

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

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

DAY: MONDAY
DATE: DECEMBER 21, 2020
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [19-27800](#)-A-7 **IN RE: EDUARDO/FLORINDA SAN ANTONIO**
[AF-5](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
10-30-2020 [[137](#)]

ARASTO FARSAD/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); trustee's non-opposition shown by stipulation, ECF No. 169

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Subject: 1250 Hercules Avenue, Hercules CA 94547

Value: \$612,503.00

1st Trust Deed: \$729,274.47 (Claim 8-1)

Exemption: \$0.00

Non-Exempt Equity: \$0.00

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." *See* 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

2. [19-27800](#)-A-7 **IN RE: EDUARDO/FLORINDA SAN ANTONIO**
[DNL-2](#)

MOTION TO APPROVE STIPULATION RE: EXEMPTIONS
11-23-2020 [[169](#)]

ARASTO FARSAD/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Approve Stipulation

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

Disposition: Granted

Order: Prepared by movant according to instructions below

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. The trustee and the debtors agreed to the following terms of the stipulation: (1) the debtors shall waive all exemptions on 1045 S. Shelter Bay, Hercules 94547; (2) the trustee shall abandon the estate's interest in 1884 Bramblewood Drive, Fairfield, CA 94534 and 1250 Hercules Avenue, Hercules CA 94547 without further order of the Court. The abandonment shall be final and with prejudice, ECF No. 172.

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 first factor

weighs in favor of the stipulation because the trustee determined that sale of the Shelter Bay property will result in a return to unsecured creditors while sale of the Bramblewood property will not, ECF No. 172. Therefore, the debtors are better served by claiming a homestead exemption against the Bramblewood property and by not claiming a homestead against the Shelter Bay property. The third factor weighs in favor of the stipulation because any litigation regarding the debtor's claim of the homestead exemption would add significant time, expense and uncertainty. The fourth factor weighs in favor of the stipulation because the terms provide for efficient administration of the debtor's estate and maximum possible returns to unsecured creditors from sale of property. The compromise will be approved.

CIVIL MINUTE ORDER

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

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

The trustee's motion to approve a settlement/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, ECF No. 172, which settles a dispute about the debtors' potential claim of exemption against 1045 S. Shelter Bay, Hercules 94547 and the trustee's abandonment of 1884 Bramblewood Drive, Fairfield, CA 94534 and 1250 Hercules Avenue, Hercules CA 94547. The material terms and conditions of the compromise include (1) the debtors shall waive all exemptions on 1045 S. Shelter Bay, Hercules 94547; (2) the trustee shall abandon the estate's interest in 1884 Bramblewood Drive, Fairfield, CA 94534 and 1250 Hercules Avenue, Hercules CA 94547 without further order of the Court. The abandonment shall be final and with prejudice.

3. [19-27800](#)-A-7 **IN RE: EDUARDO/FLORINDA SAN ANTONIO**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [[158](#)]

ARASTO FARASAD/ATTY. FOR DBT.
KELLY RAFTERY/ATTY. FOR MV.
U.S. BANK, N.A. VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1250 Hercules Ave, Hercules, CA 94547-3762

Value of Collateral: \$728,244.00

Aggregate of Liens: \$890,161.00

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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

STAY RELIEF

As to the Debtor

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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.

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).

"The stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1). Here the court ruled that the subject property will be abandoned according to terms of a court-approved stipulation between the trustee and the debtors, ECF No. 172 (Items 1-2). However, abandonment of the property has not yet occurred, so the property remains property of the estate. Therefore, the court finds cause under § 362(d)(1) to grant stay relief.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1250 Hercules Ave, Hercules, CA 94547-3762, 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.

4. [12-26424](#)-A-7 **IN RE: MARY HADDAD**
[GEL-2](#)

MOTION TO AVOID LIEN OF FERGUSON ENTERPRISES, LLC
12-2-2020 [\[53\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DEBTOR DISCHARGED: 10/26/2012

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 11857 North Lower Street Road, Lodi, CA 95242

Judicial Lien: \$8,489.34

Consensual Liens: \$1,980,021.00

Exemption claimed: \$1.00

Value: \$1,475,000.00

Debtor's net equity: (-\$261,510.50) (one-half of total net equity, Schedule A, ECF No. 1)

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a commonsense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property.

The jointly owned value of the entire fee interest in the property equals \$1,457,000.00. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$1,980,021.00 from the jointly owned value of the entire fee interest in the property,

which yields a net co-owned equity of (-\$523,021.00). Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is (-\$261,510.50).

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$8,490.34. This sum minus the value of the moving party's fractional interest in the property equals \$8,490.34 - (-\$261,510.50) = \$270,000.84.

The responding party's judicial lien may be avoided in its entirety because the respondent's judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by such judicial lien.

5. [12-20725](#)-A-7 **IN RE: BILLY/JUDY SMITH**
[DNL-4](#)

CONTINUED MOTION TO EMPLOY AYLSTOCK, WITKIN, KREIS &
OVERHOLTZ, PLLC AS SPECIAL COUNSEL
10-26-2020 [[68](#)]

RONALD HOLLAND/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTORS DISCHARGED: 04/24/2012; RESPONSIVE PLEADING

Final Ruling

Application: Retroactive Employment of Special Counsel

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

Disposition: Approved

Order: Prepared by the applicant pursuant to the instructions below

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).

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).

For the reasons discussed in the application, the court will approve the employment of special counsel. Special counsel satisfies the standards of § 327(e). Further, special counsel has shown exceptional circumstances that justify retroactive employment.

The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

6. [19-23226](#)-A-7 **IN RE: FEELING GROOVY AT EAGLE CREEK RANCH**
LLC
[TBG-3](#)

MOTION BY STEPHAN M. BROWN TO WITHDRAW AS ATTORNEY
11-24-2020 [\[95\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Attorney's Withdrawal from Representation of a Client

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

Disposition: Denied

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).

FAILURE TO SHOW CAUSE

Under California Rule of Professional Conduct 1.16(c), "[i]f permission for termination of a representation is required by the rules of a tribunal, a lawyer shall not terminate a representation before that tribunal without its permission."

An attorney's withdrawal from representing a client is governed by LBR 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. LBR 2017-1(e) provides that "an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared." This local rule also mandates that the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw.

California Rule of Professional Conduct 1.16(b)(4) provides for permissive withdrawal if "the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively."

Here the movant requests permission to withdraw as the debtor's counsel, stating that "good cause exists for this Court to enter an order approving the withdrawal," ECF No. 95. The movant's declaration states that the counsel has attempted to contact the debtor to resolve "the issues that support this motion, but were unable to resolve these issues," Declaration, ECF No. 97. The movant does not explain further its reasons for permissive withdrawal, and stated, "our office cannot disclose privileged attorney-client communications," ECF No. 97. Given the motion and declaration, the court cannot independently identify cause to grant the movant's

motion to withdraw as counsel. The court cannot approve this motion to withdraw.

Section 107(c)(1) of the Bankruptcy Code states, "The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property," 11 U.S.C. § 107(c)(1). Also, "on motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation," Fed. R. Bankr. Proc. 9018. If the counsel finds it necessary in order to properly re-file a motion to withdraw without violating rules of attorney-client privilege, the counsel may request from the court a sealing order under 11 U.S.C. § 107 or under F.R.B.P. 9018.

MOVANT AS A CORPORATION MAY NOT APPEAR *PRO SE*

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654; see *U.S. v. High Country Broadcasting Company, Inc.*, 3 F.3d 1244, 1245 (holding that a party organization filed a motion *pro se* and in violation of 28 U.S.C. § 1654 by using an attorney who is the party organization's president and sole shareholder). It is a longstanding rule that "[c]orporations and other unincorporated associations must appear in court through an attorney." *D-Beam Limited Partnership v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004); citing *United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (holding that corporation's president and sole shareholder cannot make "an end run" around the counsel requirement by intervening *pro se* rather than retaining counsel to represent the corporation).

Here attorney Stephan Brown, attorney at The Bankruptcy Group, P.C., requested this motion to withdraw as counsel on behalf of The Bankruptcy Group, P.C. Since under well-established federal and state law an LLC cannot appear in court *pro se*, the court cannot grant the movant's motion to withdraw. The Bankruptcy Group, P.C. must hire a replacement counsel to properly refile the motion to withdraw.

For the foregoing reasons, the court will deny this motion to withdraw.

CIVIL MINUTE ORDER

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

Stephan M. Brown's motion 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.

7. [13-22133](#)-A-7 **IN RE: ERIC JOE**
[RWH-2](#)

MOTION TO AVOID LIEN OF U.S. BANK, N.A.
11-21-2020 [\[29\]](#)

RONALD HOLLAND/ATTY. FOR DBT.
DEBTORS DISCHARGED: 05/28/2013

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 4316 Valley Hi Drive, Sacramento, CA 95823

Judicial Lien Avoided: \$4,504.32

All Other Liens: \$385,250.00

Exemption: \$1.00

Value of Property: \$130,000.00

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

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

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

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

8. [20-25237](#)-A-7 **IN RE: RICKY MARTIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-1-2020 [[11](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
12/2/20 FILING FEE PAID \$335

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

9. [20-21743](#)-A-7 **IN RE: PATH LABS, LLC, A DELAWARE LIMITED
LIABILITY COMPANY**
[LNB-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
8-14-2020 [[88](#)]

ERIC SCHWAB/ATTY. FOR DBT.
DAVID GOLUBCHIK/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

10. [20-23750](#)-A-7 **IN RE: KATHERINE BRUNER**
[DNL-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-18-2020 [\[36\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained as to all exemptions claimed in Amended Schedule C, ECF No. 33.
Order: Civil minute order

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).

California offers resident bankrupts a choice from two different, mutually exclusive exemption schemes. "Under California law, debtors may elect either the set of special exemptions under section 703.140(b) available only to debtors in bankruptcy ("special bankruptcy exemptions") or the set of regular exemptions *750 under sections 704.010-704.995 of the California Code of Civil Procedure available to judgment debtors generally outside of bankruptcy ("regular exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3)," *In re Geisenheimer*, 530 B.R. 747, 749-50 (Bankr. E.D. Cal. 2015), citing *Farrar v. McKown (In re McKown)*, 203 F.3d 1188, 1189 (9th Cir.2000).

In her Amended Schedule C, the debtor claimed exemptions against property (including the subject property located at 7706 Harvest Woods Drive, Sacramento, CA 95828) under both C.C.P. § 703.140(b) and C.C.P. § 704.730, Amended Schedule C, ECF No. 33. Since claiming exemptions under both sections is improper, none of the exemptions on Schedule C were properly claimed. The court will sustain the trustee's objection as to each exemption claimed in Amended Schedule C, ECF No. 33.

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 exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained as to each exemption claimed in Amended Schedule C, ECF No. 33.

11. [20-23457](#)-A-7 **IN RE: ERNESTO/MARILYN PATACIL**

CONTINUED OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
10-16-2020 [[43](#)]

CHARLES HASTINGS/ATTY. FOR DBT.
NATALIA RAMIREZ LEE/ATTY. FOR MV.
DEBTORS DISCHARGED: 11/09/2020

Final Ruling

Creditors having reconsidered their position, Status Report, ECF No. 62, the objection is overruled. The court will issue a civil minute order.

12. [19-23860](#)-A-7 **IN RE: SAMUEL/ERICA MOORE**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-19-2020 [[68](#)]

RICHARD HALL/ATTY. FOR DBT.
DEBTORS DISCHARGED: 09/30/2019;

Final Ruling

The filing fee having been paid in full, the order to show cause is discharged. The case will remain pending.

13. [19-26462](#)-A-7 **IN RE: GINA/GILBERT SAVALA**
[MAS-1](#)

MOTION FOR APPROVAL OF DISMISSAL OF DENIAL OF DISCHARGE
CLAIM
12-7-2020 [[28](#)]

BARRY SPITZER/ATTY. FOR DBT.
MARK SERLIN/ATTY. FOR MV.
JOINT DEBTOR DISCHARGED: 02/21/2020

No Ruling

14. [20-23263](#)-A-7 **IN RE: PLACERVILLE BREWING COMPANY, LLC**
[KMT-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KRONICK,
MOSKOVITZ, TIEDEMANN & GIRARD FOR GABRIEL P. HERRERA,
TRUSTEES ATTORNEY(S)
11-30-2020 [[83](#)]

JAMIE DREHER/ATTY. FOR DBT.

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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, Kronick, Moskovitz, Tiedemann & Girard, 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 \$12,610.00 and reimbursement of expenses in the amount of \$ 534.95.

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.

Kronick, Moskovitz, Tiedemann & Girard'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 \$12,610.00 and reimbursement of expenses in the amount of \$ 534.95.

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. [20-21284](#)-A-7 **IN RE: DORSIE LAKE**
[BLG-2](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH MATTHEW LAKE
9-30-2020 [[37](#)]

CHAD JOHNSON/ATTY. FOR DBT.

No Ruling

16. [19-20391](#)-A-7 **IN RE: B & G DELIVERY SYSTEM, INC., A**
CALIFORNIA CORPORATION
[KJH-3](#)

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY,
ACCOUNTANT(S)
11-23-2020 [\[96\]](#)

WALTER DAHL/ATTY. FOR DBT.

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, Gabrielson & Company, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$42,028.00 and reimbursement of expenses in the amount of \$541.86.

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.

Gabrielson & Company's application for allowance of final compensation and reimbursement of expenses has been presented to the

court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$42,028.00 and reimbursement of expenses in the amount of \$541.86.

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.

17. [20-24998](#)-A-7 **IN RE: HOLLY GREEN**
[PSB-1](#)

MOTION TO REDEEM
11-19-2020 [\[11\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Authorize Redemption of Tangible Personal Property

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 2007 Chevrolet Avalanche, VIN # 3GNFK12397G140336

Exemption Claimed: \$1.00

Redemption Value: \$100.00

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

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

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

The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such

property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2).

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