



**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 26, 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 simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
  - Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
  - Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.
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To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## 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.

1. [21-23504](#)-A-7     **IN RE: JOSE MONTES**  
[TMO-1](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC  
1-15-2024   [[23](#)]

T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/14/22

**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:** 4 West Street, Woodland, California

**Judicial Lien Avoided:** \$4,145 (Cavalry SPV I, LLC)

**All Other Liens:**

- Deed of trust - \$199,854.22 (Wells Fargo Bank)

**Exemption:** \$300,000

**Value of Property:** \$438,000

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 judicial lien of Cavalry SPV I, LLC, 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.

2. [24-20338](#)-A-7     **IN RE: BRENDA PRIEST**  
[SLH-1](#)

MOTION TO COMPEL ABANDONMENT  
1-31-2024   [\[10\]](#)

SETH HANSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(2); non opposition filed by trustee  
**Disposition:** Granted  
**Order:** Prepared by moving party pursuant to the instructions below  
  
**Subject:** 7936 Brockwood Way, Citrus Heights, California  
**Value:** \$466,600.00  
**1st Trust Deed:** \$272,336 (PennyMac Loan Services, LLC)  
**Utility Lien:** \$662.71  
**Exemption:** \$225,000.00  
**Non-Exempt Equity:** \$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).

The debtor seeks an order compelling the trustee's abandonment of real property located at 7936 Brockwood Way, Citrus Heights, California. The Chapter 7 trustee, Nikki Farris, filed non-opposition to the motion on February 5, 2024.

**ABANDONMENT**

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

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).

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

3. [23-20547](#)-A-7     **IN RE: MARTIN BERKEY**  
[BLF-4](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
1-16-2024    [43]

MARK BRIDEN/ATTY. FOR DBT.

**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:**   \$7,080.00

**Reimbursement of Expenses:**   \$32.00

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 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, Loris L. Bakken, 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 \$7,080.00 and reimbursement of expenses in the amount of \$32.00.

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.

Loris L. Bakken'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 \$7,080.00 and reimbursement of expenses in the amount of \$32.00.

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. [22-22949](#)-A-7     **IN RE: ZOE BURTON-ROSAL**  
[DNL-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES  
ATTORNEY(S)  
1-23-2024   [\[75\]](#)

GARY FRALEY/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 02/22/23

**Final Ruling**

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

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

**Required Service:** Fed. R. Civ. P. 5, Fed. R. Bankr. P. 7005

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Allowed:**   \$14,786.81

**Reimbursement of Expenses:**   \$213.19

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, Desmond, Nolan, Livaich & Cunningham, 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 "capped" amount of \$15,000.00. The motion itemizes and requests reimbursement of expenses in the amount of \$213.19. Accordingly, the court will approve \$14,786.81 as compensation and reimbursement of expenses in the amount of \$213.19.

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.

Desmond, Nolan, Livaich & Cunningham'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 \$14,786.81 and reimbursement of expenses in the amount of \$213.19.

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.

5. [23-22449](#)-A-7     **IN RE: DARIN DOWD**  
[BLF-3](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
1-16-2024    [29]

MARY TERRANELLA/ATTY. FOR DBT.

**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:**   \$4,560.00

**Reimbursement of Expenses:**   \$65.57

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, Loris L. Bakken, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,560.00 and reimbursement of expenses in the amount of \$65.57.

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.

Loris L. Bakken'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 \$4,560.00 and reimbursement of expenses in the amount of \$65.57.

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.

6. [23-22353](#)-A-7     **IN RE: ROY/MELISSA DEVANEY**  
[JCK-3](#)

MOTION TO DISMISS MELISSA LYNN DEVANEY  
1-16-2024    [[28](#)]

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

**Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case

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

**Disposition:** Denied

**Order:** Civil Minute Order

The motion seeks dismissal of this case as to debtor Melissa Lynn Devaney only. Ms. Devaney passed away on September 9, 2023. Notice of Death, ECF No. 31. The court will deny the motion to dismiss

**DISMISSAL**

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal . . . ." 11 U.S.C. § 305(a)(1); see, e.g., *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

No legal authority for this motion is cited, as required.

**CHAPTER 7 CASES DO NOT ABATE UPON DEATH OF DEBTOR**

*Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.*

Fed. R. Bankr. P. 1016, (emphasis added).

The movant has failed to provide any argument which shows that the dismissal of the petition as to debtor Melissa Devaney is in the best interests of the creditors and the debtor would be best served by a dismissal. No argument for cause which is not prejudicial to creditors has been proffered by the movant.

Conversely, Rule 1016 provides that the Chapter 7 case shall not abate, and that case administration will continue. The movant has provided no showing that continued administration of the estate is not possible.

Notice of Death and Omnibus Relief

The court also notes that the surviving debtor, Roy Devaney, has filed a Notice of Death combined with a Motion to Substitute Representative, and Request for Waiver of Debtor Education Requirement. Notice of Death, ECF NO. 31. This combined notice and request for relief is authorized pursuant to LBR 2016-1(a), (b). However, the motion for substitution of representative and waiver of debtor education requirement is not before the court as the movant failed to file a notice of hearing apprising parties of the motion, date to file opposition and other information as required under LBR 9014-1(d) (3) (B).

The court will deny the motion to dismiss.

**CIVIL MINUTE ORDER**

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

Debtor's Motion to Dismiss has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

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

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

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

**Tentative Ruling**

**Motion:** Employ Special Counsel

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

**Disposition:** Approved

**Order:** Prepared by moving party

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

**Subject of Representation:** Legal Malpractice Claim; independent consultant regarding appeal from underlying judgment

**Employment:** 11 U.S.C. §§ 327, 328

**Terms of Employment:** hourly

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).

Nichole B. 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. Special Counsel's hourly rate is \$550.00 plus reimbursement of expenses.

On April 9, 2021, Nicholas Loper filed a Second Amended Complaint against the debtor in the Circuit Court of the State of Oregon for the County of Multnomah, Case Number 20CV39371. On March 31, 2021, Debtor Lindsay Brakel filed an Answer to Loper's Second Amended Complaint that failed to raise the defense of "Sudden Medical Incapacity" in the Loper Case.

The Oregon state court in the Loper Case excluded certain evidence based on the untimely assertion of the defense of "Sudden Medical Incapacity." On September 28, 2023, the jury returned a verdict in the Loper Case in favor of Nicholas Loper. The debtors have been advised that a legal malpractice claim exists ("Malpractice Claim").

On November 9, 2023, a Notice of Appeal in the Loper Case was filed.

The attorney has significant experience with this type of case. The trustee deems it appropriate that Proposed Special Purpose Counsel be retained to represent the estate regarding the malpractice claim and providing advice regarding the appeal.

## **EMPLOYMENT**

Chapter 7 trustees may employ counsel to represent the estate. 11 U.S.C. § 327. Employment may be for all purposes or for a limited purpose. The burden of proving eligibility is on the applicant. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 154 (8th Cir. BAP 2005). Where the trustee seeks to employ special counsel that has previously represented the debtor employment is governed by § 327(e). That section provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

In most instances, "in the best interest of the estate" means reasonably likely to recover non-exempt assets that may be administered for creditors, 11 U.S.C. § 704(a)(1). Proposed special counsel must not hold or represent "any adverse interest" to the debtor or to the estate "with respect to the matter on which the attorney is to be employed." Adverse interest means "the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holding, Inc.*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008). See *In re Grant*, 507 B.R. 306, 308-10 (Bankr. E.D. Cal. 2014) (holding that there is adverse interest where the attorney to be employed asserts a charging lien—at least if avoidable, or where the debtor argues that the proceeds of the action are exempt under applicable law).

Where the applicant wishes to define the terms of employment it may also seek approval under § 328. The section provides:

The trustee...with the court's approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, 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.

11 U.S.C. § 328(a).

The court will grant the motion. The court authorizes employment of Judy Snyder, Law Offices of Judy Snyder, as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment on an hourly basis plus reimbursement of costs incurred under 11 U.S.C. § 328(a). Compensation and reimbursement of expenses shall only be paid upon the court's approval of a motion seeking approval of the settlement and payment of propose special purpose counsel. Fed. R. Bankr. P. 9019.

The trustee shall submit an order granting the motion which is consistent with this ruling.

8. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[DNL-6](#)

MOTION TO APPROVE STIPULATION RE: PROPERTY OF THE ESTATE  
1-30-2024    [\[481\]](#)

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

**Tentative Ruling**

**Motion:** Approve Stipulation

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

**Disposition:** Granted

**Order:** Prepared by movant according to instructions below

**Parties:** Debtor, Chapter 7 Trustee

**Material Terms:** The Malpractice Claim, Negligence Claim, and the Insurer Claim are property of the estate.

**Petition Filed:** July 5, 2022

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 Chapter 7 trustee, Nichole B. Farris, requests the court's approval of a stipulation between the trustee on behalf of the bankruptcy estate and the debtors. The Stipulation provides that the causes of action described as: (1) a malpractice claim; (2) a negligence claim; and (3) an insurer claim are all assets of the bankruptcy estate. The Stipulation has been filed concurrently with this motion as Exhibit A, ECF No. 484.

## **FACTS**

On April 9, 2021, Nicholas Loper filed a Second Amended Complaint against the debtor in the Circuit Court of the State of Oregon for the County of Multnomah, Case Number 20CV39371. On March 31, 2021, Debtor Lindsay Brakel filed an Answer to Loper's Second Amended Complaint that failed to raise the defense of "Sudden Medical Incapacity" in the Loper Case.

On July 5, 2022, the Debtors commenced the above-captioned case by filing a voluntary Chapter 12 petition. On August 9, 2022, the Debtors commenced Case Number 22CV26306 ("Insurance Case") in the Circuit Court of the State of Oregon for the County of Baker, by the filing of the complaint ("Insurance Complaint"). The Insurance Complaint names Ken Tew, an individual, The Simmons Agency, Inc., dba Ag Insurance, a domestic company; and LRP Insurance Group, LLC, a domestic company, as defendants, based on a claim for negligence ("Negligence Claim").

The Oregon state court in the Loper Case excluded certain evidence based on the untimely assertion of the defense of "Sudden Medical Incapacity." On September 28, 2023, the jury returned a verdict in the Loper Case in favor of Nicholas Loper. The debtors have been advised that a legal malpractice claim exists ("Malpractice Claim").

On November 9, 2023, a Notice of Appeal in the Loper Case was filed. The parties have been advised that a claim may exist against Lindsay's insurer for the retention of Chock Barhoum, LLP in the Loper Case ("Insurer Claim").

## **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 that settles the dispute described above. The compromise is reflected in the stipulation filed concurrently with the motion as Exhibit A, ECF No. 484. 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.

The proposed order shall attach a copy of the stipulation as an exhibit to the order unless the stipulation exceeds 50 pages. If the stipulation exceeds 50 pages, then the proposed order shall not attach the stipulation but shall incorporate it by reference to its title and docket number.

9. [23-24174](#)-A-7     **IN RE: MICHAEL/SUSAN MARASCO**  
[THS-3](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
2-8-2024    [\[31\]](#)

TIMOTHY STEARNS/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Convert Case

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors seek an order converting their case to Chapter 13. 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).

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.

Matrix

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the *Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate:* (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

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

In this case the matrix attached to the certificate of service is not the Clerk of the Court's Matrix as required. See Certificate of

Service, ECF No. 33. Accordingly, the court is unable to determine which parties were served with the motion or at what address they were served. Service of the motion therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

#### **SPECIAL NOTICE CREDITORS**

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Wells Fargo Bank, N.A. See ECF No. 17.

While the Certificate of Service, states the special notice parties were served with the motion, there is no matrix of special notice parties as required, nor is Wells Fargo Bank, N.A. on the list of creditors which were served with the motion. See *Certificate of Service*, Item ^ (B) (2) (b), ECF No. 33. There is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

#### **NOTICE**

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

#### Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be

given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d) (3) (B) (iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d) (3) (B) (iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d) (3) (B) (iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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 debtors' Motion to Convert 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.

10. [23-23875](#)-A-7     **IN RE: RICHARD/SARAH WILLIAMS**  
[TLA-1](#)

MOTION TO COMPEL ABANDONMENT  
1-22-2024    [[16](#)]

THOMAS AMBERG/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party pursuant to the instructions below  
  
**Subject:** 4840 Torrington Place #1104, Sacramento, California  
**Value:** \$315,000  
**1st Trust Deed:** \$223,391 (Mr. Cooper)  
**Exemption:** \$180,000  
**Non-Exempt Equity:** \$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).

The debtor seeks an order compelling the abandonment of real property located at 4840 Torrington Place #1104, Sacramento, California.

### **ABANDONMENT**

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

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).

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

11. [24-20478](#)-A-7     **IN RE: ADRIAN/AMBER LOSSING**  
[SLH-1](#)

MOTION TO COMPEL ABANDONMENT  
2-12-2024    [\[10\]](#)

SETH HANSON/ATTY. FOR DBT.

**Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Notice:** LBR 9014-1(f)(2); opposition filed by Chapter 7 trustee

**Disposition:** Continued to March 25, 2024, at 10:30 a.m.

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Sole proprietorship, Artisan Building Contractor; Domain name theartisticbuilder.com; 15x7 trailer; miscellaneous tools; tile machine; accounts receivable; and antiques.

**Value:** \$10,850.00.

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 debtors seek an order compelling the Chapter 7 trustee’s abandonment of the business assets described above. The debtors have claimed all the assets as fully exempt.

Kimberly Husted, Chapter 7 trustee, opposes the motion. Opposition, ECF No. 15. In her opposition the trustee states that she has not yet received documents from the debtor under 11 U.S.C. § 521, and has not yet been able to examine the trustee at the meeting of creditors. The meeting of creditors is scheduled for March 15, 2024.

The court will continue the hearing to allow the trustee to receive the required documents and to examine the debtor.

#### **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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is “burdensome to the estate or of inconsequential value and benefit to the estate.” See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

#### **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. No later than March 18, 2024, the trustee shall file a status report apprising the court whether she intends to oppose the motion.

12. [23-23783](#)-A-7     **IN RE: JAMES SIEPERT**  
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE  
WITHOUT ENTRY OF DISCHARGE  
2-2-2024    [\[21\]](#)

MARC CARASKA/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

**Notice:** LBR 9014-1(f)(2); no 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).

The U.S. Trustee seeks dismissal of the debtor's case under 11 U.S.C. § 707(b). The Debtor has stipulated to dismissal of this chapter 7 bankruptcy case. Stipulation, ECF No. 20. The Parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the Debtor's right to dismiss the case.

**DISMISSAL**

A motion to dismiss a chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular chapter 7 case is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b)(2) and (3) are applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8) (defining consumer debt). And the means test of § 707(b)(2) is triggered only as to above-median income debtors. See *id.* § 707(b)(7)(A).

The presumption of § 707(b)(2) is triggered when the debtor's current monthly income (CMI) less specified expenses ("disposable income"), § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$7,700.00, whichever is greater, or (2) \$12,850.00. *Id.* § 707(b)(2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. *Id.* § 707(b)(2)(B)(I).

The court approves the stipulation. The motion will be granted, and the case dismissed.

13. [23-23783](#)-A-7 **IN RE: JAMES SIEPERT**  
[UST-2](#)

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER  
SEC. 707(B) AND/OR MOTION TO EXTEND TIME  
2-2-2024 [[23](#)]

MARC CARASKA/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge or File a Motion to Dismiss

**Notice:** LBR 9014-1(f)(2); no 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).a

The U.S. Trustee seeks an order extending the deadline to file a motion to dismiss or convert this case.

The parties entered into a stipulation setting forth the debtor's desire to dismiss the chapter 7 case prior to entry of a discharge to avoid costly litigation (the "Stipulation"). See ECF No. 20. In that Stipulation, the Debtor agreed to extend the U.S. Trustee's deadline to April 1, 2024.

### **EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS**

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through April 1, 2024.