



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

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

**DAY: MONDAY**  
**DATE: FEBRUARY 12, 2024**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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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

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### 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.

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1. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-1](#)

MOTION TO AVOID LIEN OF AFK, INC.  
1-3-2024    [\[39\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The certificate of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. Certificate of Service, ECF No. 42.

### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Avoid Judicial Lien 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.

2. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-2](#)

MOTION TO AVOID LIEN OF SYSCO SACRAMENTO, INC.  
1-3-2024    [\[43\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The certificate of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. Certificate of Service, ECF No. 46.

### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Avoid Judicial Lien 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.

3. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-3](#)

MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT BUREAU, INC.  
1-3-2024    [\[47\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The certificate of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. Certificate of Service, ECF No. 50.

### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Avoid Judicial Lien 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.

4. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-4](#)

MOTION TO AVOID LIEN OF PERRIN BERNARD SUPOWITZ, LLC  
1-3-2024    [\[51\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The certificate of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. Certificate of Service, ECF No. 54.

### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Avoid Judicial Lien 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.

5. [24-20010](#)-A-7      **IN RE: OCTOPUS P AND L INVESTMENTS LLC**  
[FEC-1](#)

ORDER TO SHOW CAUSE  
1-11-2024    [\[18\]](#)

### **Final Ruling**

**Motion:** Court's Order to Show Cause

**Disposition:** Sustained, and case dismissed

**Order:** Civil minute order

On January 3, 2024, the debtor, OCTOPUS P AND L INVESTMENTS, LLC, filed a Chapter 7 bankruptcy petition. The petition was not signed by an attorney, Petition, ECF No. 1. The debtor is a limited liability company (LLC).

On January 11, 2024, the court issued an order to show cause stating its intent to dismiss the case and requiring that the debtor file written opposition no later than January 29, 2024. Order to Show Cause, ECF No. 18. The debtor has failed to file any opposition as required. For the following reasons the court sustains the order to show cause and dismisses the case.

### **CORPORATE DEBTORS MAY NOT APPEAR WITHOUT AN ATTORNEY**

"It is a longstanding rule that corporations and other unincorporated associations must appear in court through an attorney", *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004).

Rule 183 of the Local Rules of Practice of the United States District Court for the Eastern District of California *incorporated and made applicable* in bankruptcy cases by Local Bankruptcy Rule 1001-1(c), states that a corporation or other entity may appear only by an attorney.

### Requirement Applies to LLC

An attorney must sign the petition on behalf of the debtor, and the debtor may only proceed with this bankruptcy case if represented by an attorney because "an LLC, by virtue of its structure and limited liability features, fits comfortably within the Bankruptcy Code's definition of 'corporation....' ", *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 717 (9th Cir. BAP 2004).

Because the debtor is an entity, an LLC, it must be represented by an attorney. The debtor is not represented by an attorney. The order to show cause is sustained and the case dismissed.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the order to show cause is sustained and the case is dismissed. The debtor is an entity, an LLC, and the petition is not signed by an attorney. This is cause to dismiss the case.

6. [23-24253](#)-A-7     **IN RE: MICHAEL/CONNIE SCHMALJOHANN**  
[BLF-2](#)

MOTION TO EMPLOY TMC AUCTION, INC. AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
1-11-2024     [\[21\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Sell Property and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2004 Jeep Wrangler; 2005 Chrysler Town and Country; 2011 Montana 315 Keystone; 1982 Bayliner 1750 Mutiny Bowrider boat; 1976 Honda GL 1000 Goldwing motorcycle; 1976 Tahiti ski boat; 1985 Honda GL 1200A Goldwing motorcycle; 1998 Kodak V Travel Trailer; 1980 Utility Trailer; and 1982 Tarpon Fishin Ski Barge

**Sale Type:** Public auction

**Auctioneer:** TMC Auction, Inc.

**Compensation Approved:** 10% of gross sale proceeds plus 10% gross buyer's premium

**Reimbursement of Expenses Approved:** Actual, not to exceed \$6,500

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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).

Chapter 7 trustee, Kimberly Husted, seeks an order: 1) authorizing the employment of TMC Auction, Inc.; 2) authorizing the sale of the personal property identified in this ruling; and 3) authorizing compensation and reimbursement of expenses to TMC Auction, Inc.



## **SALE**

The trustee wishes to sell at public auction, the following personal property: 2004 Jeep Wrangler; 2005 Chrysler Town and Country; 2011 Montana 315 Keystone; 1982 Bayliner 1750 Mutiny Bowrider boat; 1976 Honda GL 1000 Goldwing motorcycle; 1976 Tahiti ski boat; 1985 Honda GL 1200A Goldwing motorcycle; 1998 Kodak V Travel Trailer; 1980 Utility Trailer; and 1982 Tarpon Fishin Ski Barge.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

## **COMPENSATION**

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

### 7. [23-24058](#)-A-7     **IN RE: PRISCILLA FRAZIER** [PSB-1](#)

MOTION TO AVOID LIEN OF STATES RECOVERY SYSTEMS, INC  
1-3-2024    [\[13\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

## **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:** 1985 Bainbridge Modular Home

**Judicial Lien Avoided:** \$18,225.03 (States Recovery System Inc.)

**All Other Liens:** none

**Exemption:** \$300,000

**Value of Property:** \$206,200

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 judicial lien of States Recovery Systems, 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.

8. [20-25064](#)-A-7     **IN RE: WILLIAM STELL**  
[BHS-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH WILLIAM EDWARD STELL AND/OR MOTION TO PAY  
1-9-2024     [\[54\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
BARRY SPITZER/ATTY. FOR MV.  
DEBTOR DISCHARGED: 02/16/21

### **Final Ruling**

**Motion:** Approve Compromise of Controversy; Allow Payment of Estate Taxes; Authorize Abandonment of Assets

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Chapter 7 trustee, Nikki Farris, seeks an order: 1) approving the settlement reached in the case of *PG & E Corporation, and Pacific Gas and Electric Company*, Case No. 2019-30088, (United States Bankruptcy Court, Northern District of California, 2019); 2) allowing the payment of federal income taxes of the bankruptcy estate in the amount of \$9,500.00; and 3) authorizing the trustee to abandon any remaining interest in the previously described litigation.

### **FACTS**

The debtor sustained injuries in the 2018 wildfire in Butte County, California, and his claim in the PG & E litigation described herein is an asset of the instant bankruptcy estate.

Special counsel Sieglock Law, APC, and Fox Law, APC, represented the estate in negotiating a settlement of the claim, on a contingent fee basis. Order Approving Employment of Special Counsel, ECF No. 53. A separate motion approving compensation of special counsel (BHS-4) will be heard concurrently with this motion.

Special counsel negotiated a settlement in the PG & E litigation as follows: gross settlement of \$248,709.99, to be disbursed in two installments; contingent attorney fees, \$49,741.95; and costs, \$5,375.00. Additionally, this court has previously approved an advance of \$20,000 to the debtor, Order, ECF No. 47. Accordingly, the net proceeds to the estate from the initial distribution total \$74,108.91.

The trustee contends because of the settlement and payment of monies to the bankruptcy estate, that \$9,500.00 will be due in federal income taxes. The trustee seeks authority to pay those taxes.

The trustee contends that all claims will be paid in full by the anticipated amounts from the initial distribution of settlement funds. Accordingly, the trustee seeks to abandon any interest in the remainder of the settlement funds which are to be distributed later as those funds are of no value to the estate.

#### **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.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as Exhibit B, ECF No. 56. 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.

#### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the

motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b) (1) (B) .

#### **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) .

Because all claims will be paid in full by the anticipated amounts from the initial distribution of settlement funds the remainder of the settlement is of no 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 order will authorize abandonment of only the assets that are described in the motion.

The trustee shall submit an order in accordance with the court’s ruling.

9. [20-25064](#)-A-7     **IN RE: WILLIAM STELL**  
[BHS-4](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER SIEGLOCK, SPECIAL  
COUNSEL(S)  
1-10-2024    [\[61\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 02/16/21

### **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

**Compensation Allowed:**    \$49,741.95

**Expenses:**    \$5,375.00

**Compensation/Expenses Allowed:**    50% to Sieglock Law, APC; and 50% to  
Fox Law, APC

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).

Chapter 7 trustee Nikki Farris seeks an order allowing compensation to special counsel for their representation of the estate in connection with *PG & E Corporation, and Pacific Gas and Electric Company*, Case No. 2019-30088, (United States Bankruptcy Court, Northern District of California, 2019). Sieglock Law, APC, and Fox Law, APC, represented the estate pursuant to a contingency fee agreement which was approved by the court. Order, ECF No. 53.

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Chapter 7 trustee Nikki Farris applies for allowance of final compensation and reimbursement of expenses on behalf of special counsel Sieglock Law, APC, and Fox Law, APC, special counsel for the trustee. 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 \$49,741.95 and reimbursement of expenses in the amount of \$5,375.00. The allowed compensation and expenses shall be divided equally between the two law firms.

"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).

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.

The trustee's application for allowance of final compensation and reimbursement of expenses on behalf of special counsel has been presented to the court. Having entered the default of respondent(s) 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 \$49,741.95 and reimbursement of expenses in the amount of \$5,375.00.

IT IS FURTHER ORDERED that Sieglock Law, APC, and Fox Law, APC, shall each receive one half of the total amount of compensation and expenses allowed.

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.

10. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[DNL-10](#)

MOTION TO EMPLOY JUDY SNYDER AS SPECIAL COUNSEL  
12-13-2023    [\[458\]](#)

BYRON FARLEY/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Employ Special Counsel

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

**Disposition:** Continued to February 26, 2024, at 10:30 a.m.

**Order:** Civil minute order

**Special Counsel:** Judy Snyder - Law Offices of Judy Snyder

**Subject of Representation:** injuries arising out of legal malpractice claim, independent advisor regarding appeal from adverse judgment

**Employment:** 11 U.S.C. §§ 327, 328

**Terms of Employment:** hourly, plus costs

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

Nikki Farris, chapter 7 trustee, has moved to employ Judy Snyder, Law Offices of Judy Snyder, to represent the estate on an hourly fee basis with respect to the matters described herein.

Prior to the date of the petition, the debtor(s) sustained an injury resulting from legal malpractice, for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

### **CONTINUED HEARING**

On January 30, 2024, the movant filed a notice of continued hearing. The notice continues the hearing on this motion to coincide with a hearing on the trustee's motion to approve a stipulation between the debtors and the trustee. The stipulation addresses the status of the malpractice cause of action as an asset of the estate. Accordingly, the court will continue the hearing on this motion.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to February 26, 2024, at 10:30 a.m.



11. [23-23376](#)-A-7     **IN RE: JOSEPH/RACHEL DIAZ**  
[SSH-1](#)

MOTION TO AVOID LIEN OF EMPOWER RETIREMENT, LLC  
12-29-2023    [\[30\]](#)

SIMRAN HUNDAL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/23/24

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Continued to March 25, 2024, at 10:30 a.m.  
**Order:** Civil minute order

**Subject Property:** 1379 Crestwood Ave, Manteca, California

**Judicial Lien:** \$804,294.54 (Empower Retirement, LLC)  
**All Other Liens:** none  
**Exemption:** \$550,000.00  
**Value of Property:** \$441,894.00

The debtors seek an order avoiding the judicial lien of Empower Retirement, LLC, under 11 U.S.C. § 522(f). The meeting of creditors has been continued to February 7, 2024. Accordingly, the deadline to object to the debtors' claim of exemption in the subject property will be extended.

The court will continue the hearing on this motion until after the anticipated deadline for objecting to the debtors' claim of exemptions.

### **TRUSTEE RESPONSE**

On January 29, 2024, the Chapter 7 trustee, Nikki Farris, filed a response to the motion stating that "[t]he Trustee is continuing to investigate the lien and claims of Empower and the claim of exemption asserted by the Debtors." Response, 2:11-12, ECF No. 46. The trustee also requests a continuance of the motion.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to March 25, 2024, at 10:30 a.m. Not later than March 4, 2024, the trustee shall file and serve a status report apprising the court of the status of her investigation into the motion before the court.

12. [24-20010](#)-A-7     **IN RE: OCTOPUS P AND L INVESTMENTS LLC**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-26-2024    [\[21\]](#)

**Final Ruling**

This case was dismissed on the Court's Order to Show Cause (FEC-1). Accordingly, this order to show cause is moot. This matter will be removed from the calendar. No appearances are required.

13. [23-24331](#)-A-7     **IN RE: JAYATON THOMAS**

MOTION TO ENFORCE THE AUTOMATIC STAY  
1-29-2024    [\[44\]](#)

JAYATON THOMAS/ATTY. FOR MV.

**Final Ruling**

The court has ordered this motion consolidated with the debtor's previously filed Motion for Contempt (FEC-1). Fed. R. Civ. P. 42, Fed. R. Bankr. P. 7042. The hearing is continued to March 25, 2024, at 10:30 a.m. All prior orders regarding the filing and serving of documents and the schedule for same remain in effect. Order, ECF No. 38.