



**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: OCTOBER 16, 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. [23-22903](#)-A-7     **IN RE: SHELBY CUPLER**  
[SLH-1](#)

MOTION TO AVOID LIEN OF GGFS, INC.  
9-14-2023    [\[15\]](#)

SETH HANSON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of GGFS, Inc., under 11 U.S.C. § 522(f). For the following reason the motion will be denied without prejudice.

### **SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. Certificate of Service, ECF No. 19.

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of GGFS, Inc., has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

2. [19-22509](#)-A-7     **IN RE: ULISES MEZA**  
[DNL-7](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
9-25-2023    [\[165\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/07/2022

### **Tentative Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Federal Taxes 2022:**    \$11,522  
**California State Taxes 2022:**    \$4,227

**Federal Taxes 2023:**    \$12,000  
**California State Taxes 2023:**    \$4,500

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, J. Michael Hopper, seeks an order for allowance of, and authority to pay from available funds of the estate subject to 11 U.S.C. § 726, administrative expense claims resulting from the estimated taxes that are due and payable to the: (a) Internal Revenue Service in amounts not to exceed \$11,522 for 2022 and \$12,000 for 2023; and (b) Franchise Tax Board in amounts not to exceed \$4,227 for 2022 and \$4,500 for 2023.

### **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 Clobbeck*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The following taxes are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B). The court allows federal taxes of: \$11,522 (2022) and \$12,000 (2023). The court allows California state taxes of \$4,227 (2022), and \$4,500 (2023).

3. [23-21409](#)-A-7     **IN RE: MICHAEL/ERIN CHRISTENSEN**  
[BLF-3](#)

MOTION TO SELL  
9-6-2023    [\[32\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 2005 American Ironhorse Legend

**Buyer:** TMC Auction, Inc.

**Sale Price:** \$4,000

**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The Chapter 7 trustee seeks an order approving the sale of the subject property to TMC Auction, Inc., for \$4,000.00.

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.

4. [23-22414](#)-A-7      **IN RE: HAMIDULLAH NAEBKHEL**  
[BLG-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.  
8-17-2023    [\[12\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject property:** 301 Jasmine Drive, Vacaville, California

**Judicial Lien Avoided:** \$15,476.92 (Wells Fargo Bank, N.A.)

**All Other Liens:**

- Deed of Trust, \$615,800.00 (Loancare, LLC)
- Consensual Lien, \$11,175.00 (Sunshine I, LLC)

**Exemption:** \$600,000

**Value of Property:** \$615,800

The debtor seeks an order avoiding the judicial lien of Wells Fargo Bank, N.A., under 11 U.S.C. § 522(f).

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).

## **LIEN AVOIDANCE**

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.

5. [23-22917](#)-A-7     **IN RE: MIHAIL/SORINA VANGHELI**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-8-2023    [\[12\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
TD BANK, N.A. VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2022 Tesla, Model Y

**Cause:** delinquent installment payments 3 months/\$3,239.58

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.

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

## DEFAULT OF RESPONDENT

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

## 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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *See* Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); *see also In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.



Cause exists to grant relief under § 362(d)(1). 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.

TD Bank, N.A.'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2022 Tesla, model Y, as to all parties in interest. 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.

6. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[FEC-2](#)

CONTINUED ORDER TO SHOW CAUSE  
1-23-2023    [\[155\]](#)

BRYON FARLEY/ATTY. FOR DBT.

#### **Tentative Ruling**

For the reasons stated in the court's ruling in Mark W. Briden's Motion for Compensation (MWB-10):

IT IS ORDERED that the Order to Show Cause is sustained.

7. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[MWB-10](#)

CONTINUED MOTION FOR COMPENSATION FOR MARK W. BRIDEN,  
DEBTORS ATTORNEY(S)  
8-1-2023    [\[325\]](#)

BRYON FARLEY/ATTY. FOR DBT.

### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2); written opposition filed by chapter 13  
trustee

**Disposition:** Allowed in part

**Order:** Civil minute order

**Compensation Allowed:**    \$4,550.00

**Reimbursement of Costs Allowed:**    \$352.00

**Petition Filed:**    July 5, 2022

**Conversion to Chapter 13:**    August 31, 2022

**Conversion to Chapter 7:**    September 14, 2023

Because the issues are intertwined and to avoid inconsistency in its rulings the court issues this ruling in connection with both attorney Mark W. Briden's Motion for Compensation (MWB-10) and the court's Order to Show Cause (FEC-2).

Attorney Mark W. Briden (applicant), prior counsel to the debtors, seeks an order allowing final compensation and expenses. The motion seeks approval of compensation in the amount of \$9,463.40, and reimbursement of expenses in the amount of \$536.50.

The court continued the hearing on this motion to allow for additional evidence from the applicant, and opposition by the Chapter 7 trustee, if any.

IT IS FURTHER ORDERED that the applicant shall file and serve a written response to the trustee's opposition not later than October 3, 2023. The response shall at a minimum specifically address each issue raised in the trustee's opposition, and shall include admissible evidence in support of the applicant's position.

Order, ECF No. 365.

### **CASE HISTORY**

#### Employment Order

The debtors filed this case under Chapter 12 on July 5, 2022. The applicant was the counsel of record. The debtors paid the applicant a retainer of \$10,000.00. Disclosure of Compensation, ECF No. 1.

On August 2, 2022, the court granted the debtors' motion to employ the applicant as follows:

1. to the extent provided herein, the application is approved;
2. Lindsay Brakel and Lisa Brakel are authorized under 11 U.S.C. § 327 to employ Mark W. Briden as their attorney with respect to this Chapter 12 bankruptcy proceeding and ancillary matters;
3. Employment is authorized only under 11 U.S.C. § 327 and Mark W. Briden's entitlement to, and the amount of, compensation for services rendered and reimbursement for actual, necessary expenses incurred shall be determined by the court under 11 U.S.C. § 330;
4. Mark W. Briden's employment is subject to the applicable terms and conditions of 11 U.S.C. § 329-331;
5. Mark W. Briden shall not request or accept compensation for services rendered or reimbursement for costs incurred, except by application pursuant to 11 U.S.C. §§ 330 and 331 and order thereon;
6. *any funds received by Mark W. Briden in connection with this matter (A) regardless of whether denominated a retainer or are said to be nonrefundable are deemed an advance payment of fees, are property of the estate, except to the extent that Mark W. Briden demonstrates otherwise, 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(a); and (B) shall be maintained in a trust account, subject to withdrawal only after receipt of an order under paragraph 5 of this order;*
7. except as expressly provided otherwise in this order, (A) the terms and conditions, of any agreement between Lindsay Brakel and Lisa Brakel and Mark W. Briden, including terms pertaining to Mark W. Briden's compensation, are disapproved; and (B) all other relief requested in the application for employment is denied; and
8. this order applies to services rendered and costs incurred on or after July 5, 2022, LBR 2014-1(b) (1).

Order, 2:6-28, 3:1-10, ECF No. 16 (emphasis added).

#### Chapter 12

A Chapter 12 plan was never filed. During the Chapter 12 proceeding a status conference was held. The Chapter 12 trustee filed a status report contending that the debtors did not meet the definition of family farmer under 11 U.S.C. § 101(18)(A) and thus were not eligible to be debtors pursuant to 11 U.S.C. § 1225(a)(1). The court found the debtors were not eligible to be Chapter 12 debtors. Civil Minutes, ECF No. 51. In response to this ruling the debtors converted the case to Chapter 13 on August 31, 2022.

An application for compensation was never filed during the pendency of this case under Chapter 12.

#### Chapter 13

On September 15, 2022, the debtors filed a Rights and Responsibilities form, which had been executed by the debtors and the applicant. The form states that the debtors agreed to pay and that the applicant agreed to accept \$6,000.00 for services performed during the pendency of the Chapter 13 case, and that the sum of \$6,000.00 had been paid to the applicant. Rights and Responsibilities, ECF No. 73. A subsequent Disclosure of Compensation has never been filed on the court's docket by the applicant.

The Chapter 13 trustee objected to confirmation of the proposed plans on multiple bases including: 1) plan delinquency; 2) ineligibility; 3) failure to disclose assets; 3) lack of plan feasibility. A Chapter 13 plan was never confirmed.

#### Chapter 7

The Chapter 13 trustee filed a motion to convert the case to Chapter 7 primarily because of the debtors' failure to confirm a Chapter 13 plan. The motion to convert was also supported by creditor Nicholas Loper who argued that the debtors' post-petition conversion of estate assets in the approximate amount of \$525,000 without a court order warranted conversion to Chapter 7.

The court granted the Chapter 13 trustee's motion to convert to Chapter 7 on September 13, 2023. Order, ECF No. 359.

After the conversion to Chapter 7 the debtors and counsel executed a substitution of attorney which was approved by the court.

#### Order to Show Cause

Troubled by the irregularities with respect to the applicant's handling of the retainer received from the debtors and the perceived inconsistencies between compensation in the Chapter 12 and Chapter 13 proceedings the court issued an order to show cause on January 23, 2023. The court ordered:

1. On March 7, 2023, at 9:00 a.m. Mark Briden is ordered to appear and show cause, if any there be, why this court should not:

(A) revoke its order of employment, Order, ECF No. 16;

(B) disgorge fees; or

(C) preclude attorney Briden from opting into the flat for Chapter 13 cases, LBR 2016- 1(a);

2. not later than February 14, 2023, Mark Briden is ordered to file briefs and/or evidence responsive thereto; at a minimum Mr. Briden shall provide:

(A) a declaration clarifying the total retainer received by his office and, if necessary, a supplemental Disclosure of Compensation, Fed. R. Bankr. P. 2016(b);

(B) an authenticated copy of the trust ledger for Brakels;

(C) a declaration indicating the dates, amounts and sources of funds received from or on behalf of the debtors;

(D) a declaration indicating the dates and amounts of those funds deposited into Mark Briden's trust account;

(E) a declaration indicating the dates and amounts of monies withdrawn from the trust account in this matter;

(F) the authority for the withdrawal of those amounts, e.g., statute or order;

(G) a declaration indicating the name and state bar number of each attorney who authorized the withdrawal of these funds from the trust account; and

(H) authenticated copies of timekeeping or billing invoices for all timekeepers who worked on this case;

Order to Show Cause, 4:27, 5:1-24, ECF No. 155.

In response to the court's order to show cause the applicant filed a declaration on March 23, 2023, which stated that: 1) the applicant received a retainer from the debtors in the amount of \$10,000 on July 5, 2022, and that he had received no additional monies from the debtors; 2) the monies were deposited into an account (whether the account was a trust account was not indicated); 3) the funds on deposit were no longer in the account and had been spent on "expenses"; and 4) that the applicant had filed an application for approval of compensation (MWB-7). Declaration of Mark W. Briden,

ECF No. 223. No additional evidence was provided as requested in the court's order.

Because the information provided did not sufficiently comply with the court's order the court issued a further order on May 18, 2023, as follows:

IT IS FURTHER ORDERED that not later than May 30, 2023, Mr. Briden shall file with the court a copy of the debtors' fee agreement (under seal if appropriate) and an amended Disclosure of Compensation for the Chapter 13.

IT IS FURTHER ORDERED that also, not later than May 30, 2023, Mr. Briden shall file a brief addressing (1) compliance or noncompliance regarding the deposit of funds into a trust account per Order, ECF No. 16, para. 6 and as required by Rule of professional Conduct 1.15 (a) and (b); and (2) if noncomplaint, suggestions for appropriate resolution of these issues.

Order, ECF No. 268.

On May 23, 2023, the applicant provided additional evidence as ordered. A declaration was filed which stated: 1) that the retainer received from the debtors was deposited into a general banking account; 2) that because a previous application for compensation had been denied that a further application would be filed; and 3) that if the court did not approve the compensation application for the \$10,000 received that the applicant would refund the difference to the debtors. Declaration of Mark W. Briden, ECF No. 275.

A further declaration was filed on May 30, 2023, where the applicant stated that "[t]he deposit of the \$10,000.00 retainer was placed in a general bank account on June 30, 2023." Declaration of Mark W. Briden, 1:25-26, ECF No. 280. The applicant further stated that he "did not intentionally violate the Order of this Court dated August 2, 2022. By the time the Order had been received, I was unable to transfer the funds into the trust account." *Id.*, 13-15.

In addition to the declaration the applicant filed Exhibits consisting of: 1) the Retainer Agreement signed by the applicant and the debtors; and 2) an amended Disclosure of Compensation. Exhibits, ECF No. 276.

The court notes that the Amended Disclosure of Compensation, which is dated August 29, 2022, provides that the applicant agrees to accept \$0 from the debtors for legal services. The court also notes that the Amended Disclosure Statement was never filed on the court's docket.

The retainer agreement, which is dated July 5, 2022, does not provide that the funds received from the debtors will be

deposited into a trust account. Cal. Rule Prof. Conduct 1.15(b).

#### **FAILURE TO ABIDE BY COURT'S ORDER**

A professional must obtain court approval prior to accepting payment. 11 U.S.C. § 330 (after notice "the court may award" compensation and expenses); *In re Woodcraft Studios, Inc.*, 464 B.R. 1, 12 (N.D. Cal. 2011); *In re Knudsen Corp.*, 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988). Circuit law authorizes the court to deny compensation for violation of the employment or compensation statutes.

The court construes the instant motion for compensation to be an "after the fact" effort to comply with the court's employment order. However, the court is displeased with the applicant's non-compliance with the court's employment order and the rules of professional conduct.

All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction.

Cal. Rule Prof. Conduct 1.15(a).

First, the applicant failed to deposit the retainer received into his firm's attorney client trust account as required by the court's employment order and by Cal. Rule Prof. Conduct 1.15(a).

Second, the applicant failed to seek court approval of compensation prior to depositing the retainer into a general banking account.

Given these circumstances the court may deny compensation as appropriate.

#### **COMPENSATION AND EXPENSES**

Compensation of estate professionals is regulated by the bankruptcy code.

*After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section*

333, or a professional person employed under section 327 or 1103--

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1) (emphasis added).

Court approval is mandatory for professionals seeking compensation from the estate. 11 U.S.C. § 330(a); Fed. R. Bankr. P. 2016(a); *In re Knudsen Corp.*, 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988)

("professionals must file applications for compensation which are subject to a noticed hearing prior to allowance or payment of fees"). Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The application seeks approval of compensation and reimbursement of expenses for services performed during the pendency of the case under both Chapter 12 and Chapter 13.

#### Chapter 13 Trustee Opposition

Prior to the conversion of the case to Chapter 7 the Chapter 13 trustee, David Cusick opposed the application for compensation contending: 1) the motion failed to state a legal basis for the relief requested as required by Fed. R. Bankr. P. 9013; 2) the debtors failed to file a declaration in support of the motion; 3) the applicant failed to submit any evidence regarding his experience or qualifications supporting his hourly billing rate of \$350.00; 4) task billing was inadequate; 5) costs were not itemized so that they could be matched with a particular task or motion; and 6) the compensation charged is not reasonable under § 330(a).

On October 10, 2023, the Chapter 7 trustee also filed opposition to the motion stating that the basis for her opposition was the same as the opposition proffered by the Chapter 13 trustee. Joinder in Opposition to Motion for Compensation, ECF No. 396.

#### **COMPLIANCE WITH RULE 9013**

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking a statement of the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

The motion fails to cite any authority for the relief requested.



## **LACK OF SUPPORT BY DEBTORS**

The debtors have failed to file a declaration in support of the application. The court notes that the debtors have filed a substitution of attorney which the court has approved.

## **ATTORNEY QUALIFICATION/HOURLY RATE**

- (3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court *shall* consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--
- (A) the time spent on such services;
  - (B) the rates charged for such services;
  - (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
  - (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
  - (E) *with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and*
  - (F) *whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.*

11 U.S.C. § 330(a) (3) (emphasis added).

The Chapter 13 trustee opposed the motion contending that the applicant had not proven the hourly rate of \$350.00 is reasonable. The applicant filed a declaration on October 2, 2023, stating that he had surveyed the bankruptcy attorneys in the Redding area and the hourly rate ranged from \$300-\$400. Declaration of Mark W. Briden, ECF No. 378.

The court may rely on its own knowledge of customary rates and counsel's experience concerning reasonable and proper fees. See *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011).

The court finds that the hourly rate of \$350.00 is reasonable.

## **PRE-PETITION SERVICES**

The application specifically requests approval of compensation for services rendered pre-petition. Exhibit C lists two entries for pre-petition services: 1) Chapter 12 Petition, June 28, 2022, 4 hours; and 2) Chapter 12 Petition, June 29, 2022, 4 hours. Exhibit C, ECF No. 328. At the applicant's hourly rate of \$350.00 the total amount owed for pre-petition services is \$2,800.00.

While the charges for these services do not require the court's approval the amount of \$2,800.00 for pre-petition services is acknowledged and allowed.

#### **ANALYSIS OF TASK BILLING**

The applicant has submitted as Exhibit C, a list of tasks performed, and amounts earned in the performance of his services to the debtors. Exhibits A, C, ECF No. 328.

This case was filed on July 5, 2022, and the services performed by the applicant on behalf of the debtors and the estate span a period of 15 months.

The presentation of the tasks performed on behalf of the debtors is confusing and nearly incomprehensible. The year in which each task was performed is omitted from the detail of services provided by the applicant. Moreover, the dates and tasks performed are not in chronological order; Exhibits A and C are mixed together, and no totals or subtotals are indicated in the exhibits. It is impossible for the court to determine whether tasks have been duplicated or to reconcile the services indicated in Exhibit A with those indicated in Exhibit C.

#### Judicial Notice

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

To determine the tasks performed which benefitted the estate the court takes judicial notice of the documents on the court's docket.

#### Chapter 12 Allowed Compensation

As the court has previously indicated in this ruling, the debtors were not eligible for relief under Chapter 12. Accordingly, the court finds that all post-petition services during the pendency of the Chapter 12, with one exception, were not reasonable and did not benefit the debtors or the estate.

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. The applicant filed an ex-parte application to employ Bryan Farley of Martins & Farley as special counsel to represent the estate on an hourly basis with respect to that cause of action. The court granted this motion on August 20, 2022.

The court finds that the employment of Bryan Farley benefitted the debtors and the estate. However, the court is unable to reconcile the entries indicated in Exhibits A and C, ECF No. 328, regarding the application. The application was a straightforward, ex-parte application.

Accordingly, the court allows \$700.00 for the ex-parte application to appoint Bryan Farley as special counsel.

#### Chapter 13 Allowance

The debtors converted the case to Chapter 13 on August 31, 2022. On September 15, 2022, the debtors filed a Chapter 13 plan and then an Amended Plan on October 12, 2022. The debtors filed a motion to confirm the amended plan. The motion was opposed by the Chapter 13 trustee and creditor Nicholas Loper. Subsequently, the court allowed the debtors to withdraw the plan under Fed. R. Civ. P. 41.

The debtors filed another Amended Chapter 13 plan on January 4, 2023. Confirmation of this plan was also denied. No further Chapter 13 plans were proposed by the debtors.

The debtors are defendants in two state court proceedings in Oregon state court. The plaintiffs in the two cases, Lori Lester and Nicholas Loper, are claimants in the instant bankruptcy case. Lester filed a claim for \$922,666.97, Claim No. 5. Loper filed a claim for \$15,100,000, Claim No. 10. The debtors' liability, if any, to the claimants has not yet been adjudicated and the claims are unliquidated. Each of the claimants obtained relief from the automatic stay to proceed with state court litigation regarding the claims during the pendency of the case under Chapter 13. Both motions were uncontested. The debtors did not appear in the stay relief motion filed by Lester, but filed a non-opposition to Loper's motion for stay relief.

The debtors filed objections to the claims of both Loper and Lester. The claim objections were premature and were continued to allow the state court proceedings to conclude and the claims to be liquidated. The debtors' objection to Loper's claim caused Loper to file a motion requesting that the court abstain from hearing the objection to his claim until the conclusion of the state court proceedings (KMT-4). The motion to abstain was granted by default.

On January 17, 2023, the debtors filed an ex-parte application to dismiss the Chapter 13 proceeding (MWB-6). The debtors were not entitled to dismiss the case without notice and a hearing. The court specifically disallows any compensation relating to the debtors' ex-parte application to dismiss the Chapter 13 case.

Subsequently, the debtors filed, and set for hearing, a motion to dismiss the case (MWB-8), contending that they had sufficient assets to pay all creditors in full. As the claims of Lester and Loper have not yet been liquidated the debtors' argument appears to lack merit. However, the motion was continued to coincide with the Chapter 13 trustee's motion to convert the case to Chapter 7. Ultimately, the debtors' motion to dismiss was denied when the court granted the Chapter 13 trustee's motion to convert to Chapter 7.

The Chapter 13 trustee filed a motion to convert the case to Chapter 7 (DPC-2) on December 19, 2022, citing the debtors' failure to prosecute the Chapter 13 as the primary basis for relief under 11

U.S.C. § 1307(c)(1). Creditor Nicholas Loper supported the motion arguing (as the court has previously noted) that the debtors' dissipation of estate monies and transfer of \$525,000 in estate funds without court authorization was further reason for the court to convert the case.

The debtors filed a two-page declaration in opposition to the motion on January 4, 2023, ECF No. 141. Subsequently, the applicant filed a four-page opposition to the motion, ECF No. 282. While the opposition contains evidence it was presented in the form of unsworn statements by the applicant and was not accompanied by admissible evidence by the debtors. The applicant filed a Status Report, ECF No. 341. The single paragraph report apprised the court of the status of the Oregon state court proceeding regarding Loper's claim. The applicant filed a two-paragraph rebuttal to the motion to convert, ECF No. 343. Notably, the applicant did not file any documents in response to Loper's evidence that the debtors had converted assets post-petition without court authorization.

The court finds that the applicant's services to the debtors and the estate were either ineffective or perfunctory during the pendency of the Chapter 13. A Chapter 13 plan was never confirmed, and a further amended plan was not proposed after the court denied confirmation of the most recently filed plan on February 22, 2023.

The only services which directly benefitted the debtors, or the estate are confined to the debtors' acquiescence to the motions for relief from stay filed by Lester and Loper. As the court has noted the Lester motion proceeded by default and the debtors filed a non-opposition to Loper's motion. The court is unable to determine the time spent reviewing the motions and filing the non-opposition in the Loper motion from the time records submitted by the applicant. The court therefore allows \$350.00 for the applicant's work regarding each of the motions for a total of \$700.00. The court further allows \$350.00 as shown in Exhibit C for the hour spent by the applicant reviewing Loper's motion to abstain.

Accordingly, the court finds that compensation is allowed as follows: 1) \$2,800.00 for prepetition services; 2) \$700.00 for filing the ex-parte motion to employ Bryan Farley; and 3) \$1,050.00 for work in connection with the motions for stay relief filed by Lester and Loper, and the motion to abstain. The allowed compensation totals \$4,550.00.

#### **ANALYSIS OF COSTS EXPENDED**

The applicant has submitted as Exhibit B, a statement of costs expended in the performance of his services to the debtors. Exhibit B, ECF No. 328.

This case was filed on July 5, 2022, and the services performed on behalf of the debtors and the estate span a period of 15 months. The year in which each expense was incurred is omitted from the detail of expenses provided by the applicant. This makes it impossible for the court to match the expense incurred with the task performed by the applicant, except for three expenses as follows.

The court allows the following expenses: 1) \$275.00 filing fee dated July 5; 2) \$22.50 Court Call expense dated August 29; 3) \$32.00 filing fee for Amended Schedule E/F, July 26, 2022; and 4) \$22.50 Court Call expense dated February 22.

The remaining charges are all for postage but do not indicate what was filed and served. The applicant has failed to prove the necessity of the remaining costs and the court will deny reimbursement of costs beyond \$352.00.

The court allows expenses in the amount of \$352.00.

#### **REMITTANCE TO CHAPTER 7 TRUSTEE**

Funds received by Mark W. Briden in connection with this matter are property of the estate, except to the extent that Mark W. Briden has demonstrated otherwise. Order of Employment, ¶ 6, ECF No. 16, 11 U.S.C. § 329(a), Fed. R. Bankr. R. 2016(a). The court allows compensation of \$4,550.00 and reimbursement of expenses in the amount of \$352.00. The aggregate amount allowed for compensation and reimbursement of expenses is \$4,902.00. The applicant received a retainer of \$10,000. The applicant shall remit the amount of \$5,098.00 to the Chapter 7 trustee.

#### **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.

1. As to the court's Order to Show Cause (FEC-2). The court has considered the opposition of Mark W. Briden and oral argument, if any, presented at the hearing, and
2. As to Mark W. Briden'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 compensation is allowed in the amount of \$4,550.00;

IT IS FURTHER ORDERED that reimbursement of expenses is allowed in the amount of \$352.00;

IT IS FURTHER ORDERED that Mark W. Briden shall remit \$5,098.00 to the Chapter 7 trustee, no later than November 15, 2023. The Chapter 7 trustee shall file a status report no later than November 30, 2023, apprising the court of Mark W. Briden's compliance with this order; and

IT IS FURTHER ORDERED that the court's Order to Show Cause (FEC-2) is sustained.

8. [23-21769](#)-A-7      **IN RE: RICHARD GONZALEZ**

MOTION TO AVOID LIEN OF LOBEL FINANCIAL CORP.  
9-11-2023    [\[15\]](#)

MICHAEL JOHNSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject property:** 4905 J. Parkway, Sacramento, California

**Judicial Lien Avoided:** \$8,083.97 (Lobel Financial Corp.)

**All Other Liens:**

- Deed of Trust, \$297,001.00 (United Wholesale Mortgage)

**Exemption:** \$150,000.00

**Value of Property:** \$615,800

The debtor seeks an order avoiding the judicial lien of Lobel Financial Corp., under 11 U.S.C. § 522(f). The Chapter 7 trustee has filed non-opposition to the motion.

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).

### **LIEN AVOIDANCE**

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.

9. [23-22169](#)-A-7     **IN RE: ROY AARON**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
9-7-2023     [\[37\]](#)

RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

**Notice:** LBR 9014-1(f)(1); written opposition filed by the debtor

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

The Chapter 7 trustee reports the debtor did not attend the meeting of creditors and that she has not examined the debtor as required. The debtor opposes the Chapter 7 trustee's motion to dismiss this case for failure to attend the meeting of creditors on September 7, 2023. The debtor contends he was present at the meeting. Opposition, ECF No. 39.

The meeting of creditors has been continued to October 26, 2023, at 8:00 a.m. and will be held via video conference.

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

## **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

## **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for October 26, 2023, at 8:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).



10. [23-21874](#)-A-7     **IN RE: LARRY STEFFEN AND KARLA PERCIVAL**  
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE  
A MOTION TO DISMISS CASE UNDER SEC. 707(B)  
9-8-2023    [\[16\]](#)

SETH HANSON/ATTY. FOR DBT.  
DEANNA HAZELTON/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to  
Object to Discharge or File a Motion to Dismiss

**Notice:** LBR 9014-1(f)(1); 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). 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 U.S. Trustee seeks an order extending the deadlines to object to the debtors' discharge or to file a motion to dismiss.

### **EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE**

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through December 11, 2023.

### **EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS**

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This

deadline to file a motion to dismiss will be extended through December 11, 2023.

11. [22-22290](#)-A-7     **IN RE: AMD METAL WORKS, INC**  
[DNL-6](#)

MOTION TO APPROVE STIPULATION RE: FUNDS RECEIVED ON ACCOUNT  
OF RECEIVABLES  
9-18-2023    [[148](#)]

MARK WOLFF/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
CREDITOR WELLS CONSTRUCTION, INC'S NON-OPPOSITION

### **Final Ruling**

**Motion:** Approve Stipulation

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

**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).

Geoffrey Richards, Chapter 7 trustee, seeks an order approving the stipulation between the trustee and claimant Valley Iron, Inc., Claim No. 16. Claimant Wells Construction, Inc., has filed a non-opposition to the motion, ECF No. 153.

### **FACTS**

Among the assets of the estate are several accounts receivable for work on various projects completed prepetition and certain preference claims involving third parties. Among the preference claims is a preference claim in the amount of \$49,202.76 against Valley Iron, Inc. On or about March 16, 2023, the Trustee issued a demand for payment to Valley Iron on account of the preference. In response to his demand for payment on the preference, Valley Iron produced sufficient evidence showing that the alleged preference was not subject to avoidance by the Trustee.

Motion, 2:15-21, ECF No. 148.

The trustee has received additional payments made to the bankruptcy estate on account of accounts receivable, including one check for \$15,617.62, payable to both the Debtor and Valley Iron ("Joint Check"). A second check was also received for \$17,927.97, payable to only the Debtor ("Debtor Check"). Both checks were for work performed on the same job. *Id.*, 22-25.

The Chapter 7 trustee has investigated the matter and states as follows:

My understanding is that the Joint Check is intended to remit payment for work performed *specifically* by Valley Iron on a project in which it was hired with the Debtor.

I have determined that the funds paid by the Joint Check are due and payable to Valley Iron for work performed prepetition and are properly distributed to same.

Declaration of Geoffrey M. Richards, 2:20-23, ECF No. 150 (emphasis added).

#### **APPROVAL OF 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.*

#### **Stipulation**

The parties request approval of a stipulation. The stipulation is filed concurrently with this motion as Exhibit A, ECF No. 151. The material terms and conditions of the stipulation include the following: (1) the trustee shall disburse funds in the amount of \$15,617.62 to Valley Iron on account of the Joint Check; and (2) the trustee shall retain funds in the amount of \$17,927.97 on account of the Debtor Check for the benefit of the bankruptcy estate and its creditors.

Based on the motion and supporting papers, the court finds that the stipulation presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The stipulation will be approved.

#### **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 to approve a stipulation 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 approves the parties' stipulation. The terms and conditions of the stipulation are contained in the stipulation which is filed concurrently with the motion as Exhibit A, ECF No. 151.

12. [23-20793](#)-A-7     **IN RE: DOUGLAS RODRIGUEZ**  
[DNL-2](#)

MOTION TO EMPLOY NICHOLAS BRYMAN AS SPECIAL COUNSEL  
9-18-2023    [\[51\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 08/15/2023

#### **Final Ruling**

**Motion:** Employ Special Counsel

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Special Counsel:** VAZIRI LAW GROUP, APC

**Subject of Representation:** personal injuries arising out of vehicular accident on or about November 14, 2021

**Employment:** 11 U.S.C. §§ 327, 328

Terms of Employment: contingent, 33 and 1/3% of gross recovery, plus costs, if recovery is achieved prior to the filing of a complaint; 40% of gross recovery, plus costs, if recovery achieved after the filing of a complaint

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. J. Michael Hopper, chapter 7 trustee, has moved to employ Vaziri Law Group, APC, as special counsel to represent the estate on

a contingent fee basis with respect to the matters described herein. Vaziri Law Group, APC, has previously represented the debtor(s) with respect to the same matter.

## **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 firm of Vaziri Law Group, APC, as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment of a contingency fee of 33 and 1/3% of any gross recovery, plus costs, if recovery is achieved prior to the filing of a complaint; or 40% of any gross recovery, plus costs, if recovery is achieved after the filing of a complaint. 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 settlement 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.

13. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[DNL-2](#)

MOTION TO SELL AND/OR MOTION TO EMPLOY INTERMOUNTAIN  
LIVESTOCK EXCHANGE AS AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES O.S.T.  
10-9-2023    [\[381\]](#)

BRYON FARLEY/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Sell Property and Compensate Auctioneer

**Notice:** LBR 9014-1(f)(3); order shortening time, no written  
opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Cattle - consisting of 25 Heifers; 41 Bred Cows; 41  
Calves; 2 Open Cows

**Sale Type:** Public auction

**Auctioneer:** Intermountain Livestock Exchange

**Compensation:** 4% of gross sales of first \$25,000; 3% of gross sales  
for sales above \$25,000

**Reimbursement of Costs:** Actual

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, Nikki Farris seeks an order approving the sale of Cattle – consisting of 25 Heifers; 41 Bred Cows; 41 Calves; and 2 Open Cows at public auction. The trustee moves for this order under LBR 9014-1(f)(3) shortened time, as there is concern that the cattle will become ill or die from inclement weather if the trustee is required to give longer notice. The cattle are located at 29091 Sparta Lane, Baker City, Oregon. To avoid this risk the trustee wishes to employ Intermountain Livestock Exchange (ILE) to sell the cattle.

Additionally, the trustee indicates that Tim McMillan, a representative of Intermountain Livestock Exchange, will inspect the cattle in advance of the hearing on this motion to determine whether their condition will allow for later sale and likely higher return for the bankruptcy estate. Declaration of Tim McMillan, ECF No. 383.

Given the exigency a conflicts check has not yet been conducted on behalf of ILE to determine whether any conflicts of interest exist in this case between ILE and interested parties. ILE has indicated it will advise trustee's counsel, prior to the hearing date on October 16, 2023, if any members of ILE, and ILE itself, have any connections with the debtors, creditors, or any party-in-interest, their respective attorneys, accountants, or the United States Trustee, or any employee of the United States Trustee. See Declaration of Tim McMillan, ECF No. 383.

Absent opposition, or failure to satisfy the requirement that ILE have no conflicting interests in this matter, the court will grant the motion.

#### **SALE OF CATTLE**

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.

#### **COMPENSATION OF AUCTIONEER**

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

Counsel for the Chapter 7 trustee shall prepare an order in accordance with this ruling.

14. [22-21669](#)-A-7     **IN RE: LINDSAY/LISA BRAKEL**  
[DNL-3](#)

MOTION FOR AUTHORITY TO USE ESTATE FUNDS O.S.T.  
10-10-2023    [\[390\]](#)

BRYON FARLEY/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Use of Estate Funds

**Notice:** LBR 9014-1(f)(3); order shortening time; 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).

Chapter 7 trustee, Nikki Farris seeks an order for use of estate funds under 11 U.S.C. § 363(b)(1). Specifically, the trustee requests authorization to use \$2,000.00 to purchase feed for livestock located at the debtors' residence.

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,

. . . .

11 U.S.C. § 363(b)(1).

The trustee states that among the assets of the bankruptcy estate are 4 horses, 3 bulls, 2 cows, 2 calves, and 1 steer. The animals are located at Starr Road, and the cost of feed for the next month is about \$2,000.00. The trustee also states that she currently has funds on hand in the amount of \$268,686.74 Declaration of Nichole B. Farris, ECF No. 392. The use of estate funds is necessary to pay for the cost of the feed to ensure that the animals at Starr Road are fed.

The court finds the use of estate funds to be necessary to preserve the assets of the bankruptcy estate. Accordingly, the court will grant the motion and allow the use of estate funds in the amount of \$2,000.00. The trustee shall submit an order consistent with the court's ruling.