

**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: AUGUST 16, 2021
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 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. [21-22404](#)-A-11 **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**

STATUS CONFERENCE RE: VOLUNTARY PETITION
6-29-2021 [[1](#)]

IAIN MACDONALD/ATTY. FOR DBT.

No Ruling

2. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER
BUC-2**

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2021 [[272](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.
VALERIE PEO/ATTY. FOR MV.
RABO AGRIFINANCE LLC VS.

No Ruling

3. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER
RLC-13**

AMENDED MOTION TO MODIFY CHAPTER 12 PLAN
7-1-2021 [[263](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling

4. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER
RLC-14**

AMENDED MOTION TO AMEND ORDER ON MOTION TO DISMISS CASE
7-1-2021 [[265](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

5. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-30-2020 [[1](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

6. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[FEC-1](#)

ORDER TO SHOW CAUSE REGARDING SANCTIONS
7-29-2021 [[365](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

By separate order, this matter has been dropped from calendar.

7. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[WGG-11](#)

MOTION FOR TURNOVER OF PROPERTY AND/OR MOTION ISSUING A WRIT
OF EXECUTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7070
7-13-2021 [[351](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
DAVID GOODRICH/ATTY. FOR MV.

No Ruling

8. [19-22247](#)-A-12 **IN RE: JERRY WATKINS**
[MHM-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO DISMISS CASE
3-30-2021 [[59](#)]

MARK WOLFF/ATTY. FOR DBT.
MICHAEL MEYER/ATTY. FOR MV.

No Ruling

9. [20-24259](#)-A-11 **IN RE: NESTOR/MARIA QUILATES**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-4-2020 [[1](#)]

ARASTO FARSAD/ATTY. FOR DBT.

No Ruling

10. [20-24259](#)-A-11 **IN RE: NESTOR/MARIA QUILATES**

APPROVAL OF AMENDED CHAPTER 11 DISCLOSURE STATEMENT AND
COMBINED PLAN OF REORGANIZATION FILED BY DEBTORS '
5-27-2021 [[86](#)]

ARASTO FARSAD/ATTY. FOR DBT.

No Ruling

11. [20-25294](#)-A-11 **IN RE: HILLIARD CHAPEL AME ZION CHURCH
[CCR-1](#)**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-2-2021 [[54](#)]

DAVID JOHNSTON/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.
BERNARD BRONSON VS.

Final Ruling

The motion for stay relief is continued to August 30, 2021, at 1:30 p.m. Absent contrary indication from the parties the court intends to treat the continued hearing as a status conference.

12. [20-25396](#)-A-11 **IN RE: RACEDAY CYCLE, INC.**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-1-2020 [[1](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

The status conference is continued to September 20, 2021, at 1:30 p.m. to coincide with the Plan Confirmation hearing.

13. [21-22496](#)-A-11 **IN RE: LILLIAN/ISAGANI SISAYAN**

STATUS CONFERENCE RE: VOLUNTARY PETITION
7-6-2021 [[1](#)]

LEWIS PHON/ATTY. FOR DBT.

No Ruling

14. [21-21397](#)-A-7 **IN RE: CHRISTOPHER FIGUEROA**
[UST-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION
TO DISMISS CASE
7-9-2021 [[46](#)]

GORDON BONES/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

No Ruling

15. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-25-2020 [[1](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

The status conference is continued to October 4, 2021, at 1:30 p.m.
to coincide with the Plan Confirmation hearing.

16. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**
[RLC-18](#)

MOTION TO EMPLOY VIVEK GOEL AS SPECIAL COUNSEL AND/OR MOTION
FOR COMPENSATION FOR VIVEK GOEL, SPECIAL COUNSEL(S)
7-20-2021 [[284](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

Tentative Ruling

Application: Retroactive Employment and Compensation of Special Counsel

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

Disposition: Denied

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).

The debtor seeks to employ special counsel and to compensate from the Chapter 11 estate special counsel Vivek Goel. Special counsel is an immigration lawyer whom the debtor hired to represent the debtor in connection with filing an H-1B visa petition. Declaration, para. 2-3, ECF No. 286. The court takes issue with this application under several grounds.

11 U.S.C. § 327(a)

"[T]he trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. 11 U.S.C. § 327(a) (emphasis added).

The court does not believe that this immigrant attorney would be representing *the trustee* in this proceeding. The application states only that special counsel was hired to prepare and file an H-1B visa petition, and that the debtor requests to employ and compensate special counsel. The application and declaration fail to show how an immigration lawyer who is hired to file a visa petition for the debtor can represent the trustee in any capacity.

The court cannot discern how the prosecution of an H-1B visa petition constitutes carrying out the trustee's duties under Title 11. The mere fact that there is a business reason to employ the immigration lawyer is not a sufficient reason to approve of this application.

EMPLOYMENT AND COMPENSATION

L.B.R. 2014-1

The Local Rules provide: "An application for an order approving employment pursuant to Federal Rule of Bankruptcy Procedure 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving the employment shall state the effective date on or after which the employment is authorized and effective for services rendered." L.B.R. 2014-1(b)(1). "All requests for retroactive authorization for employment exceeding 30 days duration must be set for hearing, must show exceptional circumstances, must satisfactorily explain the applicant's failure to receive prior judicial approval, and must demonstrate that the applicant's services benefited the bankruptcy estate in a significant manner." L.B.R. 2014-1(b)(2).

The debtor previously moved to employ the special counsel on April 20, 2021, ECF No. 187. For purposes of this analysis, the court assumes that the retroactive effect of the application (if any) is not precluded by the Supreme Court's decision in *Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 U.S. 696, 700-701 (2020) (see below). The court thusly treats April 20, 2021 (over 30 days before filing this current application) as the date of the earliest application and construes that the debtor wishes the court would treat this application as an application for retroactive employment, governed by L.B.R. 2014-1(b)(2) and 11 U.S.C. § 327(e).

However, the declaration only states that special counsel sent an invoice to the debtor for services rendered on May 12, 2021. Declaration, para. 8, ECF No. 284. The application and declaration do not state when the services were rendered. The court cannot tell if L.B.R. 2014-1(b) applies. The court cannot tell whether or not this application is for retroactive employment. Therefore, the court cannot approve the application in its current form.

Retroactive Employment and Compensation

The Supreme Court has recently offered guidance as to the use of retroactive employment, stating that orders granting such employment presuppose "a decree allowed, or ordered, but not entered, through inadvertence of the court" and emphasizing that "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 U.S. 696, 700-701 (2020). The Supreme Court's decision therefore prohibits retroactive employment approval in bankruptcy, unless employment was in fact requested and ordered, but not entered due to inadvertence.

Several courts have concluded that, despite the inability to order retroactive employment under *Acevedo*, supra, a professional who fails to obtain court-approved employment before rendering services may still receive compensation. I.e., "the power to award pre-employment compensation remains unchanged by *Acevedo*." March, Ahart

& Shapiro, *California Practice Guide: Bankruptcy*, Employment Application Procedure §4:670.1 (Rutter Group 2020). But even if Acevedo does not eviscerate retroactive employment, such an application must meet at least two rigid standards.

First, approval of retroactively employing an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "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," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi-pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for nunc pro tunc approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

Second, the applicant must show "exceptional circumstances" that justify approval of retroactive employment. *Atkins*, 69 F.3d at 974; *Mehdipour*, 202 B.R. at 479. "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must ... (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *In re Grant*, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014); see *Atkins*, 69 F.3d at 975-76; accord *Occidental Fin. Grp.*, 40 F.3d at 1062; *In re Gutterman*, 239 B.R. 828, 830 (Bankr.N.D.Cal.1999).

The court assumes that these standards are applicable even under the Acevedo decision. However, as stated above, the applicant failed to clarify whether or not they are requesting retroactive employment and compensation at all. Again, the declaration only states that special counsel sent an invoice to the debtor for services rendered on May 12, 2021. Declaration, para. 8, ECF No. 284. The application and declaration do not state when the services were rendered. The court cannot tell if retroactive employment rules apply.

Furthermore, even if the debtor was in fact requesting retroactive employment and compensation, the application does not satisfy the § 327(e) requirements. The application and declaration do not explain the debtor's failure to receive prior judicial approval of the employment. The applicant fails to demonstrate that their immigration law services benefitted the bankruptcy estate in any significant manner under § 327(e).

For the reasons discussed in the application, the court deny this application.

CIVIL MINUTE ORDER

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

Vivek Goel's application has been presented to the court. Having considered the application together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the application is denied.

17. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**
[RLC-24](#)

MOTION FOR AUTHORITY TO USE PREPETITION ACCOUNTS
7-29-2021 [[293](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling