

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JANUARY 30, 2019
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-11605](#)-A-7 **IN RE: BLANK EXTREME ENTERTAINMENT, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-21-2018 [[14](#)]

JAMES SALVEN/MV
JOEL WINTER

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salve, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$700 and reimbursement of expenses in the amount of \$236.80.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

James Salven's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely

oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$700 and reimbursement of expenses in the amount of \$236.80.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

2. [18-14415](#)-A-7 **IN RE: ANTONIO LOPEZ**
[FW-2](#)

MOTION TO EMPLOY JOHN B. KEATING AS SPECIAL COUNSEL AND/OR
MOTION TO EMPLOY LINDA DEOS AS SPECIAL COUNSEL , MOTION TO
EMPLOY CRAIG DAVIS AS SPECIAL COUNSEL
1-4-2019 [[24](#)]

JAMES SALVEN/MV
JEFFREY ROWE
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Application: Retroactive Employment of Special Counsel

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved

Order: Prepared by the applicant pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

FACTS

In 2016, the Antonio Alinis Lopez suffered damages as a result of violations of the Fair Credit Reporting Acts by Pre-Employ.com.

In turn, he employed Deos Law, P.C. ("Deos") and John B. Keating ("Keating") to represent him connection with those violations. Those firms associated the Law Offices of Craig Davis ("Davis"). A 40% plus costs contingency fee agreement was entered. Prior to trial a \$220,000 settlement was reached.

But before the settlement could be effectuated, Lopez filed a chapter 7 bankruptcy. James E. Salven was appointed the trustee.

Salven seeks to employ under 11 U.S.C. § 327(e), 328 on the same terms as Lopez did.

DISCUSSION

In a previous case, this court has set forth the standards for retroactive approval of special counsel under § 327(e) of the Bankruptcy Code and Ninth Circuit decisional law:

The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir.1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir.1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi-pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

Second, the applicant must show "exceptional circumstances" that justify *nunc pro tunc* approval. *Atkins*, 69 F.3d at 974; *Mehdipour*, 202 B.R. at 479. "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must ... (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Atkins*, 69 F.3d at 975-76; accord *Occidental Fin. Grp.*, 40 F.3d at 1062; *In re Gutterman*, 239 B.R. 828, 830 (Bankr.N.D.Cal.1999).

In re Grant, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014).

For the reasons discussed in the application, the court will approve the employment of special counsel. Special counsel satisfies the standards of § 327(e). Further, special counsel has shown exceptional circumstances that justify retroactive employment.

The order shall (A) append the contingent fee agreement offered in support of the motion; (B) strike paragraphs 10-12 and 19-20; (C) indicate an effective date as of the date of the petition (October 30, 2018); and (D) indicate that employment is under 11 U.S.C. §§

327(e), 328. The order shall be prepared by Fear Waddell, P.C. and approved as to form by Deos, Keating or Davis.

3. [10-16018](#)-A-7 **IN RE: JOHN/TINA SALATINO**
[TGM-3](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
1-2-2019 [[35](#)]

PETER BUNTING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Trudi Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,707 and reimbursement of expenses in the amount of \$77.70.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Trudi Manfredo's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,707 and reimbursement of expenses in the amount of \$77.70.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

4. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
GENERAL PARTNERSHIP
[FW-1](#)

MOTION TO EMPLOY PETER L. FEAR AS ATTORNEY(S)
1-2-2019 [[22](#)]

JAMES SALVEN/MV
JACOB EATON

Final Ruling

Application: Approval of Employment

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the estate for indemnification,

arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

5. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
GENERAL PARTNERSHIP**
[LKW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2019 [[35](#)]

CREAM OF THE CROP AG SERVICE,
INC./MV
JACOB EATON
LEONARD WELSH/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Pending state-court litigation described in the motion

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6)

whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Cream of the Crop AG Service, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and

appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

6. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[FW-12](#)

MOTION FOR ORDER AUTHORIZING DISPOSAL OF PATIENT RECORDS
1-2-2019 [[960](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Final Ruling

Motion: Authorize Disposal of Patient Records

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil Minute Order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 351 of the Bankruptcy Code authorizes the trustee to destroy patient records if it complies with several noticing requirements, including:

(I) publication of notice in one or more "appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider . . . by the date that is 365 days after the date of that notification, the trustee will destroy the patient records;" 11 U.S.C. § 351(1)(A);

(II) "during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records;" 11 U.S.C. § 351(1)(B);

(III) "[i]f, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate

Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph; 11 U.S.C. § 351(2)."

The trustee contends that he has complied with all the above noticing requirements and seeks authority to destroy the records not claimed by patients or insurance providers and not allowed to be deposited with federal agencies pursuant to 11 U.S.C. § 351(3), which prescribes that "[i]f, following the [above notice periods] patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by-- (A) if the records are written, shredding or burning the records; or (B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved."

Having considered the motion's well-pleaded facts, the court concludes that the movant has satisfied the notice requirements of Section 351(1)(A) and (B) and has satisfied the deposit request requirements of Section 351(2).

The movant shall have authority to destroy the patient records not claimed by patients or insurance providers and not allowed to be deposited with federal agencies, in accordance with the provisions of Section 351(3)(A) and (B).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent(s) for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The trustee may destroy the patient records not claimed by patients or insurance providers and not allowed to be deposited with federal agencies, in accordance with the provisions of Section 351(3)(A) and (B). No other relief is awarded.

7. [17-13654](#)-A-7 **IN RE: KINGS RIVER DOOR, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-21-2018 [[52](#)]

JAMES SALVEN/MV
MICHAEL FLETCHER

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,350 and reimbursement of expenses in the amount of \$324.82.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

James Salven's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely

oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,350 and reimbursement of expenses in the amount of \$324.82.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

8. [14-14169](#)-A-7 **IN RE: CECIL/KIMBERLY HELTON**
[RSW-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
1-16-2019 [[25](#)]

CECIL HELTON/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$3,144.88

All Other Liens: \$164,652

Exemption: \$6,348

Value of Property: \$171,000

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

9. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-1](#)

MOTION TO AVOID LIEN OF C B MERCHANT SERVICES
12-20-2018 [[23](#)]

TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied without prejudice

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The motion will be denied because the debtors have not actually claimed an exemption in the subject real property. The asserted exemption refers to an exemption claim in the amount of \$15,923.51, but not in the real property. It is rather in "[a]ny and all future

tax returns and assets, claims, interests, savings or income not presently known." ECF No. 1 at 18. This is not a claim of exemption in the subject real property. The real property is not described in the asserted exemption. And, the exemption's unspecified assets are limited to assets "not presently known," when the real property was obviously known to the debtors at the time Schedule C was prepared. It is listed in Schedules A and D. ECF No. 1 at 12 & 19. Accordingly, the motion will be denied without prejudice.

10. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-2](#)

MOTION TO AVOID LIEN OF VELOCITY INVESTMENTS, LLC
12-20-2018 [[27](#)]

TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied without prejudice

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The motion will be denied because the debtors have not actually claimed an exemption in the subject real property. The asserted

exemption refers to an exemption claim in the amount of \$15,923.51, but not in the real property. It is rather in "[a]ny and all future tax returns and assets, claims, interests, savings or income not presently known." ECF No. 1 at 18. This is not a claim of exemption in the subject real property. The real property is not described in the asserted exemption. And, the exemption's unspecified assets are limited to assets "not presently known," when the real property was obviously known to the debtors at the time Schedule C was prepared. It is listed in Schedules A and D. ECF No. 1 at 12 & 19. Accordingly, the motion will be denied without prejudice.

11. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[TGM-1](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
12-28-2018 [[231](#)]

JEFFREY ROWE

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Trudi Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,770.50 and reimbursement of expenses in the amount of \$120.42.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Trudi Manfredo's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,770.50 and reimbursement of expenses in the amount of \$120.42.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

12. [10-15491](#)-A-7 **IN RE: JOSEPH/DAWN MEDIATI**
[TGM-4](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
1-2-2019 [[67](#)]

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Trudi Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$7,350 and reimbursement of expenses in the amount of \$134.15.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Trudi Manfredo's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$7,350 and reimbursement of expenses in the amount of \$134.15.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.