

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

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**  
**DATE: MARCH 10, 2020**  
**CALENDAR: 9:00 A.M. CHAPTERS 9 AND 11 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. [19-27800](#)-A-11    **IN RE: EDUARDO/FLORINDA SAN ANTONIO**  
[AF-2](#)

MOTION TO EMPLOY ARASTO FARSAD AS ATTORNEY(S)  
2-1-2020    [[24](#)]

ARASTO FARSAD/ATTY. FOR DBT.

### **Final Ruling**

Application: Employment of Counsel for Debtor in Possession  
Notice: LBR 9014-1(f)(1); written opposition required  
Disposition: Approved  
Order: Prepared by applicant pursuant to 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).

### **EMPLOYMENT**

Chapter 11 debtors in possession may employ counsel to advise and assist them in the discharge of their statutory duties. See 11 U.S.C. § 327(a). Employment may be authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. *Id.* §§ 101(14), 327(a). The applicant satisfies the requirements of § 327(a), and the court will approve the application.

### **RETROACTIVE**

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 Mehdipour)*, 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. Counsel satisfies the standards of § 327(e). Further, counsel has shown exceptional circumstances that justify retroactive employment.

#### **ORDER**

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [counsel's name] and the debtor in possession for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision."

#### 2. [16-10015](#)-A-9      **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
1-4-2016    [[1](#)]

MICHAEL DELANEY/ATTY. FOR DBT.

#### **No Ruling**

#### 3. [16-10015](#)-A-9      **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT** [FEC-3](#)

CONTINUED ORDER TO SHOW CAUSE  
4-11-2019    [[606](#)]

MICHAEL DELANEY/ATTY. FOR DBT.

#### **No Ruling**

4. [16-10015](#)-A-9     **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**  
[WGG-6](#)

CONTINUED APPROVAL OF THIRD AMENDED DISCLOSURE STATEMENT  
11-8-2019    [[754](#)]

MICHAEL DELANEY/ATTY. FOR DBT.

**No Ruling**

5. [19-25117](#)-A-11     **IN RE: DONNA HEISCHOBER**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
8-14-2019    [[1](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

**Final Ruling**

The status conference is continued to April 14, 2020, at 9:00 a.m.

6. [17-20731](#)-A-11     **IN RE: CS360 TOWERS, LLC**  
[DB-49](#)

MOTION FOR COMPENSATION FOR DEVELOPMENT SPECIALISTS, INC.,  
FINANCIAL ADVISOR(S)  
2-4-2020    [[793](#)]

STEPHAN BROWN/ATTY. FOR DBT.

**Final Ruling**

The motion is granted on a final basis.  Movant shall upload an appropriate order.

7. [17-20731](#)-A-11     **IN RE: CS360 TOWERS, LLC**  
[DB-50](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DOWNEY BRAND  
LLP FOR JAMIE P. DREHER, TRUSTEES ATTORNEY(S)  
2-11-2020    [[799](#)]

STEPHAN BROWN/ATTY. FOR DBT.

**Final Ruling**

The motion is granted on a final basis.  Movant shall upload an appropriate order.

8. [19-24759](#)-A-11    **IN RE: AK BUILDERS AND COATINGS, INC**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-13-2020    [[72](#)]

MICHAEL NOBLE/ATTY. FOR DBT.

**Final Ruling**

The \$31 amendment fee having been paid, the order to show cause is discharged.