



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: JANUARY 16, 2024
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION INSTRUCTIONS

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. However, 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. [23-21409](#)-A-7 **IN RE: MICHAEL/ERIN CHRISTENSEN**
[BLF-10](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MICHAEL SCOTT CHRISTENSEN AND ERIN ORDEEN
CHRISTENSEN
12-21-2023 [\[73\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 10/18/23

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Parties to Compromise: Debtors, Chapter 7 Trustee
Dispute Compromised: Exemption Amount in Litigation Proceeds
Summary of Material Terms: Debtors to receive 2/3 of net Litigation Proceeds; Bankruptcy Estate to receive 1/3 of net Litigation Proceeds

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).

Nikki Farris, Chapter 7 trustee seeks an order approving the compromise or settlement of controversy reached between the debtors and the bankruptcy estate. The settlement agreement is filed concurrently with the motion as Exhibit C, ECF No. 76.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of

persuading the court that the compromise is fair and equitable and should be approved. *Id.*

DISCUSSION

Debtor Erin Christensen filed a lawsuit against her former employer, Goodman Manufacturing Company/Daikin, in 2018. The lawsuit was listed by the debtors in their bankruptcy schedules in the instant case, and is an asset of the bankruptcy estate.

The trustee's motion to employ special counsel was granted on October 18, 2023, ECF No. 45. The lawsuit was settled as described in the motion to approve compromise or approve settlement (BLF-11). The gross amount of the settlement is \$125,000. After payment of attorney fees and costs the balance due the estate is \$70,539.04. Motion, 3:10-16, ECF No. 73.

The debtors filed an amended Schedule C on November 20, 2023, claiming the proceeds exempt under C.C.P. § 703(b)(11)(B), ECF No. 48. The trustee contended that the debtors could not prove that the entire amount would be exempt as they had not proven all proceeds were necessary for their support as required by the statute. After considering the health of the debtors, the parties agreed that the litigation proceeds due the estate (after payment of special counsel's attorney fees and costs) in the amount of \$70,539.04 would be divided as follows: 1/3 to the bankruptcy estate; and 2/3 to the debtors.

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement filed concurrently with the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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 Chapter 7 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement filed with the motion as Exhibit C and filed at docket no. 76.

2. [23-21409](#)-A-7 **IN RE: MICHAEL/ERIN CHRISTENSEN**
[BLF-11](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GOODMAN MANUFACTURING COMPANY/ DAIKIN
12-21-2023 [\[79\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 10/18/23

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Parties to Compromise: Chapter 7 Trustee, Goodman Manufacturing Company, Inc., Goodman Distribution, Inc., Daikan Global
Dispute Compromised: *Erin Christensen v. Goodman Manufacturing Company, Inc., Goodman Distribution, Inc., Daikan Global et al.*
Sacramento Superior Court Case No. 34-2018-00236128-CU-OE-GDS,
removed to United States District Court, Eastern District of
California, Case No. 1:18-cv-02776.
Summary of Material Terms: Gross Settlement \$125,000

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

Nikki Farris, Chapter 7 trustee seeks an order approving the compromise of controversy and settlement described herein.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of

persuading the court that the compromise is fair and equitable and should be approved. *Id.*

DISCUSSION

Debtor Erin Christensen filed a lawsuit against her former employer, Goodman Manufacturing Company/Daikin, in 2018. The lawsuit was listed by the debtors in their bankruptcy schedules in the instant case, and is an asset of the bankruptcy estate.

The debtor sued for multiple causes of action including: 1) multiple violations of the Labor Code including the willful failure to pay wages due; 2) wrongful termination; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing. The defendants raised multiple defenses.

The trustee's motion to employ special counsel was granted on October 18, 2023, ECF No. 45. A settlement was proposed after discovery was conducted (including the deposition of debtor, Erin Christensen, and the defendant) and negotiations between the trustee, special counsel, and the defendants. The gross amount of the proposed settlement is \$125,000. After payment of attorney fees and costs to special counsel the balance due the estate is \$70,539.04. Motion, 3:13-18, ECF No. 79.

The parties request approval of a compromise that settles the dispute described above. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The material terms and conditions of the compromise include (1) payment of \$125,000 by defendants to the bankruptcy estate. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant A & C Properties factors. The compromise or settlement will be approved.

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 Chapter 7 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court approves the parties' compromise, which settles the following lawsuit: *Erin Christensen v. Goodman Manufacturing Company, Inc., Goodman Distribution, Inc., Daikan Global et al.*, Sacramento Superior Court Case No. 34-2018-00236128-CU-OE-GDS, removed to United States District Court, Eastern District of California, Case No. 1:18-cv-02776. The dispute is about: 1) multiple violations of the Labor Code including the willful failure

to pay wages due; 2) wrongful termination; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing. The material terms and conditions of the compromise include (1) Defendants shall pay \$125,000 to the bankruptcy estate.

3. [23-21409](#)-A-7 **IN RE: MICHAEL/ERIN CHRISTENSEN**
[BLF-12](#)

MOTION FOR COMPENSATION FOR ANDREA ROSA, SPECIAL COUNSEL(S)
12-21-2023 [\[85\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 10/18/23

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$50,000 (40% of \$125,000)

Expenses Allowed: \$4,460.96

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, Andrea Rosa, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$50,000 and reimbursement of expenses in the amount of \$4,460.96.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11

U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

DISCUSSION

Debtor Erin Christensen filed a lawsuit against her former employer, Goodman Manufacturing Company/Daikin, in 2018. The lawsuit was listed by the debtors in their bankruptcy schedules in the instant case, and is an asset of the bankruptcy estate.

The debtor sued for multiple causes of action including: 1) multiple violations of the Labor Code including the willful failure to pay wages due; 2) wrongful termination; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing. The defendants raised multiple defenses.

Special counsel represented the debtor from the inception of the lawsuit.

The trustee filed a motion to employ Ms. Rosa as special counsel for the estate. The motion was granted on October 18, 2023, ECF No. 45. The employment order approved compensation pursuant to a contingency fee agreement which would pay special counsel 40% of any recovery achieved post litigation by way of settlement. *Id.*

A settlement was proposed after discovery was conducted (including the deposition of debtor, Erin Christensen, and the defendant) and negotiations between the trustee, special counsel, and the defendants. The gross amount of the proposed settlement is \$125,000. After payment of attorney fees and costs to special counsel the balance due the estate is \$70,539.04. Motion, 3:6-11, ECF No. 85.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$50,000 and reimbursement of expenses in the amount of \$4,460.96.

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

4. [22-23020](#)-A-7 **IN RE: ROCCO DIGIOVANNI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2023 [[42](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/21/23
12/19/23 FEE PAID \$34

Final Ruling

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

5. [23-23523](#)-A-7 **IN RE: THE RETREAT AT ROYAL GREEN, LLC.**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2023 [[27](#)]

PETER MACALUSO/ATTY. FOR DBT.
12/19/23 FEE PAID \$34

Final Ruling

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

6. [23-23638](#)-A-7 **IN RE: DEVIN HARVEY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-2023 [\[15\]](#)

JONATHAN VAKNIN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
LAKEVIEW LOAN SERVICING, LLC VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Granted

Order: Civil minute order

Subject: 417 Acacia Ave, Manteca, California

Cause: § 362(d)(1) delinquent payments

Pre-petition Delinquency: 16 payments totaling \$29,101.98

Post-Petition Delinquency: 2 payments totaling \$3,668.96

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).

Lakeview Loan Servicing, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

STAY RELIEF

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).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 2 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

DEBTOR OPPOSITION

On January 2, 2024, the debtor filed opposition, which is supported by a declaration of the debtor, ECF Nos. 22, 23. The opposition does not offer any defense to the allegations of non-payment of mortgage payments which have come due. The opposition and declaration do indicate that the debtor has listed the property for sale and requests additional time for the debtor to market the property. Accordingly, the court will grant the motion for cause but will *not* waive the 14-day stay of Fed. R. Bankr. P. 4001(a).

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 *not* be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 417 Acacia Ave, Manteca, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is *not* waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [23-22353](#)-A-7 **IN RE: ROY/MELISSA DEVANEY**
[JCK-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
SUBSTITUTE PARTY, AS TO JOINT DEBTOR
12-7-2023 [\[23\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/05/23

Final Ruling

Motion: Waive Financial Management Course Requirement, Substitute Party

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

Disposition: Denied without prejudice

Order: Civil minute order

Debtor Roy Devaney seeks an order waiving the financial management course requirement, and substituting party for deceased debtor Melissa Devaney. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or

within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 26. Accordingly, service of the motion does not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to waive requirements and substitute party has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

8. [23-23162](#)-A-7 **IN RE: JAMES/PEGGY STEWART**
[BLF-2](#)

MOTION TO ABANDON
12-15-2023 [\[27\]](#)

MARK SHMORGON/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Final Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

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

Disposition: Granted only as to the assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Description: Estate's Interest in 1) Leasehold of real property located at 2650 Northgate Blvd., Sacramento, California; 2) the business known as Pizza To Go, Inc.; and 3) all personal property located at 2650 Northgate Blvd., which is owned by Pizza To Go, Inc.

Value: \$0

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).

Kimberly Husted, the chapter 7 trustee moves for an order authorizing her abandonment of the bankruptcy estate's interest in the following assets: 1) Leasehold of real property located at 2650 Northgate Blvd., Sacramento, California; 2) the business known as Pizza To Go, Inc.; and 3) all personal property located at 2650 Northgate Blvd., which is owned by Pizza To Go, Inc. Motion, 1:17-22, ECF No. 27.

ABANDONMENT

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been

wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Trustee Investigation

The trustee conducted a review of the debtor's assets and determined that the business assets are subject to a lien held by Lenci Commercial Properties, LLC, which is the landlord at the business premises located at 2650 Northgate Blvd., Sacramento, California. In her review the trustee discovered additional lienholders, Sysco Sacramento, Inc., and Assn. Company. Motion, 2:20-28, ECF No. 27. The trustee contends that the assets described in the motion are of inconsequential value to the estate.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The court will grant the trustee's motion. The order will authorize abandonment of only the assets that are described in the motion.

9. [23-23162](#)-A-7 **IN RE: JAMES/PEGGY STEWART**
[BLF-3](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
12-15-2023 [\[31\]](#)

MARK SHMORGON/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Final Ruling

Motion: Reject Lease

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

Disposition: Granted

Order: Prepared by moving party

Chapter 7 Trustee, Kimberly Husted, seeks an order approving her rejection of a lease for the premises located at 2650 Northgate Blvd., Sacramento, California, pursuant to 11 U.S.C § 365.

REJECTION OF A LEASE

Section 365 of Title 11 gives the trustee three options regarding unexpired leases and executory contracts. 11 U.S.C. § 365(a), (f). The trustee has the option to assume, to assume and assign, or to

reject. See *id.*; *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 201 (B.A.P. 9th Cir. 1991). "By 'assumption,' the trustee or DIP elects to be bound by the terms of the agreement so that the other party must continue to perform thereunder. The contract or lease remains in force" Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 16:2 (rev. 2011).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); March, Ahart & Shapiro, *supra*, ¶¶ 16:1535-1536, 16:515 (rev. 2015). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the trustee acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670. The assumption or rejection of an unexpired lease or executory contract should be approved absent a finding that the decision is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

DISCUSSION

In her investigation of the estate assets the trustee reviewed the lease of the premises located at 2650 Northgate Blvd., Sacramento, California. The trustee discovered that the lease was held by John Lenci and that the monthly rent is at least \$6,600.00. At the meeting of creditors, the debtors testified that they continue to operate the restaurant at a loss each month, and that lease payments have not been paid since August 2023.

After her review of the business documents the trustee contends that the business and the lease are of inconsequential value to the estate. The trustee requests that she be authorized to reject the business lease effective the date the petition was filed.

The lease described above is either burdensome to the estate or of inconsequential value to the estate. An order approving the trustee's rejection of the lease is warranted. The court will grant the trustee's motion.

10. [23-24276](#)-A-7 **IN RE: GOOD GROUND INVESTMENTS LLC**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2023 [[23](#)]

JENNIFER WONG/ATTY. FOR MV.
DEBTOR DISMISSED: 12/18/23
KIAVI FUNDING, INC. VS.

Final Ruling

This case was dismissed on December 18, 2023. This motion is removed from the calendar as moot. No appearances are required.

11. [23-24481](#)-A-7 **IN RE: LELAND/MEGAN STOCK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-28-2023 [[13](#)]

RICHARD HALL/ATTY. FOR DBT.
1/2/24 FILING FEE PAID \$338

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

12. [23-22586](#)-A-7 **IN RE: JILL LINDEMAN**
[GW-2](#)

MOTION TO AVOID LIEN OF STRATEGIC FUNDING SOURCE, INC.
12-5-2023 [\[28\]](#)

GERALD WHITE/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/17/23

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 9578 Rose Vista Way, Sacramento, California

Judicial Lien Avoided: \$136,775.29 (Strategic Funding Source, Inc.)

All Other Liens:

-deed of trust - Wells Fargo Home Mortgage, \$151,274.00

Exemption: \$537,000

Value of Property: \$599,000

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).

The debtor seeks an order avoiding the judgment lien of Strategic Funding Source, Inc., under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

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

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

13. [19-20389](#)-A-7 **IN RE: CAROLYN ANGUIANO**
[BHS-4](#)

MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
11-29-2023 [\[102\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
DEBTOR DISCHARGED: 04/29/19

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Allowed Compensation: \$5,865.00

Reimbursement of Expenses: \$192.15

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Barry Spitzer, attorney for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,865.00 and reimbursement of expenses in the amount of \$192.15.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,865.00 and reimbursement of expenses in the amount of \$192.15.

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