



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

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

**DAY: MONDAY**  
**DATE: SEPTEMBER 11, 2023**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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

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## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [11-28028](#)-A-7     **IN RE: JAMES/TERRI COOK**  
[FW-3](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT AND/OR MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF RUEB STOLLER DANIEL, LLP FOR JENNIFER  
RETHEMEIER, SPECIAL COUNSEL(S)  
7-7-2023    [\[42\]](#)

JESSICA DORN/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.  
DEBTORS DISCHARGED: 07/18/2011

### **Final Ruling**

**Matter:** (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

**Notice:** Continued from August 7, 2023

**Disposition:** (1) Motion to approve compromise granted; and (2) Application for compensation and expense reimbursement approved

**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). Written opposition to this motion and application 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).

### **COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a cause of action for product liability and to approve compensation for special counsel representing the estate in the proceeding. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering

the relevant *A & C Properties* factors. The compromise or settlement will be approved.

The compromise provides for cash payment of \$192,339.35 in exchange for a release of legal action against the manufacturer. The compromise is reflected in the settlement agreement filed under seal.

#### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Dalimonte Rueb Stoller, LLP, ("RSD") and Ferrer, Poirot & Wansbrough ("FPW"), special counsels for the trustee, have applied for an allowance of final compensation and reimbursement of expenses.

The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. Pursuant to this court's order, special counsel is entitled to a contingency fee of 40%, ECF No. 39. Special counsel is also entitled to reimbursement of costs.

The applicants request that the court allow compensation in the amount of \$76,935.74 to be divided equally between the two applicant firms, and reimbursement of expenses totaling \$8,800.81 as proposed in the motion. Additionally, from the 40% of the gross for compensation (\$76,935.74), a deduction will be made in the amount of \$15,387.15, which will be paid to the court hearing the Litigation Claim as a common benefit assessment.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only '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.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The trustee is authorized without further order of this court to pay immediately from the estate the aggregate amount of compensation and expenses allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

The applicants shall prepare and submit an order conforming to the court's ruling.

2. [22-21736](#)-A-7     **IN RE: ELIFAZ/LINDA MARTINEZ**  
[PGM-3](#)

MOTION TO REDEEM  
8-3-2023    [\[80\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Authorize Redemption of Tangible Personal Property

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:**    Lawnmower

**Redemption Price:**    \$500.00

The debtor seeks an order authorizing the redemption of personal property. The subject property consists of a lawnmower. The property is collateral for a loan held by creditor Mariner Finance, LLC.

### **REDEMPTION**

Pursuant to 11 U.S.C. § 722, an individual debtor in Chapter 7 may redeem tangible personal property from a lien on such property by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722. The tangible personal property must be "intended primarily for personal, family, or household use." *Id.*

Additionally, the property must have been exempted under § 522 or abandoned under § 554. *Id.* And the lien on the property must "secur[e] a "dischargeable consumer debt." *Id.*

The motion will be denied without prejudice for the following reasons. The lawnmower has been listed in Schedule A/B, ECF No. 1. However, the debtor has failed to claim the lawnmower as exempt on Schedule C, *id.*

### **CIVIL MINUTE ORDER**

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

The debtor's motion authorizing redemption of personal property has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

3. [22-21736](#)-A-7     **IN RE: ELIFAZ/LINDA MARTINEZ**  
[PGM-4](#)

MOTION TO REDEEM  
8-3-2023    [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Authorize Redemption of Tangible Personal Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** Washer, Dryer, Stove, Sofa

**Redemption Price:** \$800.00

The debtor seeks an order authorizing the redemption of personal property. The subject property consists of a washer, dryer, stove, and sofa. These items are collateral for a loan held by creditor Rent-A-Center, Inc.

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).

Pursuant to § 722, an individual debtor in Chapter 7 may redeem tangible personal property from a lien on such property by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722. The tangible personal property must be "intended primarily for personal, family, or household use." *Id.*

Additionally, the property must have been exempted under § 522 or abandoned under § 554. *Id.* And the lien on the property must "secur[e] a "dischargeable consumer debt." *Id.*

The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2).

The debtor requests authority to redeem tangible personal property, described in the motion, from the lien on such property. *See* Fed. R. Bankr. P. 6008. The property has been claimed exempt (or abandoned). The court values the property at the amount set forth in the motion (the redemption price). No party in interest has disputed whether the debt is dischargeable. The court will grant the motion and authorize the proposed redemption.

4. [22-21736](#)-A-7     **IN RE: ELIFAZ/LINDA MARTINEZ**  
[PGM-5](#)

MOTION TO REDEEM  
8-3-2023    [\[84\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Authorize Redemption of Tangible Personal Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** King Mattress and accessories

**Redemption Price:** \$50.00

The debtor seeks an order authorizing the redemption of personal property. The subject property consists of a king mattress and accessories and is collateral for a loan held by creditor NPRT0 California, LLC.

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).

Pursuant to § 722, an individual debtor in Chapter 7 may redeem tangible personal property from a lien on such property by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722. The tangible personal property must be "intended primarily for personal, family, or household use." *Id.*

Additionally, the property must have been exempted under § 522 or abandoned under § 554. *Id.* And the lien on the property must "secur[e] a "dischargeable consumer debt." *Id.*

The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2).

The debtor requests authority to redeem tangible personal property, described in the motion, from the lien on such property. *See* Fed. R. Bankr. P. 6008. The property has been claimed exempt (or abandoned). The court values the property at the amount set forth in the motion (the redemption price). No party in interest has disputed whether the debt is dischargeable. The court will grant the motion and authorize the proposed redemption.

5. [23-22047](#)-A-7     **IN RE: MAHMOUD ALLATHKANI**  
[RLL-2](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
8-17-2023    [\[16\]](#)

GEORGE BURKE/ATTY. FOR DBT.  
ANTHONY ASEBEDO/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Sell Property and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2013 Honda CRV

**Sale Type:** Public auction

**Auctioneer:** West Auctions, Inc. - approved

**Compensation:** 15% of gross sale proceeds - approved

**Reimbursement of Expenses:** Actual, not to exceed \$1,200.00 -  
approved

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).

Chapter 7 trustee, Geoffrey M. Richards, seeks an order authorizing the trustee: 1) to sell the estate's interest in a motor vehicle (a 2013 Honda CRV) by way of a public auction; 2) to employ West Auctions, Inc., as the estate's auctioneer; and 3) to pay the related commission and expenses from the sale proceeds without further order.

**SECTION 363(b) 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.

**SECTION 328(a) EMPLOYMENT AND COMPENSATION**

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer



satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

6. [21-22352](#)-A-7     **IN RE: DANNIE BROWN AND LINDA RAMIREZ**  
[DNL-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR BENJAMIN C. TAGERT, TRUSTEES  
ATTORNEY(S)  
8-14-2023    [\[55\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 10/05/2021

**Final Ruling**

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

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

**Required Service:** Fed. R. Civ. P. 5, Fed. R. Bankr. P. 7005

**Disposition:** Approved

**Order:** Civil minute order

**Total Capped Amount Requested:**    \$3,806.40

**Compensation Allowed:**    \$3,779.40

**Reimbursement of Expenses:**    \$27.00

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, Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation and reimbursement of expenses in the "capped" amount of \$3,806.40. Of necessity the court has allocated the compensation and expenses as required by the Clerk of the Court. The motion itemizes costs and requests reimbursement of costs in the amount of \$27.00. The court will apportion the award

and approve \$3,779.40 as compensation, and reimbursement of expenses in the amount of \$27.00.

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.

#### **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 \$3,779.40 and reimbursement of expenses in the amount of \$27.00.

7. [22-20855](#)-A-7     **IN RE: GAVIN ADAMS**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-4-2023    [\[41\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
DEBTOR DISCHARGED: 08/08/2022;    U.S. BANK NATIONAL ASSOCIATION  
VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 19763 Lake California Dr., Cottonwood, California

**Discharge:** August 8, 2022

**Cause:** Delinquent payments - months/14; amount/\$3,294.58

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.

U.S. Bank, National Association seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

The subject property was awarded to the debtor's former spouse in a dissolution of marriage proceeding in 2018, and the debtor has claimed no exemption in the property. See Schedules A, C, ECF No. 18. On March 3, 2023, the Chapter 7 trustee, Kimberly Husted, filed her Final Report, ECF No. 31. On July 20, 2023, the trustee filed the Final Account and Distribution report, ECF No. 38. The trustee has declined to administer the subject property. *Id.*

### **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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on

the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

#### As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied as moot as to the debtor.

#### As to the Estate

"[A]fter notice and a hearing," the court may terminate, annual, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1).

Section 362(d)(1) authorizes stay relief for cause. 11 U.S.C. § 362(d)(1). In this case, cause exists to grant the motion as 14 post-petition payments have come due, and have not been paid. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 19763 Lake California Dr., Cottonwood, California. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any

party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

8. [23-20280](#)-A-7     **IN RE: BRANDON DALTON**  
[DNL-4](#)

MOTION TO EMPLOY NOEMI LANDRAU AS SPECIAL COUNSEL  
8-21-2023    [\[32\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTOR DISCHARGED: 05/15/2023

**Tentative Ruling**

**Motion:** Employ Special Counsel  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Approved  
**Order:** Prepared by moving party

**Special Counsel:** Landrau, Rivera & Associates  
**Subject of Representation:** Legal services required to complete sale of real property located in Puerto Rico  
**Employment:** 11 U.S.C. §§ 327, 328  
**Terms of Employment:** \$250 per hour; not to exceed \$4,000

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

J. Michael Hopper, Chapter 7 trustee, has moved to employ Landrau, Rivera & Associates to represent the estate on an hourly basis with respect to the matters described herein.

Among the debtor's assets is real property located in Puerto Rico. The court has previously approved the employment of a real estate broker to market and sell the subject property, which is property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

The attorney has significant firsthand experience with cases of this type. The trustee deems it appropriate that Proposed Special Purpose Counsel be retained to provide legal services required to complete the sale of the subject property. See Declaration of J. Michael Hopper, ECF No. 34.

## EMPLOYMENT

Chapter 7 trustees may employ counsel to represent the estate. 11 U.S.C. § 327. Employment may be for all purposes or for a limited purpose. The burden of proving eligibility is on the applicant. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 154 (8th Cir. BAP 2005). Where the trustee seeks to employ special counsel that has previously represented the debtor employment is governed by § 327(e). That section provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

In most instances, "in the best interest of the estate" means reasonably likely to recover non-exempt assets that may be administered for creditors, 11 U.S.C. § 704(a)(1). Proposed special counsel must not hold or represent "any adverse interest" to the debtor or to the estate "with respect to the matter on which the attorney is to be employed." Adverse interest means "the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holding, Inc.*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008). See *In re Grant*, 507 B.R. 306, 308-10 (Bankr. E.D. Cal. 2014) (holding that there is adverse interest where the attorney to be employed asserts a charging lien—at least if avoidable, or where the debtor argues that the proceeds of the action are exempt under applicable law).

Where the applicant wishes to define the terms of employment it may also seek approval under § 328. The section provides:

The trustee...with the court's approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. § 328(a).

The court will grant the motion. The court authorizes employment of law firms of Landrau, Rivera & Associates as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes hourly payment of \$250.00 per hour, in an amount not to exceed \$4,000.00 under 11 U.S.C. § 328(a). Compensation and reimbursement of expenses shall only be paid upon the court's approval of a motion seeking approval of the sale of the subject property and payment of proposed special purpose counsel. Fed. R. Bankr. P. 9019.

The trustee shall submit an order granting the motion which is consistent with this ruling.

9. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-26](#)

CONTINUED MOTION TO ABANDON  
4-25-2023    [\[495\]](#)

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

#### **Final Ruling**

The hearing on the trustee's motion to abandon will be continued to October 2, 2023, at 10:30 a.m. The evidentiary record is closed and no further filings by any party are allowed absent leave of court for cause shown.

10. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-27](#)

OBJECTION TO CLAIM OF PAK KUENG WU, CLAIM NUMBER 45  
7-3-2023    [\[524\]](#)

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

#### **Final Ruling**

The hearing on the trustee's objection to claim of Pak Wu, Claim No. 45, will be continued to October 2, 2023, at 10:30 a.m. The evidentiary record is closed and no further filings by any party are allowed absent leave of court for cause shown.

11. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[TBG-2](#)

OBJECTION TO CLAIM OF PAK KEUNG WU, CLAIM NUMBER 45  
8-11-2023    [\[541\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Omnibus Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition required

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtors, object to the allowance of the claim of Pak Wu, Claim No. 45. For the following reasons the court will overrule the objection without prejudice.

### **SERVICE INSUFFICIENT**

Rule 3007 requires service of claim objections. It provides: "The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated[.]" Fed. R. Bankr. P. 3007.

The certificate of service filed in support of the objection does not include any attachment which shows that the either the claimant or his attorney (as indicated in the claim) were served with the motion. See Certificate of Service, ECF No. 545. Moreover, Section 5 of the certificate does not indicate that any parties other than the debtors' attorney, the United States Trustee, or the Chapter 7 trustee were served with the motion. *Id.*, Section 5.

The present objection has not been served on the claimant as required by Rule 3007.

### **CIVIL MINUTE ORDER**

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

The debtors' claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.



12. [21-22898](#)-A-7     **IN RE: HEATH V. FULKERSON LLC**  
[DNL-6](#)

MOTION TO ABANDON  
8-14-2023    [\[175\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Authorize Trustee's Abandonment of Property of the Estate

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

**Disposition:** Granted only as to the asset(s) described in the motion

**Order:** Prepared by moving party pursuant to the instructions below

**Asset:** any purported interest of the bankruptcy estate in the claims alleged by the Debtor's principal, Heath V. Fulkerson, in *Heath V. Fulkerson v. Albert & Mackenzie, LLP*, Sacramento Superior Court Case No. 34-2021-00303464

**Value:** \$0

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).

Chapter 7 trustee Nikki Farris moves for an order authorizing her abandonment of the bankruptcy estate's interest in any purported interest of the bankruptcy estate in the claims alleged by the Debtor's principal, Heath V. Fulkerson, in *Heath V. Fulkerson v. Albert & Mackenzie, LLP*, Sacramento Superior Court Case No. 34-2021-00303464 as described in the motion, ECF No. 175.

### **ABANDONMENT 11 U.S.C. § 554(a)**

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The trustee contends that actions taken by the debtor's principal, Heath Fulkerson, necessitated the instant motion as follows:

Among the scheduled assets of the estate were purported interests in several lawsuits being pursued by the Principal as an individual, including the Sacramento Case. All of the scheduled cases were dismissed prior to the Conversion Date, with the exception of the Sacramento Case, which has remained pending subject to an appeal by the defendants.

Though the complaint in the Sacramento Case includes a single paragraph identifying the Debtor with certain other entities owned or operated by the Principal, the Debtor is not otherwise named as a plaintiff and the complaint includes no allegations that suggest that the Debtor has any interest in the alleged harm caused by the defendants to the Debtor in their handling of his worker's compensation claim and related litigation. The Trustee's initial investigation into the various lawsuits confirmed the estate had no real interest in the cases.

Motion, 2:13-22, ECF No. 175.

During her investigation the trustee discovered that the Sacramento Case, the subject of this motion, is predicated on the alleged mishandling by insurance counsel of an individual worker's compensation claim by the debtor's principal, in connection with work he performed while doing business as At Home Electric. The trustee discovered that the claim was determined by the California Worker's Compensation Appeals Board to be one of at least 15 such claims submitted by the debtor's principal and determined to be without merit. The Worker's Compensation Appeals Board declared the debtor's principal a vexatious litigant.

The trustee believes the debtor's principal subsequently directed the Sacramento Case defendants to submit meet and confer correspondence to the trustee, claiming that the bankruptcy estate had an interest in and was handling the litigation. The trustee has been advised that the defendants have filed a demurrer and motion to strike the complaint, which is presently set for hearing on October 12, 2023. Trustee's counsel subsequently conferred with defense counsel and the debtor's bankruptcy attorney-of-record to investigate what the debtor's principal had been representing regarding the purported interest and involvement of the bankruptcy estate in the Sacramento Case. After her investigation the trustee believes that the debtor does not appear to have ever had any interest in the Sacramento Case despite being scheduled as an asset of the estate and its value—if any—is inconsequential at best.

The trustee believes that, in an abundance of caution, it is in the best interest of the estate and its creditors to abandon any purported interest the debtor's principal claims the debtor has in the Sacramento Case.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. Accordingly, an order authorizing the trustee's abandonment of such assets is warranted. The court will grant the motion. The order will authorize abandonment of only the assets that are described in the motion.