

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

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

**DAY:** MONDAY  
**DATE:** AUGUST 29, 2022  
**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. [22-21700](#)-A-7     **IN RE: SUSAN STEWART**  
[LCL-1](#)

MOTION TO AVOID LIEN OF IVER CAPITAL CORPORATION  
7-21-2022    [\[12\]](#)

LUONG LECHAU/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); non-opposition filed by respondent

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$16,784.82 - Iver Capital Corporation

**All Other Liens:**

- Deed of Trust: Freedom Mortgage - \$305,749.30

- Consensual Lien: Loanpal, CCC/Goodleap LLC - \$36,785.00

**Exemption:** \$110,000.00

**Value of Property:** \$415,483.00

**Subject Property:** 8822 Hermosa Ct., Stockton, California

The debtor seeks an order avoiding the judicial lien of respondent Iver Capital Corporation under 11 U.S.C. § 522(f). The respondent has filed a non-opposition to the motion, ECF No. 17.

### **LIEN AVOIDANCE**

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

While its use is not yet mandatory both attorneys used the standardized Certificate of Service, EDC 7-005 in memorializing the service of documents in this motion. The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsels' voluntary and proper use of the new form.

2. [22-21115](#)-A-7     **IN RE: JANICE/DAVID LACROIX**  
[AP-1](#)

CONTINUED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY  
AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-26-2022     [\[32\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
U.S. BANK, N.A. VS.

**No Ruling**

3. [22-21115](#)-A-7     **IN RE: JANICE/DAVID LACROIX**  
[NLG-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-27-2022     [\[41\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
NICHOLE GLOWIN/ATTY. FOR MV.  
WILMINGTON SAVINGS FUND SOCIETY, FSB VS.

**No Ruling**

4. [22-20122](#)-A-7     **IN RE: JACQUELINE JOHNSON**  
[MKM-1](#)

MOTION BY MICHAEL K. MOORE TO WITHDRAW AS ATTORNEY  
7-18-2022    [\[18\]](#)

MICHAEL MOORE/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 04/19/2022

**No Ruling**

5. [22-20832](#)-A-7     **IN RE: DANIEL STEWART**  
[CLH-1](#)

CONTINUED MOTION FOR ORDER CONFIRMING CHAPTER 7 TRUSTEE  
STATUS, AND STATUS OF CONSOLIDATED CASES  
6-28-2022    [\[32\]](#)

CHARLES HASTINGS/ATTY. FOR MV.

**Final Ruling**

**Motion:** Confirm Chapter 7 Trustee Status and Consolidate Cases

**Notice:** Continued from July 18, 2022

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the 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).

Creditors Mindi Blanchard, Trustee of the Estate of Kimberly Decker Stewart and the Decker Living Trust dated July 31, 2008, Cassandra R. Decker, Melanie J. Decker, Stephen R. Decker, Lauren M. Stewart, (Movants) filed this motion to confirm the status of the chapter 7 trustee and if appropriate to consolidate the administration of this case with the administration of the voluntary petition filed by the debtor on April 19, 2022: *In re Daniel Stewart*, Case No. 2022-20977, E.D. Cal. Bankr. (2022).

This hearing on this matter was continued from July 18, 2022, to allow the movants to file and serve a notice to all creditors and parties in interests that the court was considering a substantive consolidation of the involuntary and voluntary chapter 7 cases pertaining to debtor, Daniel Stewart. Chapter 7 trustee Geoffrey Richards has been appointed in each of the cases to administer the bankruptcy estates.

On July 20, 2022, the movants filed and served the required notice. See ECF No. 66. No opposition has been filed.

**Fed. R. Bank. P. 1015(a)**

The court may consolidate the cases if "two or more petitions by, regarding, or against the same debtor are pending in the same court...", Fed. R. Bank. P. 1015(a).

As both cases are regarding the same debtor and are pending before this court, the court will order the cases substantively consolidated. Case No. 22-20832, the involuntary case, shall be the lead case.

**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.

Movants' Motion to Confirm Status of Chapter 7 Trustee and Consolidate cases has been presented to the court. Having entered the default of respondents 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. Case No. 2022-20832 and 2022-20977 shall be substantively consolidated under Fed. R. Bankr. P. 1015(a).

IT IS FURTHER ORDERED that Case No. 2022-20832 shall be designated the lead case.

6. [19-24044](#)-A-7     **IN RE: TIEN LAM**  
[MHK-5](#)

MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN,  
LLP, ACCOUNTANT(S)  
7-20-2022     [\[50\]](#)

GARY ZILAFF/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 10/07/2019

### **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 Approved:** \$3,600.00

**Reimbursement of Expenses:** \$57.00

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, Ryan, Christie, Quinn & Horn, LLP, accountant 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 \$3,600.00 and reimbursement of expenses in the amount of \$57.00.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of this application, Meegan, Hanschu & Kassenbrock filed a Certificate of Service, ECF No. 54. That form was signed "Jeanne Hutton," who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. The applicant has properly limited notice of the application. Fed. R. Bankr. P. 2002(a)(6), 2002(h); LBR 2002-3. Section 4 properly attaches the list of documents served. ECF No. 54, p. 4. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. *Id.* at p. 5. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 6. Section 6(B)(2) is supported by a properly filtered list of creditors, e.g., those that have filed a Proof of Claim. *Id.* at p. 7. The firm and Ms. Hutton are to be commended on their precise and skillful application of the new local rules.

## **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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,600.00 and reimbursement of expenses in the amount of \$57.00. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

7. [19-24044](#)-A-7     **IN RE: TIEN LAM**  
[MHK-6](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
7-22-2022    [\[55\]](#)

GARY ZILAFF/ATTY. FOR DBT.  
ANTHONY ASEBEDO/ATTY. FOR MV.  
DEBTORS DISCHARGED: 10/07/2019

### **Final Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]

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

**Disposition:** Granted

**Order:** Civil minute order

**Administrative Expense Allowed:** Franchise Tax Board  
**Amount Allowed:**    \$11,232.00

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 seeks an order allowing payment of \$11,232.00 to the Franchise Tax Board as an administrative expense under 11 U.S.C. § 503(b)(1)(B). The expense represents the bankruptcy estate's 2021 tax liability.

### **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).



## **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of this application, Meegan, Hanschu & Kassenbrock filed a Certificate of Service, ECF No. 58. With one exception the Certificate of Service, EDC 7-005, complies with applicable local rules. One problem exists. Section 4 of EDC 7-005 allows parties to either list the documents served or to append Attachment 4 which so lists the documents. Here, the movant has checked the box indicating that Attachment 4 is appended to the Certificate of Service. No such attachment was appended. Notwithstanding this omission, the court finds notice sufficient. Excepting creditors that have filed claims, who were only given "notice of the hearing," under LBR 9014-1(d)(3)(B)(4), the best reading of the Certificate of Service is that all persons described in Section 5 of ECF No. 58, received all documents. ECF No. 58 (titled, "Trustee's Motion for Allowance and Payment of Payment Administrative Tax Claim for Franchise Tax Board *and Supporting Papers*") (emphasis added). From the phrase, "and supporting papers," the court infers service of all documents on all persons noticed. Future Certificates of Service should either describe the documents in Section 4 of EDC 7-005 or should append Attachment 4.

## **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 California state taxes of \$11,232.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

8. [19-24044](#)-A-7     **IN RE: TIEN LAM**  
[MHK-7](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
7-22-2022    [\[59\]](#)

GARY ZILAFF/ATTY. FOR DBT.  
ANTHONY ASEBEDO/ATTY. FOR MV.  
DEBTORS DISCHARGED: 10/07/2019

### **Final Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]

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

**Disposition:** Granted

**Order:** Civil minute order

**Administrative Expense Allowed:** Internal Revenue Service  
**Amount Allowed:**    \$16,334.00

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 seeks an order allowing payment of \$16,334.00 to the United States Internal Revenue Service as an administrative expense under 11 U.S.C. § 503(b)(1)(B). The expense represents the bankruptcy estate's 2021 tax liability.

### **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).

## **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of this application, Meegan, Hanschu & Kassenbrock filed a Certificate of Service, ECF No. 62. With one exception the Certificate of Service, EDC 7-005, complies with applicable local rules. One problem exists. Section 4 of EDC 7-005 allows parties to either list the documents served or to append Attachment 4 which so lists the documents. Here, the movant has checked the box indicating that Attachment 4 is appended to the Certificate of Service. No such attachment was appended. Notwithstanding this omission, the court finds notice sufficient. Excepting creditors that have filed claims, who were only given "notice of the hearing," under LBR 9014-1(d)(3)(B)(4), the best reading of the Certificate of Service is that all persons described in Section 5 of ECF No. 62, received all documents. ECF No. 62 (titled, "Trustee's Motion for Allowance and Payment of Payment Administrative Tax Claim for Internal Revenue Service *and Supporting Papers*") (emphasis added). From the phrase, "and supporting papers," the court infers service of all documents on all persons noticed. Future Certificates of Service should either describe the documents in Section 4 of EDC 7-005 or should append Attachment 4.

## **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 \$16,334.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

9. [18-22453](#)-A-7     **IN RE: ECS REFINING, INC.**  
[HSM-30](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK &  
MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY  
8-3-2022     [\[1841\]](#)

CHRISTOPHER BAYLEY/ATTY. FOR DBT.

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

#### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Application:** Fifth and Final

**Compensation Allowed:** \$88,894.00

**Reimbursement of Expenses:** \$2,268.12

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, Hefner, Stark & Marois, LLP, attorney 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 \$88,894.00 and reimbursement of expenses in the amount of \$2,268.12. The application is the movant's fifth and final application for allowance of compensation and reimbursement of expenses.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

#### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsel's voluntary use of the new form.

There are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

#### Certificate of Service Section 3 - About the Case/Proceeding

The Certificate of Service correctly identifies this case as a chapter 7 proceeding in Section 3. *See Certificate of Service*, p. 2., Section 3, ECF No. 1847. The remainder of Section 3 is incorrectly completed. It appears that the movant contends that this case is subject to limited service. However, the box indicating such has not been checked, although ECF No. 106 has been referenced as the order limiting service in this case. *Id.*, Section 3. The reference to ECF No. 106 is in error as this docket number is assigned to a declaration in support of a Motion to Extend Deadlines (FWP-2).

#### Section 5 - Who is Being Served

Section 5 of the Certificate of Service is incorrectly completed. EDC Form 7-005 requires the serving party identify the parties served by checking all appropriate boxes on the form on Section 5 or to check the box below those listed on the form which states "or those parties in interest described in the list appended hereto and numbered Attachment 5."

In this case the movant has checked numerous boxes indicating the parties served *and* has checked the box which states "or those parties in interest described in the list appended hereto and numbered Attachment 5." *See Certificate of Service*, ECF No. 1847, p. 3., Section 5.

Because the boxes have been incorrectly selected a significant burden is placed on the court to determine if Attachment 5, which was filed with the form, is complete and accurate. In this case, Attachment 5 appears to be accurate.

## Section 6 - Electronic Service of Registered Users/Attachment 6B1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it: (1) the Clerk of the Court's Matrix for the case or the adversary proceeding; (2) *the list of ECF Registered Users*; and/or (3) the list of Equity Security Holders as applicable.

LBR 7005-1(a) (emphasis added).

The movant has served parties who are registered users of the court's efilings system electronically under Fed. R. Bankr. P. 9036, 7005, and Fed. R. Civ. P. 5(b). LBR 7005-1(a) and EDC Form 7-005, Section 6B1 requires a party serving under Rule 9036 to attach a copy of the Clerk's Electronic Service Matrix which is applicable to the case as Attachment 6B1.

The movant did submit Attachment 6B1 however it is not the required Clerk's Electronic Service Matrix available on the court's website. The movant's failure to use the Clerk's Electronic Service Matrix places a burden on the court to independently verify that the listed creditors are registered users of the court's efilings system, whereas use of the Clerk's Electronic Service Matrix allows the court to presume this service is correct. Future Certificates of Service should include the Clerk's Electronic Service Matrix.

## Section 6 - Electronic Service by Consent/Attachment 6B3

(2) Service in General. A paper is served under this rule by:

. . . .

(F) *delivering it by any other means that the person consented to in writing*--in which event service is complete when the person making service delivers it to the agency designated to make delivery.

Fed. R. Civ. P. 5(b) (2) (F) (emphasis added).

For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), *a copy of the written consent to such electronic service must be attached to the Certificate of Service.*

LBR 7005-1(b) (emphasis added).

A party may be served electronically if they have consented to such service under Fed. R. Civ. P. 5(b) (2) (F). Local Rule 7005-1(b) implements Fed. R. Civ. P. 5(b) (2) (F) by requiring that a copy of the written consent to electronic service must

be attached to the Certificate of Service. Thus, in addition to providing Attachment 6B3 when using EDC Form 7-005, the party effecting service must also include evidence of a party's consent to be served electronically.

The movant has filed Attachment 6B3 which corresponds to Section 6B3 of the Certificate of Service, ECF No. 1847. This section refers to "Other Methods of Service" and in this case refers to service by email pursuant to Fed. R. Civ. P. 5. However, no proof of consent has been provided for the ten parties served in this manner. See *Certificate of Service*, Attachment 6B3, ECF No. 1847.

#### **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 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 \$88,894.00 and reimbursement of expenses in the amount of \$2,268.12. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

10. [18-22453](#)-A-7     **IN RE: ECS REFINING, INC.**  
[KJH-10](#)

MOTION FOR COMPENSATION FOR KIMBERLY HUSTED, CHAPTER 7  
TRUSTEE  
8-3-2022    [\[1832\]](#)

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

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Continued to September 26, 2022, at 9:00 a.m.

**Order:** Civil minute order

The hearing on this motion will be continued to September 26, 2022, at 9:00 a.m. to allow the moving party to supplement and clarify the evidentiary record.

Kimberly Husted, the chapter 7 trustee, seeks an order allowing final compensation. Ms. Husted is the successor trustee in this case. The previously appointed interim trustee, Michael McGranahan has received final compensation of \$71,593.37 and reimbursement of expenses of \$993.90 pursuant to the court's order dated March 22, 2021, ECF No. 1621. An interim award of compensation and reimbursement of expenses was also approved for Ms. Husted.

The instant motion for final compensation contends that the interim award to Ms. Husted was as follows: compensation in the amount of \$59,999.27; and reimbursement of expenses in the amount of \$6,591.43. *See Motion*, ECF No. 1832, 2:1. *See also, Declaration of Kimberly Husted*, ECF No. 1835, 2:3-10.

The amount indicated in the motion and supporting declaration regarding the previous order for reimbursement of expenses is in error. Ms. Husted's interim compensation was approved in the amount of \$59,999.27 and reimbursement of expenses was approved in the amount of \$2,007.50 pursuant to the court's order of interim compensation. *See Order*, ECF No. 1611, 2:7-10.

It is unclear to the court how, or if, the improper assertion regarding the prior order impacts the trustee's calculation of final compensation and reimbursement of expenses in this motion. The court will continue the matter so that the trustee can supplement the record and clarify or correct the accounting in this case.

### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).



The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsel's voluntary use of the new form.

There are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

#### Certificate of Service Section 3 - About the Case/Proceeding

The Certificate of Service correctly identifies this case as a chapter 7 proceeding in Section 3. See *Certificate of Service*, p. 2., Section 3, ECF No. 1847. The remainder of Section 3 is incorrectly completed. It appears that the movant contends that this case is subject to limited service. However, the box indicating such has not been checked, although ECF No. 106 has been referenced as the order limiting service in this case. *Id.*, Section 3. The reference to ECF No. 106 is in error as this docket number is assigned to a declaration in support of a Motion to Extend Deadlines (FWP-2).

#### Section 5 - Who is Being Served

Section 5 of the Certificate of Service is incorrectly completed. EDC Form 7-005 requires the serving party identify the parties served by checking all appropriate boxes on the form on Section 5 or to check the box below those listed on the form which states "or those parties in interest described in the list appended hereto and numbered Attachment 5."

In this case the movant has checked numerous boxes indicating the parties served *and* has checked the box which states "or those parties in interest described in the list appended hereto and numbered Attachment 5." See *Certificate of Service*, ECF No. 1847, p. 3., Section 5.

Because the boxes have been incorrectly selected a significant burden is placed on the court to determine if Attachment 5, which was filed with the form, is complete and accurate. In this case, Attachment 5 appears to be accurate.

#### Section 6 - Electronic Service of Registered Users/Attachment 6B1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it: (1) the Clerk of the Court's Matrix for the case or the adversary proceeding; (2) *the list of ECF Registered Users*; and/or (3) the list of Equity Security Holders as applicable.

LBR 7005-1(a) (emphasis added).

The movant has served parties who are registered users of the court's efilings system electronically under Fed. R. Bankr. P. 9036,

7005, and Fed. R. Civ. P. 5(b). LBR 7005-1(a) and EDC Form 7-005, Section 6B1 requires a party serving under Rule 9036 to attach a copy of the Clerk's Electronic Service Matrix which is applicable to the case as Attachment 6B1.

The movant did submit Attachment 6B1 however it is not the required Clerk's Electronic Service Matrix available on the court's website. The movant's failure to use the Clerk's Electronic Service Matrix places a burden on the court to independently verify that the listed creditors are registered users of the court's efilng system, whereas use of the Clerk's Electronic Service Matrix allows the court to presume this service is correct. Future Certificates of Service should include the Clerk's Electronic Service Matrix.

#### Section 6 - Electronic Service by Consent/Attachment 6B3

(2) Service in General. A paper is served under this rule by:

. . .

(F) *delivering it by any other means that the person consented to in writing--in which event service is complete when the person making service delivers it to the agency designated to make delivery.*

Fed. R. Civ. P. 5(b) (2) (F) (emphasis added).

For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), *a copy of the written consent to such electronic service must be attached to the Certificate of Service.*

LBR 7005-1(b) (emphasis added).

A party may be served electronically if they have consented to such service under Fed. R. Civ. P. 5(b) (2) (F). Local Rule 7005-1(b) implements Fed. R. Civ. P. 5(b) (2) (F) by requiring that a copy of the written consent to electronic service must be attached to the Certificate of Service. Thus, in addition to providing Attachment 6B3 when using EDC Form 7-005, the party effecting service must also include evidence of a party's consent to be served electronically.

The movant has filed Attachment 6B3 which corresponds to Section 6B3 of the Certificate of Service, ECF No. 1847. This section refers to "Other Methods of Service" and in this case refers to service by email pursuant to Fed. R. Civ. P. 5. However, no proof of consent has been provided for the ten parties served in this manner. *See Certificate of Service, Attachment 6B3, ECF No. 1847.*

## 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.

IT IS ORDERED that the hearing on this application for approval of final compensation and reimbursement of expenses shall be continued to September 26, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that the applicant shall file and serve any additional evidence on all interested parties not later than September 12, 2022.

IT IS FURTHER ORDERED that not later than September 12, 2022, the applicant shall file and serve a notice of continued hearing on all interested parties. The notice shall advise all parties that opposition may be made at the hearing on the motion under LBR 9014-1(f)(2).

11. [18-22453](#)-A-7     **IN RE: ECS REFINING, INC.**  
[KJH-8](#)

MOTION FOR COMPENSATION FOR MICHAEL GABRIELSON, ACCOUNTANT  
8-3-2022    [\[1836\]](#)

CHRISTOPHER BAYLEY/ATTY. FOR DBT.

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Application:** Fourth and Final

**Compensation Allowed:** \$8,346.50

**Reimbursement of Expenses:** \$24.42

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, Gabrielson & Company, accountant 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 \$8,346.50 and reimbursement of expenses in the amount of \$24.42.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsel's voluntary use of the new form.

There are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

### Certificate of Service Section 3 - About the Case/Proceeding

The Certificate of Service correctly identifies this case as a chapter 7 proceeding in Section 3. See *Certificate of Service*, p. 2., Section 3, ECF No. 1847. The remainder of Section 3 is incorrectly completed. It appears that the movant contends that this case is subject to limited service. However, the box indicating such has not been checked, although ECF No. 106 has been referenced as the order limiting service in this case. *Id.*, Section 3. The reference to ECF No. 106 is in error as this docket number is assigned to a declaration in support of a Motion to Extend Deadlines (FWP-2).

### Section 5 - Who is Being Served

Section 5 of the Certificate of Service is incorrectly completed. EDC Form 7-005 requires the serving party identify the parties

served by checking all appropriate boxes on the form on Section 5 or to check the box below those listed on the form which states "or those parties in interest described in the list appended hereto and numbered Attachment 5."

In this case the movant has checked numerous boxes indicating the parties served *and* has checked the box which states "or those parties in interest described in the list appended hereto and numbered Attachment 5." See Certificate of Service, ECF No. 1847, p. 3., Section 5.

Because the boxes have been incorrectly selected a significant burden is placed on the court to determine if Attachment 5, which was filed with the form, is complete and accurate. In this case, Attachment 5 appears to be accurate.

#### Section 6 - Electronic Service of Registered Users/Attachment 6B1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it: (1) the Clerk of the Court's Matrix for the case or the adversary proceeding; (2) *the list of ECF Registered Users*; and/or (3) the list of Equity Security Holders as applicable.

LBR 7005-1(a) (emphasis added).

The movant has served parties who are registered users of the court's efilng system electronically under Fed. R. Bankr. P. 9036, 7005, and Fed. R. Civ. P. 5(b). LBR 7005-1(a) and EDC Form 7-005, Section 6B1 requires a party serving under Rule 9036 to attach a copy of the Clerk's Electronic Service Matrix which is applicable to the case as Attachment 6B1.

The movant did submit Attachment 6B1 however it is not the required Clerk's Electronic Service Matrix available on the court's website. The movant's failure to use the Clerk's Electronic Service Matrix places a burden on the court to independently verify that the listed creditors are registered users of the court's efilng system, whereas use of the Clerk's Electronic Service Matrix allows the court to presume this service is correct. Future Certificates of Service should include the Clerk's Electronic Service Matrix.

#### Section 6 - Electronic Service by Consent/Attachment 6B3

(2) Service in General. A paper is served under this rule by:

. . .

(F) *delivering it by any other means that the person consented to in writing*--in which event service is

complete when the person making service delivers it to the agency designated to make delivery.

Fed. R. Civ. P. 5(b)(2)(F) (emphasis added).

For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), *a copy of the written consent to such electronic service must be attached to the Certificate of Service.*

LBR 7005-1(b) (emphasis added).

A party may be served electronically if they have consented to such service under Fed. R. Civ. P. 5(b)(2)(F). Local Rule 7005-1(b) implements Fed. R. Civ. P. 5(b)(2)(F) by requiring that a copy of the written consent to electronic service must be attached to the Certificate of Service. Thus, in addition to providing Attachment 6B3 when using EDC Form 7-005, the party effecting service must also include evidence of a party's consent to be served electronically.

The movant has filed Attachment 6B3 which corresponds to Section 6B3 of the Certificate of Service, ECF No. 1847. This section refers to "Other Methods of Service" and in this case refers to service by email pursuant to Fed. R. Civ. P. 5. However, no proof of consent has been provided for the ten parties served in this manner. See *Certificate of Service*, Attachment 6B3, ECF No. 1847.

#### **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.

Gabrielson & Company'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 \$8,346.50 and reimbursement of expenses in the amount of \$24.42. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

12. [22-20175](#)-A-7     **IN RE: DARRIN/KRISTINA DEMELLO**  
[DRE-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-31-2022    [\[41\]](#)

D. ENSMINGER/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Convert to Chapter 13

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

**Disposition:** Continued to October 17, 2022, at 9:00 a.m.

**Order:** Civil minute order

The debtors seek to convert their case to chapter 13. This is the second motion brought by the debtors to convert under 11 U.S.C. § 706(a).

### **CONVERSION UNDER § 706(a)**

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtors' schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

The previous motion (DRE-1) was denied because the debtors failed to show that they had sufficient income to fund a feasible chapter 13 plan under 11 U.S.C. § 1325(a)(6). See Civil Minutes, ECF No. 30.

The motion in this case refers to concurrently filed Schedules I and J which purportedly evidence the debtors' ability to fund a plan. See *Motion*, ECF No. 41, 2:4-7. The debtors' declaration in support of this motion to convert makes the same assertion. See *Declaration*, ECF No. 43, 1:27-28.

The court's docket shows that the most recently filed Schedules I and J were filed on June 2, 2022, ECF No. 28 in support of the debtors' previous motion to convert. No new schedules have been filed as asserted in the instant motion. The debtors' most recently

Amended Schedules I and J show the debtors' net monthly income to be (\$1,411.66). *Id.*

The court will continue this hearing to allow the debtors to augment the evidentiary record. Given that the court continued the prior motion to convert for the same purpose the court will not grant any further continuances of this motion. Should the debtors fail to provide adequate evidence in support of the motion the court intends to issue a ruling without further hearing.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to October 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 12, 2022, the debtors shall file and serve on all interested parties, any further evidence in support of their motion.

IT IS FURTHER ORDERED that no later than September 12, 2022, the debtors shall file and serve on all interested parties a notice of the continued hearing. The notice shall advise all parties that written opposition to the motion must be filed and served not later than 14 days prior to the hearing on this motion.

13. [22-20175](#)-A-7     **IN RE: DARRIN/KRISTINA DEMELLO**  
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)  
7-29-2022    [\[34\]](#)

D. ENSMINGER/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Dismiss

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

**Disposition:** Continued to October 17, 2022, at 9:00 a.m.

**Order:** Civil minute order

The United States Trustee (UST) seeks an order dismissing the debtors' case under 11 U.S.C. §§ 707(b)(1), 707(b)(2), and 707(b)(3). After the filing of this motion the debtors filed a motion to convert their case to chapter 13 under 11 U.S.C. § 706(a). The debtors' motion to convert (DRE-2) has been continued for further evidence. The court will continue this motion to coincide with the hearing on the debtors' motion to convert.



## CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to October 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 26, 2022, the debtors shall file and serve on all interested parties, any evidence in opposition to the motion.

IT IS FURTHER ORDERED that the United States Trustee may file any reply no later than October 3, 2022.

14. [22-21277](#)-A-7     **IN RE: YOUSEF HADDAD**  
[PP-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT  
8-15-2022     [\[40\]](#)

MARK WOLFF/ATTY. FOR DBT.  
THOMAS PHINNEY/ATTY. FOR MV.

### Tentative Ruling

**Motion:** Extend Deadline for Filing Nondischargeability Complaint under section 523(c); and for objecting to Debtor's discharge pursuant to 11 U.S.C. § 727 (FRBP 4004(b))

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

**Disposition:** Granted

**Order:** Prepared by moving party

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).

EBF Holdings LLC dba Everest Business Funding, creditor and party in interest, moves the Court for an order extending time for and to objecting to dischargeability of debt pursuant to 11 U.S.C. § 523 (FRBP 4007(c)), and for objecting to Debtor's discharge pursuant to 11 U.S.C. § 727 (FRBP 4004(b)). The current deadline to file such objections is September 6, 2022. The movant has requested this deadline be extended to November 7, 2022. The basis for the request is that movant is conducting ongoing discovery and has subpoenaed financial records relating to the debtor's financial affairs which, subject to extension, are not due until September 12, 2022.

### **Rules 4007(c) and 4004(b)**

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4007(c). The deadline may be extended for "cause." *Id.*

A party in interest may bring a motion for an extension of the deadline to object to discharge under 11 U.S.C. § 727 but with limited exceptions the motion must be filed before the original time to object to discharge has expired. See Fed. R. Bankr. P. 4004(b) (1).

Based on the motion and supporting papers, the court finds that cause exists to extend EBF Holdings LLC dba Everest Business Funding's deadline for filing a nondischargeability complaint under § 523(c) and deadline to object to discharge under § 727. The deadline will be extended through November 7, 2022.

### **LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE**

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

While its use is not yet mandatory Parkinson Phinney, attorney for the movant, used the standardized Certificate of Service, EDC 7-005 in memorializing the service of documents in this motion. The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. The court appreciates counsel's voluntary and proper use of the new form.

With one exception the Certificate of Service, ECF No. 42, complies with applicable local rules. The following problem exists. While the box in Item 5 is checked indicating that the debtor was served, and Box 6B2 was checked indicating that service was made by U.S. Mail, there is no attachment as required which indicates the address where the debtor was served. *Id.*, p. 3., Items 5, 6B2. Future Certificates of Service should include the required Attachment 5.

In this case the omission is not fatal as the debtor is represented by attorney Mark Wolff. The Certificate of Service states that debtor's counsel was served as a registered user of the court's electronic filing system under Fed. R. Bankr. P. 9036, 7005, and Fed. R. Civ. P. 5(b). *Id.*, p. 3, No. 5, 6B1. The proper attachment is included with the Certificate of Service, which includes Mr. Wolff in the Clerk's Matrix of Registered Users of the Electronic Filing System in this case. *Id.*, Attachment 6B1.

15. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-19](#)

MOTION TO EMPLOY RICHARD SILVESTRI AS SPECIAL COUNSEL  
8-1-2022     [\[428\]](#)

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

### **Final Ruling**

**Motion:** Employ Special Counsel

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Special Counsel:** Richard Silvestri

**Subject of Representation:** personal injuries arising out of uninsured motorist claim against Liberty Mutual (vehicular accident on or about July 30, 2018)

**Employment:** 11 U.S.C. §§327, 328

**Terms of Employment:** Contingent, as specified in Exhibit C, ECF No. 432

Unopposed applications 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).

Prior to the date of the petition, the debtor(s) sustained an injury for which a cause of action lies; that cause of action appears to be property of the estate, subject to applicable exemptions. 11 U.S.C. § 541. Kimberly Husted, chapter 7 trustee, has moved to employ Richard Silvestri as special counsel to represent the estate on a contingent basis with respect to the matters described herein.

The contingency fee provides that Special Counsel is to receive 1/3 (33.33%) of what is recovered either by settlement or compromise up to sixty (60) days after: (1) filing the case, or (2) demanding arbitration against the first party's insurance carrier, whichever comes first. Thereafter, Special Counsel is to receive forty percent (40%) of what is recovered. Fees are to be calculated prior to the deduction of costs. See *Motion*, ECF No. 428, 2:24-27. See also, *Exhibit C*, ECF No. 432.

Richard Silvestri has previously represented the debtor(s) and the bankruptcy estate with respect to the same matter. On March 28, 2022, the court granted chapter 7 trustee Sheri Carello's motion to employ Mr. Silvestri as special counsel. See *Order*, ECF No. 318. After the passing of Trustee Carello, Kimberly Husted was appointed as the successor chapter 7 trustee and desires to continue the representation of the estate by Mr. Silvestri under the same terms and conditions of appointment.

## 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 his 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).

From the factual information provided in the motion and supporting papers, the court will approve the employment and grant the motion. The court finds the applicant has shown the employment is in the best interests of the estate and the applicant's lack of an adverse interest.

The movant shall prepare an order consistent with this ruling.