

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: FEBRUARY 10, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-14206](#)-A-7 BLANCA LOPEZ
TMT-1
TRUDI MANFREDO/MV
JEFFREY ROWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
1-11-16 [[14](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 50% interest in the 3 vehicles described below

Buyer: Debtor

Sale Price:

—2004 Toyota Sienna: \$2635 cash

—2004 Honda Civic: \$1020 cash

—2007 Toyota Tundra: \$8245 (\$5345 cash plus \$2900 exemption credit)

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.

2. [15-12317](#)-A-13 MIRIAM INIGUEZ
JES-1
JAMES SALVEN/MV
MARCUS TORIGIAN/Atty. for dbt.
CONVERTED ON 1/27/16

MOTION TO COMPEL
12-2-15 [[38](#)]

Final Ruling

Having issued an order converting the case to chapter 13, the court will deny this motion as moot.

3. [15-12417](#)-A-7 ALBERT LOVE MOTION TO SELL AND/OR MOTION TO
JES-3 PAY
JAMES SALVEN/MV 1-6-16 [[27](#)]
MARIO LANGONE/Atty. for dbt.

Final Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Pontiac

Sale Type: Public auction

Compensation: 15% of gross sale proceeds plus extraordinary expenses of no more than \$250 applicable to storage and sale

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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.

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

4. [14-15827](#)-A-7 JESUS MELENDEZ MOTION TO COMPEL
JAMES SALVEN/MV 11-20-15 [[26](#)]
LAYNE HAYDEN/Atty. for dbt.

Final Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

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

TAX REFUNDS

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by* *Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 93% of the 2014 federal and state tax refunds will be granted (the approximate dollar

amount required for turnover is \$1125). No amount of these refunds has been claimed exempt on Schedule C. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

TAX RECORDS AND RETURNS

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (i) all 2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2014 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 93% of any 2014 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (i) all 2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2014 federal and state tax-related records or documents relevant to the debtor's tax returns, whether in electronic or paper form, that the debtor holds.

5. [16-10129](#)-A-7 HERIBERTO/MICHELLE AVILA MOTION TO EXTEND AUTOMATIC STAY
PFT-1 1-27-16 [[12](#)]
PETER FEAR/MV
PETER BUNTING/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Extend and Impose the Automatic Stay Only as to Estate Property

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party

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

EXTENSION OF THE STAY AS TO ESTATE PROPERTY: MICHELLE AVILA

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted to extend the stay only as to estate property (but not as to the joint debtor Michelle Avila) except as to any creditor without proper notice of this motion.

IMPOSITION OF THE STAY AS TO ESTATE PROPERTY: HERIBERTO AVILA, JR.

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c) (4) (B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. For the reasons stated in the motion and supporting

papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted to impose the stay only as to estate property (but not as to joint debtor Heriberto Avila, Jr.) except as to any creditor without proper notice of the motion.

6. [14-15636](#)-A-7 NATALIE ROBERTS
JES-1
JAMES SALVEN/MV

MOTION TO COMPEL TURNOVER TAX
RETURNS OR DATA TO PREPARE
RETURNS
11-23-15 [[38](#)]

DAVID JENKINS/Atty. for dbt.

Tentative Ruling

Motion: Compel Debtor's Turnover of Property of the Estate and Records Relating to the Estate

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

Disposition: Granted in part, denied without prejudice in part

Order: Prepared by moving party

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

2013 TAX REFUNDS

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the

estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. *See, e.g., In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 100% of the 2013 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

2014 TAX REFUNDS

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. *See In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

It follows that only if the refunds are related to the pre-petition earnings will they be part of the bankruptcy estate. Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. *See, e.g., In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee seeks an order compelling turnover of the 2014 federal and state tax refunds. But the petition was filed in

November 2014, so a portion of the 2014 federal and state tax refunds will not be property of the estate. The trustee's motion makes no such distinction and does not limit its request precisely to the portion of the 2014 refunds that is property of the estate. Accordingly, the motion will be denied without prejudice as to the 2014 tax refunds.

2013 AND 2014 TAX RECORDS AND RETURNS

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (i) all 2013 and 2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 and 2014 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 100% of any 2013 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (i) all 2013-2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013-2014 federal and state tax-related records or documents relevant to the debtor's tax returns, whether in electronic or paper form, that the debtor holds.

IT IS FURTHER ORDERED that the motion is denied in part without prejudice as to the trustee's request for an order compelling turnover of 2014 federal and state tax refunds.

7. [15-14240](#)-A-7 MICHAEL/NICOLE WELLS MOTION FOR RELIEF FROM
DJP-2 AUTOMATIC STAY
EDUCATIONAL EMPLOYEES CREDIT 1-18-16 [[25](#)]
UNION/MV
DEDE AGRAVA/Atty. for dbt.
DON POOL/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: 2008 Ford F150 SuperCrew Cab King Ranch Pickup

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

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.

Educational Employees Credit Union'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 2008 Ford F150 SuperCrew Cab King Ranch Pickup, 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.

8. [15-11144](#)-A-7 MARIA BARBOZA MOTION TO COMPEL
JES-1 12-2-15 [[20](#)]
JAMES SALVEN/MV
THOMAS GILLIS/Atty. for dbt.
NON-OPPOSITION

Tentative Ruling

Motion: Compel Debtor's Turnover of Property of the Estate
Notice: LBR 9014-1(f)(1); debtor has filed a non-opposition
Disposition: Granted
Order: Civil minute order

The trustee moves for turnover of a 1998 Chevrolet Suburban to the estate. The debtor does not oppose but states that the vehicle is not in working condition and that the trustee will need to make arrangements to pick up the vehicle.

TURNOVER OF VEHICLE

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. But the trustee shall bear the cost of picking up the vehicle and transporting it necessary for liquidation.

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 turnover motion 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 1998 Chevrolet Suburban described in the motion shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion. For purposes of this order, "turning over" the vehicle to the trustee means making it accessible to the trustee so that the trustee can inspect the vehicle and remove it from the debtor's property. The debtor shall not be required to transport a non-operative vehicle on behalf of the estate.

9. [15-11144](#)-A-7 MARIA BARBOZA
JES-2
JAMES SALVEN/MV
THOMAS GILLIS/Atty. for dbt.

MOTION FOR TURNOVER OF PROPERTY
12-29-15 [[26](#)]

Final Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

10. [14-13153](#)-A-7 ALFREDO GONZALEZ AND MOTION TO COMPEL
JES-4 LETICIA VAZQUEZ 11-23-15 [[67](#)]
JAMES SALVEN/MV
STEPHEN LABIAK/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [14-14164](#)-A-7 ADOLFO ISARRARAS AND MOTION FOR TURNOVER OF PROPERTY
JES-2 HERIBERTA VASQUEZ 12-2-15 [[44](#)]
JAMES SALVEN/MV
ALBERT GARCIA/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

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

Disposition: Granted in part, denied in part without prejudice

Order: Civil minute order

LEGAL STANDARDS FOR TURNOVER

Section 542(a) Generally

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books,

documents, records, and papers, relating to property of the estate.”
Id. § 521(a)(4).

Specific Elements Required to Prevail in a Turnover Proceeding

“To prevail in a turnover action under § 542, the party seeking turnover must establish that:

[1] the property in which the estate has an interest is or was in the possession, custody or control of an entity during the pendency of the case; [2] the property may be used by the trustee in accordance with § 363 or exempted by the debtor under § 522; and [3] the property has more than inconsequential value or benefit to the estate.” Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 21:1704, at 21-191 (rev. 2015).

Burden of Proof

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

DISCUSSION

1991 Mazda

The debtors’ opposition indicates that they do not oppose surrendering the 1991 Mazda MX6 DX to the trustee. The debtors represent that this vehicle, however, is non-operational.

Because the debtors do not oppose the relief sought, the court will grant the motion as to the 1991 Mazda MX6 DX. But the court will limit the relief sought by requiring the debtors only to provide the trustee access to the vehicle for pickup and transportation.

1993 Mitsubishi Mighty Max Pickup

The debtors’ opposition reveals that the 1993 Mitsubishi Mighty Max Pickup was sent to the junkyard in September 2015. They oppose this aspect of the relief sought.

Possession, Custody or Control

The debtors’ lack of possession, custody or control of the vehicle at the time of the turnover motion (December 2, 2015), does not resolve this dispute.

The Ninth Circuit held in *Shapiro v. Henson* that turnover may be sought from “an entity that had ‘possession, custody, or control’ of the subject property during the bankruptcy case whether or not the entity had ‘possession, custody, or control’ at the time the turnover motion is filed.” *Shapiro v. Henson*, 739 F.3d 1198, 1204 (9th Cir. 2014).

The court of appeals interpreted § 542(a) to require turnover of funds in a checking account that the debtor had in her possession, custody, or control when the petition was filed but not when the motion for turnover was filed. The court reasoned that the statutory phrase “‘during the case’ means that the trustee may bring a motion for turnover against an entity who *has* possession of the property of the

estate, or *had* possession of that property at some point during the bankruptcy case.” *Id.* at 1200.

The court further held that “the trustee has a remedy in a case where an entity was ‘in possession’ of estate property at some point ‘during the case,’ but lost possession of that property by the time the trustee brought the motion for turnover. In such a case, the trustee may recover the ‘value of such property’ from the entity previously in possession. *Id.* at 1201.

Trustee’s Delay in Bringing the Motion

It is possible for a trustee to wait too long in bringing a § 542(a) motion. At least one bankruptcy court has held:

“Undeniably, Section 542(a) has no express period of limitation within which one must sue for a turnover. This does not mean that a trustee has unbridled discretion to sue under Section 542(a) at any time he wishes or deems convenient. Good reason and sound practice dictate that actions under § 542(a) be commenced within a reasonable period of time. The bankruptcy courts are thereby spared from the litigation of stale claims and parties are not put to the difficult burden of litigating after memories have faded, witnesses have disappeared and evidence lost. The more than four years that the Trustee herein waited to sue is well beyond any common sense definition of reasonableness.”

In re De Berry, 59 B.R. 891, 898 (Bankr. E.D.N.Y. 1986)

This case was filed on August 19, 2014. The trustee’s turnover motion was filed December 2, 2015. This is approximately 1 year and 3.5 months after the case was filed. The court questions whether this delay is appropriate, but does not need to reach this issue as the turnover request fails on other grounds.

Trustee’s Burden of Proof

The trustee has the burden of proving three elements as stated above. But the trustee has not satisfied this burden.

The debtors have admitted the first element—they had possession of the vehicle at some point during the case. They represent that they turned over the vehicle to the junkyard in September 2015, which was postpetition. By inference, the vehicle was within their possession prior to the time when they transferred it to the junkyard.

The second element would be satisfied by the fact that the debtor could exempt personal property such as a vehicle. The debtor has exempted different vehicles on Schedule C.

But the trustee has not satisfied his burden of proof as to the third element. He has not shown that the vehicle has more than inconsequential value or benefit to the estate. The only reference the trustee makes to value is his opinion that “liquidation of this asset(s) [sic] will net the estate approximately \$3200.” This statement lacks a foundation, and will thus not be considered as evidence. Fed. R. Evid. 602. The statement, moreover, bears no weight as it does not provide any particular probative value as to either of the two separate vehicles. The statement is ambiguous as to whether it refers to the value of the 1991 Mazda, the 1993 Mitsubishi, or both in the aggregate.

Without evidence as to the value of the vehicle, the court has no basis for concluding that the property has more than an inconsequential value or benefit to the estate.

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 turnover motion 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 in part. The 1991 Mazda MX6 DX shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion. For purposes of this order, "turning over" the vehicle to the trustee means making it accessible to the trustee so that the trustee can inspect the vehicle and remove it from the debtor's property. The debtor shall not be required to transport a non-operative vehicle on behalf of the estate.

IT IS FURTHER ORDERED that the motion is denied in part without prejudice as to any other relief sought. In particular, the motion is denied without prejudice as to the trustee's request for turnover of the 1993 Mitsubishi Mighty Max Pickup.

12. [09-11871](#)-A-7 COVENANT SERVICES, INC.
RHT-4
ROBERT HAWKINS/MV

CONTINUED MOTION FOR
COMPENSATION FOR ROBERT
HAWKINS, CHAPTER 7 TRUSTEE(S)
10-23-15 [\[116\]](#)

DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/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

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. The court approves the application and allows compensation in the amount of \$23,625.00 and reimbursement of expenses in the amount of \$383.09.

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.

Robert Hawkins'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 \$23,625.00 and reimbursement of expenses in the amount of \$383.09.

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. [15-11283](#)-A-7 GLORIA ESTILLORE

GLORIA ESTILLORE/MV

MOTION TO COMPEL ABANDONMENT
1-26-16 [[129](#)]

No tentative ruling.

14. [15-11185](#)-A-7 SCOTT/LISA WOODHOUSE MOTION TO COMPEL ABANDONMENT
JRL-1 1-7-16 [[42](#)]
SCOTT WOODHOUSE/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 1897 W. Hampton Drive, Hanford, CA

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. The fair market value of the property is \$216,000 as of the petition date. A deed of trust on the property secured a loan in the amount of \$158,644 as of the petition date. The exemption claimed is in the amount of \$53,000. This leaves \$4,356 of equity. After costs of sale, this equity would not likely be realized by the estate.

An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

15. [15-12691](#)-A-7 HARPREET SINGH
JES-2
JAMES SALVEN/MV

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR BAIRD
AUCTIONS AND APPRAISALS,
AUCTIONEER(S)
1-6-16 [[27](#)]

PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Sell Property and Compensate Auctioneer

Notice: LBR 9014-1(f) (1); written opposition filed by Golden 1 Credit Union

Disposition: Conditionally granted, the condition being that Golden 1's lien on the vehicle will be paid in full upon the closing of the sale

Order: Prepared by moving party

Property: 2007 Nissan Armada

Sale Type: Public auction

OPPOSITION

The trustee requests authorization to sell a 2007 Nissan Armada at public auction. Relief is sought under § 363(b) only. Golden 1 Credit Union has asserted a perfected security interest in the vehicle, and argues that the vehicle secures an outstanding principal balance of \$4407.29 plus approximately \$975 in attorney's fees.

Golden 1 mischaracterizes the motion by stating that the trustee seeks to sell the vehicle free and clear of liens pursuant to § 363(f). Limited Obj. to Tr.'s Mot. Sell, at 2, ECF No. 32. Golden 1 opposes the purported free and clear relief sought by the trustee.

No part of the motion requests that the sale be made free and clear of Golden 1's lien. Golden 1's argument addressing the grounds for § 363(f) relief is inapt.

The court, however, recognizes that Golden 1 is entitled to adequate protection of its security interest in the collateral being sold as a condition of any sale. Accordingly, the court will condition the sale on payment of Golden 1's lien in full.

SALE UNDER § 363(b)

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

COMPENSATION

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

16. [15-14492](#)-A-7 LEONARDO AMADOR MOTION FOR RELIEF FROM
DJP-1 AUTOMATIC STAY
EDUCATIONAL EMPLOYEES CREDIT 1-18-16 [[29](#)]
UNION/MV
MARK ZIMMERMAN/Atty. for dbt.
DON POOL/Atty. for mv.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [15-14492](#)-A-7 LEONARDO AMADOR MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 1-7-16 [[16](#)]
MARK ZIMMERMAN/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2007 Infiniti M45

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.

TD Auto Finance LLC'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 2007 Infiniti M45, 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.

18. [15-14592](#)-A-7 MICHELLE JONES
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
1-6-16 [[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

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled

meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued 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 requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

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.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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 February 16, 2016, at 8:30 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's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

19. [15-11393](#)-A-7 LINDA CONOVER
JES-2
JAMES SALVEN/MV
JEFFREY ROWE/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
12-29-15 [[41](#)]

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, James E. Salven, 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 \$1450.00 and reimbursement of expenses in the amount of \$186.75.

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.

James E. Salven'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 \$1450.00 and reimbursement of expenses in the amount of \$186.75.

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.

20. [15-11995](#)-A-7 JIMMY/GWENDOLYN CANNON MOTION FOR RELIEF FROM
TGF-1 AUTOMATIC STAY
CREATIVE REALTY MARKETING AND 1-13-16 [[67](#)]
MORTGAGE/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 719 Sunset Meadow, Bakersfield, CA

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).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

AS TO ESTATE

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.

Creative Realty Marketing and Mortgage'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 719 Sunset Meadow, Bakersfield, CA. 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.

21. [14-12696](#)-A-7 JOSE AVINA
JES-1
JAMES SALVEN/MV
GEORGE ALONSO/Atty. for dbt.

MOTION TO COMPEL
11-19-15 [[17](#)]

Final Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

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

TAX REFUNDS

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 40% of the debtor's 2014 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

TAX RECORDS AND RETURNS

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (i) all 2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2014 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or

paper form, that the debtor holds.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 40% of any 2014 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (i) all 2014 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2014 federal and state tax-related records or documents relevant to the debtor's tax returns, whether in electronic or paper form, that the debtor holds.