

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California

**December 7, 2016, at 10:30 a.m.**

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1. <a href="#"><u>16-23600-E-7</u></a> <b>DNL-2</b>	<b>TODD SHAW</b> Cindy Hill	<b>MOTION TO EMPLOY WILLIAM L. BRELSFORD, JR. AS SPECIAL COUNSEL</b> 11-21-16 <a href="#"><u>[53]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 23, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Employ is granted.</b></p>
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Alan Fukushima, the Chapter 7 Trustee, seeks to employ Poswall White & Brelsford as Special Counsel, pursuant to Bankruptcy Code Sections 327(a) and 328(a). Trustee seeks the employment of Special Counsel to assist the Trustee in prosecuting the Estate's interest in a medical malpractice case, Sacramento County Superior Court Case No. 34-2015-00185750.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding claims that Debtor has asserted in state court for injuries to his gallbladder.

William Brelsford, Jr., of Poswall White & Brelsford, testifies that he is representing a state court medical malpractice case on behalf of Debtor. William Brelsford, Jr., testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Poswall White & Brelsford as special counsel for the Chapter 7 estate on the terms and conditions set forth in the Contingent Fee Agreement filed as Exhibit A, Dckt. 56. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and the Chapter 7 Trustee is authorized to employ Poswall White & Brelsford, William Brelsford, Jr., Esq. as lead counsel, as special counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 56.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order above (incorporating the contingent fee agreement) or in a subsequent order of this court.

2.     [15-28108](#)-E-11     **WILLARD BLANKENSHIP**     **MOTION TO SELL FREE AND CLEAR**  
          RLC-9           Stephen Reynolds           **OF LIENS**  
  11-9-16 [[164](#)]

**Final Ruling:** No appearance at the December 7, 2016 hearing required.  
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<p><b>The hearing on the Motion to Sell Free and Clear of Liens is continued to 10:30 a.m. on January 12, 2017.</b></p>
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Debtor filed an Amended Notice of Hearing on November 28, 2016, in which Debtor has re-noticed the hearing for 10:30 a.m. on January 12, 2017. Dckt. 172. Accordingly, **the hearing is continued, and the matter is removed from this calendar.**

3. [07-27123](#)-E-13      **DOREEN GASTELUM**  
PGM-6                      **Peter Macaluso**

**CONTINUED STATUS CONFERENCE**  
**RE: MOTION TO MODIFY ORDER FOR**  
**EVIDENTIARY HEARING**  
6-12-15 [[186](#)]

**Final Ruling:** No appearance at the December 1, 2016 Status Conference is required.  
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<b>The Status Conference is continued to 2:30 p.m. on January 18, 2017.</b>
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Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/16/16 to allow the Parties to document their settlement and conclude this matter.

**DECEMBER 7, 2016 STATUS CONFERENCE**

Both the City of Chicago and the Debtor have filed Status Conference Statements for the December 7, 2016 Conference.

The Debtor reports in her Status Conference Statement the following:

- A. In the present case, the City of Chicago has filed four claims, Proofs of Claims Nos. 4, 5, 6, and 7, for claims that total \$275,256.27.
- B. Debtor seeks assurances that allowing the City to exercise its lien rights on the properties securing the four claims will resolve all personal liability of the Debtor.
- C. Debtor believes that "Settlement is likely" but that there needs to be an additional sixty days of delay before a "settlement" can be documented.

Debtor Status Report, Dckt. 236. Debtor does not explain why or how an actual "settlement agreement" cannot be drafted, the settlement documented, and these matters concluded.

The City of Chicago provides additional information, reporting to the court in its Settlement Conference Statement that:

- A. On November 29, 2016, the City transmitted to Debtor's counsel a draft stipulation that includes the following provisions:
  - 1. The City releases the Debtor of any claims arising in connection with the 1517 West 61st Street and 356 West 45th Street properties. These are two of

the three properties that Debtor identifies as relating to the four proofs of claim filed in this bankruptcy case.

2. The Debtor is to grant the City, and its enumerated agents and representatives, a release for all claims relating to the two properties, including the claim asserted for violation of the discharge injunction and contempt.
3. Debtor will dismiss the contempt motion.
4. Bankruptcy Case 07-27123 is to be dismissed with prejudice. (In this case, Debtor has completed her Chapter 13 Plan and has obtained a discharge.)

City Status Conference Statement, Dckt. 237.

The City's Status Conference Statement continues, stating that the Debtor believes that the release should also include any claims relating to the Princeton Street Property. The City's attorney pointed out that the Princeton Street Property claims are not at issue in the contempt motion. Counsel for the City has communicated that additional settlement term request to the City, however.

It is reported that due to unfortunate non-business reasons, the key person at the City to address this point and make a prompt decision is unavailable for at least several weeks. Therefore, the City requests that the Status Conference be continued to the first hearing date in January 2017, joining in the Debtor's request for some additional time.

The court acknowledges the efforts of counsel to address these issues and document a resolution that can bring these proceedings to an end. Continuance is appropriate.

#### Issue Concerning Dismissal of Case 07-27123.

The court is unsure as to whether the "dismissal with prejudice" is an appropriate settlement term. The court flags this for the parties so that if it is a term, then the rationale for it be included in any noticed motion to dismiss this bankruptcy case. As noted above, there is a confirmed plan in this case, other creditors' rights and interests have been effected, a Chapter 13 plan has been completed, and a discharge entered for Debtor.

#### **NOVEMBER 16, 2016 STATUS CONFERENCE**

At the Status Conference, though the City of Chicago reported that it had completed the purchases of the two properties that are the subject of the pending Motion, it would not confirm that it would not try to assert any other monetary claims relating to the properties against the Debtor. The City argued that it had already stipulated with the Debtor that upon the sales being completed that the Debtor would dismiss this Motion. Therefore, the City rejected the Debtor's request that the dismissal include a confirmation that the City was not further pursuing the Debtor for obligation relating to the properties.

The City noted that the Debtor had not agreed to release the City of any claims for attorneys' fees and costs relating to the alleged violation of the stay. Upon this being stated, counsel for the Debtor stated on the record that the Debtor so agreed. The court instructed the parties to go back and see if they could enter into a stipulation for the dismissal of this Motion and the granting of mutual releases for the obligations and claims asserted in this motion and related to the two properties.

The stipulation relied upon by the City of Chicago is one filed in Debtor's second bankruptcy case, 13-31441. A copy of the stipulation is provided as Exhibit 1, an attachment to Mr. Paffrath's letter of October 27, 2016, Dckt. 229. Pursuant to the Motion for Relief from the Stay pursuant to the stipulation, the court entered its order modifying the automatic stay in case number 13-31441, ordered a modification of the automatic stay—nothing more and nothing less. 13-31441; Order, Dckt. 73. The court did not approve, and did not authorize the Debtor, to waive any rights relating to the alleged violation of the automatic stay.

The City of Chicago asserts that pursuant to the stipulation to modify the automatic stay, Debtor is obligated to dismiss this Motion, without the City of Chicago addressing whether it is continuing to assert that there is an obligation of Debtor relating to the properties. The stipulation does not so provide. While in the whereas paragraphs reference is made to the dismissal of the Motion, the parties did not so agree in the stipulation. See page 3 of the stipulation where the parties state what they actually agree to in the stipulation.

4.

[14-29231](#)-E-11  
RLC-23

MIZU JAPANESE SEAFOOD  
BUFFET, INC.  
Stephen Reynolds

MOTION FOR FINAL DECREE AND  
ORDER CLOSING CASE  
11-16-16 [\[217\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2016. By the court's calculation, 9 days' notice was provided. 14 days' notice is required.

The Motion for Final Decree and Order Closing Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p><b>The Motion for Final Decree and Order Closing Case is denied without prejudice.</b></p>
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#### **INSUFFICIENT NOTICE PROVIDED**

Debtor/Plan Administrator filed this Motion pursuant to Local Bankruptcy Rule 9014-1(f)(2), which requires fourteen days' notice. Debtor/Plan Administrator provided nine days' notice. Dckt. 220. Accordingly, the Motion is denied without prejudice.

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 Final Decree and Order Closing Case filed by the Debtor/Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT REQUESTS THE COURT TO SHORTEN THE NOTICE PERIOD**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is “fully administered and the court has discharged the trustee.” The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” the court considers whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor’s successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on February 10, 2015. Dckt. 138. The Plan provided that Debtor/Plan Administrator is responsible for operating its business and making distributions in accordance with the terms of the Plan. Debtor/Plan Administrator states that all distributions to be made under the Plan are current and that all the post-confirmation operating reports have been filed.



As indicated by the Advisory Committee Notes accompanying Federal Rule of Bankruptcy Procedure 3022, entry of a final decree closing a Chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtor/Plan Administrator, there are no outstanding deposits that require distribution under the plan, and all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtor, who is currently managing the estate. Debtor/Plan Administrator appears to be current on all distribution under the Plan and filed post-confirmation operating reports.

Thus, the court finds that Debtor/Plan Administrator has satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtor's case.

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 Final Decree and Order Closing Case filed by the Debtor/Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.