

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**WEDNESDAY**

**NOVEMBER 5, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00

1. [13-11803](#)-A-13 JERZY BARANOWSKI  
PK-4

MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTOR'S  
ATTORNEY(S).  
10-14-14 [[143](#)]

PATRICK KAVANAGH/Atty. for dbt.

### **Tentative Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** Patrick Kavanagh

**Compensation approved:** \$2,000.00

**Costs approved:** \$462.90

**Aggregate fees and costs approved in this application:** \$2,462.90

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$2,462.90

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).

### **DISCUSSION**

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). 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. 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 minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Second Interim Application for Fees and Costs filed by Patrick Kavanagh having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the application is approved; (2) additional fees of \$2,000.00 are approved on an interim basis; (3) additional costs of \$462.90 are approved on an interim basis; (4) the Chapter 13 trustee shall pay debtor's counsel, Patrick Kavanagh, \$2,462.90 as an administrative expense through the plan in a manner consist with the terms of the most recently confirmed Chapter 13 plan;

and (5) the applicant shall finalize those amounts by final application filed not later than the close of the case.

2. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION TO CONFIRM PLAN  
LKW-4 DE CAMPOS 9-24-14 [[104](#)]  
ANDRES ALVAREZ/MV  
LEONARD WELSH/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(1), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

3. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION FOR COMPENSATION FOR  
LKW-5 DE CAMPOS LEONARD K. WELSH, DEBTOR'S  
ATTORNEY(S).  
10-7-14 [[113](#)]  
LEONARD WELSH/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** Leonard K. Welsh

**Compensation approved:** \$12,985.00

**Costs approved:** \$260.75

**Aggregate fees and costs approved in this application:** \$13,245.75

**Retainer held:** \$1,892.50

**Amount to be paid as administrative expense:** \$11,353.25

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**

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). 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. 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. The moving party is authorized to draw on any retainer held.

#### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First Interim Application for Fees and Costs filed by Leonard K. Welsh having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the application is approved; (2) fees of \$12,985.00 are approved on an interim basis; (3) costs of \$260.75 are approved on an interim basis; (4) aggregate fees and costs approved by this application are \$13,245.75; (5) applicant Leonard K. Welsh may draw on his retainer of \$1,892.50; (6) the Chapter 13 trustee shall pay debtors' counsel, Leonard K. Welsh, \$11,353.25 as an administrative expense through the plan in a manner consistent with the terms of the most recently confirmed Chapter 13 plan; and (7) the applicant shall finalize those amounts by final application filed not later than the close of the case.

4. [14-13928](#)-A-13 ADDISON CRAFTS

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-9-14 [[29](#)]

DISMISSED

#### **Final Ruling**

The case dismissed, the order to show cause is discharged.

5. [14-14638](#)-A-13 MERLIE MESAR MOTION TO CONFIRM TERMINATION  
MDE-1 OR ABSENCE OF STAY  
ONEWEST BANK N.A./MV 9-29-14 [[12](#)]  
MARK ESTLE/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

6. [12-16551](#)-A-13 WAYNE/REGINA CARPENTER MOTION TO MODIFY PLAN  
RSW-4 9-25-14 [[62](#)]  
WAYNE CARPENTER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

7. [14-12360](#)-A-13 SERGIO BUENO CONTINUED OBJECTION TO  
MHM-2 CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
8-18-14 [[37](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Matter:** Objection to Confirmation of Plan

**Notice:** Continued hearing date

**Disposition:** Pending

**Order:** Pending

At the September 17, 2014 hearing, the court continued this matter to this hearing. The parties filed a status report. The status report states that the debtor amended Schedule B to reduce the value of

certain accounts receivable to \$4,989.58. The court has reviewed its docket and does not find such an amendment showing the accounts receivable in such an amount. The court does note amended Schedule B filed September 4, 2014, which shows accounts receivable ("currently attached") in the amount of \$19,958.32. The original Schedule C filed shows the accounts receivable exempted in the amount of \$15,261.67. The court also cannot find on the docket recently amended exemptions that become "final on November 27, 2014" as stated in the status report.

At the hearing, the court will inquire as to the status of the resolution of this matter between the parties. The court suggests that the matter be further continued if (i) the only remaining unresolved issue is whether the plan meets the liquidation test, and (ii) a determination of the amount that must be paid under the plan pursuant to the liquidation test depends on the debtor's future amendments to Schedule C's exemptions.

8. [13-17176](#)-A-13 CURTIS DUNMORE AND MOTION TO MODIFY PLAN  
RSW-3 DEMETRIA JOHNSON 9-25-14 [[57](#)]  
CURTIS DUNMORE/MV  
ROBERT WILLIAMS/Atty. for dbt.

#### **Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

9. [14-14480](#)-A-13 MANUEL LAZO

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-14-14 [[20](#)]

FRANCISCO ALDANA/Atty. for dbt.

**Tentative Ruling**

The filing fee installment in the sum of \$77 due October 9, 2014, remaining unpaid, the case is dismissed.

**9:30 a.m.**

1. [14-13277](#)-A-13 NOVELLA MCGLEW  
[14-1067](#)

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-14-14 [[1](#)]

U.S. TRUSTEE V. MCGLEW  
ROBIN TUBESING/Atty. for pl.  
JUDGMENT ENTERED  
ADVERSARY PROCEEDING CLOSED

**Final Ruling**

Judgment entered and the adversary proceeding closed, the status conference is concluded.

**10:30 a.m.**

1. [14-13402](#)-A-7 ANDREW PFAHL

PRO SE REAFFIRMATION AGREEMENT  
WITH LA FINANCIAL CREDIT UNION  
10-8-14 [[13](#)]

RABIN POURNAZARIAN/Atty. for dbt.

**No tentative ruling.**

1:00 p.m.

1. [11-60914](#)-A-7 WADE/CARRIE MOOR  
KDG-3

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER, COOPER, ROSENLIEB &  
KIMBALL, LLP FOR LISA HOLDER,  
TRUSTEE'S ATTORNEY(S).  
10-15-14 [76]

D. GARDNER/Atty. for dbt.

### **Tentative Ruling**

**Application:** First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** Klein, DeNatale

**Compensation approved:** \$11,636.50

**Costs approved:** \$109.52

**Aggregate fees and costs approved in this application:** \$11,746.02

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).

### **DISCUSSION**

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), (4)(B). 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 as to the amounts requested.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First and Final Application for Compensation filed by Klein DeNatale having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$11,636.50 is approved on a final basis; (3) costs of \$109.52 are approved on a final basis; and (4) if in the discretion of the Chapter 7 trustee the estate is administratively solvent, the Chapter 7 trustee may forthwith and without further order pay the amounts approved herein.

2. [13-10814](#)-A-7 FL.INVEST.USA INC.  
MKK-1  
VINCENT GORSKI/MV  
RYAN ERNST/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

CONTINUED MOTION TO EMPLOY M.  
KATHLEEN KLEIN AS ACCOUNTANT(S)  
9-23-14 [[305](#)]

### **Final Ruling**

**Motion:** Employment Nunc Pro Tunc

**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).

### **DISCUSSION**

A Chapter 7 trustee may employ professionals, including accountants, to assist in the performance of his statutory duties. The standards for employment as set forth in 11 U.S.C. § 327. Where a professional seeks employment nunc pro tunc the applicant must also satisfactorily explain the seek employment at the outset and must demonstrate that the services rendered benefitted the estate. *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir. 1995).

In this case, the applicant prepared for submission in a timely fashion an application for employment but the Chapter 7 trustee specifically asked her to withhold filing the application. The fault for failing to submit the application in a timely fashion belongs to the Chapter 7 trustee, not the applicant, and retroactive employment is approved.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Employment Nunc Pro Tunc filed by accountant M. Kathleen Klein having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and employment approved nunc pro tunc to the date on which the applicant first rendered services in this matter.

3. [13-10814](#)-A-7 FL.INVEST.USA INC.  
MKK-2  
M. KLEIN/MV

CONTINUED MOTION FOR  
COMPENSATION FOR M. KATHLEEN  
KLEIN, ACCOUNTANT(S).  
9-23-14 [[309](#)]

RYAN ERNST/Atty. for dbt.

### **Final Ruling**

**Application:** First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** M. Kathleen Klein

**Compensation approved:** \$4,389.00

**Costs approved:** \$359.58

**Aggregate fees and costs approved in this application:** \$4,748.58

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**

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 as to the amounts requested.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First and Final Application for Compensation filed by M. Kathleen Klein having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$4,389.00 is approved on a final basis; (3) costs of \$359.58 are approved on a final basis; and (4) if in the discretion of the Chapter 7 trustee the estate is administratively solvent, the Chapter 7 trustee may forthwith and without further order pay the amounts approved herein.

4. [12-16817](#)-A-7 GREGORY STURGES MOTION FOR COMPENSATION FOR  
JES-2 JAMES E. SALVEN, ACCOUNTANT(S).  
JAMES E. SALVEN, CERTIFIED 9-24-14 [[241](#)]  
PUBLIC ACCOUNTANT/MV  
PATRICK KAVANAGH/Atty. for dbt.

**Tentative Ruling**

**Application:** Compensation and Expenses

**Disposition:** Denied without prejudice

**Order:** Prepared by moving party

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3). Here, notice has not been transmitted to all creditors, and the application requests approval of compensation in the amount of \$1282.50 and reimbursement of expenses of \$172.16.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

5. [11-63718](#)-A-7 TIMOTHY/ALLISON DOLAN AMENDED MOTION FOR COMPENSATION  
RP-1 FOR RANDELL PARKER, CHAPTER 7  
RANDELL PARKER/MV TRUSTEE(S).  
10-8-14 [[276](#)]  
JACOB EATON/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

**Final Ruling**

Resolved by order issued November 3, 2014.

6. [13-11347](#)-A-7 CHRISTOPHER BURGONI CONTINUED TRUSTEE'S FINAL  
REPORT (TFR)  
6-24-14 [[45](#)]  
LEONARD WELSH/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

7. [13-11347](#)-A-7 CHRISTOPHER BURGONI CONTINUED OBJECTION TO CLAIM OF  
VG-4 BOARD OF TRUSTEES OF THE KERN  
VINCENT GORSKI/MV COUNTY ELECTRICAL PENSION FUND,  
CLAIM NUMBER 6-2  
8-22-14 [[65](#)]

LEONARD WELSH/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

8. [14-13676](#)-A-7 SEAN/ROSE LACH ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-9-14 [[28](#)]

**Tentative Ruling**

The filing fee for filing of amended schedules in the sum of \$30 remaining unpaid, the case is dismissed.

1:15 p.m.

1. [14-12906](#)-A-7 GAIL RUMBO CONTINUED STATUS CONFERENCE RE:  
[14-1071](#) AMENDED COMPLAINT  
U.S. TRUSTEE V. RUMBO 10-17-14 [[22](#)]  
ROBIN TUBESING/Atty. for pl.

**Final Ruling**

The status conference is continued to January 7, 2015, at 11:00 a.m.  
A status report shall be filed seven (7) days prior to the hearing.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED STATUS CONFERENCE RE:  
[14-1076](#) DEVELOPMENT INC. COMPLAINT  
PARKER V. GAINES 7-28-14 [[1](#)]  
LISA HOLDER/Atty. for pl.

**No tentative ruling.**

3. [14-10279](#)-A-7 DONNIE PRICE STATUS CONFERENCE RE: AMENDED  
[14-1044](#) COMPLAINT  
EXPRESS SERVICES, INC. V. 10-24-14 [[56](#)]  
PRICE  
RICHARD MONAHAN/Atty. for pl.

**No tentative ruling.**

4. [14-10279](#)-A-7 DONNIE PRICE  
[14-1044](#) BH-2  
EXPRESS SERVICES, INC. V.  
PRICE  
ROBERT BRUMFIELD/Atty. for mv.

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
10-8-14 [[52](#)]

### **Tentative Ruling**

**Motion:** Dismiss Second Amended Complaint to Determine Dischargeability of Debt

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

**Disposition:** Denied as moot

**Order:** Civil minute order

The defendant-debtor Donnie Kay Price has filed a motion to dismiss the plaintiff's Amended Complaint and Second Amended Complaint (denominated as "Amended Complaint" and filed September 16, 2014). The motion has not been opposed and written opposition was required not less than 14 days before the hearing.

On October 24, 2014, at docket no. 56, the plaintiff filed another complaint designated the Third Amended Complaint to Determine Dischargeability of a Debt. In response to this complaint, defendant filed a "Reply-Response to Plaintiff's Filing of Its Third Amended Complaint in Lieu of Opposing Defendant's Motion to Dismiss."

### **PROCEDURAL BACKGROUND**

A brief summary of the procedural events in this case is helpful to understanding the procedural effect of the most recently filed amended complaint.

The plaintiff's first complaint was dismissed after a hearing on the defendant's first motion to dismiss (BH-1). The court dismissed the first complaint without prejudice to refile an amended complaint, but the court imposed a deadline for an amended complaint that was 30 days after service of the order dismissing the complaint. Civ. Min. Order, June 28, 2014, ECF No. 25. The order was served on July 2, 2014. The deadline to amend therefore was August 1, 2014.

The plaintiff filed an amended complaint on August 8, 2014 ("August Complaint"), after the 30-day deadline had passed. The court issued an order to show cause because the August Complaint had not been filed within the 30-day period for which the court had granted the plaintiff leave to amend under the order dismissing the first complaint.

The plaintiff then filed another amended complaint on September 16, 2014 ("September Complaint"). The plaintiff also filed a motion to extend time to file the late-filed August Complaint nunc pro tunc. The court discharged its order to show cause. The court also granted the plaintiff's motion to extend time to file the amended complaint nunc pro tunc.

The order granting the plaintiff's motion to extend time to file the amended complaint gave the plaintiff leave to file the September Complaint. The relevant portion of the order states, "Not later than October 8, 2014, the defendant shall file a responsive pleading to amended complaint filed September 16, 2014, ECF No. 37." Civ. Min. Order, Sept. 23, 2014, ECF No. 47.

By directing the defendant to file a responsive pleading to the

September Complaint, the language of the order impliedly gives the plaintiff leave retroactively to amend and file the September Complaint. Thus, the court recognized the efficacy of the September Complaint as an amended pleading for purposes of proceeding with the action. This is true even though the motion to extend time to file the amended complaint had been directed at the August Complaint (the September Complaint was filed after the motion to extend time but before the hearing and before the order was issued on such motion).

The present motion was directed at the September Complaint. But after the present motion to dismiss was filed, the plaintiff filed its third amended complaint as of October 24, 2014 ("October Complaint").

The October Complaint was filed 16 days after the present motion to dismiss was filed.

#### **AMENDMENT OF THE COMPLAINT AS A MATTER OF COURSE**

Federal Rule of Civil Procedure 15 sets the parameters for amendments of pleadings as a matter of course. Rule 15(a)(1) allows a party to "amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."

The rule expressly allows amendments as a matter of course within the periods specified only "once." Thus, more than one amendment as a matter of course is not permitted even though such amendment is otherwise timely filed pursuant to Rule 15(a)(1).

In this case, the August Complaint and September Complaints were not amendments to the plaintiff's original pleading as a matter of course. In dismissing the original complaint, the court granted leave to amend the original complaint for a 30-day period following service of the order dismissing the complaint. The August Complaint was filed outside this 30-day period, and the court then granted the plaintiff's motion to extend time to amend the original complaint retroactively, and in the order on such motion to extend time, the court essentially gave the plaintiff leave to file the most recently filed complaint at that time, the September Complaint.

The complaint was a pleading to which a responsive pleading is required, see Rule 7012(a), so Rule 15(a)(1)(B) applies. The present motion to dismiss was filed October 8, 2014. The plaintiff amended its complaint 16 days later. This amendment is permitted as a matter of course because it is within the 21-day period after service of the motion under Rule 12(b). See Fed. R. Civ. P. 15(a)(1)(B), *incorporated by Fed. R. Bankr. P. 7015.*

Furthermore, the October Complaint is the first amendment in this case by the plaintiff filed as a matter of course as described in Rule 15(a)(1). Both the August Complaint and the September Complaint were amendments for which leave was given to amend retroactively. In any event, these two complaints were filed long after the expiration of the 21-day period for amendment as a matter of course: the 21-day period following service of the defendant's first motion to dismiss ended on June 5, 2014 (and the 21-day period following service of the original complaint ended May 12, 2014).

As a result, the present amendment represented by the October Complaint does not violate the rule permitting only one amendment as a matter of course. But the court notes that no further amendments as a matter of course are permitted under the express terms of Rule 15(a)(1). The rule only allows a party to amend as a matter of course only "once." Fed. R. Civ. P. 15(a)(1), *incorporated by Fed. R. Bankr. P. 7015*.

#### **DENIAL OF THE MOTION TO DISMISS ON GROUNDS OF MOOTNESS**

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

The motion requests dismissal of both the August Complaint (filed August 8, 2014) and the September Complaint (filed September 16, 2014) pursuant to Rule 12(b)(6) and Rule 9(b). But such complaints have no effect and have been superseded by the October Complaint. Even if the court were to accept all of the movant's arguments and found dismissal appropriate, the court could not grant effective relief. The movant's personal interest in dismissing the August and September Complaints no longer exists as those complaints have no effect.

The defendant's reply requests that the court consider the October Complaint (designated the Third Amended Complaint). But the motion to dismiss is directed at the Second Amended Complaint (the August and September Complaints). A motion is required under Rule 9013 when a request for an order is made, so a reply does not serve as an adequate substitute for a motion even if it may seem inefficient to file a new motion to dismiss an amended pleading filed after the present motion to dismiss.

Further, the opposing party has no opportunity to oppose relief in a reply, so a reply cannot present new relief not requested in the motion. And arguments raised for the first time in a reply brief need not be considered by the trial court. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (citing *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003)).

#### **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.

Defendant Donnie Kay Price's motion to dismiss the Second Amended Complaint to Determine Dischargeability of Debt has been presented to the court. Having considered the motion, the reply, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied as moot given the filing of another amended complaint that supersedes the Second Amended Complaint that the present motion seeks to dismiss.

1:30 p.m.

1. [14-14204](#)-A-7 KENNETH PERKINS MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
FIRST INVESTORS SERVICING 10-7-14 [[16](#)]  
CORP./MV  
JENNIFER WANG/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2007 Dodge Nitro Truck

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [14-14405](#)-A-7 ERIC GULBRANSON MOTION FOR RELIEF FROM  
RWR-1 AUTOMATIC STAY  
PACIFIC SERVICE CREDIT 10-3-14 [[24](#)]  
UNION/MV  
RUSSELL REYNOLDS/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 7734 Kilts Court, Antelope, California

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [14-14014](#)-A-7 JEFFREY/MARGARET MOTION FOR RELIEF FROM  
VVF-1 ADVINCULA AUTOMATIC STAY  
HONDA LEASE TRUST/MV 10-14-14 [[12](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2010 Honda Accord (leased)

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The motion asserts that the debtors have defaulted in making "the August 20, 2014 payment and forward." The case was filed August 10, 2014, and the present motion was filed October 14, 2014. The court infers that the debtors are in default on their loan payments from August 20, 2014 through October 14, 2014, the date of the motion. Thus, assuming the lease payments become due on the same day of each month, the debtors have defaulted on the August 20, 2014 and September 20, 2014 payments, post-petition payments that would have become due before the present motion was filed.

The stay relief summary sheet confirms that the debtor has missed 2 post-petition payments due on the debt owed pursuant to a vehicle lease agreement between the debtors and the movant. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1:45 p.m.

1. [14-12637](#)-A-11 TOURE/ROLANDA TYLER  
LKW-5

MOTION FOR COMPENSATION FOR  
LEONARD K. WELSH, DEBTOR'S  
ATTORNEY(S).  
10-6-14 [[103](#)]

LEONARD WELSH/Atty. for dbt.

#### **Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** Law Offices of Leonard K. Welsh

**Compensation approved:** \$8,220.00

**Costs approved:** \$131.17

**Aggregate fees and costs approved in this application:** \$8351.17

**Retainer held:** \$8824.39

**Amount to be paid from non-retainer source as administrative expense:**  
\$0.00

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).

## COMPENSATION AND REIMBURSEMENT OF EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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. 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. The moving party is authorized to draw on any retainer held.

## 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 Offices of Leonard K. Welsh's second application for compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the second application is approved on an interim basis. The court allows compensation and reimbursement of expenses in the aggregate amount of \$8351.17. The retainer held by the applicant on the date of the application is \$8824.39. The compensation and expenses approved shall be paid from the retainer held by the applicant. 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.

2. [14-12637](#)-A-11 TOURE/ROLANDA TYLER MOTION TO ENTER INTO LEASE OF  
LKW-6 REAL PROPERTY  
TOURE TYLER/MV 10-6-14 [[110](#)]  
LEONARD WELSH/Atty. for dbt.

## Final Ruling

**Motion:** Authority to Enter Into Lease of Real Property

**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).

#### **AUTHORIZATION TO ENTER INTO LEASE**

The debtors in possession request authority to enter into a lease of a portion of the property located at 2201 "V" Street, Bakersfield, California. The lessee is New Steps Learning Center, LLC. For the reasons stated in the motion, the court grants the motion. By granting the motion, the court only authorizes the debtors in possession to enter into the lease described in the motion with New Steps, and for joint debtor to be employed by News Steps, based on the terms summarized. The court will not require either party to enter into the proposed lease or approve the lease's terms.

#### **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 motion for authority to enter into a lease of real property located at 2201 "V" Street, Bakersfield, CA, has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted, and, on the terms summarized in the motion, the debtors in possession are authorized to enter into a lease of real property located at 2201 "V" Street, Bakersfield, CA, with New Steps Learning Center, LLC, and joint debtor Rolanda Tyler is authorized as part of this transaction to be employed by this entity on whatever lawful terms the parties' agreement contains.

3. [14-12637](#)-A-11 TOURE/ROLANDA TYLER  
PK-1  
INOCENCIO MADERA/MV  
LEONARD WELSH/Atty. for dbt.  
PATRICK KAVANAGH/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VACATE  
9-13-14 [[93](#)]

**No tentative ruling.**

4. [14-14241](#)-A-11 ARTHUR FONTAINE  
DMG-3  
ARTHUR FONTAINE/MV

MOTION TO EMPLOY HALLE PORTER  
NEWLAND AND RICKETT LLP AS  
ACCOUNTANT(S)  
9-26-14 [[34](#)]

D. GARDNER/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Application to Employ Halle Porter Newland & Rickett LLP as CPA

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

**Disposition:** Pending

**Order:** Pending

The court intends to discuss two issues with counsel for the debtor in possession at the hearing. The first issue is whether the application requests the court's approval of the terms and conditions of Halle Porter Newland and Rickett LLP's employment under § 328(a), including approval of the hourly rate. The last paragraph of the motion suggests that the court's approval of compensation is sought under § 328(a). The last paragraph of Craig A. Rickett's declaration states otherwise that approval of hourly rates is not sought at this time but will be sought under § 330 and § 331.

The second issue is whether the accountant firm will be employed to prepare the debtor's individual pre-petition tax returns as well as post-petition tax returns, and handle both pre-petition and post-petition tax issues. More importantly, the issue is whether services provided relating to pre-petition tax issues for the debtor individually would be inconsistent with the accountant firm's fiduciary duties to the estate or present a conflict of interest for the accounting firm in rendering services for the debtor in possession on post-petition tax issues. It may be the case that the firm's services for pre-petition tax issues do not present a conflict because resolution of the debtor's pre-petition, individual tax issues may be necessary to providing services on post-petition tax issues.

However, the court reiterates the basic principle that to the extent that services on a given tax issue may present a conflict between the debtor's interest and the estate's interest, the accounting firm will be representing the estate, not the debtor individually.

5. [14-14241](#)-A-11 ARTHUR FONTAINE  
DMG-4  
ARTHUR FONTAINE/MV  
D. GARDNER/Atty. for dbt.

MOTION TO EMPLOY PARADISE REAL  
ESTATE AS REALTOR(S)  
10-22-14 [[60](#)]

#### **Tentative Ruling**

**Motion:** Application to Employ Paradise Real Estate as Real Estate Broker

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

**Disposition:** Pending

**Order:** Pending

The debtor requests an order authorizing him to employ Paradise Real Estate (PRE) to market and sell real property located at 37 Southpoint

Place, Glenbrook, NV. Southpoint, LLC owns the real property. The debtor in possession owns a 50% interest in Southpoint, LLC.

The declaration of Dan Spano, who is employed by PRE, states that PRE has previously represented the debtor and Southpoint LLC in marketing of this real property. The declaration, however, also states that PRE is a disinterested person within the meaning of § 101(14) of the Bankruptcy Code, which means that PRE is not a creditor. The court intends to discuss the previous representation of the debtor by PRE at the hearing to ensure that no conflict of interest exists that would preclude authorization of the employment.

Next, the court wishes to discuss whether the broker is licensed in Nevada where the real property is located. The application states that the broker is a "licensed California real estate broker" located in South Lake Tahoe, CA. But the application also indicates that the property to be sold is in Nevada.

Lastly, if the court at the hearing approves the application, the court's approval will not extend to the fee agreement, compensation terms, or the rates identified in such application and agreement. Any compensation and reimbursement of expenses is subject to approval by a compensation application brought pursuant to § 330 and § 331 at a future time.

6. [14-14241](#)-A-11 ARTHUR FONTAINE  
DMG-5  
ARTHUR FONTAINE/MV  
D. GARDNER/Atty. for dbt.

MOTION TO EMPLOY GREGORY S.  
FALK AS SPECIAL COUNSEL  
10-22-14 [[64](#)]

### **Tentative Ruling**

**Application:** Approval of Employment of Gregory P. Falk as Special Counsel

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

**Disposition:** Approved

**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). 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. However, the court's approval will not extend to the fee agreement, compensation terms, or the rates identified in such application and agreement. Any compensation and reimbursement of expenses is subject to approval by a compensation application brought pursuant to § 330 and § 331 at a future time.

7. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-14

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF YOUNG WOOLDRIDGE,  
LLP FOR D. MAX GARDNER,  
DEBTOR'S ATTORNEY(S).  
10-15-14 [[317](#)]

D. GARDNER/Atty. for dbt.

### **Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Applicant:** Law Offices of Young Wooldridge, LLP

**Compensation approved:** \$18,172 not previously approved and \$76,361.10 total compensation in this case (including fees previously approved on an interim basis and fees not previously approved but included in the present application)

**Costs approved:** \$914.07 not previously approved and \$3504.35 total expense reimbursement in this case (including previous expense reimbursement approved on an interim basis and expense reimbursement not previously approved but included in this present application)

**Aggregate fees and costs approved in this application:** \$19,086.07 not previously approved and \$79,865.45 total (including amounts approved in interim applications and amounts not approved but included in the present application)

**Retainer held:** \$0.00

**Amount to be paid from non-retainer source as administrative expense:** \$37,488.17 (\$18,402.10 of amounts currently due but unpaid pursuant to prior approved applications plus \$19,086.07 of amounts not previously approved but included in the present application)

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).

### **COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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. 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. The moving party is authorized to draw on any retainer held.

## 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.

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

IT IS ORDERED that the second application is approved on a final basis including all interim compensation and reimbursement of expenses previously allowed pursuant to prior applications as well as amounts of compensation and reimbursement of expenses not previously allowed but requested in the present application. The court allows compensation and reimbursement of expenses in the aggregate amount of \$19,086.07, which amount was not previously allowed but requested in this present application. The court further allows total compensation and reimbursement of expenses in this case, in the aggregate amount of \$79,865.45, including all interim compensation and reimbursement expenses allowed as well as compensation and reimbursement of expenses not previously allowed but presently requested.

8. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-15  
500 WHITE LANE LP/MV  
D. GARDNER/Atty. for dbt.

MOTION FOR FINAL DECREE  
10-21-14 [[322](#)]

### Tentative Ruling

**Motion:** Enter Final Decree Closing Chapter 11 Case

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

**Disposition:** Granted only if the fee application of DIP's counsel is approved at the hearing; if the fee application is continued, this matter will be continued to the same date

**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). 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).

Under § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." 11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022. "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" See *In re Ground Sys., Inc.*, 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Rule 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. See Fed. R. Bankr. P. 3022 advisory committee's note—1991 Am. These factors present a court with "flexibility in determining whether an estate is fully administered," and "not all of the factors . . . need to be present to establish that a case is fully administered for final decree purposes." *In re Provident Fin., Inc.*, Nos. MT-10-1134-JuPaD, MT-10-1135-JuPaD, Bankr. No. 09-61756, 2010 WL 6259973 (B.A.P. 9th Cir. Oct. 12, 2010) (unpublished opinion).

The Advisory Committee Note also states that entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed." Fed. R. Bankr. P. 3022 advisory committee's note—1991 Am. It further provides that "[t]he court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code." *Id.*

Here, factors supporting a finding of full administration of the estate have been satisfied. The order confirming the plan has become final and non-appealable pursuant to Rule 8002. Payments under the plan have commenced. Deposits, if any, required by the plan, have been distributed. Any property proposed by the plan to be transferred has been transferred. All motions other than this motion and a pending fee application, all contested matters, and all adversary proceedings have been resolved. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.