

**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: APRIL 12, 2017
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. [17-10003](#)-A-7 JOSE/SONIA CASTELLANOS OBJECTION TO DEBTOR'S CLAIM OF
RHT-1 EXEMPTIONS
ROBERT HAWKINS/MV 3-1-17 [[16](#)]
DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

After the trustee's objection to the debtors' exemption was filed, the debtors filed an amended Schedule C as of March 1, 2017. The debtors amended exemptions in vehicles that were the subject of the trustee's objection. The objection will be overruled as moot.

2. [17-10104](#)-A-7 FRED/KARLA OLMSTEAD MOTION FOR RELIEF FROM
BKC-1 AUTOMATIC STAY
AIR-WAY FARMS, INC./MV 3-13-17 [[18](#)]
T. BELDEN/Atty. for dbt.
BRIAN CUTTONE/Atty. for mv.

Final Ruling

Pursuant to stipulation and order, the hearing on the motion is continued to April 26, 2017, at 9:00 a.m.

3. [16-14406](#)-A-7 JAMES POLIS MOTION TO SELL
RHT-2 3-15-17 [[23](#)]
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 26792 Avenue 26, Chowchilla, CA

Buyer: Bala Akkina

Sale Price: \$601,000 cash

Sale Type: Private sale subject to overbid opportunity

Broker's Compensation: 6% commission

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).

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. 16-14406 -A-7 JAMES POLIS RHT-3 ROBERT HAWKINS/MV ROBERT HAWKINS/Atty. for mv.	OBJECTION TO HOMESTEAD EXEMPTION 3-15-17 [29]
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Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

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).

HOMESTEAD EXEMPTION LAW

Article 4 of Part 2, Title 9 (Enforcement of Judgments), Division 2, Chapter 4 of the California Code of Civil Procedure provides for an exemption known as the "automatic" homestead exemption. See Cal. Civ. Proc. Code §§ 704.710-704.850; *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 17-20 (B.A.P. 9th Cir. 2003).

The automatic homestead exemption under Article 4 is limited to the "principal dwelling" of the debtor or the debtor's spouse. A "dwelling" is defined by statute to include any place a person "resides." Cal. Civ. Proc. Code § 704.710(a), (c). Section 704.710 further provides that the term "'homestead' means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." *Id.* § 704.710(c).

Additionally, "the factors a court should consider in determining residence for homestead purposes are [(i)] physical occupancy of the property and [(ii)] the intention with which the property is

occupied." *Kelley*, 300 B.R. at 21 (citing *Ellsworth v. Marshall*, 16 Cal. Rptr. 588, 589 (Cal. Ct. App. 1961)); accord *In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994).

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

APPLICATION

The debtor has claimed a homestead exemption in real property known as 26792 Avenue 26, Chowchilla, CA. The homestead is claimed under §§ 704.710, 704.720, 704.730, 704.920, in the amount of \$50,000. The trustee's contends that the debtor did not reside on the subject property on the date the bankruptcy petition was filed. The declaration of William Enns supports the conclusion that during the pre-petition period after June 2016 (the petition was filed December 9, 2016), the debtor did not reside at the property or physically occupy the property. The objection will be sustained.

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 homestead exemption 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 objection,

IT IS ORDERED that the objection is sustained. The debtor is not entitled under California law to claim a homestead exemption in real property located at 26792 Avenue 26, Chowchilla, CA.

5. [17-10106](#)-A-7 RANDEEP SINGH
TMT-1
TRUDI MANFREDO/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
3-14-17 [[28](#)]

PATRICK GREENWELL/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to
Object to Discharge or File a Motion to Dismiss

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through July 1, 2017.

6. [14-13415](#)-A-7 RON/KARRIE HATLEY
DRJ-3
RON HATLEY/MV
DAVID JENKINS/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
2-9-17 [[95](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

7. 14-13415 -A-7 RON/KARRIE HATLEY DRJ-4 RON HATLEY/MV DAVID JENKINS/Atty. for dbt.	OBJECTION TO CLAIM OF ATLAS ACQUISITIONS LLC, CLAIM NUMBER 2 2-9-17 [99]
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Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be

allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). The objection's well-pleaded facts show that the debtor has not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

8. [16-14215](#)-A-7 DEREK/KASEY CARROLL MOTION TO SELL
TMT-1 3-3-17 [[20](#)]
TRUDI MANFREDO/MV
MARK ZIMMERMAN/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 823 N. Valley Forge Dr., Hanford, CA

Buyer: Debtors

Sale Price: \$264,277 (\$6,390 cash plus \$100,000 exemption credit, and the sale is made subject to a deed of trust held by M&T Bank Mortgage

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.

9. [17-10724](#)-A-7 FEDERICO SANCHEZ
APN-1
NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-10-17 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Nissan Altima

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Nissan Altima, 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.

10. [11-62425](#)-A-7 JOSE/ARACELI LONGORIA MOTION TO AVOID LIEN OF
SAH-1 HOUSEHOLD FINANCE CORPORATION
JOSE LONGORIA/MV OF CALIFORNIA
3-22-17 [[23](#)]
SUSAN HEMB/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The court takes judicial notice of Schedule C filed in this case. Fed. R. Evid. 201. No exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

11. [16-14131](#)-A-7 ALICIA FRANCO
APN-1
NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-15-17 [[28](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Nissan Altima

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2015 Nissan Altima, 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.

12. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-16

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
3-14-17 [[423](#)]

JUSTIN HARRIS/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, Klein Denatale Goldner, general counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$21,213.00 and reimbursement of expenses in the amount of \$360.96.

The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis. And the applicant seeks authorization to be paid \$18,799.10, which is 20% of the fees from the first application for compensation that were allowed but subject to hold-back.

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

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.

- No tentative ruling.

14. [17-10136](#)-A-7 FRESNO MOVING & STORAGE MOTION TO EMPLOY GOULD AUCTION
TMT-3 INC. & APPRAISAL COMPANY AS
TRUDI MANFREDO/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
3-13-17 [[56](#)]

JEFFREY ROWE/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2008 GMC Yukon

Sale Type: Public auction

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.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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.

15. [16-13454](#)-A-7 MARVIN/MAUREKA DAVIS MOTION FOR ORDER SETTING NEW
TMT-3 DATE FOR AUCTION
TRUDI MANFREDO/MV 3-8-17 [[80](#)]
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Order Setting New Date for Auction and to Sell Property at New Auction

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

Disposition: Granted on the same terms as the prior order (except the date of sale)

Order: Prepared by moving party on the same terms as the prior order (except the date of sale)

Property: 2003 Cadillac CTS

Sale Type: Public auction

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).

The trustee moves for an order setting a new date for an auction sale and to sell the above property at the new auction sale. The auctioneer was previously employed and compensation and reimbursement of expenses was also authorized. The motion will be granted and the new sale authorized. 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). The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

16. [15-10966](#)-A-7 RODNEY HARON
USA-1
INTERNAL REVENUE SERVICE/MV

MOTION FOR RELIEF FROM
AUTOMATIC STAY (FILING FEE NOT
APPLICABLE)
3-22-17 [[236](#)]

TIMOTHY SPRINGER/Atty. for dbt.
JEFFREY LODGE/Atty. for mv.
NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Tax court proceeding to determine tax liability for 2011 and 2012

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) (1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Courts considering a request to pursue litigation in a collateral forum frequently consider: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief. The tax court proceeding would result in complete resolution (settlement) of the issues between the parties, the IRS, the debtor and the estate. The proceeding described will not interfere with the bankruptcy case as it would simply reduce the amount of claims against the estate (and reduce the nondischargeable tax claims against the debtor).

Further, the tax court is a specialized tribunal with the necessary expertise to resolve this matter so that both the interests of judicial economy and the expeditious resolution of the litigation are achieved by allowing the litigation to proceed in the tax court.

The moving party shall have relief from stay to resolve the debtor's tax pre-petition liabilities for 2011 and 2012. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any settlement agreement or judgment, except by filing an amended proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

The United States' 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 to the extent specified in this order. The automatic stay is vacated to allow the movant to resolve the debtor's tax pre-petition liabilities for 2011 and 2012. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any settlement agreement or judgment, except by filing an amended proof of claim in this court.

17. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-10
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF OLYMPIC
WIRE & EQUIPMENT, INC., CLAIM
NUMBER 15-2
2-14-17 [[97](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 15-2 in the amount of \$1,139.80. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

18. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-11
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF PRUNER
ENTERPRISES, INC., CLAIM NUMBER
17-1
2-14-17 [[100](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 17-1 in the amount of \$4,647.52. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

19. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-3
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF
DEPARTMENT OF TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 18-2
2-14-17 [[79](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

20. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-4
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF ATLAS
SCALE SERVICES, INC., CLAIM
NUMBER 2-1
2-14-17 [[82](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 2-1 in the amount of \$979.88. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

21. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-6
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF
INNOVATIVE AG SERVICES, LLC,
CLAIM NUMBER 5-1
2-14-17 [[85](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 5-1 in the amount of \$1,967. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

22. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-7
TRUDI MANFREDO/MV
DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

OBJECTION TO CLAIM OF BORETTI,
INC., CLAIM NUMBER 6-1
2-14-17 [[88](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 6-1 in the amount of \$1575. The basis for the objection is that the claim is unenforceable against the

debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

23. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-8
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF ACE
HYDRAULIC SALES & SERVICE,
INC., CLAIM NUMBER 8-1
2-14-17 [[91](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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

The trustee objects to Claim No. 8-1 in the amount of \$824.91. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

24. [16-11674](#)-A-7 JEFF/MICKI PRINS
HAR-9
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF TULARE
COUNTY ENVIRONMENTAL HEALTH,
CLAIM NUMBER 9-1
2-14-17 [[94](#)]

DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-

1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

The trustee objects to Claim No. 8-1 in the amount of \$824.91. The basis for the objection is that the claim is unenforceable against the debtor and property of the debtor under agreement and applicable law. 11 U.S.C. § 502(b)(1). The liability on this claim is a corporate liability of an entity owned by the debtor rather than a liability of the debtors individually. The objection will be sustained and the claim disallowed in its entirety.

25. [16-13477](#)-A-7 MICHAEL/TANYA SCAMBLER MOTION FOR ORDER SETTING NEW
TMT-2 DATE FOR AUCTION
TRUDI MANFREDO/MV 3-9-17 [[34](#)]
SCOTT LYONS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Order Setting New Date for Auction and to Sell Property at New Auction

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

Disposition: Granted on the same terms as the prior order (except the date of sale)

Order: Prepared by moving party on the same terms as the prior order (except the date of sale)

Property: 20023 Volkswagen Beetle

Sale Type: Public auction

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).

The trustee moves for an order setting a new date for an auction sale and to sell the above property at the new auction sale. The auctioneer was previously employed and compensation and reimbursement of expenses was also authorized. Order Authorizing Employment, Sale and Compensation, ECF No. 34.

The motion will be granted and the new sale authorized. 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). The stay of the order

provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

26. [15-11079](#)-A-7 WEST COAST GROWERS, INC. MOTION TO COMPROMISE
KDG-26 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH APPLIED
INDUSTRIAL TECHNOLOGIES, INC.
3-13-17 [[909](#)]
- HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a post-petition transfer dispute in the amount of \$17,592.79. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 912. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Robert A. Hawkins's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 912. After payment of attorney's fees and costs, the estate will retain 20% of the net proceeds. See Global Settlement Agreement, April 18, 2016, ECF # 730.

27.	15-11079 -A-7 WEST COAST GROWERS, INC. KDG-27 A CALIFORNIA CORPORATION ROBERT HAWKINS/MV	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH INTERNATIONAL PAPER 3-13-17 [916]
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HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the

creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a preferential pre-petition and post-petition transfer dispute in the amount of \$223,098.43. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 919. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Robert A. Hawkins's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 919. After payment of attorney's fees and costs, the estate will retain 20% of the net proceeds. See Global Settlement Agreement, April 18, 2016, ECF # 730.

28.	<u>17-10380</u> -A-7	JOAO MEDEIROS GODINHO AND ALCINA TOSTE GODINHO	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-14-17 [<u>23</u>]
		NICHOLAS ANIOTZBEHERE/Atty. for dbt.	

No tentative ruling.