

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** OCTOBER 31, 2018  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

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

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-10004](#)-A-7     **IN RE: CASEY ALESSO**  
[TGM-6](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES  
ATTORNEY(S)  
9-26-2018    [[113](#)]

ROBERT WILLIAMS

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Trudi G. Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$11,083.50 and reimbursement of expenses in the amount of \$423.85.

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.

Trudi G Manfredo'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 \$11,083.50 and reimbursement of expenses in the amount of \$423.85.

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

2. [18-10705](#)-A-7      **IN RE: BARRY MCCOWN**

MOTION TO AVOID LIEN OF NANCY L. OEHLER  
9-18-2018    [\[47\]](#)

BARRY MCCOWN/MV  
JULIAN MCMILLAN

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**PROCEDURAL DEFICIENCIES**

Federal Rule of Bankruptcy Procedure

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 an individual must be made by mailing a copy of the motion "to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). Service to a post office box does not comply with service under 7004(b)(1). See *In re Sustaita*, 438 B.R. 198, 208-209 (B.A.P. 9th Cir. 2010).

Service of the motion was insufficient under Rule 7004(b)(1). The motion was mailed to a post office box.

Local Bankruptcy Rules

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The notice of hearing fails to advise respondents that "the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition" LBR 9014-1(d)(3)(B)(ii). The notice of hearing also fails to advise respondents to check the court's website to view [any] pre-hearing dispositions after 4:00 p.m., the day preceding the hearing. LBR 9014-1(d)(3)(B)(iii).

Documents must be filed as separate documents. LBR 9004-2(c)(1). Here, the proof of service was filed as part of the notice of hearing in violation of Local Bankruptcy Rules 9004-2(c)(1), (e)(1), (2). Notice of Hearing, ECF No. 48. In addition, the exhibits were filed as part of the declaration and without an exhibit index in violation of Local Bankruptcy Rules 9004-2(c)(1), (d)(1), (2). Declaration, ECF No. 49.

This is not the first time the court has addressed the deficiencies of insufficient service and lack of a docket control number. Civil Minutes, filed August 22, 2018, ECF No. 43.

#### **INCONSISTENT REPRESENTATIONS**

The court notes inconsistent representations. The subject lien is referred to as a judicial lien and second trust deed. Motion ECF No. 47, at ¶s 1, 4, 6.c., Declaration ECF No. 49, at ¶s 5, 6., Schedule D, ECF No. 1.

#### **SUBSTANTIVE DEFICIENCIES**

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is not entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$281,522.04 (= \$38,587.92 Nancy L. Oehler's judicial lien + \$189,496.02 First Deed of Trust + \$7,802.01 Citibank's judicial lien + \$45,636.09 exemption), but does not exceed the property's value of \$310,632.00, and thus does not impair the exemption. Accordingly, a prima facie case has not been made for relief under § 522(f).

For each of these reasons, the motion is denied without prejudice.

#### **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 Nancy L. Oehler has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

3. [18-10705](#)-A-7     **IN RE: BARRY MCCOWN**

MOTION TO AVOID LIEN OF CITIBANK SOUTH DAKOTA, N.A.  
9-18-2018    [\[50\]](#)

BARRY MCCOWN/MV  
JULIAN MCMILLAN

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **PROCEDURAL DEFICIENCIES**

##### Federal Rule of Bankruptcy Procedure

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 FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

#### Local Bankruptcy Rules

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The notice of hearing fails to advise respondents that "the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition" LBR 9014-1(d)(3)(B)(ii). The notice of hearing also fails to advise respondents to check the court's website to view [any] pre-hearing dispositions after 4:00 p.m., the day preceding the hearing. LBR 9014-1(d)(3)(B)(iii).

Documents must be filed as separate documents. LBR 9004-2(c)(1). Here, the proof of service was filed as part of the notice of hearing in violation of Local Bankruptcy Rules 9004-2(c)(1), (e)(1), (2). Notice of Hearing, ECF No. 51. In addition, the exhibits were filed as part of the declaration and without an exhibit index in violation of Local Bankruptcy Rules 9004-2(c)(1), (d)(1), (2). Declaration, ECF No. 52.

This is not the first time the court has addressed the deficiencies of insufficient service and lack of a docket control number. Civil Minutes, filed August 22, 2018, ECF No. 42.

#### **INCONSISTENT REPRESENTATIONS**

The court notes inconsistent representations. The subject lien is referred to as a judicial lien and trust deed. Motion ECF No. 50, at ¶s 1, 4, 6.c., Declaration ECF No. 52, at ¶s 5, 6.

#### **SUBSTANTIVE DEFICIENCIES**

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under §

522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is not entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$242,934.12 (= \$7,802.01 Citibank's judicial lien + \$189,496.02 First Deed of Trust + \$45,636.09 exemption), but does not exceed the property's value of \$310,632.00, and thus does not impair the exemption. Accordingly, a prima facie case has not been made for relief under § 522(f).

For each of these reasons, the motion is denied without prejudice.

#### **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 Citibank South Dakota, N.A. has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

4. [18-10705](#)-A-7      **IN RE: BARRY MCCOWN**

MOTION TO AVOID LIEN OF BELL TOWER CLUB, A PARTNERSHIP  
9-18-2018    [[53](#)]

BARRY MCCOWN/MV  
JULIAN MCMILLAN

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

## **PROCEDURAL DEFICIENCIES**

### Federal Rule of Bankruptcy Procedure

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.

### Local Bankruptcy Rules

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The notice of hearing fails to advise respondents that "the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition" LBR 9014-1(d)(3)(B)(ii). The notice of hearing also fails to advise respondents to check the court's website to view [any] pre-hearing dispositions after 4:00 p.m., the day preceding the hearing. LBR 9014-1(d)(3)(B)(iii).

Documents must be filed as separate documents. LBR 9004-2(c)(1). Here, the proof of service was filed as part of the notice of hearing in violation of Local Bankruptcy Rules 9004-2(c)(1), (e)(1), (2). Notice of Hearing, ECF No. 54. In addition, the exhibits were filed as part of the declaration and without an exhibit index in violation of Local Bankruptcy Rules 9004-2(c)(1), (d)(1), (2). Declaration, ECF No. 55.

This is not the first time the court has addressed the deficiencies of insufficient service and lack of a docket control number. Civil Minutes, filed August 22, 2018, ECF No. 41.

## **INCONSISTENT REPRESENTATIONS**

The court notes inconsistent representations. The subject lien is referred to as a judicial lien and trust deed. Motion ECF No. 53, at ¶s 1, 4, 6.c., Declaration ECF No. 55, at ¶s 5, 6.



## **SUBSTANTIVE DEFICIENCIES**

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is not entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$282,061.76 (= \$539.72 Bell Tower Club's judicial lien + \$189,496.02 First Deed of Trust + \$7,802.01 Citibank's judicial lien + \$38,587.92 Nancy L. Oehler's judicial lien + \$45,636.09 exemption), but does not exceed the property's value of \$310,632.00, and thus does not impair the exemption. Accordingly, a prima facie case has not been made for relief under § 522(f).

For each of these reasons, the motion is denied without prejudice.

## **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 Bell Tower Club, a Partnership has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

5. [18-12113](#)-A-7     **IN RE: ADOLFO/PATRICIA SOLIS**  
[TGM-3](#)

MOTION TO EMPLOY FLINT LAW FIRM, LLC, AKINMEARS, LLP, AND  
LOCKRIDGE GRINDAL NAUEN, PLLP AS SPECIAL COUNSEL  
10-3-2018    [[45](#)]

PETER FEAR/MV  
MARIO LANGONE  
TRUDI MANFREDO/ATTY. FOR MV.

## **Final Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by applicant

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **EMPLOYMENT**

The court may approve a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . 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." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person").

Section 328(e) authorizes the trustee to employ special counsel that has represented the debtor provided it is in "the best interests of the estate" and if the attorney does not "represent or hold any interest adverse" to the debtor of the estate "with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 328.

Here, the trustee prays leave to employ debtor's former counsel Flint Law firm, AkinMears, LLP and Lockridge, Grindal Nauen, PLLP as his special counsel to prosecute a personal injury action (implantation of a bio-medical device in the co-debtor). The trustee prays employment on a 40% plus costs contingency fee agreement, which will be divided among the special counsel firms. The employment application will be approved.

## RETROACTIVE EMPLOYMENT

In a previous case, this court has set forth the standards for retroactive approval of special counsel under § 327(e) of the Bankruptcy Code and Ninth Circuit decisional law:

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir.1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir.1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

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

*In re Grant*, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014).

Here, the trustee seeks retroactive approval to August 26, 2014 (the date in debtor originally retained personal injury counsel). The court finds that the *Grant* standard for retroactive approval are satisfied and that the trustee has sought expeditiously employment of special counsel and the employment will be approved retroactive to the petition date (May 25, 2018).

The trustee will lodge an order consistent with the findings herein.

6. [18-12113](#)-A-7     **IN RE: ADOLFO/PATRICIA SOLIS**  
[TGM-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH PATRICIA SOLIS AND/OR MOTION FOR COMPENSATION  
BY THE LAW OFFICE OF FLINT LAW FIRM, LLC, LOCKRIDGE GRINDAL  
NAUEN, PLLP AND AKINMEARS, LLP SPECIAL COUNSEL(S)  
10-3-2018    [[55](#)]

PETER FEAR/MV  
MARIO LANGONE  
TRUDI MANFREDO/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

### **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. 1982). 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. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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.

## 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.

Peter L. Fear's motion to approve a compromise 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 hereby approves the compromise that is reflected in the stipulated settlement agreement attached to the motion an exhibit and filed at docket no. 60.

7. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[KG-4](#)

MOTION FOR COMPENSATION FOR KAVITA GUPTA, CHAPTER 11  
TRUSTEE(S)  
10-2-2018    [[849](#)]

KAVITA GUPTA/MV  
CECILY DUMAS  
TEDDY KAPUR/ATTY. FOR MV.

### Final Ruling

**Application:** First and Final Allowance of Compensation and Expense Reimbursement (Chapter 11 trustee)

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

**Disposition:** Approved

**Order:** Civil minute order

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 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 11 case, the chapter 11 trustee Kavita Gupta ("Gupta") has applied for an allowance of first and final compensation and reimbursement of expenses. Trustee Gupta seeks the maximum distribution allowed by statute based on distribution of \$1,137,146.29 (\$920,240.42 of which were monies turned over to the Chapter 7 trustee James E. Salven).

The starting point in reviewing a chapter 11 trustee's fees is § 326 of the Bankruptcy Code. Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 11 case. *See, e.g., In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (reviewing court's order on chapter 7 trustee's compensation). Ninth Circuit authority holds that fees turned over by a Chapter 11 trustee to the Chapter 7 trustee may be included in the Chapter 11 trustee's fee cap under § 326 and that the fees due trustees in a Chapter 11 case that converts to Chapter 7 are calculated independently of each other. *In re Financial Corp. of America*, 946 F.2d 689 (9th Cir. 1991).

In addition, the court must also consider § 330(a)(1), (3), and (7). *See In re Salgado-Nava*, 473 B.R. 911, 920 n.11 (B.A.P. 9th Cir. 2012) ("But we cannot assume that Congress inadvertently included chapter 11 trustees within the scope of §330(a)(7)."). "Section 330(a)(7) applies to all trustees under all chapters." *Id.* at 919.

Under § 330(a)(7), in determining the reasonableness of a chapter 11 trustee's compensation, "the court shall treat such compensation as a commission, based on § 326." Congress has linked the reasonableness of a chapter 11 trustee's compensation to the commission rates set forth in § 326 for the vast majority of cases. *Id.* at 916-17, 920.

But for chapter 11 trustees, unlike chapter 7 trustees, § 330(a)(3) applies. BAPCPA's enactment in 2005 "amended § 330(a)(3) so that the only types of trustees that come within its ambit are chapter 11 trustees . . . ." *Id.* "On the other hand, if extraordinary circumstances exist, or if chapter 11 trustee fees are at issue, the bankruptcy court may be called upon in those cases to determine whether there exists a rational relationship between the amount of the commission and the type and level of services rendered. In the case of a chapter 11 trustee, this determination necessarily requires consideration of the § 330(a)(3) factors, and also ordinarily includes a lodestar analysis." *Id.* at 921 (emphases added). In short, the reasonableness factors listed in § 330(a)(3) continue to directly apply to chapter 11 trustees even though chapter 7 trustees are no longer subject to its terms. *See id.*

The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that a rational relationship exists between the commission amount of § 326(a) and the type of services rendered, § 330(a)(3), (7); and (3) that expenses to be reimbursed are actual and necessary. As the court makes these findings, it notes that trustee Gupta did extraordinarily good work in a very difficult case and did so in a very timely fashion.

The court approves the application and allows compensation in the amount of \$57,364.39 and reimbursement of expenses in the amount of \$7,898.01.

## **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.

Kavita Gupta's application for allowance of 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 the trustee compensation in the amount of \$57,364.39 and reimbursement of expenses in the amount of \$7,898.01.

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

8. [18-13325](#)-A-7     **IN RE: MARTHA JACKSON**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
9-13-2018    [[10](#)]

PETER BUNTING

### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

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

**Order:** Civil minute order

### **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 November 15, 2018 at 9:00 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).

9. [18-13426](#)-A-7     **IN RE: MATTHEW/PATRICIA RICHARDSON**  
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
9-19-2018    [[10](#)]

SCOTT LYONS

#### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

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

**Order:** Civil minute order



## **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 November 19, 2018 at 9:30 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. [18-13339](#)-A-7     **IN RE: RICHARD DICKENS**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-28-2018    [\[16\]](#)

FORD MOTOR CREDIT COMPANY/MV  
MARK ZIMMERMAN  
AUSTIN NAGEL/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Kia Forte

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).

Federal Rule of Bankruptcy Procedure 9013 requires that a written motion "set forth the relief or order sought". In this case, the motion refers to the collateral as a "2014 Kia Forte", however, the exhibits refer to a "2014 Kia Soul". Motion, ECF No. 16, Exhibits, ECF No. 19. Accordingly, the court is granting the motion only as to the 2014 Kia Forte.

### **STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Ford Motor Credit Company'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 2014 Kia Forte, 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.

11. [18-11240](#)-A-7     **IN RE: DIANA XAVIER**  
[TMT-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH TONY XAVIER  
9-26-2018    [\[98\]](#)

TRUDI MANFREDO/MV  
JUSTIN HARRIS  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.

### Final Ruling

**Motion:** Approve Compromise of Controversy

**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).

## **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. 1982). 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 parties request approval of a compromise. Tony Xavier (the settling party) post-petition sold the debtor's 2012 Dodge Ram 2500. That sale was not authorized by this court. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The material terms and conditions of the compromise are that Tony Xavier will pay the estate \$8,361.47. 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.

## **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.

Trudi G. Manfredo's motion to approve a compromise 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' compromise, which settles a dispute about unauthorized sale, post-petition, debtor/estate's 2012 Dodge Ram 2500. The material terms and conditions of the compromise Tony Xavier will pay the estate \$8,361.47 in full and final resolution of the dispute.

12. [13-13243](#)-A-7     **IN RE: MARIA RODRIGUEZ**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,  
ACCOUNTANT(S)  
9-28-2018    [\[73\]](#)

RATZLAFF, TAMBERI & WONG/MV

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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, Ratzlaff Tamberi & Wong, accountants for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,127.50 and reimbursement of expenses in the amount of \$8.46.

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.

Ratzlaff Tamberi & Wong'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 \$1,127.50 and reimbursement of expenses in the amount of \$8.46.

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

13. [16-14243](#)-A-7     **IN RE: DAMON JACKSON**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,  
ACCOUNTANT(S)  
9-28-2018    [\[78\]](#)

RATZLAFF, TAMBERI & WONG/MV  
SUSAN HEMB

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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, Ratzlaff Tamberi & Wong, accountants for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,045.50 and reimbursement of expenses in the amount of \$23.97.

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.

Ratzlaff Tamberi & Wong'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 \$1,045.50 and reimbursement of expenses in the amount of \$23.97.

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

14. [16-13654](#)-A-7     **IN RE: JONATHAN/KATHERINE DAVENPORT**  
[RWR-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN AND  
HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)  
10-1-2018    [\[76\]](#)

HAGOP BEDOYAN

#### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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, Coleman & Horowitt, LLP, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$6,121.00 and reimbursement of expenses in the amount of \$403.68.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$6,121.00 and reimbursement of expenses in the amount of \$403.68.

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



15. [15-13655](#)-A-7     **IN RE: LEE BROGGI**  
[TMT-4](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, CHAPTER 7  
TRUSTEE(S)  
10-2-2018    [[104](#)]

TRUDI MANFREDO/MV  
PETER BUNTING  
DAVID JENKINS/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

#### **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 application for allowance of 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 to the trustee compensation in the amount of \$37,516.55 and reimbursement of expenses in the amount of \$554.05.

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

16. [18-13460](#)-A-7     **IN RE: STEVEN/LINDSEY HUERTA**  
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-24-2018    [[13](#)]

AURORA FINANCIAL GROUP/MV  
NEIL SCHWARTZ  
NANCY LEE/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 5411 Upton Avenue, Bakersfield, California

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**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Aurora Financial Group'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 5411 Upton Avenue, Bakersfield, California, 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.

17. [18-13760](#)-A-7     **IN RE: DANIEL LOPEZ AND ANA ARMENTA DE MARTINEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-1-2018    [[13](#)]

EDDIE RUIZ  
\$335.00 FILING FEE PAID IN FULL 10/3/18

**Final Ruling**

The filing fee paid in full, the order to show cause is discharged.

18. [18-12263](#)-A-7     **IN RE: ROGER BOOS**  
[KDG-2](#)

OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO  
DISTRIBUTION  
8-23-2018    [[24](#)]

JERRY LOWE  
HAGOP BEDOYAN/ATTY. FOR MV.

**Final Ruling**

The objection withdrawn, Withdrawal, October 24, 2018, the matter is dropped from calendar.

19. [18-12966](#)-A-7     **IN RE: STEVEN ROJO**  
[ASW-3079](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-26-2018    [[21](#)]

RESIDENTIAL BANCORP/MV  
WILLIAM OLCOTT  
DANIEL FUJIMOTO/ATTY. FOR MV.

**Final Ruling**

**Motion:** Relief from Stay  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, service on an

individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). A debtor in bankruptcy may be served before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). In this case, service was not properly made because the attorney was not served at the address reflected in the court's records.

Here, service of the motion was insufficient.

#### **DOCKET CONTROL NUMBER**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). This is the first motion filed by the moving party in this case. Accordingly, the movant's numerical portion of the docket control number ("ASW-3079") is improper.

#### **CIVIL MINUTE ORDER**

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

Residential Bancorp's Motion for Relief from the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

20. [17-11968](#)-A-7     **IN RE: GLOBAL MULTISOLUTION, INC.**  
[TGM-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
9-11-2018    [\[74\]](#)

RANDELL PARKER/MV  
D. GARDNER  
TRUDI MANFREDO/ATTY. FOR MV.

### **Final Ruling**

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

**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).

### **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 court allows as an administrative expense under 11 U.S.C. § 503(b)(1)(B) the following: (1) 2016 California taxes of \$ 826.44; (2) 2017 California taxes of \$ 829.28; (3) 2018 California taxes of \$ 848.14; and (4) penalties not to exceed \$100.00.

21. [18-13878](#)-A-7     **IN RE: MELISSA LIVESAY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-12-2018    [[19](#)]

**Tentative Ruling**

If the filing fee of \$335 has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

22. [18-12481](#)-A-7     **IN RE: PETE/ROSIE TUMOINE**  
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-4-2018    [[27](#)]

FREEDOM MORTGAGE  
CORPORATION/MV  
GRISELDA TORRES  
CHRISTINA O/ATTY. FOR MV.  
DISCHARGED 10/10/18

**Tentative Ruling**

**Motion:** Stay Relief

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

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

**Order:** Civil minute order

**Subject:** 3410 Amanecer Avenue, Clovis, California

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).

#### **AS TO THE DEBTOR**

The motion is denied as moot. 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 is moot as to the debtor.

#### **AS TO THE ESTATE**

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). 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).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed three post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

Freedom Mortgage Corporation'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 3410 Amanecer Avenue, Clovis, 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.

23. [18-10587](#)-A-7     **IN RE: DAVID CASNER**  
[JES-1](#)

MOTION TO SELL  
10-3-2018    [\[64\]](#)

JAMES SALVEN/MV  
JUSTIN HARRIS  
JAMES SALVEN/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Personal property listed below

**Buyer:** Debtor

**Sale Price:** \$4,150

1. 1989 Kawasaki jet ski, 1991 Kawasaki ski and 1991 Carrier trailer: \$750 cash
2. 1995 Yamaha Waverunner: \$500 cash
3. 2002 Chaparral boat: \$500 cash
4. 1978 Jeep: \$1,000 cash
5. 1999 Ford F-250 pick-up: \$500 cash
6. 2000 Ford F-250 pick-up: \$250 cash
7. 2004 Ford F-150 pick-up: \$650 cash

**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).

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.

24. [10-15491](#)-A-7     **IN RE: JOSEPH/DAWN MEDIATI**  
[AJF-1](#)

MOTION TO EMPLOY ANDREW J. FELDMAN AS SPECIAL COUNSEL AND/OR  
MOTION TO EMPLOY YVONNE M. FLAHERTY AS SPECIAL COUNSEL  
10-3-2018     [\[56\]](#)

PETER FEAR/MV  
TRUDI MANFREDO/ATTY. FOR MV.

### **Final Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by applicant

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **EMPLOYMENT**

The court may approve a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . 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." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person").

Section 328(e) authorizes the trustee to employ special counsel that has represented the debtor provided it is in "the best interests of the estate" and if the attorney does not "represent or hold any interest adverse" to the debtor of the estate "with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 328.

Here, the trustee prays leave to employ debtor's former counsel Flint Law firm, and Lockridge, Grindal Nauen, PLLP as his special counsel to prosecute a personal injury action (implantation of a bio-medical device in the co-debtor). The trustee prays employment on a 40% plus costs contingency fee agreement, which will be divided among the special counsel firms. The employment application will be approved.

## RETROACTIVE EMPLOYMENT

In a previous case, this court has set forth the standards for retroactive approval of special counsel under § 327(e) of the Bankruptcy Code and Ninth Circuit decisional law:

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir.1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir.1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

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

*In re Grant*, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014).

Here, the court finds that the *Grant* standard for retroactive approval are satisfied and that the trustee has sought expeditiously employment of special counsel and the employment will be approved retroactive to the date special counsel was first employed by the debtor.

The trustee will lodge an order consistent with the findings herein.

25. [18-13493](#)-A-7     **IN RE: CHERIE SNODGRASS**  
[CFS-1](#)

MOTION TO AVOID LIEN OF ONEMAIN FINANCIAL SERVICES, INC.  
9-27-2018    [\[16\]](#)

CHERIE SNODGRASS/MV  
CHERIE SNODGRASS/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **PROCEDURAL DEFICIENCY**

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.

### **SUBSTANTIVE DEFICIENCIES**

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 movant has shown that the security interest to be avoided is a nonpossessory, nonpurchase money security interest. However, the movant has not complied with the limitations for avoidance of

nonpossessory, nonpurchase money security interests found in § 522(f)(4). Paragraph (4) of subsection (f) of §522 provides in pertinent part:

(A) Subject to subparagraph (B), for purposes of paragraph

(1)(B), the term "household good" means --

- (i) clothing;
- (ii) furniture;
- (iii) appliances;
- (iv) 1 radio;
- (v) 1 television;
- (vi) 1 VCR;
- (vii) linens;
- (viii) china;
- (ix) crockery;
- (x) kitchenware;
- (xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii) medical equipment and supplies;
- (xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv) 1 *personal computer and related equipment*.

(B) The term "household goods" *does not include* -

...

(v) *a computer (except as otherwise provided by this section)* ... 11 U.S.C. § 522 (West) (emphases added).

The statutory limitations for avoiding nonpossessory, nonpurchase money security interests in household goods have been exceeded by this motion. First, the motion includes a laptop and a tablet, though the limitation is one personal computer. Second, the camera does not fit within any of the categories of household goods under § 522(f)(4)(A). The motion appears proper to the extent it seeks to avoid the lien of one computer.

Accordingly, the court will deny the motion without prejudice to allow the debtor to re-file it to correct the procedural and substantive deficiencies described in this ruling.

#### **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 OneMain Financial Services, Inc. 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.

26. [18-10398](#)-A-7     **IN RE: ALIPIO SANTIAGO**  
[FW-2](#)

MOTION TO EMPLOY DAVID L. MILLIGAN AS SPECIAL COUNSEL  
10-1-2018    [[26](#)]

TRUDI MANFREDO/MV  
ERIC ESCAMILLA  
TRUDI MANFREDO/ATTY. FOR MV.

**No Ruling**

27. [18-12104](#)-A-13     **IN RE: DIANNA CONDELL**  
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE  
9-12-2018    [\[46\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN

### **Final Ruling**

The matter is continued to November 1, 2018, at 9:00 a.m., pursuant to Order Rescheduling Hearing, ECF #62.

28. [18-13315](#)-A-7     **IN RE: KULWINDER SINGH**  
[KEH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-17-2018    [\[16\]](#)

BALBOA THRIFT & LOAN/MV  
JERRY LOWE  
KEITH HERRON/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2011 Toyota Camry XLE Sedan 4D

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**

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). 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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart

& Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2017). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may provide adequate protection of its security interest while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). The Ninth Circuit has held that a 20% equity cushion adequately protects a creditor's security interest." *Id.* at 1401.

In this case the equity cushion is approximately .47%, which is far below the percentage cushion ordinarily considered as adequate protection. In addition, the debtor has missed 2 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

Balboa Thrift & Loan'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 2011 Toyota Camry XLE Sedan 4D, 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.



29. [17-12389](#)-A-7     **IN RE: DON ROSE OIL CO., INC.**  
[WFH-8](#)

MOTION TO PAY  
10-17-2018    [[937](#)]

TRUDI MANFREDO/MV  
RILEY WALTER  
T. BELDEN/ATTY. FOR MV.

**No Ruling**

