

**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

DAY: MONDAY
DATE: JULY 13, 2020
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. [15-24202](#)-A-7 **IN RE: CHERYL MCNEIL**
[ASF-3](#)

MOTION FOR COMPENSATION FOR ALAN S. FUKUSHIMA, CHAPTER 7
TRUSTEE(S)
6-2-2020 [[138](#)]

J. HENDRIX/ATTY. FOR MV.
DEBTOR DISCHARGED: 09/21/2015; JOINT DEBTOR DISCHARGED:
09/21/2015

Final Ruling

The trustee's application for compensation is withdrawn and the matter dropped as moot.

The court does note that the trustee filed two applications for compensation using the same docket control number. *Compare* Motion for Compensation, June 1, 2020, ECF No. 134 with Motion for Compensation, June 2, 2020, ECF no. 138. Recycling docket control numbers is a violation of LBR 9014-1(c)(3). Moreover, it engenders confusion, as is present here by virtue of the withdrawal. Unable to discern otherwise, the court assumes the applicant intended to withdraw both motions.

2. [18-25811](#)-A-7 **IN RE: JLM ENERGY, INC.**
[DNL-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR NICHOLAS L. KOHLMAYER, TRUSTEES
ATTORNEY(S)
6-11-2020 [[164](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Desmond, Nolan, Livaich & Cunningham, attorneys 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 \$12,143.25 and reimbursement of expenses in the amount of \$356.75.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Desmond, Nolan, Livaich & Cunningham's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$12,143.25 and reimbursement of expenses in the amount of \$356.75.

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.

3. [19-22038](#)-A-7 **IN RE: GREGORY/MICHELLE STITT**
[BLF-6](#)

MOTION TO FILE TAX RETURNS AND/OR MOTION FOR ADMINISTRATIVE
EXPENSES
6-2-2020 [[98](#)]

CHARLES HASTINGS/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTOR DISCHARGED: 08/06/2019; JOINT DEBTOR DISCHARGED:
08/06/2019

Final Ruling

Motion: File Tax Returns and Pay Administrative Expense [Estate Taxes]

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

Disposition: Granted in part, denied in part

Order: Civil minute order

File Tax Returns:

- Federal estate taxes for period ending May 31, 2020
- California estate taxes for the period ending May 31, 2020

Pay Estate Taxes:

- federal: \$3,286.00 (estimated)
- state: \$4,880.00 (estimated)

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.

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).

FILE TAX RETURNS

A chapter 7 trustee may file estate returns.

A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor,

and any successor to the debtor are discharged from any liability for such tax—

(A) upon payment of the tax shown on such return, if--

(i) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(ii) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(B) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(C) upon payment of the tax determined by such governmental unit to be due.

11 U.S.C. § 505(b)(2) (emphasis added).

Neither notice to creditors, nor leave of court, is required for the trustee to file an estate return. As a consequence, the request for an order authorizing the trustee to file the return is denied as moot.

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 to the extent provided herein. The court allows federal taxes of \$3,286.00 and California state taxes of \$4,880.00 as administrative expenses under 11 U.S.C. § 503(b)(1)(B);

IT IS FURTHER ORDERED that in the event the taxes exceed the trustee's estimates, the trustee may pay federal taxes and/or California state taxes of up to an additional 20% beyond the amount expressly authorized; and

IT IS FURTHER ORDERED that all other relief is denied.

4. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[HSM-17](#)

MOTION FOR COMPENSATION FOR HOWARD S. NEVINS, TRUSTEES
ATTORNEY(S)
6-15-2020 [[1327](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.

Tentative Ruling

Application: Allowance of Second Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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, Hefner, Stark & Marois, LLP, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$104,956.00 and reimbursement of expenses in the amount of \$3,344.70.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Hefner, Stark & Marois, LLP's application for allowance of interim 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. The court allows interim compensation in the amount of \$104,956.00 and reimbursement of expenses in the amount of \$3,344.70. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

5. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[HSM-18](#)

MOTION FOR ALLOWANCE OF CLAIMS AS REQUIRED BY STIPULATION
AND/OR MOTION TO PAY
6-15-2020 [[1333](#)]

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

No Ruling

6. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[HSM-19](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-15-2020 [[1337](#)]

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

No Ruling

7. [20-22053](#)-A-7 **IN RE: SAN XIONG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-19-2020 [[21](#)]

ORDER GRANTING FEE WAIVER 6/22/2020, DKT. 25

Final Ruling

Order, ECF #25, filed June 22, 2020, Granted the Debtor's motion to waive this filing fee. The Order to Show Cause is discharged.

8. [19-25465](#)-A-7 **IN RE: AJAY DHAMI**
[BLG-1](#)

MOTION TO COMPEL ABANDONMENT
6-2-2020 [[48](#)]

CHAD JOHNSON/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/16/2019; NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Real Property Description: 2915 N. Texas Street # 236, Fairfield, CA
Value: \$205,000
Deed of Trust: \$126,091
Exemption Claimed: \$75,000

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.

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). The chapter 7 trustee has filed a notice of non-opposition.

ABANDONMENT

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

The real property described above is of inconsequential value to the estate. The debtor avers, and no party in interest challenges, that (1) the property is worth \$205,000; (2) the property is encumbered by a perfect deed of trust in the amount of \$126,091; and (3) the debtor is entitled to exempt \$75,000 in equity in the property. From that it follows that non-exempt encumbered equity in the property is \$3,909. After considering the imprecise value of real estate valuations and transaction costs (which the court assumes to be 8%), there is no equity for creditors and the motion will be granted.

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.

Ajay Ramniklal Dhami's has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that 2915 N. Texas Street # 236, Fairfield, CA, is abandoned and no longer property of the estate.

9. [19-27477](#)-A-7 **IN RE: CARMAZZI, INC., A CALIFORNIA**
CORPORATION
[DNL-6](#)

MOTION TO ABANDON
6-25-2020 [[303](#)]

WALTER DAHL/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Property Description: Social Security Administration Claim

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).

ABANDONMENT

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

The debtor entered into several service contracts to provide personnel and technical support to conduct SSA hearings. The debtor agreed to pay rates to the contractors greater than what was provided in the underlying SSA contracts and paid substantially all amounts due under the SSA contracts. The debtor did not have sufficient funds to meet the shortfall. The debtor filed for bankruptcy. Creditors filed between 24-270 Proofs of Claim, aggregating \$3 million, were filed by contractors recruited by the debtor.

Pre-petition, the debtor pursued a \$25 million Social Security Administration ("SSA") claim by prosecution of the SSA Appeals with assistance of a succession of four law firms. On petition date, Nelson Mullins and Busch Law were working on the matter. Nelson Mullins has withdrawn from the SSA Appeals. Busch Law Firm conditioned continuing representation upon receiving \$300,000.00 in outstanding and unpaid fees, an amount exceeding funds on hand in the estate. The trustee is continuing discovery for records of the debtor's arrears.

The SSA filed a motion for summary judgment that would terminate the debtor's SSA Appeals on the merits.

The court has considered the debtor's need to retain counsel to pursue and defend the present action with the SSA. The court acknowledges the estate lacks the funds to retain counsel to do so and to pay outstanding balances of bankruptcy claims. The property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such property is warranted. The order will compel abandonment of only the property that is described in the motion.

COURT PREFERS USE OF THE CLERK'S MATRIX

Here, the movant re-typed the creditors matrix in support of the Certificate of Service, June 25, 2020, ECF No. 308. The court prefers that the movant use the creditors matrix prepared by the Clerk of the Court and append that as an exhibit to the Certificate of Service.

Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney and for the court to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different bankruptcy court. As a result, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

10. [19-20391](#)-A-7 **IN RE: B & G DELIVERY SYSTEM, INC., A**
CALIFORNIA CORPORATION
[HCS-7](#)

MOTION TO SELL
6-11-2020 [\[74\]](#)

WALTER DAHL/ATTY. FOR DBT.
DANA SUNTAG/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party

Property: Flat Bed (#48591), Flat Bed (#48580), Utility Trailer (#5131), Utility Trailer (#48556), Flat Bed (#48582), Flat Bed (#53579), Hyundai Trailer (#53562), Utility Trailer (#5134), Flat Bed (#48581), Wabash Trailer (#53559), Utility Trailer (#5132), and Great Dane Trailer (# 5100)

Buyer: Gould Auction & Appraisal, LLC

Sale Price: \$12,500.00

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). 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).

SALE

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.

BREAKUP FEE

Courts have used two basic tests to determine whether a particular breakup fee comports with § 363(b): business judgment test and best interests test. This court follows the best interests of the estate test. *In re American Airlines, Inc.*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191, 196 (Bankr. N.D. Ohio 1992). That test considers whether (1) the stalking horse bidder's bid is higher than it would have been without the breakup fee; (2) that fee produced a net value to the estate; (3) the fee is

necessary to start the bidding process; and (4) the fee is small compared to the benefit conferred on the estate. *Id.*

Here, the movant seeks a \$3,500 breakup fee against an opening bid of \$12,500. The court finds that the movant has not demonstrated that such a fee does, in fact, satisfy the best interests test and the fee is disapproved. Overbids will proceed in \$1,000 increments.