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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
DAVID LEE,
Debtor.

Case No. 2:19-bk-10119-RK
Chapter 11

**MEMORANDUM DECISION ON CLAIM
OF LENDER YCCS, LLC, FOR
ATTORNEYS' FEES AND COSTS ON
ITS SECURED CLAIM UNDER 11 U.S.C.
§ 506(b) AND DEBTOR'S OBJECTION
THERE TO**

Pending before the court is the claim of Lender YCCS, LLC, ("YCCS") for its attorneys' fees and costs based on its promissory note and deed of trust which had encumbered Debtor's principal residence, but had been released pursuant to an order of the court approving Debtor's taking out a new loan secured by a lien on his residence to refinance existing loan indebtedness on the property, including YCCS's loan secured by a second priority lien. As a result of the court approved refinancing, Debtor paid through escrow the principal, interest and all costs (other than disputed legal fees and related legal costs) of the loan owed to YCCS, including payment of \$20,731.39 to YCCS out of the amount of over \$61,697 in legal fees and costs that YCCS claims is owed by Debtor pursuant to the note and deed of trust. As set forth in Debtor's Objection to the Reasonableness of Lender's Attorney Fees, filed on March 24, 2020, Electronic Case

1 Filing (“ECF”) 289 (the “Fee Objection”), Debtor objects to fees claimed by YCCS in
2 excess of the \$20,731.39 Debtor already paid YCCS through escrow. YCCS filed an
3 Opposition to Debtor’s Fee Objection on March 30, 2020 (the “Opposition”). ECF 292. In
4 response to YCCS’s Opposition, Debtor filed a Reply RE Fee Objection, ECF 293, on
5 March 30, 2020 (the “Reply”). YCCS’s unpaid claim for its legal fees and related costs
6 and Debtor’s objection thereto is a contested matter within the meaning of Federal Rule
7 of Bankruptcy Procedure 9014. Debtor is represented by David A. Tilem of the Law
8 Offices of David A. Tilem. YCCS is represented by Baruch C. Cohen of the Law Office of
9 Baruch C. Cohen.

10 Debtor and YCCS agree that pursuant to Section 5.(C) of that promissory note
11 secured by a deed of trust entered into between Debtor and YCCS on or about
12 November 14, 2017, Exhibit 2 to YCCS’s Motion for Relief from the Automatic Stay Under
13 11 U.S.C. § 362, ECF 108 at 33-37 (the “Note”), under the note and deed of trust, where
14 debtor as the borrower fail to pay it as required, YCCS has “the right to be paid back for
15 all its costs and expenses . . . includ[ing], for example, reasonable attorney’s fees and
16 expert’s fees[.]” should Debtor default under the Note and YCCS requires full payment,
17 as occurred here. YCCS seeks reimbursement of \$61,697.36 for the fees and expenses
18 incurred during the bankruptcy case, including fees and expenses principally related to:
19 (i) Debtor’s Motion to Employ Attorney Sanders, ECF 26; (ii) Debtor’s Motion for Order
20 Authorizing Debtor to Enter Into a Month to Month Lease and Pay for Moving Expenses,
21 ECF 95; (iii) YCCS’s Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362,
22 ECF 108 (the “Motion for Relief from Stay”); (iv) Debtor’s Motion for Order Authorizing
23 Debtor to Obtain Credit Pursuant to § 364(c)(2), ECF 195; (v) Debtor’s January 14, 2020
24 Status Report, ECF 233; (vi) Debtor’s Motion for Order Employing Real Estate Broker,
25 ECF 235; (vii) and Debtor’s Motion for Order Authorizing Debtor to Obtain Credit
26 Pursuant to 11 U.S.C. § 364(c)(2), ECF 239 (the “Second Refinancing Motion”). As
27 directed by the court, YCCS submitted to the court *in camera* the invoices or bills
28 containing unredacted billing entries showing the fees and expenses billed by its counsel,

1 Baruch C. Cohen, of the Law Office of Baruch C. Cohen, and the court has reviewed the
2 fees and expenses incurred by YCCS's counsel in detail in these unredacted billing
3 entries as well as in Debtor's objections to specific billing entries.

4 Debtor notes that YCCS was ordered to file copies of its redacted billing
5 statements on the case docket and to deliver unredacted copies to the judge's chambers
6 by a date certain and that YCCS did not comply with this order. Debtor is correct that
7 YCCS did not file its redacted billing statements so that the billing statements are on
8 record on the case docket. Debtor acknowledges that he was provided with minimally
9 redacted billing statements, and the court acknowledges that it was provided with
10 unredacted billing statements. Thus, Debtor and the court have been able to review the
11 billing statements of YCCS's counsel, though the billing statements are still not on record
12 on the case docket based on the court's review of the docket.

13 The court determines that Debtor's specific objections to the legal fees and costs
14 claimed by YCCS, as set forth in his Fee Objection, ECF 289, are well-taken, and as
15 discussed herein, the court generally sustains those objections for the reasons set forth
16 in Debtor's Fee Objection. Additionally, in conducting its independent review of the fees,
17 the court reduces the amount of YCCS's "undisputed"¹ attorneys' fees of \$42,917.90, that
18 is, not disputed by Debtor, ECF 289 at 10, and determines that reasonable attorneys'
19 fees and expenses of \$36,730.40 should be allowed to YCCS based on the relatively
20 straightforward and noncomplex nature of the dispute between Debtor and YCCS
21 regarding payoff of its promissory note and deed of trust and the legal standards
22 discussed below.

23 Pursuant to 11 U.S.C. § 506(b), an oversecured creditor "is entitled to postpetition
24 attorneys' fees and costs if: (1) the claim is an allowed secured claim; (2) the creditor is
25 oversecured; (3) the fees are reasonable; and (4) the fees are provided for under the
26 agreement." *In re 1910 Partners*, 2017 WL 6273314, 2017 Bankr. LEXIS 4211, slip op.

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28 ¹ Here, "undisputed" means those fees that Debtor has not specifically objected to in the Fee
Objection, ECF 289.

1 at *7 (9th Cir. BAP 2017) (citing *Kord Enterprises II v. California Commerce Bank (In re*
2 *Kord Enterprises II)*, 139 F.3d 684, 687 (9th Cir. 1998)). Neither party disputes that YCCS
3 was an oversecured creditor with an allowed secured claim and could recover its
4 reasonable postpetition attorneys’ fees and expenses based on the promissory note
5 entered into between the parties. Accordingly, the reasonableness of the fees and costs
6 of counsel for YCCS is the only determination for the court to make here. A secured
7 creditor has the burden of proving the reasonableness of its fee claim under 11 U.S.C. §
8 506(b). *Atwood v. Chase Manhattan Mortgage Company (In re Atwood)*, 293 B.R. 227,
9 233 (9th Cir. BAP 2003).

10 The crucial “determinant for ‘reasonableness’ is whether the creditor . . . took the
11 kinds of actions that similarly situated creditors might reasonably conclude should be
12 taken.” *In re 1910 Partners*, 2017 WL 6273314, slip op. at *7 (citing *Dalessio v. Pauchon*
13 *(In re Dalessio)*, 74 B.R. 721, 723 (9th Cir. BAP 1987)). The court should evaluate
14 whether “the creditor reasonably believed that the services employed were necessary to
15 protect its interests in the debtor’s property.” *Id.* (internal citation omitted). “A court
16 should not reward a creditor whose overly aggressive attorney harasses and opposes the
17 debtor at every stage of the bankruptcy proceeding, nor should an oversecured creditor
18 be given a blank check to incur fees and costs which will automatically be reimbursed out
19 of its collateral.” *Id.*

20 As Debtor argues,

21 “YCCS seeks more than \$65,000 for a one-issue relief from stay
22 motion. That issue was whether a balloon payment constituted
23 ‘cause’ for relief. No argument was made based on [11 U.S.C.]
24 §362(d)(2), hence there was never a need to litigate value – which
25 can quickly generate fees of this magnitude. No facts were
presented and no argument was made to support a claim that
Debtor was misusing or abusing the collateral. In fact, there were
no other substantive arguments at all.”

26 Fee Objection at 5.

27 In the court’s view, this is an accurate and fair description of YCCS’s position in
28 this case. YCCS was the holder of a second priority lien on real property collateral which

1 had a substantial equity cushion to adequately protect its lien from erosion of value. All
2 YCCS needed to do was to obtain relief from the automatic stay to enforce its
3 nonbankruptcy foreclosure rights or wait for a payoff of its secured claim since the loan
4 had matured and could not be modified though Debtor's Chapter 11 reorganization plan.
5 There was nothing complex or difficult about the legal work to protect YCCS's lien
6 interest in this case.

7 The case authorities interpreting the reasonableness of legal fees under 11 U.S.C.
8 § 330 are also instructive when courts analyze the reasonableness of fees under 11
9 U.S.C. § 506(b). *In re Parreira*, 464 B.R. 410, 414-415 (Bankr. E.D. Cal. 2012)
10 ("Because all professional fees awarded in a bankruptcy case are effectively paid from
11 assets of the bankruptcy estate and because both Code sections use the term
12 "reasonable," the court may apply to its § 506(b) analysis the same principles and case
13 law that govern the award of fees under § 330.") (citation omitted). "The customary
14 method for assessing the amount of reasonable attorney's fees to be awarded in a
15 bankruptcy case is the 'lodestar.' Under this approach, 'the number of hours reasonably
16 expended' is multiplied by 'a reasonable hourly rate' for the person providing the
17 services." *Wechsler v. Macke International Trade, Inc. (In re Macke International Trade,*
18 *Inc.)*, 370 B.R. 236, 254 (9th Cir. BAP 2007) (citation omitted). A bankruptcy court has
19 broad discretion to determine the number of hours reasonably expended. *Id.* "Even
20 where evidence supports that a particular number of hours were worked, the court may
21 give credit for fewer hours if the time claimed is 'excessive, redundant, or otherwise
22 unnecessary.'" *Id.* (quoting *Dawson v. Washington Mutual Bank, F.A. (In re Dawson)*,
23 390 F.3d 1139, 1152 (9th Cir. 2004)) (alterations omitted). Courts undertaking a fee
24 analysis may also consider "(1) the time and labor required, (2) the novelty and difficulty
25 of the questions involved, (3) the skill requisite to perform the legal service properly, . . .
26 (8) the amount involved and the results obtained, . . . and (12) awards in similar cases."
27 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

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1 The court sets forth below a table listing the amount of Debtor's fee objections and
2 the amount of fees not specifically disputed by Debtor, ECF 289 at 10. The table also
3 includes the fee reductions determined by the court for excessive, duplicative, or
4 unnecessary fees, and the finally allowed fees as explained further below:

Date of Counsel's Invoice to YCCS	Fees Claimed on Invoice	Fees Objected to by Debtor	Fees Not Disputed by Debtor	Additional Fees Reduced by Court	Finally Allowed Fee Amount
3/12/2019	\$7,725.00	\$4,300.00	\$3,425.00	\$625.00	\$2,800.00
5/10/2019	\$6,613.00	\$1,838.00	\$4,775.00	\$0.00	\$4,775.00
7/05/2019	\$8,081.00	\$1,650.00	\$6,431.00	\$2,087.50	\$4,343.50
8/08/2019	\$18,008.66	\$5,703.16	\$12,305.50	\$3,000.00	\$9,305.50
11/14/2019	\$8,675.00	\$2,625.00	\$6,050.00	\$0.00	\$6,100.00 ²
12/26/2019	\$3,262.00	\$875.00	\$2,387.00	\$0.00	\$2,387.00
2/24/2020	\$9,602.70	\$2,033.30	\$7,569.40	\$1,500.00	\$6,069.40
Totals	\$61,967.36	\$19,049.46	\$42,917.90	\$6,212.50	<u>\$35,780.40</u>

21 The court first determines for the purposes of its evaluation of the reasonableness
22 of the claimed fees under the lodestar method that YCCS's counsel's professional billing
23 rate of \$500 an hour is reasonable.³ The court next addresses the fees included in the

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25 ² As discussed below, the court overrules Debtor's objection to a \$50.00 cost related to Court Call
26 fees on YCCS's November 14, 2019 Bill, and, accordingly, the allowed fee of \$6,100.00 is an increase of
\$50.00 from the \$6,050.00 in fees not disputed by Debtor.

27 ³ YCCS's counsel, Baruch C. Cohen, did not state his professional qualifications in the Opposition to
28 Debtor's Fee Objection, but the court takes judicial notice of the information listed on the website of the
State Bar of California, which states that Counsel was admitted to the State Bar of California on June 11,
1992 and listed his law school as Southwestern University School of Law. Federal Rule of Evidence 201.
The court determines that based on its observation of the legal practice community, in light of his

1 seven invoices or bills covering the duration of counsel's representation of his client,
2 YCCS, in this case, which fees are included in the above table. As discussed above, the
3 court sustains Debtor's specific objections to YCCS's counsel's fees and expenses on
4 reasonableness grounds as set forth in the Fee Objection, ECF 289. In this regard, the
5 court notes that Debtor did not object to the majority of the legal fees and costs claimed
6 by YCCS and that only certain fees which Debtor specifically identified and objected to on
7 reasonableness grounds were disputed by him. In the court's view, Debtor's objections
8 were fairly conservative as the court also determines that certain fees that Debtor did not
9 specifically dispute are excessive, duplicative, or unnecessary, and the court disallows
10 those fees as not reasonable under the circumstances of this bankruptcy case.

11 ***Docket Entries or Communications, and Additional Charges.*** Debtor objects
12 to fees and expenses incurred in each of the seven billing periods related to
13 communications as to docket entries in the bankruptcy case and additional charges that
14 are administrative or secretarial in nature. Because these objections are repeated for
15 each individual bill discussed below, the court addresses them in the aggregate. The
16 court sustains Debtor's objections to "Docket Entries," "Communications," and "Additional
17 Charges" because those fees and expenses are not reasonable in this case.

18 YCCS's counsel claimed charges for secretarial and administrative work for
19 "Docket Entries" and "Communications" in an unreasonable manner because no creditor
20 could reasonably expect that, in order to protect the creditor's secured interest in real
21 property, its attorney would communicate to it as the client on each and every docket
22 entry in a bankruptcy case. *In re 1910 Partners*, 2017 WL 6273314, slip op. at *7. In this
23 regard, the court notes that Debtor did not object to all communications of counsel with
24 his client, YCCS, relating to the case docket, but only those communications which had
25 little or nothing to do with YCCS's secured claim and its desired remedies in this case.
26 An attorney's communications with his or her client are compensable when they might

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28 experience as a lawyer for over 27 years, YCCS's counsel's hourly rate of \$500 is within the range of
reasonableness in the Los Angeles legal community.

1 reasonably further the client's claim or interests in the bankruptcy case. When those
2 communications are only related to the client's claim to the extent that they are included
3 on the same docket, as is the case for the objected-to "Communications" and "Docket
4 Entries" here, those communications are unnecessary and not reasonable to be
5 compensated in a fee shifting situation here under 11 U.S.C. § 506(b).

6 YCCS's counsel also claimed "Additional Charges" in each billing period related to
7 Electronic Case Filing charges, clerical costs, paralegal services, scanning and certain
8 transportation fees, and related administrative charges. As discussed above, YCCS has
9 the burden of demonstrating the reasonableness of its legal fees and expenses. *Atwood*
10 *v. Chase Manhattan Mortgage Company (In re Atwood)*, 293 B.R. at 233. Debtor did not
11 object to all additional charges, but only objected to charges that appear duplicative,
12 unnecessary or excessive, such as charges for transcripts that were never cited to, extra
13 charges for clerical services, extra fees apparently related to electronic filings, and
14 paralegal charges. The court agrees with Debtor that YCCS has failed to meet its burden
15 of substantiating the reasonableness of the objected-to additional charges of its counsel.
16 The "additional charges" by YCCS's counsel for "paralegal . . ." or "scan. . ." were vague,
17 and counsel has not provided substantiation of the experience or billing rates for the
18 paraprofessionals who provided such services in order for the court to determine the
19 reasonableness of the fees and costs. Moreover, the billing statements listing these
20 charges insufficiently explain their necessity in order to protect YCCS's lien in this case.
21 YCCS has not carried its burden of proof as to the reasonableness of the vague
22 additional charges of its counsel that lack foundation, and, accordingly, the court sustains
23 Debtor's objections to these charges.

24 ***The March 12, 2019 Bill.*** The March 12, 2019 Bill from YCCS's counsel requests
25 \$7,725.00 in fees and expenses. Debtor objected to a total of \$4,300.00 in fees and
26 related costs. Debtor specifically objected to: \$1,000.00 for a retainer fee, \$850.00 for
27 1.7 hours of work for an opposition to Debtor's Motion to Employ Attorney Sanders, ECF
28

1 26, \$3,375.00 for 6.75 hours of work for “initial case analysis”, and \$225.00 for 0.45 hour
2 of work for communications and \$475.00 in administrative charges.

3 As discussed herein, the court sustains Debtor’s objections. The court agrees with
4 Debtor that the “initial retainer fee” is not a reasonable fee or expense that might protect
5 a creditor’s interest in debtor’s property because a retainer fee is not a charge for a
6 service or specific task performed. A retainer fee, rather, is a fee charged for agreeing to
7 accept the representation of the client. See *In re Dick Cepek, Inc.*, 339 B.R. 730, 736 n.
8 5 (9th Cir. BAP 2006) (“Classic retainers ‘refer to the payment of a sum of money to
9 secure availability over a period of time.’ The attorney is entitled to the retainer whether
10 or not services are needed.”)(citations omitted). Here, the retainer fee was not a fee for a
11 legal service that related to the performance of actual work in representing the creditor to
12 enforce a promissory note after the debtor’s default, and therefore, is not reasonable to
13 be charged to the debtor pursuant to 11 U.S.C. § 506(b).

14 The claimed fees by YCCS’s counsel related to Debtor’s Motion to Employ
15 Attorney Sanders, ECF 26, are also unreasonable because, unlike a motion for relief
16 from stay for YCCS to enforce its nonbankruptcy collection rights, opposition to the
17 employment of Debtor’s bankruptcy counsel was not necessary for protection of YCCS’s
18 interest in its loan collateral, Debtor’s principal residence.

19 The court agrees with Debtor that fees requested by YCCS’s counsel for “initial
20 case analysis” of \$3,375.00 for 6.75 hours of attorney work are excessive and
21 unreasonable. Debtor acknowledges that a review of the file and preparation of a
22 memorandum of potential issues is certainly reasonable, and thus, Debtor does not
23 dispute that 2.25 hours for counsel’s reviewing the file and 1.0 hour for preparing a
24 memorandum, representing fees totaling \$1,625.00, would be reasonable. However,
25 given the simple nature of the lien structure related to Debtor’s residential property and
26 the straightforward course of action for YCCS in this case, seeking relief from stay or
27 payment of its claim in full by December 1, 2019, the court determines that only 2.0
28 hours, or fees of \$1,000.00, is reasonable for the tasks relating to initial case analysis.

1 As noted in YCCS's counsel's February 7, 2019 billing entry for "Communications with
2 client," counsel commented: "The Unlikely Success of a Motion to Lift the Automatic Stay
3 to Pursue YCCS Foreclosure." Thus, YCCS's counsel understood⁴ the remote likelihood
4 that relief from the automatic stay would be granted in light of the equity cushion in
5 Debtor's residence. See e.g., Motion for Relief from Stay, ECF 108 at 8, 15 (noting
6 equity cushion of 28% in the property and likely equity cushion of 12% as of a
7 hypothetical closing of sale of the property as of January 1, 2020). Further, both counsel
8 in this proceeding have lengthy bankruptcy and litigation experience. YCCS's counsel
9 understood his client's goals and the "lay of the land" from the earliest days of this
10 bankruptcy case, that is, YCCS needed to press its case for stay relief to enforce its
11 nonbankruptcy collection rights. Given this simple and straightforward legal situation for
12 YCCS as an oversecured and adequately protected lien claimant whose loan could not
13 be modified because it had matured, the fees claimed in excess of \$1,000.00 for initial
14 case analysis are unreasonable.

15 The court also agrees with Debtor's objections to fees for claimed services for
16 communicating with the client with respect to every docket entry made in this case as
17 previously discussed, and the court disallows the charges for these services for
18 excessive communications which do not specifically relate to Debtor's loan indebtedness
19 to YCCS totaling \$225.00 for 0.45 hours of time.

20 Debtor also objects to additional charges totaling \$475.00, consisting of: \$50.00
21 for an ECF PACER charge for a request for courtesy Notice of Electronic Filing; \$150.00
22 for a paralegal relating to this request for courtesy Notice of Electronic Filing; \$50.00 for
23 an ECF PACER charge for an opposition to motion in individual Chapter 11 case for
24 order approving a budget for the use of Debtor's cash and postpetition income; \$150.00
25 for a paralegal relating to this opposition to motion in individual Chapter 11 case for order
26 approving a budget for use of Debtor's cash and postpetition income, and \$75.00 for a

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28 ⁴ YCCS's counsel's first billing entry on this bill was dated February 5, 2019, and the February 7,
2019 billing entry was the second billing date on this bill.

1 messenger for this opposition to motion in individual Chapter 11 case for order approving
2 a budget for use of Debtor's cash and postpetition income. The court agrees with
3 Debtor's objections to these additional charges because they are insufficiently explained
4 and substantiated as to how they were necessary to protect YCCS's lien, and as
5 discussed previously, there is no explanation of the identity and qualification of the
6 paraprofessionals performing these tasks. There is no reasonable basis for a \$50 per
7 item charge for ECF PACER if YCCS's counsel is receiving copies of the documents filed
8 in the case without charge based on a request for special ECF notice. There is no
9 reasonable basis for a \$75 messenger charge for delivery to the court as shown on the
10 proof of service since there is no showing that delivery of papers to the court on an
11 expedited basis was necessary where the opposition was to a motion not set for hearing
12 and that YCCS was only requesting that a hearing on the motion be set in the opposition.

13 Accordingly, the court determines that only the amount of \$2,800.00 of the fees
14 and costs on the March 12, 2019 bill is reasonable.

15 ***The May 10, 2019 Bill.*** The May 10, 2019 Bill from YCCS's counsel requests
16 \$6,613.00 in fees and expenses. Debtor objected to \$1,838.00 in fees and expenses
17 related to reviewing Debtor's amended schedules, communications, and administrative
18 charges. The court sustains Debtor's objection proposing a reduction of fees of \$1,250
19 claimed by YCCS's counsel's for 2.5 hours of work reviewing Debtor's amended
20 schedules on grounds that such fees were excessive in light of the work performed by
21 YCCS's counsel reviewing the original schedules, 6.75 hours, which fees of \$3,300 are
22 undisputed and allowed. A reduction in fees for reviewing the amended schedules is
23 warranted because of YCCS's counsel's familiarity with Debtor's bankruptcy schedules
24 and what amendments could affect his client's rights, and the court agrees with Debtor
25 that no more than 1.0 hour should be allowed for this work, or \$500 in fees, and the
26 excessive fees of \$750 should be disallowed.

27 The court also agrees with Debtor's objections to fees for claimed services for
28 communicating with the client with respect to every docket entry made in this case as

1 previously discussed, and the court disallows the charges for these services for
2 excessive communications which do not specifically relate to Debtor's loan indebtedness
3 to YCCS totaling \$850.00 for 1.70 hours of time.

4 Debtor also objects to additional charges totaling \$238.00, consisting of: \$38.00
5 for scanning a proof of claim and declaration; \$150.00 for a paralegal relating to this proof
6 of claim and declaration, and an ECF PACER charge of \$50.00 relating to these
7 documents. The court agrees with Debtor's objections to these additional charges
8 because they are insufficiently explained and substantiated as to how they were
9 necessary to protect YCCS's lien, and as discussed previously, there is no explanation of
10 the identity and qualification of the paraprofessionals performing the tasks, or how the
11 charges for scanning were computed. There is no reasonable basis for a \$50 per item
12 charge for PACER ECF if YCCS's counsel is receiving copies of the documents filed in
13 the case without charge based on a request for special ECF notice.

14 The court therefore sustains Debtor's objections to the charges in the specific
15 billing entries on this bill and determines that only the amount of \$4,775.00 in fees and
16 expenses charged by YCCS's counsel on this bill, which Debtor does not dispute, is
17 reasonable.

18 ***The July 5, 2019 Bill.*** The July 5, 2019 Bill from YCCS's counsel requests
19 \$8,081.00 in fees and expenses. Debtor objected to \$1,650.00 in fees and expenses
20 related to communications and additional charges. Specifically, Debtor objected to
21 \$1,050.00 in fees for 2.10 hours of work relating to communications of counsel with
22 YCCS, and the court agrees with Debtor's objections because it is not reasonable for
23 counsel to communicate with the client on each and every docket entry in the case, and
24 the communications that are the subject of Debtor's objections do not directly relate to
25 YCCS's lien. Thus, it is unreasonable to claim \$50.00 (0.10 hour) or \$75.00 (0.15 hour)
26 in fees to communicate with the client each and every time there is a filing in the Debtor's
27 bankruptcy case. Debtor's objections have merit because YCCS has not demonstrated
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1 the necessity of the work performed by its counsel in order to protect its lien interest for
2 which these fees are claimed.

3 Debtor further objected to \$600 in four additional charges of \$150 each for
4 paralegal services and a filing and service fee relating to a motion for stay relief. The
5 court agrees with Debtor's objections because there is insufficient explanation and
6 substantiation of these charges. There is no information about the identity and
7 qualifications of the paralegal and the computation of the time for the services performed
8 by the unidentified paralegal and the filing and service agency in order for the court to
9 determine the reasonableness of the charges.

10 Accordingly, the court sustains Debtor's objections, which are similar to his
11 objections to the specific "Communications," "Docket Entries," and "Additional Charges"
12 fees as discussed above.

13 The court also disallows additional fees relating to negotiations and a proposed
14 stipulation with Debtor's counsel that apparently never materialized as excessive and
15 unreasonable. Counsel's billing entries on April 10 and 24, 2019, which are included in
16 the May 10, 2019 Bill from YCCS's counsel, but which have been included herein for
17 ease of reference, request \$1,075.00 for 2.15 hours of attorney time related to
18 responding to a relief from stay proposal from Debtor's counsel and renewed analysis
19 involving a stipulation for relief from stay. Billing entries on May 2, 3, and 7, 2019, which
20 are included in the July 5, 2019 Bill, request in the aggregate \$1,675.00 for 3.35 hours of
21 attorney work that also related to responding to Debtor's counsel's proposal and
22 discussing Debtor's monthly operating report and case strategy with YCCS. YCCS's
23 counsel therefore claims fees of \$2,750.00 for 5.5 hours of work in connection with
24 negotiations with Debtor's counsel that were limited to perhaps two or three e-mail
25 communications, a review of Debtor's most recent monthly operating report, and a call
26 with his client. The court determines that YCCS's counsel could have reasonably
27 communicated with Debtor's counsel and with his client, YCCS, and performed any
28 analysis regarding any proposed relief from stay stipulation for a total of 1.5 hours for a

1 fee of \$750.00. Therefore, the court determines that the amount of fees in excess of
2 \$750.00, i.e., \$2,000.00, is unreasonable and disallows this excess amount of fees.

3 The court also determines that the June 11, 2019 billing entry related to hearing
4 dates and self-calendaring procedures is secretarial in nature and should not have been
5 billed at an attorney rate of \$500. The court therefore reduces the 0.25 hour charge of
6 \$125.00 to a \$37.50 charge at a reasonable local paralegal rate of \$150.00 an hour.

7 Accordingly, the court determines that Debtor's objections to fees on this bill in the
8 amount of \$1,650.00 should be sustained and that the fees should be further reduced in
9 the amount of \$2,087.50 as discussed above and that only the amount of \$4,343.50
10 should be allowed as reasonable for this bill.

11 ***The August 8, 2019 Bill.*** The August 8, 2019 Bill from YCCS's counsel requests
12 \$18,088.66 in fees and expenses. Debtor objected to \$5,703.16 in fees and expenses
13 related to YCCS's counsel's Reply To Debtor's Opposition To Relief From Stay Motion,
14 ECF 136 (the "Relief from Stay Reply"), and other administrative and communications
15 charges. Debtor specifically objected to additional charges of \$2,953.16 and
16 communications charges of \$750.00, and Debtor made a general objection to the amount
17 billed for the Reply to Debtor's Opposition to Relief from Stay Motion, ECF 136, which
18 included by implication a deduction of \$2,000.00. ECF 289 at 17-20. As discussed
19 below, the court sustains Debtor's objections.

20 Debtor objects to additional charges totaling \$2,225.00 for what is alleged to be
21 paralegal services and services of a filing and service agency, specifically consisting of:
22 \$150.00 for paralegal work relating to miscellaneous tasks performed for "MFR", which
23 the court assumes means Motion For Relief [from stay], including email correspondence
24 with "BCC" [referring to counsel for YCCS] reviewing and revising "MFR," assembling and
25 mark clean exhibits, preparing and e-filing "MFR" and downloading and forwarding "NEF"
26 [Notice of Electronic Filing]; \$150.00 for paralegal work relating to a first amended proof
27 of service re: corrected notice of hearing and notice of motion and motion for relief from
28 automatic stay; \$150.00 for paralegal work relating to an objection to Debtor's motion for

1 order authorizing Debtor to enter into a month-to-month lease; \$150.00 for a “J&J filing
2 and service fee” relating to a first amended proof of service re: corrected notice of
3 hearing and notice of motion and motion for relief from automatic stay; \$150.00 for a “J&J
4 filing and service fee” relating to an objection to Debtor’s motion for order authorizing
5 Debtor to enter into a month-to-month lease; \$150.00 for a “J&J filing and service fee”
6 relating to a request for judicial notice re: motion for relief from automatic stay; \$150.00
7 for paralegal work relating to this document; \$300.00 for paralegal work relating to
8 miscellaneous tasks in connection with YCCS’s objection to motion authorizing month-to-
9 month lease, including email correspondence with “BCC”, reviewing and revising
10 objections and request, preparing and e-filing request and downloading and forwarding
11 “NEF,” and preparing and forwarding copies to “BCC” and “J&J”; \$150.00 for paralegal
12 work relating to miscellaneous tasks in connection with a missing exhibit to “RJN”
13 [Request for Judicial Notice], including email correspondence with “BCC”, drafting
14 amended “RJN,” preparing and e-filing Amended “RJN,” downloading and forwarding
15 “NEF,” and preparing and forwarding copies to “BCC” and “J&J”; \$150.00 for a “J&J filing
16 and service fee” relating to a reply to Debtor’s opposition to relief from stay motion;
17 \$150.00 for paralegal work relating to this document; \$275.00 for paralegal work in
18 connection with miscellaneous tasks relating to a “Reply to Opposition,” including email
19 correspondence with “BCC,” reviewing and revising opposition, preparing and e-filing
20 request and downloading and forwarding “NEF,” and preparing and forwarding copies to
21 “BCC” and “J&J”, and \$150.00 for paralegal work relating to “YCCS Transcript Request.”

22 The court agrees with Debtor’s objections to the additional charges relating to the
23 paralegal work and the “J&J filing and service fee” because these charges are
24 insufficiently explained and substantiated as to how they were necessary to protect
25 YCCS’s lien, and as discussed previously, there is no explanation of the identity and
26 qualification of the paralegal or the filing and service party performing these tasks.
27 Accordingly, the court sustains Debtor’s objections to these charges as not necessary or
28 reasonable and disallows them.

1 Debtor also objects to additional charges of \$728.16 for “YCCS Ch 11 (copies and
2 postage).” There is no explanation of these charges in order to determine their necessity
3 and reasonableness. That is, there is no information provided that would indicate what
4 was being copied and mailed, and to whom, in order for the court to determine that such
5 charges were necessary to protect YCCS’s lien interest in this case. Accordingly, the
6 court sustains Debtor’s objections to these charges as not necessary or reasonable and
7 disallows them.

8 Debtor objected to \$750.00 in fees for 1.50 hours of work relating to
9 communications of counsel with YCCS, and the court agrees with Debtor’s objections
10 because it is not reasonable for counsel to communicate with the client on each and
11 every docket entry in the case, and the communications that are the subject of Debtor’s
12 objections do not directly relate to YCCS’s lien. It is thus unreasonable to claim \$50.00
13 (0.10 hour) or \$75.00 (0.15 hour) in fees to communicate with the client each and every
14 time there is a filing in the Debtor’s bankruptcy case and to claim an attorney fee rate for
15 the nonattorney secretarial task of calendaring a hearing. Debtor’s objections have merit
16 because YCCS has not demonstrated the necessity of the work performed by its counsel
17 in order to protect its lien interest for which these fees are claimed. The fees for
18 objected-to billing entries were not for work directly related to protecting YCCS’s lien.
19 Accordingly, the court sustains Debtor’s objections to these charges as not necessary or
20 reasonable and disallows them.

21 Debtor objects to \$4,150.00 in fees claimed by YCCS’s counsel for 8.30 hours in
22 preparing a reply brief to Debtor’s opposition to its relief from stay motion. As Debtor
23 observes, YCCS’s reply brief was twelve pages in length, including a three-page
24 declaration, and cited only three cases: *United Savings Association of Texas v. Timbers*
25 *of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988) and *In re Mellor*, 734 F.2d 1396
26 (9th Cir. 1984), which were cited in Debtor’s opposition, and both cases are well-known
27 to experienced bankruptcy practitioners, and the case of *In re Marsch*, 36 F.3d 825 (9th
28 Cir. 1994) for the proposition that “includes” and “including” are not terms of limitation and

1 the enumerated grounds for dismissal of a Chapter 11 bankruptcy case are not
2 exhaustive. ECF 136 at 1-6. Debtor argues that YCCS charging over \$10,000 in legal
3 fees for a relief from stay motion and a reply to an opposition, including \$4,150 for a
4 reply, is excessive and unreasonable. Debtor notes that he did not object to counsel for
5 YCCS billing \$6,000 for 12 hours of work in preparing the relief from stay motion, but
6 argues that \$4,150 for preparing a reply is excessive, stating that he would not object to
7 allowance of a total fee of \$8,000.00 for counsel in preparing the relief from stay motion
8 and a reply to Debtor's opposition, or a reduction of \$2,000.00 in fees for preparing the
9 reply.

10 YCCS's counsel claimed aggregate fees of \$7,000.00 for 14 hours of work in the
11 August 8, 2019 Bill related to its Reply to Debtor's Opposition to Relief from Stay Motion
12 and preparing for the relief from stay motion hearing, which includes fees beyond the 8.3
13 hours for \$4,150.00 for preparing the Reply. As discussed above, Debtor proposed
14 reducing the fees for work on the relief from stay motion by \$2,000.00 representing 4.0
15 hours of work. The court agrees with Debtor's objection that the fees for these tasks are
16 excessive and unreasonable and sustains the objection to reduce the fees for work on
17 the Reply by \$2,000.00. The court also reduces the fee by an additional \$3,000.00, 6.0
18 hours of work, because the fees for the 14.0 hours of time spent on preparing the Reply
19 To Debtor's Opposition To Relief From Stay Motion, ECF 136, and for preparing for the
20 relief from stay hearing on July 17, 18, 19, 20, 21, 22, 27, and 29, 2019, are excessive
21 and unnecessary in light of the lack of complexity of the issues presented by the dispute
22 over YCCS's relief from stay motion and the repetitive nature of the Relief from Stay
23 Reply, ECF 136. As noted earlier, the Relief from Stay Reply, including a client
24 declaration, was only twelve pages, including a three-page client declaration, and cited
25 three cases. The Reply primarily included citations to other pleadings on the case
26 docket, including YCCS's Objection to Debtor's Lease Motion, ECF 114. Debtor argued
27 in opposition to YCCS's stay relief motion that the motion should be denied because
28 there was a sufficient equity cushion of 28% in the property to adequately protect YCCS's

1 lien. YCCS in its reply made two simple points: (i) that the equity cushion would decline
2 to 18% due to accrual of its attorneys' fees and interest during this case, which is below
3 the deemed adequate protection of 20% set forth in *In re Mellor*, 734 F.2d 1396 (9th Cir.
4 1984), and (ii) that Debtor could not confirm a reorganization plan if he could not pay
5 YCCS's loan in full by the maturity date of December 1, 2019. Even if YCCS's math was
6 correct, an equity cushion of 18% is not per se lack of adequate protection under *In re*
7 *Mellor*. Moreover, YCCS's argument that Debtor could not confirm a reorganization plan
8 if he could not pay its loan by the maturity date of December 1, 2019 is legally incorrect.
9 Debtor *could* confirm a plan by paying off the loan at some point, though Debtor no
10 longer could modify the terms of the loan because the loan was on his principal residence
11 when the bankruptcy case was commenced. Nevertheless, it is unreasonable for the
12 court to shift fees from YCCS to Debtor for YCCS's counsel charging excessive fees of
13 \$7,000 for 14 hours of work related to preparing a reply pleading and arguing the motion
14 to make these two simple points. The fees for preparing the reply and the oral argument
15 for the hearing included numerous entries for "communicating" with the client, "review
16 and analyze cases" (of which there were three), preparing the oral argument and "revise"
17 oral argument, which fees are excessive given the simple nature of the motion and reply.
18 The court determines that of the 14.0 hours of time spent on preparing the reply and
19 preparing for the hearing, a reduction of \$3,000.00 for 6.0 hours of work is reasonable.
20 This disallowance does not affect the over \$6,000 for preparing the motion itself not
21 objected to by Debtor, nor does it affect the 3.00 hours or \$1,500 for appearing at the
22 hearing. Accordingly, the court sustains Debtor's objections and its own objections to the
23 fees claimed on this bill and only allows fees totaling \$9,305.50.

24 ***The November 14, 2019 Bill.*** The November 14, 2019 Bill from YCCS's counsel
25 requests \$8,675.00 in fees and expenses. Debtor objected to \$2,625.00⁵ in fees and

26 _____
27 ⁵ Debtor's Fee Objection inadvertently stated the amount of the objections to this bill as \$2,650 in its
28 chart, ECF 289 at 10, but the substance of Debtor's objections indicates aggregate objections to fees of
\$2,625 on this bill. ECF 289 at 22 ("Based on the foregoing, Debtor seeks a reduction in this invoice of
\$2,625.").

1 expenses related to YCCS' Supplemental Points and Authorities RE: Relief from Stay,
2 ECF 175, communications, and administrative charges.

3 The court agrees with Debtor that the fees of \$1,750.00 for 3.50 hours of work by
4 counsel in preparing YCCS's Supplemental Points and Authorities RE: Relief from Stay,
5 ECF 175, are excessive because counsel had already charged \$10,000.00 for 20 hours
6 of work for preparing YCCS's original motion for relief from stay in this case and its initial
7 reply to Debtor's opposition to the original stay relief motion. Further, the supplemental
8 memorandum consisted of four pages of argument, citations to 2 cases, and a one-page
9 declaration. Most of the arguments in the supplemental memorandum repeated the
10 arguments of the original motion and reply. Debtor objects to these fees as excessive
11 and unreasonable, and argues that only fees of \$875.00 for 1.75 hours of work are
12 reasonable. The court agrees that the fees for this work should be reduced to \$875.00
13 for 1.75 hours of work.

14 Debtor objected to \$1,100.00 in fees for 2.20 hours of work relating to
15 communications of counsel with YCCS, and the court agrees with Debtor's objections
16 because it is not reasonable for counsel to communicate with the client on each and
17 every docket entry in the case, and the communications which are the subject of Debtor's
18 objections do not directly relate to YCCS's lien, and it is thus unreasonable to claim
19 \$50.00 (0.10 hour) or \$75.00 (0.15 hour) in fees to communicate with the client each and
20 every time there is a filing in the Debtor's bankruptcy case. Debtor's objections have
21 merit because YCCS has not demonstrated the necessity of the objected-to
22 communications in order to protect YCCS's lien interest for which these fees are claimed.

23 Debtor also objects to additional charges totaling \$650.00, consisting of: \$150.00
24 for paralegal work relating to a stipulation to continue hearing on motion for relief from the
25 automatic stay; \$150.00 for a "J&J filing and service fee" relating to this document;
26 \$150.00 for paralegal work relating to a limited opposition to Debtor's motion to obtain
27 credit under 11 U.S.C. § 364(c)(2); a \$150.00 "J&J filing and service fee" relating to this
28 document, and \$50.00 for an "up-charge" for CourtCall on November 14, 2019. The

1 court agrees with Debtor's objections to the additional charges relating to the paralegal
2 work and the "J&J filing and service fee" because these charges are insufficiently
3 explained and substantiated as to how they were necessary to protect YCCS's lien, and
4 as discussed previously, there is no explanation of the identity and qualification of the
5 paralegal or the filing and service party performing these tasks. The court overrules
6 Debtor's objection to the up-charge for CourtCall because the CourtCall charge of \$50.00
7 was incurred for counsel to appear telephonically for a hearing on November 14, 2019.

8 The court therefore sustains Debtor's objections to the fees on this bill, except as
9 to the \$50.00 CourtCall charge, and determines that only the amount of \$6,100.00 in fees
10 requested on this bill by YCCS's counsel is reasonable.

11 ***The December 26, 2019 Bill.*** The December 26, 2019 Bill from YCCS's counsel
12 requests \$3,262.00 in fees and expenses. Debtor objected to \$875.00 in fees and
13 expenses related to communications and administrative charges. Debtor objected to
14 \$525.00 in fees for 1.05 hours of work relating to communications of counsel with YCCS,
15 and the court agrees with Debtor's objections because it is not reasonable for counsel to
16 communicate with the client on each and every docket entry in the case. The
17 communications which are the subject of Debtor's objections do not directly relate to
18 YCCS's lien, and it is thus unreasonable to claim \$50.00 (0.10 hour) or \$75.00 (0.15
19 hour) in fees to communicate with the client each and every time there is a filing in the
20 Debtor's bankruptcy case. Debtor's objections have merit because YCCS has not
21 demonstrated the necessity of the communications by counsel in order to protect its lien
22 interest for which these fees are claimed.

23 Debtor also objects to additional charges totaling \$350.00, consisting of: \$50.00
24 for a "duplicate up-charge" for CourtCall; \$150.00 for paralegal work relating to a limited
25 opposition to Debtor's motion to obtain credit under 11 U.S.C. § 364(c)(2), and another
26 \$150.00 for paralegal work relating to a supplemental declaration of counsel for YCCS
27 and the client representative regarding YCCS's motion for relief from the automatic stay.
28 The court agrees with Debtor's objections to the additional charges relating to the

1 paralegal work because the charges are insufficiently explained and substantiated as to
2 how they were necessary to protect YCCS's lien, and as discussed previously, there is
3 no explanation of the identity and qualification of the paralegal performing the task. The
4 court sustains Debtor's objection to the "duplicate up-charge" for CourtCall because the
5 CourtCall charge of \$50.00 for counsel to participate in the court's hearing on November
6 14, 2019 was already claimed and allowed on the prior bill dated November 14, 2019.

7 The court sustains Debtor's objections to fees and charges totaling \$875.00 and
8 allows \$2,387.00 in fees and costs on this bill from YCCS's counsel as reasonable.

9 **The February 24, 2020 Bill.** YCCS's counsel's February 24, 2020 Bill requests
10 \$9,602.70 in fees and expenses. Debtor objected to \$2,033.30 in fees and expenses on
11 this bill related to communications and administrative charges. Debtor objected to
12 \$1,050.00 in fees for 2.10 hours of work relating to communications of counsel with
13 YCCS, and the court agrees with Debtor's objections that the fees are unreasonable
14 because it is not reasonable for counsel to communicate with the client on each and
15 every docket entry in the case, and the communications which are the subject of Debtor's
16 objections do not directly relate to YCCS's lien. Thus, it is unreasonable to claim \$50.00
17 (0.10 hour) or \$75.00 (0.15 hour) in fees to communicate with the client each and every
18 time there is a filing in the Debtor's bankruptcy case. Debtor's objections have merit
19 because YCCS has not demonstrated the necessity of the communications by its counsel
20 in order to protect its lien interest for which these fees are claimed. The fees for
21 objected-to billing entries were not for work directly related to protecting YCCS's lien.

22 Debtor also objects to additional charges totaling \$600.00, consisting of: \$150.00
23 for paralegal work relating to an opposition to Debtor's motion for authority to obtain
24 credit under 11 U.S.C. § 364(c)(2); \$150.00 for a "J&J filing and service fee" relating to
25 this document; \$150.00 for paralegal work relating to YCCS's opposition to Debtor's
26 motion for order employing real estate broker, and a \$150.00 "J&J filing and service fee"
27 relating to this document. The court agrees with Debtor's objections to the additional
28 charges relating to the paralegal work and the "J&J filing and service fee" because these

1 charges are insufficiently explained and substantiated as to how they were necessary to
2 protect YCCS's lien, and as discussed previously, there is no explanation of the identity
3 and qualification of the paralegal or the filing and service party performing these tasks.

4 Debtor also objects to additional charges totaling \$383.00 for transcript fees.
5 There is no reasonable basis for \$383.00 in transcript fees as there is no explanation why
6 transcripts of court hearings on December 10, 2019, January 28, 2020 and February 5,
7 2020 were necessary to protect YCCS's lien interest such as for use on an appeal, for
8 example.

9 Accordingly, the court sustains Debtor's objections to fees and charges claimed by
10 YCCS's counsel in the amount of \$1,050.00 for communications, \$600.00 for additional
11 charges relating to paralegal work and a filing and service agency, and \$338.00 for
12 transcript fees.

13 The court further reduces the fees requested on this bill by \$1,500.00 for 3 hours
14 of work performed on January 15 and 31, 2020 in connection with YCCS's oppositions to
15 Debtor's Status Report, ECF 234, and Application to Employ Broker, ECF 260. As
16 mentioned above, YCCS's Counsel noted in his February 7, 2019 billing entry,
17 "Communications with client [. . .] The Unlikely Success of a Motion to Lift the Automatic
18 Stay to Pursue YCCS Foreclosure." This case was never more than a simple relief from
19 stay action by a second lien mortgage holder, where the liens on Debtor's residence were
20 protected by a significant equity cushion, and Debtor hoped to refinance his residence
21 instead of losing the home. Debtor's efforts to "take out" YCCS's loan by satisfaction of
22 its claim through a sale or refinancing were diligent and reasonable in the court's view.
23 *See Order Granting Debtor's Motion for Order Authorizing Debtor to Obtain Credit*
24 *Pursuant to 11 U.S.C. § 364(c)(2)*, ECF 214. It was not necessary for YCCS to file an
25 "opposition" to Debtor's status report, which was not a pleading requiring any response,
26 and while YCCS could reasonably oppose a sale motion which adversely affected its lien
27 interest, filing an opposition to the broker's application was not necessary to protect
28 YCCS's lien interest as the employment of the broker was needed to market the property,

1 which the parties did not dispute was valued at more than the liens. It is not reasonable
2 for a court to reward a creditor like YCCS for aggressive litigation stances that created
3 unnecessary obstacles in response to Debtor's reasonable efforts to realize value of the
4 assets of the bankruptcy estate to pay creditors. *In re 1910 Partners*, 2017 WL 6273314,
5 slip op. at *7. Its foreclosure sale having been delayed by Debtor's bankruptcy case,
6 YCCS advocated strenuously for relief from stay and a sale of the property from the
7 outset, but upon Debtor's motion for authority to engage a broker, YCCS objected. ECF
8 260. YCCS's objections to every act of the Debtor that might lead to a payout of YCCS
9 or a sale of the property were excessive and unnecessary in light of the fact that YCCS
10 and the court were well aware of the equity in the home from this case's inception. The
11 court accordingly reduces the legal fees requested by YCCS for its counsel by an
12 additional \$1,500.00 on the February 2020 bill because the actions for which fees are
13 requested were not necessary to protect its lien interest.

14 **CONCLUSION**

15 Debtor has already paid \$20,731.99 to YCCS for its legal fees and expenses
16 through the escrow of his loan refinancing transaction. Accordingly, YCCS is entitled to
17 an award of the remaining outstanding balance of the allowed reasonable attorneys' fees
18 and expenses of \$35,780.40, which balance is \$15,048.41. For the foregoing reasons,
19 the court determines the following:

- 20 1. Debtor's objections to the reasonableness of legal fees and costs of YCCS's
21 counsel are sustained, and the court disallows additional fees and costs as
22 discussed herein.
- 23 2. YCCS is entitled to reasonable attorneys' fees and costs in the amount of
24 \$35,780.40 pursuant to 11 U.S.C. § 506(b).
- 25 3. Having already paid YCCS reasonable attorneys' fees and costs in the amount
26 of \$20,731.99, Debtor is liable to YCCS for the outstanding balance of allowed
27 reasonable attorneys' fees and costs in the amount of \$15,048.41.

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A separate final order consistent with this Memorandum Decision is being filed and entered concurrently herewith.

IT IS SO ORDERED.

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Date: May 28, 2020



Robert Kwan
United States Bankruptcy Judge