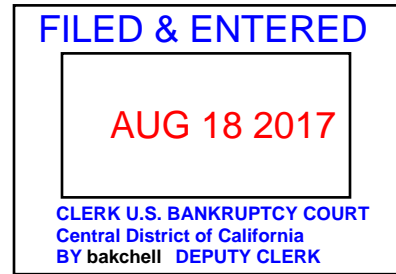


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**CHANGES MADE BY COURT**

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re

PAUL BODEAU and SANDRA  
BODEAU,

Debtors and Debtors-in-Possession.

Case No. 2:17-bk-17761-RK

**Chapter 11**

**ORDER ON NOTICE OF MOTION AND  
MOTION IN INDIVIDUAL CHAPTER 11  
CASE FOR ORDER APPROVING A  
BUDGET FOR THE USE OF THE  
DEBTOR'S CASH AND POSTPETITION  
INCOME**

[No hearing required]

The Court, having considered the Notice of Motion and Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Case and Postpetition Income (the "Motion") filed by Paul Bodeau and Sandra Bodeau, Debtors and Debtors-in-Possession ("Debtors"), the Declaration Re: That No Party Requested a Hearing on Motion Pursuant to LBR 9013-1(o) Re Notice of Motion and Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Case and Postpetition Income, and good cause appearing therefore, it is hereby,

1       **ORDERED**, that the Motion is denied as to the approval of use funds for \$450 in expenses  
2 per month for entertainment, clubs, recreation, newspapers, magazines, and books to be outside  
3 the ordinary course of business and not shown to be an exercise of reasonable business judgment;  
4 and it is

5       **FURTHER ORDERED**, that Debtors' use of cash on hand and the Debtors' postpetition  
6 income and/or earnings to pay the expenses and/or make the deductions and/or withholdings  
7 described in in Schedules I and J attached to the declaration filed in support of the Motion are  
8 neither approved nor disapproved. Use of estate funds in the ordinary course of business does not  
9 need court approval. Recently, a district court in Maryland observed that "some bankruptcy  
10 courts have found that individuals operating as Chapter 11 debtors-in-possession may use estate  
11 proerpty on personal expenses are in the 'ordinary course' rather than unusual or extraordinary."  
12 *In re Massenburg*, 554 B.R. 796, 755 (D. Md. 2016), *citing*, *In re Seely*, 492 B.R. 284, 290  
13 (Bankr. C.D. Cal. 2013) (Bluebond, J.) and *In re Bradley*, 185 B.R. 7, 8-9 (Bankr. W.D.N.Y.  
14 1995). Judge Bluebond in her opinion in *Seely* stated that an individual Chapter 11 debtor may  
15 use estate funds without court approval to pay for living expenses so long as such expenses were  
16 in the "ordinary course." 492 B.R. at 290. However, ordinary course means ordinary course. See  
17 *In re Dant & Russell, Inc.*, 853 F.2d 700, 704-705 (9<sup>th</sup> Cir. 2008).

18       Morevoer, if the use of estate funds to pay Debtors' living expenses is not in the "ordinary  
19 course," such use is subject to the general requirements of 11 U.S.C. § 363(b)(1) and applicable  
20 case law. *Id.* That is, if the proposed use of estate funds for personal living expenses is not within  
21 the ordinary course of business, a debtor-in-possession (or trustee) may use, sell or lease estate  
22 property only after notice and a hearing and upon a showing of exercise of reasonable business  
23 judgment for such use outside the ordinary course of business. See, *In re Mark Vincent Kaplan*,  
24 No. 2:15-bk-16187 RK Chapter 11 (Bankr. C.D. Cal., order filed and entered on June 11, 2015)  
25 (Kwan, J.), *citing*, 3 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶¶ 14:75  
26 and 14:595 at 14(I)-6 and 14(I) at 49 (2014), *citing inter alia*, *In re Lionel Corp.*, 727 F.2d. 1063,  
27 107 (2<sup>nd</sup> Cir. 1983) and *In re Ernest Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash.  
28 1997).

1 This court in *In re Kaplan* noted that in *In re Villalobos*, 2011 WL 4485793 (9<sup>th</sup> Cir. BAP  
2 2011) (unpublished memorandum opinion), the Bankruptcy Appellate Panel of the Ninth Circuit  
3 reversed the order of the bankruptcy court approving the individual Chapter 11 debtor's personal  
4 living expenses on grounds that the bankruptcy court failed to issue sufficient findings of facts and  
5 conclusions of law to support approval or disapproval of the expenses in the debtor's proposed  
6 budget as well as to support the approval of the debtor's budget nunc pro tunc to the petition date.  
7 *In re Mark Vincent Kaplan*, slip op. at \*4, citing, *In re Villalobos*, 2011 WL 4485793, slip op. at  
8 \*\*8-9 and no. 13. The Bankruptcy Appellate Panel of the Ninth Circuit in *In re Villalobos* stated:  
9 "[g]iven the uncertainty in this area of the law [i.e., post-BAPCPA], the identification of the  
10 proper Bankruptcy Code section for approval or personal expenses of individual Chapter 11  
11 debtors, it is all the more important for the bankruptcy court to articulate the legal rule being  
12 applied and the explicit findings of fact that support the legal rule." *Id.*, slip op. at \*9. Boilerplate  
13 recitals in a form motion by movants are not sufficient to assist the court in meeting this standard.

14 In the instant case, other than the denial of approval of the \$450 for entertainment  
15 expenses per month which the court finds to be not in the ordinary course of business, and not  
16 shown to be the exercise of reasonable business judgment, the court does not approve nor  
17 disapprove the personal expenses of the Chapter 11 debtors.

18 **IT IS SO ORDERED.**

19 ###

20  
21  
22  
23  
24 Date: August 18, 2017



Robert Kwan  
United States Bankruptcy Judge