

**Dated: December 04, 2023**  
**The following is ORDERED:**



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

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**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT**  
**WESTERN DISTRICT OF TENNESSEE**  
**WESTERN DIVISION**

In re  
**Terri Kaye Erby**  
Debtor

Case No. 23-20919  
Chapter 13

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**OPINION AND ORDER ON CHAPTER 13 TRUSTEE'S MOTION**  
**TO DETERMINE FUNDS DISTRIBUTION**

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This matter is before the Court on the Chapter 13 Trustee's Motion to Determine Funds Distribution [DE 52], seeking the Court's determination of how remaining funds on hand with the trustee are to be disbursed, and the Response to Trustee's Motion to Determine Funds Distribution filed by Debtor's attorney, Ms. Janet Lane. [DE 55]

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings

subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel and the Chapter 13 trustee, considered all of the evidence and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby approves the application for compensation of Debtor’s attorney, Ms. Janet Lane, granting Ms. Lane an allowed administrative expense in the amount of \$1,200, and authorizing the Chapter 13 trustee to disburse the unpaid \$1,200 to Ms. Lane.

**DISCUSSION OF BACKGROUND FACTS AND  
PROCEDURAL HISTORY OF THE CASE**

This case began with the Debtor’s execution of attorney Jane Lane’s fee agreement and the filing of Debtor’s Chapter 13 bankruptcy petition, which both took place on February 22, 2023. Debtor’s Chapter 13 case proceeded down the usual path, with the required documentation and forms submitted, as well as a motion and accompanying order for an extension of the automatic stay. [DE 7, 20] Once the Chapter 13 plan was filed, there were objections to confirmation of the plan [DE 23, 28] and the meeting of creditors was held. [DE 26] Debtor, represented by Ms. Lane, commenced an adversary proceeding against one of her creditors and obtained a default judgment in that case. [Adv. Proc. No. 23-00052] Despite the filings and orders entered, however, the Debtor’s Chapter 13 bankruptcy case was dismissed on motion of the Chapter 13 trustee, prior to confirmation of her plan.

At the time of the dismissal, the Chapter 13 trustee had approximately \$16,378 on hand. [DE 52] From these funds the trustee paid \$313 to the Clerk of Court for filing fees and, pursuant

to local practice that “[s]hould a Chapter 13 case be dismissed prior to confirmation, the presumptively reasonable [attorney] fee shall be \$1,200,”<sup>1</sup> *id.*, the trustee held approximately \$1,200 earmarked for payment to Debtor’s attorney and refunded \$14,696.89 to the Debtor. *Id.* After receiving her refund from the trustee, Debtor contacted the trustee and requested a refund of the remaining \$1,200 - disputing the \$1,200 payment to her attorney - *id.*, and the trustee filed her Motion seeking the Court’s direction. Ms. Lane filed a Response [DE 55] to the trustee’s Motion contending that no evidence nor argument has been submitted to rebut the presumptive reasonableness of the established \$1,200 “no-look” fee, and set forth an itemized billing statement of her time and efforts expended on Debtor’s case. Ms. Lane, however, is only seeking an attorney’s fee of \$1,200 – the “no-look” fee amount that is customary in this jurisdiction when a Chapter 13 case is dismissed prior to confirmation.

The Court held a hearing on October 25, 2023, and heard the statements of the Chapter 13 trustee and the arguments of Ms. Lane. Ms. Lane submitted her Fee Agreement with the Debtor and disclosed that pursuant to the agreement, Debtor paid to Ms. Lane \$600 prior to filing the Chapter 13 petition. [Chapter 13 Bankruptcy Fee Agreement Exh. A] The Agreement provides, in pertinent part, as follows:

For the following services, Client agrees to pay a fee of \$3,800, to be paid through the bankruptcy plan. In the event there is no secured debt to be paid in the Plan, the fee is \$3,000. Client understands that a \$600 attorney fee will be paid prior to filing. . . .

The attorney fee described above includes, but is not limited to:

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<sup>1</sup> It is also an established custom in this jurisdiction that, if a Chapter 13 plan reaches successful confirmation, “[t]he presumptively reasonable debtor’s attorneys’ fee in Chapter 13 cases shall be \$3,800 and shall cover all reasonably necessary services and expenses provided by debtor’s attorney from the outset of the Chapter 13 case,” with the option of debtor’s attorney to later file an itemized fee application requesting approval of additional fees when warranted. Proposal Pertaining to Debtor’s Attorneys’ Fees in Chapter 13 Cases as adopted by the Bankruptcy Judges in the Western District of Tennessee via e-mail dated March 6, 2017. A “no look” fee arrangement for debtors’ counsel filing Chapter 13 cases is typical in many jurisdictions.

- (a) Analysis of the financial situation, and rendering advice and assistance to client in determining whether to file a petition under Title 11 U.S.C.
- (b) Preparation and filing of the petition, schedules, statement of affairs and other documents required by the court.
- (c) Representation of the client at the meeting of creditors. . . .

Should Client's plan be terminated prior to the payment in full, Client hereby directs the Chapter 13 Trustee to disburse any funds in its hands to Janet M. Lane, Attorney, and appoints Janet M. Lane, Attorney, his or her attorney in fact to endorse Client's name to said check, deposit said funds in its escrow account, pay itself the balance of any fees due and distribute to Client any excess funds. . . .

Janet M. Lane, Attorney, is entitled to her full fee. Client understands that Janet M. Lane, Attorney, is always entitled to a reasonable fee for her services regardless of any quoted fee. . . .

Chapter 13 Bankruptcy Fee Agreement, Exh. A.

The Debtor's Disclosure of Compensation of Attorney for Debtor [DE 12] states that Ms. Lane agreed to accept \$3,800 for her services and that she was paid \$600 prior to filing the Chapter 13 petition, resulting in a balance due from the Debtor (should the case reach completion) of \$3200. [DE 12] In her Response to the trustee's Motion, Ms. Lane itemized her time expended on this case as follows:

- 2/22/23 – Initial meeting with Debtor to prepare emergency Chapter 13 filing. 1 hour
- 2/22/23 – Notify Wilson & Associates of the filing and fax them the Notice of Case Filing. .5 hour
- 2/24/23 – Prepare and file Verified Motion to Extend the Automatic Stay. .5 hour
- 2/27/23 – Prepare and file completion of schedules and Plan. 2.5 hours
- 3/1/23 – Letter to debtor regarding plan payment and Meeting of Creditors. 1 hour
- 3/1/23 – Prepare ID, Tax, and payroll documents required by the Trustee and submit. .5 hour
- 3/21/23 – Prepare Order on VM to Extend the Stay and submit to the Trustee. .5 hour
- 4/4/23 – Attend Meeting of Creditors. 1 hour
- 4/6/23 – Obtain proof of insurance from debtor and submit to Progressive. .5 hour
- 5/2/23 – Numerous email communications with mortgage creditor, Selene Finance, regarding corrections needed on Proof of Claim. 1 hour
- 5/8/23 – After communications with and at the request of Debtor, prepare and file Complaint to Determine Extent/Validity of Lien. 3 hours
- 5/9/23 – Mail Summons and Notice of Hearing regarding the Complaint and filed

Certificate of Service. .5 hour  
6/9/23 – Prepare and file Motion for Default Judgment. .5 hour  
7/19/23-- Court hearing on Adversary Proceeding. 1 hour  
7/20/23 – Prepare and file Motion for Entry of Default. .5 hour  
7/20/23 – Prepare and file an Answer to Objection to Confirmation filed by second mortgage holder Real Time Resolutions. 1 hour  
8/10/23 – Prepare and submit Order Granting Motion for Default. 1 hour  
10/16/23 – Compose this Response to the Trustee’s Motion. 1 hour

Ms. Lane’s timesheet evidences a total of 17.5 hours expended, and she asserts that her hourly billing rate is \$150, amounting to fees of \$2,625 if Debtor was billed at an hourly rate. [DE 55] Ms. Lane also stated to the Court that she has been practicing law for more than 20 years.

It is against this factual backdrop that the Court now considers Ms. Lane’s request for the customary \$1,200 fee paid when a Chapter 13 plan fails to reach successful confirmation.

### **LAW AND ANALYSIS**

“No-look” or presumptive fees, common in many jurisdictions, are flat fee arrangements that are presumed to be reasonable attorney fees based on customary hourly rates and the general amount of expected work required by an average Chapter 13 case – in essence, a predetermined lodestar amount. Attorneys who agree to charge a flat fee according to a no-look fee structure are not required to file formal fee applications. *See In re Spurlock*, 642 B.R. 269, 276-77 (Bankr. S.D. Ohio 2022) (collecting cases). While this Court has no standing order or local rule regarding its no-look fee structure in place at this time, it recognizes the customary no-look \$1,200 fee for Chapter 13 cases that are dismissed prior to plan confirmation and notes that the Court has sanctioned this local practice by unofficial judicial determination.<sup>2</sup> Ms. Lane has partially incorporated the no-look fee structure into her Chapter 13 fee agreement. The agreement, however, does not specify the no-look amount of the attorney fee due in the event the case is dismissed prior

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<sup>2</sup> Proposal Pertaining to Debtor’s Attorneys’ Fees in Chapter 13 Cases as adopted by the Bankruptcy Judges in the Western District of Tennessee via e-mail dated March 6, 2017.

to confirmation of the plan, but appoints Ms. Lane as Debtor's attorney-in-fact to receive any funds on hand with the Chapter 13 trustee in the event the case is dismissed, and to withhold the amount of any attorney fees due before disbursing the remaining funds to the Debtor. Chapter 13 Bankruptcy Fee Agreement, Exh. A.

It is well established, however, that “[t]he statutory scheme for the payment of attorney’s fees in [C]hapter 13 cases outlined in the Code is not preempted or supplanted by the . . . attorney’s . . . contract with the debtor.” *In re Rogers*, 519 B.R. 267, 272 (Bankr. E.D. Ark. 2014). Because the Debtor in this case has essentially objected to disbursement of the customary no-look fee, the Court turns to “the symbiotic application” of Bankruptcy Code §§ 1326(a)(2), 503(b) and 330(a)(4)(B). *Id.* Application of these Code sections “result[s] in judicial scrutiny, approval, and allowance of attorney’s fees, a consequence wholly consistent with judicial review and control of attorney compensation in [C]hapter 13 bankruptcy cases.” *Id.*

In her Motion the Chapter 13 trustee points to the provisions of Bankruptcy Code § 1326(a)(2), which provides that pre-confirmation plan payments on hand be disbursed by the trustee as follows:

If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors . . . to the debtor, *after deducting any unpaid claim allowed under section 503(b)*.

11 U.S.C. § 1326(a)(2) (emphasis added). Section 503(b) allows for administrative expense claims to be paid upon application and after notice and a hearing for, among other things, “compensation and reimbursement awarded under section 330(a). . . .” 11 U.S.C. § 503(b)(2).<sup>3</sup>

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<sup>3</sup> Although Ms. Lane did not file an application pursuant to § 503(b), the Court will consider her detailed Response to Trustee’s Motion to Determine Funds Distribution [DE 55] as such.

This Court has previously scrutinized an application for compensation under Bankruptcy Code § 330(a) in the case of *In re Clear the Way Supportive Housing Corp.*, Case No. 20-24352 (Bankr. W.D. Tenn. May 5, 2021) (*see* D.E. 143), and the Court hereby adopts and incorporates its conclusions of law in that case as follows.

Section 330(a)(3) of the Bankruptcy Code codifies the criterion and enumerates several factors for the Court’s guidance when determining the amount of reasonable compensation for attorneys, considering the nature, extent and value of the services provided, which include, but are not limited to: (1) the time spent; (2) the rates charged; (3) whether the services were necessary to the administration of, or beneficial at the time rendered toward completion of the case; (4) whether the services were performed within a reasonable amount of time commensurate with the complexity and nature of the issue or task; (5) whether the attorney has skill and experience in the bankruptcy field; and (6) whether the compensation is reasonable based on the customary fees charged by comparably skilled practitioners in non-bankruptcy cases. 11 U.S.C. § 330(a)(3).

It is well established that bankruptcy courts within the Sixth Circuit perform a “lodestar” analysis to determine the reasonableness and necessity of a § 330(a) application for attorney fees and expenses.<sup>4</sup> *Boddy v. United States Bankr. Ct., Western Dist. of Kentucky (In re Boddy)*, 950 F.2d 334, 338 (6<sup>th</sup> Cir. 1991) (“At a minimum . . . the bankruptcy courts must expressly calculate the lodestar amount when determining reasonable attorney’s fees.”). “Whether to award fees and, if so, the reasonable amount of the fees are issues committed to the sound discretion of the trial court.” *In re Scarlett Hotels, LLC*, 392 B.R. 698, 700 (B.A.P. 6<sup>th</sup> Cir. 2008) (citation omitted).

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<sup>4</sup> The Court also notes that in class action cases, or cases with a common fund, the court may also employ a “percentage of fund” analysis. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269 (6<sup>th</sup> Cir. 2016), *reh’g. denied*. The percentage of fund analysis is inapplicable to the case at bar.

The burden of proof rests on the applicant to justify the fees requested. *In re New Boston Coke Corp.*, 299 B.R. 432, 438 (Bankr. E.D. Mich. 2003) (citations omitted).

The first step in the lodestar analysis is determine a reasonable hourly rate. “A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.” *In re Williams*, 357 B.R. 434, 438-9 (B.A.P. 6<sup>th</sup> Cir. 2007) (citations omitted). The court next considers the reasonableness of the lawyer’s hours expended. *Id.* at 439 (citation omitted). The court must then calculate the lodestar amount by “multiplying the attorney’s reasonable hourly rate by the number of hours reasonably expended.” *In re Boddy*, 950 F.2d at 337 (citations omitted). The *Boddy* Court went on to note that “[t]he bankruptcy court also may exercise its discretion to consider other factors such as the novelty and difficulty of the issues, the special skills of counsel, the results obtained, and whether the fee awarded is commensurate with fees for similar professional services in non-bankruptcy cases in the local area.” *Id.* at 338 (citations omitted).

Even when, as in this case, the Court is reviewing an application for a flat fee, “the fee must be reasonable, and the work must be beneficial to the Debtor’s completion of [the bankruptcy case].” *In re Pursley*, 577 B.R. 289 (Bankr. E.D. Tenn. 2017) (Court determined the reasonableness of flat fee application submitted by Chapter 13 debtor’s attorney). Guided by the factors set forth by Congress and the Sixth Circuit in the *Boddy* decision, the Court will now discuss those factors relevant to this case<sup>5</sup> to evaluate the reasonableness of the \$1,200 fee requested by Ms. Lane.

(i) THE HOURLY RATE CHARGED

Ms. Lane’s hourly rate is not at issue because she is seeking the customary \$1,200 no-look, flat fee amount for Chapter 13 cases dismissed prior to plan confirmation. In its consideration of

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<sup>5</sup> The Court notes that some of the factors listed are discussed and subsumed by the four factors discussed herein, and discussion will not be duplicated for purposes of the Court’s analysis.



the reasonableness of the flat fee requested by Ms. Lane, however, the Court notes that Ms. Lane's itemized statement reflects an hourly rate of \$150 – a very modest amount and well within the customary rate in this jurisdiction for attorneys with Ms. Lane's considerable practice experience and skills in bankruptcy law. The Court finds that Ms. Lane's hourly rate is reasonable and therefore a practical guideline for the Court's determination of the reasonableness of the requested \$1,200 fee. The Court's finding under this factor weighs in favor of approval of the \$1,200 fee requested.

(ii) THE TIME SPENT AND REASONABLENESS OF THE TIME EXPENDED

Ms. Lane's time entries indicate that she has expended 17.5 hours on this case up to this point in the case administration. The Court notes that Ms. Lane categorized this case as an "emergency filing" and she acted accordingly in notifying a creditor, completing the schedules and filing a verified motion to extend the automatic stay, all within a few days of commencement of the case. Ms. Lane's most significant time entry is for three hours during which she communicated with the Debtor and prepared and filed an adversary proceeding to determine the extent and validity of a lien. The Court notes that, unlike Ms. Lane, many bankruptcy attorneys seek additional fees - above and beyond the no-look fee - to pursue an adversary proceeding on behalf of their debtor clients.

Based on Ms. Lane's time entries set forth above, the Court finds that Ms. Lane reasonably expended 17.5 hours managing the Debtor's case and adversary proceeding, and this factor weighs in favor of the Court's approval of the \$1,200 fee requested.

(iii) WHETHER THE SERVICES WERE NECESSARY TO THE ADMINISTRATION OF, OR BENEFICIAL AT THE TIME RENDERED TOWARD COMPLETION OF, THE CASE

The Court now considers whether Ms. Lane's endeavors as Debtor's counsel were necessary and beneficial for the administration of this case.<sup>6</sup> Upon review of Ms. Lane's time entries and the Court's docket for this case, the Court finds that Ms. Lane's efforts and work on this case were both necessary and beneficial. Ms. Lane filed all of the required documentation to complete the filing, submitted the Chapter 13 plan, attended the meeting of creditors, successfully defended a creditor's objection to confirmation of the plan, and obtained a default judgment in Debtor's adversary proceeding to determine the validity of a lien, resulting in the reclassification of a second mortgage as a general unsecured claim.<sup>7</sup> See *Erby v. Real Time Resolutions, Inc.*, Adv. Pro. No. 23-00052.

The Court recognizes that the Debtor's Chapter 13 plan did not reach confirmation prior to dismissal of the bankruptcy case, but the Court nevertheless finds that Ms. Lane's diligent efforts on behalf of the Debtor and the bankruptcy estate were both necessary and beneficial at the time they were rendered. The Debtor's case was dismissed on a motion of the Chapter 13 trustee [DE 29] alleging that sufficient grounds existed to warrant dismissal; there is no evidence, and the Court finds no reason that indicates the dismissal was a result of any actions – or inactions – attributed to Ms. Lane. In many instances a Chapter 13 debtor nevertheless realizes a benefit from a bankruptcy case that does not reach successful completion. Considering the circumstances set forth

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<sup>6</sup> Although “§ 330 requires a determination that the services were ‘reasonably likely to benefit the estate,’ there is no requirement that the services at issue resulted in an actual benefit to the estate.” *In re New Boston Coke Corp.*, 299 B.R. 432, 439 (Bankr. E.D. Mich. 2003), quoting 2 Lawrence P. King, *Collier on Bankruptcy*, § 330.4[5][c] (15<sup>th</sup> ed. 2003).

<sup>7</sup> The Order Granting Motion for Default Judgment, however, provides that in the event the bankruptcy case is dismissed, the unsecured claim will be restored to fully secured status. Adv. Proc. 23-00052, DE 14.

herein, the Court finds that this factor weighs in favor of the reasonableness of the \$1,200 fee for Ms. Lane's work on this case.

(iv) NOVELTY AND COMPLEXITY OF THE CASE

After a review of the record in this case, the Court finds that this case proceeded along a conventional and familiar Chapter 13 path, presenting no novel nor particularly complex issues. Nor was this case effortless. The Court therefore finds that this factor is inconsequential in persuading the Court one way or the other as the reasonableness of the fee requested.

**CONCLUSION**

Based on the facts presented and examining the nature, extent and value of Ms. Lane's legal services, the Court finds that Ms. Lane has carried her burden of proof<sup>8</sup> in support of her application for compensation in the amount of \$1,200, the no-look attorney fee customary in this jurisdiction for work on Chapter 13 cases that do not reach confirmation. Ms. Lane's fee application is deemed to be reasonable under 11 U.S.C. § 330(a)(3) and accordingly approved as an allowed administrative expense claim pursuant to 11 U.S.C. §503(b). The Chapter 13 trustee is hereby ordered to disburse the \$1,200 on hand to Ms. Lane for her services on behalf of the Debtor and the bankruptcy estate.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

Ms. Terri Kaye Erby  
7661 Brookbriar Cove  
Memphis, TN 38125

Ms. Janet Lane, Esq.  
2299 Union Avenue  
Memphis, TN 38104

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<sup>8</sup> The Court notes that the Debtor failed to appear at the hearing on this matter and presented no evidence to rebut the presumptive reasonableness of the \$1,200 no-look fee.

Ms. Jennifer K. Cruseturner, Esq.  
Chapter 13 trustee  
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