

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

**DAY: MONDAY**  
**DATE: MARCH 14, 2022**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**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. 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. [19-26714](#)-A-7     **IN RE: STEVEN/SHARON HARPER**  
[BLF-3](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
2-8-2022    [\[39\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/24/2020

### **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:**    \$2,485.00

**Expenses:**        \$44.92

**Payment:**    Deferred until dividend disbursement under FRBP 3009

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 \$2,485.00 and reimbursement of expenses in the amount of \$44.92.

The applicant is terminating her employment on behalf of the estate and the trustee has not yet fully administered the estate. As such, the applicant and the trustee agree that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$7,500.00, and there are no more assets to be administered, then the applicant shall reduce her fees to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment, ECF No. 39, 3:13-19.

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 and will approve the payment schedule negotiated by the parties.

#### **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 \$2,485.00 and reimbursement of expenses in the amount of \$44.92.

IT IS FURTHER ORDERED that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$7,500.00, and there are no more assets to be administered, then the applicant's fees shall be reduced to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment.

2. [21-23522](#)-A-7     **IN RE: JOSEPH SMITH**  
[WW-2](#)

MOTION TO COMPEL ABANDONMENT  
2-11-2022     [\[42\]](#)

MARK WOLFF/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/24/2022; RESPONSIVE PLEADING

#### **Final Ruling**

The parties have stipulated to withdraw the motion (WW-2) without prejudice under Fed. R. Civ. P. 41. See ECF No. 50. The matter will be removed from the calendar.

3. [21-22830](#)-A-7     **IN RE: RANDALL HAYASHI**  
[BLF-2](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S  
ATTORNEY  
2-15-2022    [\[35\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 11/16/2021

**Tentative Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:**    \$5,355.00

**Expenses:**        \$78.06

**Payment:**    Deferred until dividend disbursement under FRBP 3009

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 already reduced compensation in the amount of \$5,355.00 and reimbursement of expenses in the amount of \$78.06.

The applicant is terminating her employment on behalf of the estate and the trustee has not yet fully administered the estate. As such, the applicant and the trustee agree that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$15,000.00, and there are no more assets to be administered, then the applicant shall reduce her fees to one third of the amount of funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment, ECF No. 35, 3:16-24.

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 and will approve the payment schedule negotiated by the parties.

#### **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 \$5,355.00 and reimbursement of expenses in the amount of \$78.06.

IT IS FURTHER ORDERED that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$15,000.00, and there are no more assets to be administered, then the applicant's fees shall be reduced to one third of the amount of funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment.

4. [21-23843](#)-A-7     **IN RE: REENA/SULESH KUMAR**  
[FWP-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC  
STAY  
2-11-2022    [\[27\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
NICHOLAS KOHLMAYER/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Approval of Stipulation for Relief from the Automatic Stay

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

**Disposition:** Granted

**Order:** Prepared by the movant pursuant to the instructions below

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 movants seek an order for relief from the automatic stay to pursue recovery in a civil action exclusively from insurance, including coverage generated pursuant to a MCS 90 endorsement, and other non-debtor persons or entities. Movants waive any deficiency claim against the debtors or property of the debtors' Bankruptcy Estate for any amounts above the applicable coverage amounts.

The movants and debtors, through their counsel, have signed a stipulation allowing the movants to so proceed. The chapter 7 trustee, Nikki Farris, has also signed the stipulation. See ECF Nos. 29-30.

The movant has filed a motion to approve the stipulation for relief from the automatic stay of 11 U.S.C. § 362(a). Federal Rule of Bankruptcy Procedure 4001(d)(3) authorizes the court to approve or disapprove a stipulation for relief from the automatic stay. Under this rule, the court hereby approves the stipulation for relief from stay filed. The movant shall attach the stipulation to the proposed order as an exhibit.

5. [21-23945](#)-A-7     **IN RE: MAY YANG AND WANGSAI LOR**  
[UST-1](#)

MOTION TO DISMISS CASE  
2-11-2022    [\[29\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)

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

**Disposition:** Granted

**Order:** Prepared by moving party

The debtors filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code. The U.S. Trustee has moved to dismiss the debtors' case under § 707(b). The motion is brought on grounds that the presumption of abuse arises under § 707(b)(2) and, alternatively, on grounds that the totality of the circumstances warrants dismissal under § 707(b)(3)(B). The debtors oppose the motion.

### **PROCEDURAL BACKGROUND**

The day before the filing of the instant motion the debtors filed Forms 122A-1 and 122A-2 on February 10, 2022, ECF No. 26. In response to the motion to dismiss the debtors have filed an opposition, ECF No. 49. The opposition is an unsworn statement by the debtors' attorney. The debtors have provided no declaration in support of their opposition.

The court notes that ECF No. 26 appears to have a document appended to it in error at page 15. Page 15 appears to pertain to another matter not before the court.

The movant filed a Reply on March 7, 2022, ECF No. 52. The reply and supporting exhibits and declarations provide the movant's analysis of the debtors' amended Forms 122A-1 and 122A-2. The documents in support of the reply include: Exhibits consisting of the corrected analysis tables under 11 U.S.C. §§ 707(b)(2) and (b)(3)(B), and pay stubs recently obtained from the debtors, ECF No. 54; and the reply declaration of Teresa Field, Certified Public Accountant employed by the movant, ECF No. 53.

The court bases its ruling on the amended forms as identified above and the analysis provided in the movant's reply and supporting documents.

### **LEGAL STANDARDS**

Section 707(b)(2)(A) of the Bankruptcy Code contains a statutory means test that determines whether the court should presume that the granting of relief would be an abuse of Chapter 7. See 11 U.S.C. § 707(b)(2)(A); see also *Blausey v. U.S. Tr.*, 552 F.3d 1124, 1132 (9th

Cir. 2009). "The means test is applied only if the debtor's CMI [current monthly income] is above the safe harbor amount set forth in 11 U.S.C. § 707(b)(7)." *Blausey*, 552 F.3d at 1132 (citing 11 U.S.C. § 707(b)(7)). Stated differently, the means test applies only to debtors with above-median income.

CMI is a defined term in § 101(10A). 11 U.S.C. § 101(10A)(A), (B). The statutory definition is as follows:

"The term 'current monthly income'--

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on-- (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism."

11 U.S.C. § 101(10A)(A), (B).

The means test is a statutory formula designed to calculate disposable income and compare it to a statutory threshold. "If the debtor's CMI minus certain expenses specified in the Internal Revenue Service's collection standards multiplied by 60"

("disposable income") is greater than or equal to the lesser of the amounts specified in § 707(b)(2)(A)(i)(I) and (II), "then the case is presumed to be an abuse and the bankruptcy court may either dismiss it under § 707(b) or, with the debtor's consent, convert it to Chapter 13." *Id.* (citing 11 U.S.C. § 707(b)(1), (b)(2)(A)).

## **DISCUSSION**

The court takes judicial notice of the voluntary petition, schedules, and statements filed in this case, as well as judicial notice of their contents. Fed. R. Evid. 201. The contents of the schedules and statements are non-hearsay admissions of the debtors to the extent they are offered against the debtors in this matter. Fed. R. Evid. 801(d)(2)(A), (D).



Section 707(b)(1) and (7)

The voluntary petition shows the nature of the debts in this case. They are primarily consumer debts. 11 U.S.C. § 707(b)(1).

Further, the debtor's amended Form 122A-1, filed February 10, 2022, shows that the debtor is above-median income for the debtor's applicable state and household size, ECF No. 26. See *id.* § 707(b)(7)(A).

Section 707(b)(2)

The U.S. Trustee has offered evidence that the presumption of abuse arises under § 707(b)(2). The U.S. Trustee's expert, a certified public accountant, has offered her declaration based on personal knowledge. In her declaration, she offers testimony about her experience, education, and skill that qualifies her as an expert under Fed. R. Evid. 702. See, Declaration of Teresa Field, ECF No. 53.

The U.S. Trustee's expert has reviewed all the materials filed by the debtor in this case, including: amendments to the Schedules, ECF Nos. 42 and 43; the Statement of Financial Affairs, ECF No. 44; Amended Forms 122A-1 and 122A-2, ECF No. 26.

The U.S. Trustee's expert has made adjustments to the debtor's deductions from income. The analysis presumes a household of 6 persons. The most notable adjustments are as follows:

Line-Item Form 122A-2	Description	Debtors' Amended 122A-2	Movant adjustments
4	Adjusted monthly income	\$10,925.81	\$10,973.57
12	Vehicle Expense	\$242.00	\$484.00
16	Taxes	\$1,950.40	\$1,229.15
25	Health and Disability insurance; Health savings accounts	\$0	\$491.40
29	Education Expenses	\$681.32	\$0
39	Monthly Disposable Income	\$(306.56)	\$519.19

Movant has made additional smaller adjustments in its favor to the form for optional telephones and services; involuntary deductions; and life insurance.

The debtors have provided no testimony in support of, or as explanation for, the amounts they have proffered in Forms 122A-1 or 122A-2.

After accounting for all the movant's adjustments to the debtor's deductions from income, the debtor's monthly disposable income for purposes of Form 122A-2, multiplied by 60, is \$31,151.00. This exceeds the applicable statutory limit under § 707(b)(2)(A)(i). The presumption of abuse arises under § 707(b)(2).

I reviewed the amendments to the Schedules (ECF Nos. 42 and 43) and the Statement of Financial Affairs (ECF #44). Based on this analysis, Trial Attorney Gaitan included me as a recipient in a February 24, 2022, email to counsel advising him that I found an error in using the IRS Standard for Food and Clothing for five individuals instead of six. I adjusted for the discrepancy as reflected in the attached Exhibit "A" to this declaration, but I continued to find monthly disposable income of \$519.19 (or \$31,151 over 60 months) for the means test period.

Declaration of Teresa Field, ECF No. 53, 2:1-8.

### **CONCLUSION**

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted, and the case dismissed.

6. [21-23051](#)-A-7     **IN RE: NICHOLAS/JENNIFER WILLIAMS**  
[DEF-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO ABANDON  
10-20-2021    [\[48\]](#)

DAVID FOYIL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/11/2022

**No Ruling**

7. [18-22453](#)-A-7     **IN RE: ECS REFINING, INC.**  
[DMC-45](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC  
1-31-2022    [\[1780\]](#)

CHRISTOPHER BAYLEY/ATTY. FOR DBT.  
HOWARD NEVINS/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

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

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. seeks an order approving a settlement with Comcast Cable Communications Management, LLC pursuant to Fed. R. Bankr. P. 9019(a).

### **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 submitted concurrently with the motion as an exhibit, ECF No. 1783. 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.

Kimberly J. Husted's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement submitted concurrently with the motion as an exhibit and filed at ECF No. 1783.

8. [18-22453](#)-A-7     **IN RE: ECS REFINING, INC.**  
[DMC-46](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL, MOTION FOR APPROVAL OF EARNED CONTINGENCY FEE FROM SETTLEMENT BETWEEN TRUSTEE AND COMCAST CABLE COMMUNICATION MANAGEMENT, LLC AND REIMBURSEMENT OF EXPENSES  
1-31-2022    [\[1786\]](#)

CHRISTOPHER BAYLEY/ATTY. FOR DBT.  
CHRISTOPHER SULLIVAN/ATTY. FOR MV.

#### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

#### **Comcast Communications Litigation**

**Compensation:** \$19,928.03

**Reimbursement of Expenses:** \$12,724.89

#### **Final Compensation and Expenses - Previously Allowed and Paid**

**Compensation:** \$1,352,390.45

**Reimbursement of Expenses:** \$187,537.79

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**

The applicant, Diamond McCarthy, LLP, seeks an order that: (1) approves and allows on a final basis previously allowed and paid compensation in the amount of \$1,352,390.45 and expenses in the amount of \$187,537.79; and (2) approves and allows on a final basis an earned contingency fee in the amount of \$19,928.03 from the proceeds of the settlement between the Trustee and Comcast and approve reimbursement of expenses on a final basis in the amount of \$12,724.89 for a total of \$32,652.92.

#### **COMCAST LITIGATION**

The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code.

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.

#### **PREVIOUSLY ALLOWED COMPENSATION AND REIMBURSEMENT**

The court also approves on a final basis all previously allowed and paid compensation and expenses.

#### **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.

Diamond McCarthy LLP'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 Comcast Communications litigation in the amount of \$19,928.03 and reimbursement of expenses in the amount of \$12,724.89.

IT IS FURTHER ORDERED that the court approves on a final basis all previously allowed and paid compensation in the amount of \$1,352,390.45, and all previously allowed and paid reimbursement of expenses in the amount of \$187,537.79.

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.

9. [21-23056](#)-A-7     **IN RE: RANDI HARRY AND SAMUEL BALSLEY**  
[JMH-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
2-11-2022     [\[27\]](#)

SETH HANSON/ATTY. FOR DBT.  
J. HOPPER/ATTY. FOR MV.  
DEBTORS DISCHARGED: 12/29/2021

### **Final Ruling**

**Motion:** Allow Administrative Expense [Sales Taxes]

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

**Disposition:** Granted

**Order:** Civil minute order

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

The chapter 7 trustee, J. Michael Hopper, seeks an order approving the allowance of an administrative expense, specifically the payment of sales taxes in the amount of \$628.07. The taxes were generated from the auction sale of 812 Bottles of Wine and a Wine Enthusiast Wine Cooler, ECF No. 27, 1:21-25.

### **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).

#### **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 for allowance of administrative expense 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 court allows sales taxes of \$628.07 as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

10. [21-20864](#)-A-7     **IN RE: HEATH/CHRISTIAN FULKERSON**  
[GMR-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR  
MOTION FOR TURNOVER OF PROPERTY  
6-22-2021    [\[80\]](#)

#### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions/Motion for Turnover

**Notice:** Continued from January 18, 2022

**Disposition:** Sustained as to Objection to Exemptions; Denied without prejudice as to Motion for Turnover

**Order:** Civil minute order

**Property/Value:** Annuity - \$538.00

- Amount Claimed Exempt: \$538.00

**Property/Value:** 2020 IRS Refund - \$65,728.00

- Amount Claimed Exempt: \$65,728.00

**Property/Value:** 2020 Franchise Tax Board Refund - \$11,000.00

- Amount Claimed Exempt: \$11,000.00

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less

than 14 days before the hearing on this motion. 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).

## **BACKGROUND**

The former chapter 7 trustee, Geoffrey Richards filed an objection to the debtors' claim of exemptions contained in an amended Schedule C filed June 7, 2021, ECF No. 61. See Objection, ECF No. 80.

The case was subsequently converted to Chapter 13 and the objection continued multiple times to allow the chapter 13 trustee to take a position regarding the objection to the claim of exemptions. The debtors failed to prosecute the chapter 13 case and the chapter 13 trustee moved to reconvert the case to chapter 7.

The court reconverted the case to chapter 7 on December 21, 2021, ECF No. 184. Kimberly Husted is the chapter 7 trustee appointed to the reconverted chapter 7 case and has filed a status report regarding this objection. The status report states that Trustee Husted: 1) has reviewed the entire docket; 2) supports the objection to the exemptions; 3) does not anticipate a recovery of any tax refunds; 4) has filed a motion to dismiss the case given the debtors' failure to attend the meeting of creditors; and 5) is of the opinion that there are no assets to administer in a meaningful way to satisfy any of the claims currently filed as priority claims in this case. See Status Report, ECF No. 208.

## **EXEMPTION EXCEEDS STATUTORY LIMIT**

The debtors have claimed an exemption in property (one or more items of property) under Cal. Civ. Proc. Code § 703.140(b)(1) and (5). The debtors' claimed exemption exceeds the statutory limit of \$28,225.00 permitted under paragraphs (1) and (5) of this subsection.

The debtors have specifically claimed exemptions in the properties listed above under the following exemption laws: "California 703 exemption wildcard exemption, homestead exemption, AB 1249". See ECF No. 61.

The debtors' exemption claimed under § 703.140(b)(1) and (5) will be disallowed to the extent it exceeds the statutory limit of \$28,225.00. The trustee's objection will be sustained.

## **MOTION FOR TURNOVER**

The former trustee's objection included a request for turnover of tax refunds. The priority claims filed in this case are significant and the likelihood of any tax refund appears remote. The *priority* portions of the tax claims are as follows: Internal Revenue Service, Claim No. 1, in the amount of \$649,588.26; EDD, Claim No. 9, in the amount of \$132,577.08; Franchise Tax Board, Claim No. 20,



in the amount of \$35,835.20; and California Department of Tax and Fee Administration, Claim No. 27, in the amount of \$261,869.05.

Given that Trustee Husted has filed a request to dismiss the case, and that in her opinion there are no assets to administer to pay creditors the court will deny the request for turnover of tax refunds without prejudice.

#### **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 objection to the debtors' claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtors' exemption claimed under Cal. Civ. Proc. Code § 703.140(b)(1) and (5) will be disallowed to the extent it exceeds the statutory limit of \$28,225.00. The motion for turnover will be denied without prejudice.

11. [12-38073](#)-A-7     **IN RE: MICHAEL LEWIS**  
[HLG-4](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
2-4-2022    [\[73\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 01/29/2013

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$4,446.98 Capital One Bank (USA) N.A.

**All Other Liens:**

- Deed of Trust Wells Fargo Home Mortgage \$318,116.00
- SMUD \$28,329.88
- Judicial Lien Citibank South Dakota, N.A. \$3,233.34

**Exemption:** \$1.00

**Value of Property:** \$221,755.00

**Subject Property:** 10062 Elk Glen Ct, Elk Grove, California

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

Debtor seeks an order avoiding the judicial lien of Capital One Bank (USA), N.A. under 11 U.S.C. § 522(f).

### **LIEN-AVOIDANCE STANDARDS**

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).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Capital One Bank (USA), N.A.; and (ii) Citibank South Dakota, N.A. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$1.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$354,127.20. The value of the property is \$221,755.00. The respondent's judicial lien, all other liens (except junior judicial 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 respondent's judicial lien will be avoided entirely.

12. [12-38073](#)-A-7     **IN RE: MICHAEL LEWIS**  
[HLG-5](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.  
2-4-2022     [\[78\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 01/29/2013

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$3,233.34 - Citibank South Dakota, N.A.

**All Other Liens:**

- Deed of Trust Wells Fargo Home Mortgage \$318,116.00

- SMUD \$28,329.88

**Exemption:** \$1.00

**Value of Property:** \$221,755.00

**Subject Property:** 10062 Elk Glen Ct, Elk Grove, California

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

Debtor seeks an order avoiding the judicial lien of Citibank South Dakota, N.A. under 11 U.S.C. § 522(f).

### **LIEN-AVOIDANCE STANDARDS**

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).

## REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Capital One Bank (USA), N.A.; and (ii) Citibank South Dakota, N.A. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$1.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$349,680.22. The value of the property is \$221,755.00. The respondent's judicial lien, all other liens (except junior judicial 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 respondent's judicial lien will be avoided entirely.

13. [19-20389](#)-A-7     **IN RE: CAROLYN ANGUIANO**  
[BLF-5](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S  
ATTORNEY  
2-8-2022     [\[66\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 04/29/2019

## 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:** \$5,670.00

**Expenses:** \$159.27

**Payment:** Deferred until dividend disbursement under FRBP 3009

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 already reduced compensation in the amount of \$5,670.00 and reimbursement of expenses in the amount of \$159.27.

The applicant is terminating her employment on behalf of the estate and the trustee has not yet fully administered the estate. As such, the applicant and the trustee agree that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$15,000.00, and there are no more assets to be administered, then the applicant shall reduce her fees to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment, ECF No. 66, 4:2-7.

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 and will approve the payment schedule negotiated by the parties.

#### **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 \$5,670.00 and reimbursement of expenses in the amount of \$159.27.

IT IS FURTHER ORDERED that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed.

R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$15,000.00, and there are no more assets to be administered, then the applicant's fees shall be reduced to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment.

14. [21-20490](#)-A-7     **IN RE: SHANE MININGER**  
[BLF-3](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S  
ATTORNEY  
2-8-2022     [\[35\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 06/14/2021

### **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:**    \$2,625.00

**Expenses:**        \$49.90

**Payment:**        Deferred until dividend disbursement under FRBP 3009

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 \$2,625.00 and reimbursement of expenses in the amount of \$49.90.

The applicant is terminating her employment on behalf of the estate and the trustee has not yet fully administered the estate. As such, the applicant and the trustee agree that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$7,500.00, and there are no more assets to be administered, then the applicant shall reduce her fees to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the

trustee determines that there are no assets to administer then the applicant shall not receive payment, ECF No. 35, 3:13-19.

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 and will approve the payment schedule negotiated by the parties.

#### **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 \$2,625.00 and reimbursement of expenses in the amount of \$49.90.

IT IS FURTHER ORDERED that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$7,500.00, and there are no more assets to be administered, then the applicant's fees shall be reduced to one third of the funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment.



15. [21-24294](#)-A-7     **IN RE: DONNA HANSON**  
[BHS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-10-2022    [\[13\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
BARRY SPITZER/ATTY. FOR MV.  
TESSA CARTER VS.; TRUSTEE NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Pending state-court litigation described in the motion

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).

Movant, Tessa Carter, seeks an order retroactively granting relief from the automatic stay to allow her to proceed with a workers' compensation claim against Uninsured Benefit Trust Fund. Movant specifically waives as to the debtor any award in excess of what is available under the Uninsured Benefit Trust Fund. The chapter 7 trustee has filed a non-opposition to the motion.

The motion seeks retroactive relief, however none of the pleadings or evidence submitted contact facts which show any action was taken in the Workers' Compensation Proceeding after the filing of the bankruptcy petition on December 30, 2021.

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection

with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue through judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable Uninsured Benefit Trust Fund proceeds/awards; or (2) by filing a proof of claim in this court.

Because there is no showing that actions were taken against the debtor following the filing of the bankruptcy petition the court denies retroactive relief.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will 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.

Tessa Carter'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable Uninsured Benefit Trust Fund proceeds/awards; or (2) by filing a proof of claim in this case. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Retroactive relief from the automatic stay is denied. No other relief is awarded.

16. [13-21498](#)-A-7     **IN RE: JOYCE MONDAY**  
[BLF-4](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
2-15-2022    [\[64\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 06/10/2013

#### **Tentative Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:** \$6,615.00

**Expenses:** \$117.39

**Payment:** Deferred until dividend disbursement under FRBP 3009

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 already reduced compensation in the amount of \$6,615.00 and reimbursement of expenses in the amount of \$117.39.

The applicant is terminating her employment on behalf of the estate and the trustee has not yet fully administered the estate. As such, the applicant and the trustee agree that: 1) payment of compensation

and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$18,000.00, and there are no more assets to be administered, then the applicant shall reduce her fees to one third of the amount of funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment, ECF No. 64, 4:27-28, 5:1-5.

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 and will approve the payment schedule negotiated by the parties.

#### **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 \$6,615.00 and reimbursement of expenses in the amount of \$117.39.

IT IS FURTHER ORDERED that: 1) payment of compensation and expenses shall be deferred until dividends are paid to creditors under Fed. R. Bankr. P. 3009; 2) should the trustee fail to gather at least \$18,000.00, and there are no more assets to be administered, then the applicant's fees shall be reduced to one third of the amount of funds in the estate; and 3) if there are no funds in the estate, or if the trustee determines that there are no assets to administer then the applicant shall not receive payment.