

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

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

DAY: MONDAY
DATE: SEPTEMBER 20, 2021
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [19-27507](#)-A-7 **IN RE: KENNETH/LIELANIE STEERS**
[HSM-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
8-30-2021 [[233](#)]

WALTER DAHL/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/06/2021

Tentative Ruling

Application: Allowance of Second Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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, the Law Office of Hefner, Stark & Marois, LLP, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$40,808.00 and reimbursement of expenses in the amount of \$412.21.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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 Law Office of Hefner, Stark & Marois, LLP's application for allowance of interim 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. The court allows interim compensation in the amount of \$40,808.00 and reimbursement of expenses in the amount of \$412.21. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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. [21-21627](#)-A-7 **IN RE: DEBORAH/DAREN WRIGHT**
[UST-2](#)

MOTION TO DISMISS CASE
8-18-2021 [37]

PETER CIANCHETTA/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(3) [Presumption of Abuse]

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

Disposition: Granted

Order: Prepared by moving party

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).

DISCUSSION

The United States Trustee has moved to dismiss this case pursuant to 11 U.S.C §§ 707(b)(1), 707(b)(2), and 707(b)(3)(B).

A motion to dismiss a chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular chapter 7 case is

abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b)(2) and (3) are applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8) (defining consumer debt). And the means test of § 707(b)(2) is triggered only as to above-median income debtors. *See id.* § 707(b)(7)(A).

The presumption of § 707(b)(2) is triggered when the debtor's current monthly income (CMI) less specified expenses ("disposable income"), § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$8,175.00, whichever is greater, or (2) \$13,650.00. *Id.* § 707(b)(2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. *Id.* § 707(b)(2)(B)(I).

This case involves a debtor who has above-median income and whose debts are primarily consumer debts.

Consumer Debt

The debtors have identified their debts as primarily consumer debts on their Petition, ECF No.1.

Adjustments to Income

The United States Trustee received documents from the debtor regarding income. After calculating income, using information from the paystubs provided by the debtor and unemployment income, and adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income for purposes of Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted, and the case dismissed.

3. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[HSM-25](#)

MOTION FOR COMPENSATION FOR HEFNER, STARK AND MARIOS, LLP,
TRUSTEES ATTORNEY(S)
8-23-2021 [[1681](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

4. [20-24691](#)-A-7 **IN RE: FREEDOM 123 LLC**
[HSM-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
8-20-2021 [[288](#)]

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved in part, as to amounts earned; denied in part
without prejudice, as to amounts which will be paid and when amounts
will be paid

Order: Civil minute order

There are two issues before the court in this application for allowance of final compensation. First, the court is asked to approve the compensation and expenses as presented. The second issue before the court is the timing of the payments awarded. No opposition to the motion has been filed. The chapter 7 trustee supports the application.

COMPENSATION AND EXPENSES

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).

In this Chapter 7 case, Hefner, Stark and Marois, LLP, attorneys for the trustee, seek an order approving final compensation and reimbursement of expenses.

The applicant requests that the court allow compensation in the amount of \$107,902.50 and reimbursement of expenses in the amount of \$1,110.77, First and Final Application for Allowance of Compensation and Reimbursement, ECF No. 288.

Applicant also requests that "the court authorize the trustee to immediately pay to applicant, the allowed compensation from such unencumbered funds as may be available to the Trustee, in his discretion, pursuant to the priorities set forth in the Bankruptcy Code", First and Final Appl. Comp. *Id.* 13:21-24.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the amounts in the application.

IMMEDIATE DISTRIBUTION IS PREMATURE UNDER § 726

Distribution of property of the estate is governed by Bankruptcy Code § 726(a). It provides:

Except as provided in section 510 of this title, property of the estate shall be distributed--

(1) *first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of--*

(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

(B) the date on which the trustee commences final distribution under this section...

11 U.S.C. § 726(a) (1) (emphasis added).

Section 507 provides:

(a) The following expenses and claims have priority in the following order:

....

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), and any fees and charges assessed against the estate under chapter 123 of title 28.

11 U.S.C. § 507(a) (2).

Section 503(b) provides:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--

...

(2) compensation and reimbursement awarded under section 330(a) of this title...

Applicant admits that with full payment of its compensation the estate is administratively insolvent. The application states that:

[T]o support the administrative solvency of this otherwise-insolvent estate, Counsel is willing to accept a distribution from the Trustee in such lesser amount as the Trustee determines to be sufficient to distribute the agreed sums to unsecured creditors below the administrative priority level; the Trustee's discounted commission; the Trustee's expense reimbursement; payment in full of the estate's taxes; compensation to the Trustee's CPA; and other administrative expenses.

First and Final Appl. Comp. 2:17-22, ECF No. 288.

It is unclear how much of the compensation and reimbursement will be paid, and how the amount paid will be determined. Without a determination of the amount to be paid, the award for compensation, an administrative expense under 11 U.S.C § 507(a)(2), cannot be paid in a manner consistent with § 726(a)(1). The application appears to suggest that the trustee will unilaterally determine the amount applicant will be paid at some future time. The court disagrees with this approach. It is the court's prerogative and duty to ensure distribution is consistent with the prescribed priorities of § 726 and that all administrative expense creditors are treated equally under §507.

All administrative expense creditors must be treated with "absolute equality," unless, of course, some creditors, with full knowledge of the facts, have agreed to subordinate their claims. *Thomas Corp. v. Nicholas*, 221 F.2d 286, 289 (5th Cir. 1955). In this case, previous disbursements to other administrative expense creditors of the Cochise estate could possibly prevent the appellants from recovering that pro rata share of the assets of the estate that they would have received if all disbursements had been delayed until the trustee's final accounting.

In re Cochise College Park, Inc., 703 F.2d 1339, 1356 & fn. 22 (9th Cir. 1983)

"Under the Bankruptcy Code, administrative expense creditors must be treated equally[,] and the court should not set up its own order of priorities." *In re Lazar*, 83 F3d. 306, 309 (9th Cir. 1996)

The trustee has indicated that he has now administered all assets of the estate, that the deadline to file proofs of claims has passed, and that he does not anticipate filing any objections to claims. He further indicates that he is prepared to complete final closing tasks, distribute funds, and close the case. See Declaration of

Gary Farrar in Support of First and Final Application for Allowance of Compensation and Reimbursement of Expenses to Counsel for the Chapter 7 Trustee, ECF No. 291, 3:20-24.

The court agrees that the amounts applicant has requested are reasonable. The court is not inclined to authorize payment at this time as it cannot determine how much is to be paid to applicant.

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 Law Office of Hefner, Stark & Marois, LLP's application for allowance of first and 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 in part. The court allows interim compensation in the amount of \$107,902.50, and reimbursement of expenses in the amount of \$1,110.77.

IT IS FURTHER ORDERED that the request for immediate disbursement to applicant is denied without prejudice.

5. [21-21397](#)-A-7 **IN RE: CHRISTOPHER FIGUEROA**
[BLF-32](#)

AMENDED MOTION TO COMPEL ABANDONMENT
9-3-2021 [[82](#)]

GORDON BONES/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied without prejudice
Order: Civil Minute Order

Business Description: Landscaping Business

The debtor operates a landscaping business in which he uses the following assets listed in this motion: 2018 GMC Canyon, Kubota mower tractor, Hewlett Packard Computer and Printer, Lawn tools, lawn tractor, hand tools, and inventory in the form of pop-up lawn watering sprayers and sprinkler parts. The debtor also assists his father by performing work for his father who also owns a landscaping

business, a business which is not the subject of this bankruptcy proceeding.

The court will deny the motion without prejudice as it was not properly served on all parties pursuant to Fed. R. Bankr. P. 6007(b). The Certificate of Service, ECF No. 87, shows that the moving papers were only served upon the chapter 7 trustee Geoffrey Richards. Rule 6007(b) requires service of the motion and notice of motion upon the trustee, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.

The Certificate of Service, ECF No. 87, was filed with the court on September 14, 2021. The Amended Motion to Compel Abandonment and the Notice of Motion were filed on September 3, 2021. The late filed certificate of service violates LBR 9014-1(e)(2) which provides that "a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed".

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.

IT IS ORDERED that the debtor's Amended Motion to Compel Abandonment (BLF-32) is denied without prejudice. The motion and notice of motion were not served properly under Fed. R. Bankr. P. 6007(b). Neither was the certificate of service filed in compliance with LBR 9014(-1(e)(2).