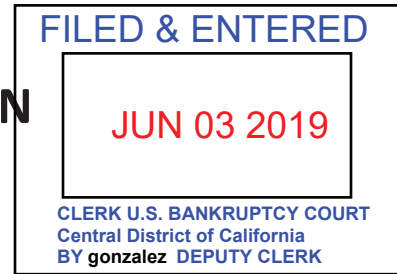


NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Andrea Michel,
Debtor.

Case No.: 2:18-bk-23311-ER
Chapter: 7

**MEMORANDUM OF DECISION RE:
MOTION FOR CONTEMPT¹
[DOC. NO. 14]**

Hearing:

Date: May 8, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

I. Background Facts

At the above-captioned date, time and place, the Court held a hearing on Andrea Michel's (the "Debtor") *Motion for Contempt Against Michael's Superstore Abaud, Inc., for Their Intentional Violation of: The Bankruptcy Automatic Stay [and] the Rosenthal Fair Debt Collection Practices Act* [Doc. No. 14] (the "Motion for Contempt"). Appearances were as stated on the record.²

¹ This disposition is not appropriate for publication.

² Veronica Abaud, the alleged owner of Creditor, appeared without counsel and attempted to argue against the Motion for Contempt. However, the Court was not persuaded to entertain argument after finding that the motion was properly served, no opposition was filed, and Ms. Abaud appeared to represent the Creditor/Respondent without an attorney as required by the Local Rules of this Court.

As set forth in the Court’s Tentative Ruling [Doc. No. 18], incorporated herein by reference, the Court found that the Debtor was entitled to an award of damages against Michael’s Superstore Abaud, Inc. (“Creditor”) for the attorney’s fees and costs that Debtor incurred to halt Creditor’s stay violating conduct and prosecute the Motion for Contempt³. However, the Court noted that the Debtor failed to submit any evidence of the amount of attorney’s fees and costs incurred in support of the Motion for Contempt. Therefore, the Court directed the Debtor to “file and serve on Creditor a supplemental declaration from Debtor’s counsel that attaches a billing statement for services performed in connection with (a) notifying Creditor and the Superior Court of the Debtor’s bankruptcy filing and discharge of Creditor’s debt and (b) bringing th[e Motion for Contempt]” by no later than May 22, 2019. *Id.* The Court also set a May 29, 2019 deadline for Creditor to object to the reasonableness of the requested fees and costs and stated that the matter would be deemed submitted as of May 29, 2019. *Id.*

On May 22, 2019, the Debtor timely filed a *Memorandum in Support of Attorney’s Fees and Costs* [Doc. No. 19] (the “Fee Application”) seeking \$3,623.00 in fees and \$273.60 in costs for a total award of \$3,896.60 as follows:

Date	Description	Hours	Staff	Rate	Amount
3/13/2019	Telephone call with Debtor & email regarding summons and credit reports	0.3	Scott Ziegler	\$120.00 Paralegal	\$36.00
3/14/2019	Retrieved and reviewed credit reports with Debtor	0.75	Scott Ziegler	\$120.00 Paralegal	\$90.00
3/14/2019	Drafted letters to Michael’s Superstore & Superior Court	0.75	Ryan Davis	\$120.00 Paralegal	\$90.00
3/14/2019	Cost to mail letters to Michael’s Superstore & Superior Court via certified mail	N/A	N/A	N/A	\$13.60
3/14/2019	Telephone call with Debtor to review and gather facts/documentation	1	Jared Ahern	\$350.00 Attorney	\$350.00
3/25/2019	Telephone call with Debtor regarding the hearing for Michael Superstores v. Michel on 3/26/19	0.2	Lauren Rodkey	\$350.00 Attorney	70.00
3/25/2019	Draft Ex-Parte Application to Reopen Case, Motion for Contempt, Declaration and proposed order	3	Jared Ahern	\$300.00 Attorney	\$900.00
3/25/2019	Fee to reopen Case # 2:18-bk-23311-ER	N/A	N/A	N/A	\$260.00
3/25/2019	Cost for service of Motion to Reopen	N/A	N/A	N/A	N/A
3/26/2019	Email exchange with Debtor regarding outcome of the hearing for Michael Superstores v. Michel	0.1	Scott Ziegler	\$120.00 Paralegal	\$12.00

³ The Court notes that on June 3, 2019, the Supreme Court of the United States issued the decision *Taggart v. Lorenzen*, 587 U.S. ___ (2019), which involves the applicable standard for violations of the discharge injunction; however the Court specifically stated that its decision does not impact the applicable standard under § 362(k).

Date	Description	Hours	Staff	Rate	Amount
5/10/2019	Prepare draft of fee application	0.5	Lauren Rodkey	\$350.00 Attorney	\$175.00
5/13/2019	Draft fee application and declarations	4.75	Brian Brazer	\$400.00 Attorney	\$1,900.00
5/13/2019	Anticipated expense for hearing on fee application	??	Attorney	\$350.00	
		11.35			\$3,896.60

As of the date of entry of this Memorandum of Decision, Creditor has not filed an objection.

II. FINDINGS AND CONCLUSIONS

Attorneys' fees and costs are a mandatory component of the § 362(k)(1) remedy and encompass fees reasonably incurred in prosecuting a damages action for automatic stay violation. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1099-1101 (9th Cir. 2015) (en banc). However, "[o]nly an award of fees reasonably incurred is mandated by the statute; courts awarding fees under § 362(k) thus retain the discretion to eliminate unnecessary or plainly excessive fees." *Id.* at 1101 (citing *In re Dawson*, 390 F.3d 1139, 1152 (9th Cir. 2004)).

In this case, the Court finds that the fees incurred for the services performed from March 13, 2019 through March 26, 2019 totaling \$1,548 and \$273.60 in costs are reasonable and appropriate damages stemming from Creditor's stay violation. However, the Debtor's request for \$2,075 in fees for services performed on May 13, 2019 to draft the Fee Application and declarations are unwarranted and unreasonable for several reasons.

First, the Court finds these fees unwarranted because the Court's Tentative Ruling did not authorize the Debtor to include fees for time spent preparing and filing the supplemental declaration attaching counsel's billing statements. The Tentative Ruling stated:

Therefore, by no later than **May 22, 2019**, the Debtor is directed to file and serve on Creditor a supplemental declaration from Debtor's counsel that attaches a billing statement for services performed in connection with (a) notifying Creditor and the Superior Court of the Debtor's bankruptcy filing and discharge of Creditor's debt and (b) bringing this motion . . . The Court will not entertain any argument or evidence from either party beyond the scope of the appropriate amount of attorney's fees and costs the Debtor is entitled to.

Tentative Ruling, Doc. No. 18.

The Tentative Ruling limited fees to the two categories described above and made no mention of a fee application or memorandum of points and authorities. The Court acknowledges that the last sentence of the Tentative Ruling could be read as an invitation to submit briefing on the reasonableness of counsel's fees, but that was not the Court's intention. The Court clearly stated that all that was required was a supplemental declaration that attached a billing statement.

Second, the Court finds that the Debtor's request for reimbursement of \$2,075 in fees for time spent preparing the Fee Application are plainly excessive, especially in relation to the amount of underlying fees sought to end the stay violation. As noted above, the Debtor should have included counsel's billing statements in support of the Motion for Contempt. However, rather than denying the Debtor's request for damages outright for failure to carry her evidentiary burden of proof, the Court instead permitted the Debtor an opportunity to submit evidence of damages. Therefore, the Court does not believe it is appropriate to reward counsel for its failure to file the required evidence in support of the Motion for Contempt.

The Court also finds it unreasonable to award the Debtor fees for the unnecessary time spent briefing this Court on the applicable standard for considering the reasonableness of attorneys' fees or the appropriate rate for an attorney practicing in the Central District of California since this Court is already abundantly familiar with those standards and rates. Additionally, the Fee Application has no explanation for why the firm had two different paralegals and three different attorneys working on this relatively simple matter or how much unnecessary time it wasted bringing each new paralegal and attorney up to speed.

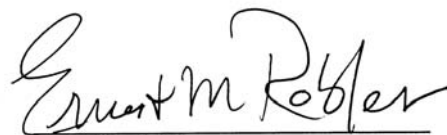
Therefore, the Court will not award the Debtor any fees for time spent preparing the Fee Application.

III. CONCLUSION

For the foregoing reasons, the Court awards the Debtor \$1,548 in fees and \$273.60 in costs for a total damages award of \$1,821.60 arising from Creditor's violation of the automatic stay pursuant to 11 U.S.C. § 362(k). The Court will enter an order consistent with this Memorandum of Decision.

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Date: June 3, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The middle initial "M." is written in a smaller, more compact style.

Ernest M. Robles
United States Bankruptcy Judge