



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

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

DAY: MONDAY
DATE: APRIL 17, 2023
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [23-20305](#)-A-7 **IN RE: LAKHWINDER VIRK AND RAJINDER KAUR**
[FRB-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY

4-3-2023 [\[16\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
GERRICK WARRINGTON/ATTY. FOR MV.

Final Ruling

Motion: Motion to Approve Stipulation Granting Relief from the
Automatic Stay

Notice: LBR 9014-1(f)(2); written opposition not required

Disposition: Continued to May 15, 2023, at 10:30 a.m.

Order: Civil minute order

SERVICE AND NOTICE

Special Notice Creditors

The motion will be continued to allow moving party to serve the
motion on creditors which have filed a request for special notice.

The following parties filed a request for special notice: LoanCare,
LLC, Ally Bank and Wells Fargo Equipment Finance, Inc. See ECF Nos.
8, 11, 14.

There is no attachment which indicates the special notice creditors,
specifically LoanCare, LLC, was served. See Certificate of Service,
ECF No. 24.

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 therefore, 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).

CIVIL MINUTE ORDER

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

Wells Fargo Equipment Finance, Inc.'s motion to approve stipulation granting relief from the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the hearing on the motion is continued to May 15, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than April 24, 2023, the moving party shall file and serve the notice of continued hearing and motion on all parties which have filed a request for special notice.

2. [19-22509](#)-A-7 **IN RE: ULISES MEZA**
[DNL-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
3-20-2023 [\[145\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISCHARGED: 1/7/22

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

Order: Civil minute order

IRS Taxes Allowed: 2022 year, \$4,160.00; 2023 year, \$4,600.00

State Taxes Allowed: 2022 year, \$1,170.00 amount; 2023, \$1,300.00

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 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 allowing administrative expenses under 11 U.S.C. § 503(b)(1)(B) for the Estate's 2022 tax year federal and state income tax liabilities, and the estimated 2023 tax year federal and state income tax liabilities.

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 Cloobek*, 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 federal taxes of \$4,160.00 and \$4,600.00 for the 2022 and 2023 tax years respectively, and California state taxes of \$1,170.00 and \$1,300.00 for the 2022 and 2023 tax years respectively as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

3. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION
8-15-2022 [[1](#)]

RICK MORIN/ATTY. FOR DBT.

Final Ruling

The status conference is continued to May 30, 2023, at 10:30 a.m.,
See ECF No. 90.

4. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO SET TRIAL DATE
10-18-2022 [[23](#)]

RICK MORIN/ATTY. FOR DBT.

Final Ruling

The status conference is continued to May 30, 2023, at 10:30 a.m.,
See ECF No. 90.

5. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-3](#)

MOTION TO APPOINT TRUSTEE
4-3-2023 [[78](#)]

RICK MORIN/ATTY. FOR DBT.
JAMIE DREHER/ATTY. FOR MV.

No Ruling

6. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[RJM-3](#)

MOTION TO AMEND
4-3-2023 [\[73\]](#)

RICK MORIN/ATTY. FOR DBT.

No Ruling

7. [19-24044](#)-A-7 **IN RE: TIEN LAM**
[RLL-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF RENOLDS LAW,
LLP FOR ANTHONY ASEBEDO, TRUSTEES ATTORNEY(S)
3-13-2023 [\[94\]](#)

GARY ZILAFF/ATTY. FOR DBT.
ANTHONY ASEBEDO/ATTY. FOR MV.
DEBTOR DISCHARGED: 10/7/19

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

Compensation Allowed: Fees \$1,880.00

Reimbursement of Expenses Allowed: Expenses \$0.00

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, Reynolds Law, LLP, Counsel 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 \$1,880.00 and reimbursement of expenses in the amount of \$0.

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 sought is 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.

Reynolds Law, LLC'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 \$1,880.00 and reimbursement of expenses in the amount of \$0.

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.

8. [22-22949](#)-A-7 **IN RE: ZOE BURTON-ROSAL**
[DNL-3](#)

MOTION TO SELL
3-27-2023 [\[45\]](#)

GARY FRALEY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISCHARGED: 2/22/23

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 577 Addison Court, Folsom, California 95630

Buyer: Masters Team Mortgage

Sale Price: \$20,000.00

Sale Type: Private sale subject to overbid opportunity

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).

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

9. [23-20476](#)-A-7 **IN RE: LUIS INTERIANO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-17-2023 [\[14\]](#)

T. O'TOOLE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Ford Focus

Cause: delinquent installment payments ~ 4 months/\$1,031.12

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Ford Motor Credit Corporation (party) seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee has filed a report of no assets for distribution. The debtor has indicated that the vehicle will be surrendered on the Statement of Intentions, ECF No. 1.

DEFAULT OF RESPONDENT

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).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g.,

the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, California Practice Guide: Bankruptcy ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Ford Focus, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue

its rights against the property pursuant to applicable non-bankruptcy law.

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

10. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[DNL-24](#)

MOTION TO EMPLOY RICHARD SILVESTRI AS SPECIAL COUNSEL
3-20-2023 [[483](#)]

STEPHAN BROWN/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Employ Special Counsel

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

Disposition: Approved

Order: Prepared by moving party

Special Counsel: Richard Silvestri, Gavrilov & Brooks

Subject of Representation: underinsured motorist claim

Employment: 11 U.S.C. §§ 327, 328

Terms of Employment: tiered contingent, 33.33% of amount recovered within sixty (60) days after the filing of the case, or demanding arbitration against the first-party's insurance carrier; thereafter 40% of what is recovered, plus costs.

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

Kimberly J. Huster, chapter 7 trustee, has moved to employ Richard Silvestri, Gavrilov & Brooks to represent the estate on a contingent fee basis with respect to the matters described herein. Richard Silvestri, Gavrilov & Brooks have previously represented the debtor(s) with respect to the same matter. Special Counsel's employment by the Chapter 7 trustee have previously been granted on March 30, 2022 and August 29, 2022. ECF Nos. 318 & 448.

Prior to the date of the petition, the debtor(s) were involved in a vehicle collision for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

The attorneys have significant firsthand experience with this case. The attorneys have caused a conflicts check that shows they had been retained by, and represented, a party that has commenced an unrelated civil action against the debtors in Sacramento County Superior Court. See Declaration of Richard Silvestri, ECF No. 485.

Proposed Special Counsel represents that his firm has also represented Reliance Community, Inc. ("Reliance Community"), which has brought an unrelated civil action against several defendants including the debtors in Sacramento County for alleged harms that arose on and after August 2022.

Proposed Special Counsel proposes to divide the recovery on a tiered contingency fee on the same terms previously agreed to with the Debtor: 33.33% within 60 days, 40% thereafter. See Motion, Supplemental Application to Employ Special Counsel pursuant to a Contingency Fee Agreement, ECF No. 483.

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 law firm of Gavrilov & Brooks as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment of a tiered contingency fee of one third (33.33%) for the first 60 days and forty percent (40%), plus 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 approving the motion which is consistent with this ruling.