV. Debt Relief Agency Violations**

23 Section 526 lists four activities that a "debt relief agency" shall not undertake for "an
24 assisted person or prospective assisted person." "[A]ttorneys who provide bankruptcy assistance
25

26 ⁹ The cost of the filing fee was not included in the Billable Hours Log and so the total for
27 the legal services specifically is \$27,500.

28 ¹⁰ The court applied the Section 330 factors in performing the analysis under this section
and sees no reason to make further adjustments to the reasonable value of the services provided.

1 to assisted persons are debt relief agencies within the meaning of [Section 526].” Milavetz,
2 Gallop & Milavetz, P.A. v. United States, 559 U.S. 229, 239 (2010). “‘Assisted person’ means
3 any person whose debts consist primarily of consumer debts and the value of whose nonexempt
4 property is less than \$256,800¹¹.” 11 U.S.C. § 101(3) (emphasis added). As well stated by the
5 bankruptcy court for the District of Idaho:

6 As the statute indicates, if a debt relief agency represents to an assisted person
7 that it will provide certain services in connection with a bankruptcy case, and
8 then fails to perform those services, the debt relief agency has violated §
9 526(a)(1). Moreover, § 526(a)(2) is violated if a debt relief agency makes,
10 or counsels or advises any assisted person to make, a statement in a document
11 that is filed with the court, that is untrue or misleading, or using reasonable
12 care should have been known to be untrue or misleading. Finally, if a debt
13 relief agency misrepresents the services that it will provide to an assisted
14 person or the benefits and risks that may result if such person files a
15 bankruptcy petition, then § 526(a)(3) may have been violated.

16 Lantz, 643 B.R. at 623. Additionally, Section 526(a)(4) “prohibits advice ‘to incur more debt’
17 either (1) ‘in contemplation of’ a bankruptcy filing or (2) ‘to pay an attorney’ for bankruptcy-
18 related legal services.” Cadwell v. Kaufman, Englett & Lynd, PLLC, 886 F.3d 1153, 1159 (11th
19 Cir. 2018).

20 If a debt relief agency violates the requirements of Section 526(a), any contract between
21 the debt relief agency and the assisted person will be void and the debt relief agency must pay
22 back to the assisted person any fees charged to the assisted person for bankruptcy assistance.
23 See 11 U.S.C. §§ 526(c)(1) and (2).

24 According to the Petition, however, Debtor attests that he has primarily business debts
25 rather than consumer debts. Because Section 526 applies only to assisted persons that have
26 primarily consumer debts, the debt relief agency prohibition is not implicated. Accordingly,
27 Debtor’s reliance on Section 526 is misguided. As a result, Section 526(c)(1) and (c)(2) do not
28

26 ¹¹ The value is adjusted every three years with an original value of \$150,000. See 11
27 U.S.C. § 101(3). The value was increased to \$204,425 in 2019, 84 Fed.Reg. 3488; \$226,850 in
28 2022, 87 Fed.Reg. 6625; and \$256,800 in 2025, 90 Fed.Reg. 8941. Debtor indicates that his
assets were worth no more than \$100,000 which would be less than the cutoff for any year
applied. See Petition at 6 and 13.

1 require Attorney Randolph to return any payments made under the First Representation
2 Agreement nor the Second Representation Agreement.

3 **CONCLUSION**

4 The court concludes that there is no reason to order disgorgement of any of Attorney
5 Randolph's \$27,935 in fees and expenses. The court has authority to review all of Attorney
6 Randolph's fees because they were paid in contemplation of filing for bankruptcy under
7 Bankruptcy Rule 2017. Attorney Randolph complied with the disclosure requirements under
8 Section 329 and Bankruptcy Rule 2016 by filing the Compensation Disclosure timely and with
9 the value of \$1,500 for bankruptcy specific services.

10 The court also concludes that Attorney Randolph's fees were reasonable under Section
11 330 because Attorney Randolph performed tax services that were beneficial and necessary to the
12 estate and did so at a reasonable rate of compensation.

13 In addition, the court concludes that the debt relief agency prohibitions of Section 526 do
14 not apply because the Debtor is not an "assisted person."

15 **IT IS THEREFORE ORDERED** that the Amended Motion for Review and
16 Disgorgement of Attorney Fees Under 11 U.S.C. § 329, Requesting Refund to Debtor, Docket
17 No. 26, be, and the same hereby **DENIED**.

18
19 Copies sent via CM/ECF ELECTRONIC FILING

20 Copies sent via BNC to:
21 ADAM J GILMORE
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