

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**May 27, 2021 at 10:30 a.m.**

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<b>1.</b>	<b><u>20-25398-E-11</u></b> <b><u>KMR-1</u></b>	<b>ALEJANDRO ALEJANDRO/ GRISELDA GONZALEZON Eric Wood</b>	<b>MOTION TO APPROVE STIPULATION ON PLAN TREATMENT ON FIRST LIEN SECURED BY REAL PROPERTY 4-23-21 <u>[49]</u></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and parties requesting special notice on April 23, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court, based on the facts and circumstances of this Contested Matter and this case, shortens the time to the 34 days given.

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Approval of Stipulation Between the Chapter 11 Debtor, individually and as the Debtor in Possession in this case, and Creditor Towd Point Mortgage Trust 2017-4, U.S. Bank National Association, as Indenture Trustee, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact is granted.**

Towd Point Mortgage Trust 2017-4, U.S. Bank National Association, as Indenture Trustee, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact, identified as a creditor holding a secured claim, (“Creditor”) requests that the court approve a stipulation with Alejandro C. Alejandro and Griselda Gonzalez (“Debtor”) which stipulates that Debtor will provide adequate protection payments (including an escrow to pay for insurance coverage and property taxes) and for certain acts in case of default of payments related to real property located at 1016 Docday Court, Folsom, California (“Property”).

As discussed below, the Stipulation includes the agreement of the Debtor to incorporate the agreed terms into any and all existing and future proposed Chapter 11 Plans, and if Debtor does not, then Creditor may object to such plans.

## **STIPULATION**

Creditor and Debtor stipulate to an order regarding Creditor with secured claim, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 51):

- A. Debtor agree to make contractual payments to Secured Creditor, including the escrow payment, currently in the amount of \$2,166.50 (principal and interest \$1,656.79 + taxes \$423.95 + insurance \$85.76) commencing May 1, 2021. Debtor are obligated to make the monthly escrow payment in addition to principal and interest payments. Debtor understand that these amounts may fluctuate.

In this Chapter 11 case it is not clear how the individual Debtor has the resources to fund such required payments. Looking at the most recent monthly Operating Report, the Debtor in Possession reports that the bankruptcy estate has received \$12,500 in rents and \$31,390 in salary since this case was commenced. Dckt. 53 at 4. The Bankruptcy Code provides in 11 U.S.C. § 1115(a)(1),(2) that when the debtor commencing a Chapter 11 case is an individual, then the property of the bankruptcy estate includes all of that specified in 11 U.S.C. § 541, and “earnings from services performed by the debtor after the commencement of the case. . . .”

It appears that this may be a simple shorthand drafting error in which the Stipulation is with the Debtor individually and the Debtor servicing as the debtor in possession exercising the powers, duties, and fiduciary responsibilities of a trustee, which includes the debtor in possession being in control of property of the bankruptcy estate.

- B. Debtor agree to repay all contractual arrears due as of the date of the confirmation order in this case through a non-interest bearing balloon due upon maturity of the loan, or upon the sale or refinance of the property.
- C. Payments shall be made directly to Creditor, Select Portfolio Servicing, Inc. at the specified address.
- D. All other terms of the Deed of Trust and Note not directly altered by this

agreement will remain in full force and effect.

- E. In the event of a default on payments to Creditor under the terms of this stipulation prior to the entry of the confirmation order, Creditor shall notify Debtor and Debtor's counsel of the default in writing. Debtor shall have ten (10) calendar days from the date of the written notification to cure the default, and Debtor agree to pay an additional \$100.00 for attorneys' fees for each occurrence.
- F. If Debtor fail to cure the default, Creditor may lodge a declaration of default and order terminating the automatic stay, and upon entry of that order, Creditor may obtain possession of the Property without further order from the court. Parties have also stipulated that the 14-day stay as provided in FRBP 4001(a)(3) is waived.
- G. Debtor agrees to incorporate the above agreed terms of lien treatment into any and all existing and future proposed Chapter 11 Plans, or by reference in the confirmation order. If any terms in Debtor's Chapter 11 Plan conflict with the terms of this stipulation Creditor reserves the right to object to the plan.
- H. Creditor agrees to vote for Debtor's Chapter 11 Plan provided it incorporates or reflects or attaches the terms of this stipulation.
- I. If this Chapter 11 bankruptcy is dismissed or converted to another chapter under title 11, Creditor's lien shall remain a valid secured lien for the full amount due under the original Promissory Note and all payments received under this agreement will be applied contractually under the original terms of the Deed of Trust and original Promissory Note.

## DISCUSSION

Here, the stipulation requires Debtor to tender post-petition payments to Movant on a claim secured by their principal residence pending Debtor's completion of their efforts to reorganize through a Chapter 11 Plan. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 34 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor and Creditor agreeing to adequate protection payments, while Debtor pursues a Chapter 11 plan.

Counsel, Debtor, and Creditor have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

~~At the hearing, counsel for the Debtor in Possession and Creditor amended the Stipulation on the record to include not only the Debtor individually, but the Debtor in Possession in this case.~~

The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Stipulation filed by Towd Point Mortgage Trust 2017-4, U.S. Bank National Association, as Indenture Trustee, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact, creditor holding a secured claim ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Stipulation between Creditor and Alejandro C. Alejandro and Griselda Gonzalez, individually as the Debtors ~~in this case and as the Debtors in Possession~~, is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit 1 in support of the Motion (Dckt. 51).

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2021. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Objection to Proof of Claim Number 9-1 of Steven C. Sanders, Sanders & Associates is XXXXX.**

Shon Jason and Jill Diana Treanor, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Steven C. Sanders, Sanders & Associates ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$1,001,372.60. Objector asserts the following as the basis for this objection:

1. The judgment on which Creditor bases their claim is not final.
2. Creditor's claim is based on an unconscionable contract that is void.
3. The fees requested under that contract are also void as excessive.
4. Making three personal loans to Debtor was a conflict on interest so that Creditor violated the Model Rules of Professional Conduct and the amounts of these loans should not be paid through the proof of claim.

5. The claim exceeds \$1 Million and is thus unconscionable especially when the Debtor would receive less than \$500,000; thus, the claim should be determined based on a reasonable fee and not on an unconscionable fee.
6. The claim, for damages to be awarded a wrongfully discharged attorney, should be determined by the court based upon a “reasonable fee” which requires further hearings and is a disputed material fact.
7. The value of the claim is a disputed material fact because it may not be based upon the “net recovery” as required by the agreement where no evidence, such as “Net Sheet” upon which the contingency would have been triggered, has been produced.
8. Creditor may be not entitled to recovery of fees where it is a disputed fact that Creditor’s conduct was neither willful nor egregious so as to warrant denial of compensation.
9. Whether the fees requested are reasonable is a disputed fact requiring an evidentiary hearing.

Debtors filed this Objection to Claim on April 11, 2021. At that time, Objector were represented by counsel. Objector substituted in as *pro se* on April 16, 2021. Dckt. 207. The Order on Substitution of Attorney was entered on April 29, 2021. Dckt. 227.

Trustee filed a Response on May 6, 2021 opposing the objection on the ground that the underlying claim is subject of a motion to approve compromise that is set for hearing on June 17, 2021. Dckt. 230. Trustee requests that the objection be stayed pending resolution of the motion to compromise; or in the alternative, that the hearing and deadline to file a written response to this objection be extended to a date after June 17, 2021.

## **DISCUSSION**

Here, there is a Motion for Approval of Compromise pending before this court settling all disputes with Creditor. Dckt. 85. Trustee seeks authorization to settle Creditor’s claim for the sum of \$245,005 plus 30% of the Post-Petition Recovery. Creditor’s claim is for the amount of \$1,001,372.60. If the court were to make a decision now regarding Creditor’s claim, this would negatively impact Trustee’s compromise. Trustee has negotiated a significant reduction in this claim that would benefit the estate, creditors, and Debtor in the long run.

The settlement payment is also accompanied by a dismissal of the state court cases and adversary proceedings in the instant bankruptcy case. This would also benefit creditors, the estate, and Debtor.

Moreover, Debtors has been afforded the opportunity to oppose the compromise. The hearing on the Motion was continued so as to –

insure that Debtor is able to state the opposition that Debtor believes should be asserted and not feel that now former counsel did not full state such opposition.

Civil Minutes, Dckt. 217.

The Debtors have rained down on the court many, many documents in which they desire the bankruptcy court to undertake/order investigations to be done by the Federal Bureau of Investigation and the Attorney General of alleged conspiracies and fraud committed against non-debtor parties (such as the Bandy Estate and Gortemiller Estate). The allegations include misconduct by multiple state and county officials, including judges in the State courts.

The court has discussed with Debtors, who are now prosecuting this case in *pro se*, that to the extent they were “advised” by an FBI agent in Boston to file bankruptcy because the judge would undertake and order investigations of all the alleged wrongs over more than the past decade, such was clearly erroneous “advice” by a federal agent. The Federal Courts are not investigatory or prosecutorial agencies, such as is the FBI, or the U.S. Attorney, or the State Attorney General.

Debtors, having elected to file bankruptcy, have placed all of their various rights and interests in the bankruptcy estate in this case. All of those rights and interests are under the control of the Chapter 7 Trustee who is responsible for administering such assets. 11 U.S.C. §§ 541(a), 704.

The Trustee is seeking to settle and resolve the disputes Creditor. In the Objection, Debtors recount numerous state court proceedings and a June 8, 2020 judgment in favor of Creditor for \$1,001,372.60. Objection, ¶ 66; Dckt. 185.

Debtors assert that the June 8, 2020 Judgment is merely a “Decision,” and Debtor make seek to vacate the Decision within 60 days after they are entered. Those 60 days would have expired on or about August 8, 2020.

However, Debtors argue that the June 20, 2020 filing of the bankruptcy case imposes the automatic stay that prohibits actions taken against the Debtors after the bankruptcy case was filed. Debtors then infer that since the bankruptcy case was filed and the automatic stay arose, then the time for them to seek to vacate the “Decision” is opened ended and has not expired.

Debtors then explain that they would seek to vacate the “Decision” based upon Federal Rule of Civil Procedure 60(b) in the State Court action. Debtors do not explain how a Federal Rule of Civil Procedure will be applied in a California State Court action.

The provisions of 11 U.S.C. § 108(b) provide for extensions of a time period under nonbankruptcy law for a debtor, creditor, the trustee, or debtors to act within a time period specified by non-bankruptcy law:

b) Except as provided in subsection (a) of this section, **if applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period within which the debtor** or an individual protected under section 1201 or 1301 of this title [co-debtor stay] **may file any pleading**, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, **and such period has not expired before the date of the filing of the**

**petition, the trustee may only file, cure, or perform, as the case may be, before the later of—**

(1) the **end of such period**, including any suspension of such period occurring on or after the commencement of the case; or

(2) **60 days after the order for relief.**

However, the State Court Decision/Judge is in an action brought against the Debtor for which the automatic stay applies and appears not to be subject to the above.

The court is presented with a conflict – the Chapter 7 Trustee exercising his business judgment and acting with the advice from his legal counsel seeks to administer the assets of the bankruptcy estate in a certain way; and the Debtors seeks to administer them differently and launch a multi-front litigation against many persons.

At the hearing, **XXXXXXX**

3.	<a href="#"><u>20-23267</u></a> -E-7 <a href="#"><u>PGM</u></a> -4 2 thru 3	<b>SHON/JILL TREANOR</b> Pro Se	<b>MOTION TO SUBSTITUTE ATTORNEY</b> 4-16-21 [ <a href="#"><u>207</u></a> ]
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**Pursuant to Order of this court, Dckt. 207, the Motion to Substitute Attorney is granted, and Debtors are hereby in pro se, and the matter is thus removed from the calendar.**



## FINAL RULINGS

4. [19-24134-E-7](#) **FELIX/DEBORAH KIARSIS** **MOTION TO EMPLOY J. RUSSELL**  
[DNL-1](#) **Bruce Dwiggins** **CUNNINGHAM AS ATTORNEY(S)**  
**4-7-21 [57]**

**Final Ruling:** No appearance at the May 27, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Employ is granted.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Desmond, Nolan, Livaich and Cunningham ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to investigate, prosecute and collect a potential claim.

Trustee argues that Special Counsel's appointment and retention is necessary to investigate, prosecute and collect the potential claim for turnover, stay violation and sanctions against Radium 2 Capital, Inc. and others arising from Radium's pre-petition and post-petition enforcement of judgment activities in the New York state courts against approximately \$34,000 held in the Debtors' deposit accounts at Wells Fargo Bank. The terms of employment form a contingent fee agreement that provides for a fee that is the greater of: (a) a contingent fee of 25% before litigation is commenced, 33% thereafter through 30 days before trial and 40% thereafter inclusive of appeals; and (b) the amount of attorney fees,

if any, awarded, including sanctions based thereon

J. Russell Cunningham, a Member of Desmond, Nolan, Livaich and Cunningham, testifies that Trustee and the firm agree that a contingent fee agreement is in the best interest of the estate due to the nature of services DNLC will provide. J. Russell Cunningham testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Desmond, Nolan, Livaich and Cunningham as Special Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Contingent Fee Agreement for Legal Services filed as Exhibit A, Dckt. 60. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 7 Trustee, Nikki B. Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Desmond, Nolan, Livaich and Cunningham as Special Counsel for Trustee on the terms and conditions as set forth in the Contingent Fee Agreement for Legal Services filed as Exhibit A, Dckt. 60.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred

to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

5.	<a href="#"><u>21-21389</u></a> -E-7	JEFFERY/OLGA HUIZAR Steele Lanphier	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 4-30-21 <a href="#"><u>14</u></a>
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**Final Ruling:** No appearance at the May 27, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 2, 2021. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338.00 due on April 16, 2021.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.