

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: APRIL 14, 2020
CALENDAR: 9:00 A.M. CHAPTERS 9 AND 11 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-27800](#)-A-11 **IN RE: EDUARDO/FLORINDA SAN ANTONIO**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-18-2019 [[1](#)]

ARASTO FARSAD/ATTY. FOR DBT.

Final Ruling

The status conference is continued to June 2, 2020, at 9:00 a.m. Not later than 7 days prior to the continued hearing, the debtors shall, and any other party in interest may, file a status report. The debtors' status report shall indicate whether: (1) the debtors' hearing on the adequacy of the disclosure statement (noticed for the same date and time) will proceed; or (2) whether the debtors contemplate amendments to the disclosure statement and/or plan such that the hearing on the disclosure statement will not proceed.

2. [16-10015](#)-A-9 **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**
[WGG-5](#)

CONTINUED AMENDED MOTION TO ESTIMATE CONTINGENT OR
UNLIQUIDATED CLAIMS
10-22-2019 [[715](#)]

MICHAEL DELANEY/ATTY. FOR DBT.

Final Ruling

At the suggestion of the parties, this matter is continued to June 2, 2020, at 9:00 a.m. Not later than 14 days prior to the continued hearing the parties shall file a status report indicating whether the matter is ready for resolution or, in the alternative, whether other handling of the matter is appropriate, e.g., further continuances, dropping the matter from calendar, issuance of a scheduling order.

3. [19-25117](#)-A-11 **IN RE: DONNA HEISCHOB**

STATUS CONFERENCE RE: VOLUNTARY PETITION
8-14-2019 [[1](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

4. [19-25117](#)-A-11 **IN RE: DONNA HEISCHOB**
[MRL-4](#)

APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTOR
2-26-2020 [[71](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

5. [19-27845](#)-A-11 **IN RE: HILL TOP REAL ESTATE, LLC**
[FWP-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLOUGHBY
PASCUZZI & RIOS LLP FOR THOMAS WILLOUGHBY, DEBTORS
ATTORNEY(S)
3-5-2020 [[102](#)]

THOMAS WILLOUGHBY/ATTY. FOR DBT.
DEBTOR DISMISSED: 02/05/2020

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

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 11 case, Fitzgerald, Willoughby & Pascuzzi LLP, counsel for the debtor in possession, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$69,336.50 and reimbursement of expenses in the amount of \$585.26. Those fees and costs were earned and incurred during the pendency of the Chapter 11 bankruptcy; the case has since been voluntarily dismissed.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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.

Fitzgerald, Willoughby & Pascuzzi 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 the amount of \$69,336.50 and reimbursement of expenses in the amount of \$585.26. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

6. [19-27845](#)-A-11 **IN RE: HILL TOP REAL ESTATE, LLC**
[FWP-7](#)

MOTION FOR COMPENSATION FOR DAVID CARTER, OTHER
PROFESSIONAL(S)
3-5-2020 [[108](#)]

THOMAS WILLOUGHBY/ATTY. FOR DBT.
DEBTOR DISMISSED: 02/05/2020

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

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 11 case, David Carter, Chief Restructuring Officer, has applied for an allowance of final compensation and reimbursement of expenses. Carter was employed under 11 U.S.C. § 363(b) with fees to be evaluated under 11 U.S.C. §§ 330, 331. Order ¶¶ 2, 12, January 30, 2020, ECF No. 88. The applicant requests that the court allow compensation in the amount of \$29,298.00 and reimbursement of expenses in the amount of \$688.00. Those fees and costs were earned and incurred during the pendency of the Chapter 11 bankruptcy; the case has since been voluntarily dismissed.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case 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.

David Carter'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 \$28,298.00 and reimbursement of expenses in the amount of \$688.00. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

7. [19-23553](#)-A-11 **IN RE: SHAWN/HEATHER WHITNEY**
[JGD-6](#)

MOTION TO VALUE COLLATERAL OF MOUNTAIN AMERICA CREDIT UNION
3-30-2020 [[189](#)]

JOHN DOWNING/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

8. [19-23553](#)-A-11 **IN RE: SHAWN/HEATHER WHITNEY**
[JGD-7](#)

MOTION TO VALUE COLLATERAL OF KABBAGE/CELTIC BANK
3-30-2020 [[194](#)]

JOHN DOWNING/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property]

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

VALUATION OF COLLATERAL

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value the debtor's personal property collateral. The collateral is described as "business collateral," more fully described in ¶ 4.1 of the Kabbage Business Loan Agreement, March 30, 2020, ECF No. 197.

The court values the collateral at \$1,000.00. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

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 debtor's motion to value personal property collateral of Kabbage/Celtic Bank 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 personal property collateral described as "business collateral," more fully described

in ¶ 4.1 of the Kabbage Business Loan Agreement, March 30, 2020, ECF No. 197 has a value of \$1,000.00. Senior liens on the collateral secure debt in the amount of \$0.00. The respondent has a secured claim in the amount of \$1,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

9. [19-24759](#)-A-11 **IN RE: AK BUILDERS AND COATINGS, INC**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-29-2019 [[1](#)]

MICHAEL NOBLE/ATTY. FOR DBT.

No Ruling

10. [19-24759](#)-A-11 **IN RE: AK BUILDERS AND COATINGS, INC**
[MMN-4](#)

MOTION TO APPROVE DISCLOSURE STATEMENT FILED BY DEBTOR
2-26-2020 [[82](#)]

MICHAEL NOBLE/ATTY. FOR DBT.

No Ruling