

**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:** DECEMBER 19, 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. [18-13311](#)-A-7     **IN RE: MELINDA MARTINDALE**  
[DMG-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
12-4-2018    [[26](#)]

D. GARDNER  
JACOB EATON/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Notice:** LBR 9014-1(f)(2); no 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). 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).

### **CONVERSION UNDER § 706(a)**

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

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

The debtor is the sole shareholder in "Bee Good to Yourself, Inc.," which sells essentials. The trustee has received a \$10,000 offer for the stock of the corporation by an individual with whom the debtor formerly had a relationship. The debtor is unable to better that offer and, if that sale were completed, would terminate the debtor's source of livelihood. Conversion to chapter 13 would avoid this consequence. While conversion to avoid loss of assets to the chapter 7 trustee can, in some instances, give rise to an inference of *Marrama* bad faith, this court will not draw such an inference absent opposition by the trustee or a creditor and/or additional evidence suggesting a lack of good faith. The motion will be granted.

## 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 debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

2. [17-13015](#)-A-7      **IN RE: DOS PALOS MEMORIAL HOSPITAL, INC.**  
[HAR-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,  
BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP FOR HILTON A. RVDER,  
TRUSTEES ATTORNEY(S)  
11-16-2018    [\[68\]](#)

JEFFREY ROWE

### 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, McCormick, Barstow, Sheppard, Wayte & Carruth LLP, general counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$8,962.50 and reimbursement of expenses in the amount of \$529.79.

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.

McCormick, Barstow, Sheppard, Wayte & Carruth 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 \$8,962.50 and reimbursement of expenses in the amount of \$529.79.

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.

3. [17-11824-A-7](#)     **IN RE: HORISONS UNLIMITED**  
[PCO-8](#)

MOTION FOR COMPENSATION FOR JOHN DRATZ, JR., OMBUDSMAN  
HEALTH(S)  
11-16-2018    [[891](#)]

JOHN DRATZ/MV  
CECILY DUMAS

#### **Final Ruling**

**Application:** Allowance of Interim 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, John Dratz, Jr., patient care ombudsman, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$10,395.00 and reimbursement of expenses in the amount of \$889.12.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

#### **PROCEDURAL ISSUES**

The court notes two procedural issues that warrant comment. First, the Certificate of Service, November 16, 2018, ECF # 894, contains no caption. Fed. R. Civ. P. 10(a), *incorporated by* Fed. R. Bankr. P. 7010.

Second, there are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different

bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

#### **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.

John Dratz, Jr.'s application for allowance of interim 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. The court allows interim compensation in the amount of \$10,395.00 and reimbursement of expenses in the amount of \$889.12. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

4. 17-11824-A-7     **IN RE: HORISONS UNLIMITED**  
WFH-40

MOTION TO ESTABLISH ADMINISTRATIVE CLAIMS BAR DATE  
11-21-2018    [905]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Set Administrative Claims Bar Date  
**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).

#### **DISCUSSION**

This court may establish a claims bar date for administrative expenses incurred during the pendency of a chapter 11 case, but prior to conversion to chapter 7. Fed. R. Bank. P. 3003(c)(3), 1019(6); see also 11 U.S.C. § 503(b).

On May 10, 2017, the debtor filed its chapter 11 bankruptcy. On August 13, 2017, the case converted to chapter 7. James E. Salven was appointed, and remains, the chapter 7 trustee. Salven prays the establishment of a bar date of February 28, 2019 for administrative claims during the chapter 11. The motion will be granted.

#### **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.

James E. Salven's motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted;

IT IS FURTHER ORDERED the claims bar date for administrative claims incurred during the chapter 11 is February 28, 2019; and

IT IS FURTHER ORDERED that James E. Salven shall serve notice of the claims bar date, and file a Certificate of Service so indicating, not later than December 28, 2018.

5. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-43](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
11-21-2018    [\[909\]](#)

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Allowance and Payment of Administrative Expenses

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

**Disposition:** Granted

**Order:** Prepared by the moving party

**Description of Expenses:** Post-Petition Wages of Employees

**Statutory Basis for Administrative Priority:** § 503(b)(1)(A)(i)  
("actual and necessary expenses of preserving the estate")

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).

### **DISCUSSION**

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose post-petition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

These expenses arose post-petition. Here, claimants are 94 regular employees of the debtor who performed services after the debtor filed chapter 11 bankruptcy and before the case converted to chapter 7. These are properly payable as administrative expenses. 11 U.S.C. § 503(b)(1)(A)(i). The trustee seeks pay those wages and related payroll taxes in the amounts specified Exhibit A, November 21, 2018, ECF # 912, as modified by the Supplemental Reply, December 12, 2018, ECF # 937. The motion will be granted.

### **ORDER**

The movant shall lodge an order consistent with the findings herein. The order shall (1) append Exhibit A, November 21, 2018, ECF # 912 (as modified to reflect the correct amounts due Edsel Condez, Adam



Covarrubais, and Jennifer Vilorio); and (2) specify the amount of related payroll to be paid.

6. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-44](#)

MOTION TO PAY  
11-21-2018    [[914](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**No Ruling**

7. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-45](#)

OMNIBUS OBJECTION TO CLAIMS  
11-19-2018    [[896](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

8. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-46](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
11-21-2018    [[919](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Final Ruling**

**Motion:** Pay Administrative Expense (United Healthcare) Previously Approved

**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).

## **DISCUSSION**

This court previously approved an administrative expense of \$218,065.74 in favor of United Healthcare Insurance. Order, September 23, 2017, ECF # 249. The trustee now prays leave to pay that amount from estate funds. The motion will be granted.

## **CIVIL MINUTES**

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.

James E. Salven's motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that James E. Salven may pay United Healthcare the payment described in the Order, September 23, 2017, ECF # 249, at this time, provided he believes the estate is administratively solvent.

9. [18-13826](#)-A-7     **IN RE: RHONDA RIEDEL**  
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
11-6-2018    [[15](#)]

JAMES SALVEN/MV

## **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

## LEGAL STANDARDS

"[T]he automatic homestead exemption can only be claimed by a debtor who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling." *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 21 (B.A.P. 9th Cir. 2003) (citing Cal. Civ. Proc. Code §§ 704.710(a)-(c), 704.720, 704.730, 704.740). The bankruptcy petition constitutes a "forced sale" for purposes of the Article 4 automatic exemption under sections 704.710-704.850. See *id.* at 17, 20, 21 (citing *In re Pike*, 243 B.R. 66, 70 (B.A.P. 9th Cir. 1999)). Thus, to claim an automatic homestead exemption, the debtor must reside (or be related to one who resides) at the homestead property on the petition date. *Id.* at 21 (stating that the debtor did not reside at a particular property at the time of the petition's filing).

## DISCUSSION

The trustee objects to the debtor's claim of exemption in a lot in Arizona and in a Tahiti Village timeshare on the basis that the debtor improperly utilizes § 704.730 of the California Code of Civil Procedure to claim these two properties exempt. The court rejects the trustee's interpretation of § 704.730. The trustee incorrectly states that § 704.730 applies to "[m]aterial for repair or improvement of a residence". However, § 704.730 refers to the homestead exemption. The exemption for "material for repair or improvement of a residence" is found at § 704.030. The debtor has not claimed the property exempt under this code section. Notwithstanding the trustee's erroneous interpretation of § 704.730, the court will decide this matter on the merits.

The debtor has claimed a \$46,000.00 homestead exemption in real property located at 726 S. Garden Street, Visalia, California, a \$12,000.00 homestead exemption in real property consisting of a lot located in Arizona and a \$15,000.00 homestead exemption in a timeshare with Tahiti Village. All homestead exemptions list § 704.730 of the California Code of Civil Procedure as the legal basis for the exemption. Schedule C, ECF No. 1.

Sections 704.710(c), 704.720(a), and 704.730 allow a homestead exemption in only one dwelling. Section 704.710(c) defines a homestead as "the principal dwelling" in which the debtor or the debtor's spouse resides at the applicable time. The use of the article *the* and the word *principal* indicate that a homestead is limited to only one particular dwelling of the judgment debtor, the principal one. See *id.* As a result, the debtor is not permitted to claim an exemption in two different real properties.

Because a homestead may only be claimed in a dwelling, which is where the debtor resides on the petition date, § 704.710(a)-(c), the debtor's claim of a homestead exemption in the lot in Arizona and in the Tahiti Village timeshare are not allowed.

## **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 trustee's objection to the debtor's claim of exemption has been presented to the court. Having entered the default of respondent debtors for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the trustee's objection;

IT IS ORDERED that the objection is sustained. The debtor is not entitled to claim an exemption in the lot in Arizona and the Tahiti Village timeshare under section 704.730 of the California Code of Civil Procedure.

10. [18-13928](#)-A-7     **IN RE: STEVEN AVALOS**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
11-6-2018    [[18](#)]

### **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 January 7, 2019 at 10:00 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).

11. [18-11240](#)-A-7     **IN RE: DIANA XAVIER**  
[SFR-3](#)

MOTION FOR COMPENSATION FOR SHARLENE F. ROBERTS-CAUDLE,  
TRUSTEES ATTORNEY(S)  
11-28-2018    [[121](#)]

JUSTIN HARRIS

### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2); no 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). 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, Sharlene Roberts-Caudle, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$9,700.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

### **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.

Sharlene Roberts-Caudle's application for allowance of interim 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. The court allows interim compensation in the amount of \$9,700.00 and reimbursement of expenses in the amount of \$0.00. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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

12. [16-14243](#)-A-7     **IN RE: DAMON JACKSON**  
[TGM-3](#)

MOTION FOR COMPENSATION FOR TRUDI MANFREDO, SPECIAL  
COUNSEL(S)  
11-21-2018    [\[93\]](#)

SUSAN HEMB  
TRUDI MANFREDO/ATTY. FOR 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, 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 \$2,000.50 and reimbursement of expenses in the amount of \$398.30.

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 \$2,000.50 and reimbursement of expenses in the amount of \$398.30. 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**  
[TMT-5](#)

MOTION FOR COMPENSATION FOR TRUDI MANFREDO, CHAPTER 7  
TRUSTEE(S)  
11-21-2018     [\[87\]](#)

TRUDI MANFREDO/MV  
SUSAN HEMB  
TRUDI MANFREDO/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 \$18,950.00 and reimbursement of expenses in the amount of \$685.42.

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. [18-13854](#)-A-7     **IN RE: NAVDEEP SINGH**  
[FRB-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT  
12-4-2018    [[34](#)]

TBK BANK, SSB/MV  
JUSTIN HARRIS  
ANDREW ALPER/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Extend Deadline for Filing Complaint under 11 U.S.C. §§ 523, 727

**Notice:** LBR 9014-1(f)(2); no 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). 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).

#### **DISUCSSION**

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), and for denial of discharge 727but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b)(1), 4007(c). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend TBK Bank, SSB's deadline for filing a nondischargeability complaint under § 523(c) and/or denial of discharge under § 727. The deadline will be extended through March 5, 2019.

## 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.

TBK Bank, SSB's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that TBK Bank, SSB shall have through and including March 5, 2019, to file an adversary proceeding under 11 U.S.C. §§ 523(c) or 727.

15. [18-14087](#)-A-7     **IN RE: CAROLINA MARTINEZ JIMENEZ**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-14-2018    [\[15\]](#)

WELLS FARGO BANK, N.A./MV  
PETER BUNTING  
AUSTIN NAGEL/ATTY. FOR MV.

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2011 Chevrolet Impala

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

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. 2018). 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 adequately protect the creditor's security interest against a decline in the collateral's value 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. *See id.* ¶ 8:1076 (citing *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 2.3%, which is far below the percentage cushion ordinarily considered as adequate protection. In addition, the debtor has missed 11 pre-petition payments due on the debt secured by the moving party's lien, and the debtor intends to surrender the vehicle. 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.

Wells Fargo 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 2011 Chevrolet Impala, 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.

16. [18-10398](#)-A-7     **IN RE: ALIPIO SANTIAGO**  
[FW-2](#)

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

TRUDI MANFREDO/MV  
ERIC ESCAMILLA  
PETER SAUER/ATTY. FOR MV.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [18-14542](#)-A-7     **IN RE: LARRY SELL**  
[SL-1](#)

MOTION TO COMPEL ABANDONMENT

LARRY SELL/MV  
SCOTT LYONS/ATTY. FOR MV.  
OST

**No Ruling**