

**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: AUGUST 1, 2018
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-11200](#)-A-7 **IN RE: HARRIET THOMAS**
[KLG-1](#)

CONTINUED MOTION TO REDEEM
5-9-2018 [[18](#)]

HARRIET THOMAS/MV
CAROLINE KIM
RESPONSIVE PLEADING

No Ruling

2. [16-14101](#)-A-7 **IN RE: SILVANO CERVANTES**
[TMT-3](#)

AMENDED MOTION TO SELL FREE AND CLEAR OF LIENS
7-11-2018 [[50](#)]

TRUDI MANFREDO/MV
DAVID JENKINS
TRUDI MANFREDO/ATTY. FOR MV.

No Ruling

3. [18-11305](#)-A-7 **IN RE: JAGDES SINGH AND KULDIP KAUR**
[NEA-2](#)

MOTION TO AVOID LIEN OF FRESNO CREDIT BUREAU
6-19-2018 [[21](#)]

JAGDES SINGH/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been

entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

4. [17-12119](#)-A-7 **IN RE: JOHN EBEL**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E SALVEN, ACCOUNTANT(S)
6-28-2018 [[86](#)]

JAMES SALVEN/MV
HAGOP BEDOYAN

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 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 \$1400.00 and reimbursement of expenses in the amount of \$252.34.

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. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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 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 \$1400.00 and reimbursement of expenses in the amount of \$252.34. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

5. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[CD-8](#)

FURTHER CONTINUED HEARING RE: MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PILLSBURY WINTHROP SHAW PITTMAN LLP (FOR
CECILY A. DUMAS, DEBTORS ATTORNEY(S)
11-17-2017 [[392](#)]

CECILY DUMAS
RESPONSIVE PLEADING, ECF ORDER #688 CONTINUING TO 8/29/18

Final Ruling

Pursuant to ECF #688, the hearing is continued to August 29, 2018,
at 9:00 a.m.

6. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[SFR-2](#)

CONTINUED MOTION TO DISQUALIFY DEBTOR'S COUNSEL
5-16-2018 [[638](#)]

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

Final Ruling

This motion is continued to August 29, 2018, at 9:00 a.m. The
written record in support of or opposition to the motion is closed.
Absent an order of this court upon a showing of cause, no further
submissions will be considered in ruling on this motion.

The continuance resulted from the court's need to attend the Ninth
Circuit Conference last week and to address personal matters, viz.,
displacement from its personal residence from July 26-31, by the
Carr fire. The court apologizes to the parties and counsel for any
inconvenience.

7. [10-60731](#)-A-7 **IN RE: REGINA/CLIFFORD CAKE**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
7-3-2018 [\[54\]](#)

MARIO LANGONE

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, Fear Waddell, P.C., 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 \$9,596.00 and reimbursement of expenses in the amount of \$165.69.

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. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

Fear Waddell, P.C.'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 \$9,596.00 and reimbursement of expenses in the amount of \$165.69. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

8. [10-60731](#)-A-7 **IN RE: REGINA/CLIFFORD CAKE**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-3-2018 [[61](#)]

JAMES SALVEN/MV
MARIO LANGONE
PETER FEAR/ATTY. FOR MV.

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James 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 \$1125.00 and reimbursement of expenses in the amount of \$394.46.

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. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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 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 \$1125.00 and reimbursement of expenses in the amount of \$394.46. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

9. [11-63440](#)-A-7 **IN RE: TROY JACQUES**
[RHT-6](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, CHAPTER 7
TRUSTEE(S)
6-26-2018 [\[101\]](#)

ROBERT HAWKINS/MV
JANINE ESQUIVEL
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

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows the trustee's compensation in the amount of \$36,725.52 and reimbursement of expenses in the amount of \$228.04.

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.

10. [18-12346](#)-A-7 **IN RE: CYNTHIA UNRUH**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2018 [\[10\]](#)

BANK OF AMERICA, N.A./MV
SUSAN HEMB
DIANA TORRES-BRITO/ATTY. FOR MV.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Subject: 3412 Penny Lane, Modesto, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

SECTION 362(d)(4) RELIEF

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In fact, the debtor has offered evidence to the contrary. He attests in a declaration that she has no knowledge of the subject real property, the movant's promissory note, the original borrowers on that note, or the borrowers transfer of an interest in the subject real property to her.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

SECTION 362(d)(1) RELIEF

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief. The court grants stay relief for cause under § 362(d)(1) because the property is not estate property and because the property's transfer was unauthorized.

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.

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

IT IS ORDERED that the motion is granted in part as to relief under 11 U.S.C. § 362(d)(1). The automatic stay is vacated for cause under § 362(d)(1) with respect to the property described in the motion, commonly known as 3412 Penny Lane, Modesto, CA, 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 the motion is denied in part as to relief under 11 U.S.C. § 362(d)(4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or

other costs against the debtor for bringing this motion, the request is denied.

11. [18-10047](#)-A-7 **IN RE: DAVID HUNT**
[JES-1](#)

MOTION TO SELL
6-20-2018 [\[17\]](#)

JAMES SALVEN/MV
LAYNE HAYDEN

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2011 Chevrolet Silverado truck

Buyer: Debtor

Sale Price: \$9,050 (\$6,000 cash plus \$3,050 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.

12. [18-11160](#)-A-7 **IN RE: ANTHONY/NANCY MENDES**
[TMT-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
7-3-2018 [[17](#)]

TRUDI MANFREDO/MV
MARK ZIMMERMAN
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

13. [08-10861](#)-A-7 **IN RE: JAMES/DAISY CORBETT**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2018 [[286](#)]

CITIMORTGAGE, INC./MV
SCOTT LYONS
ROBERT ZAHRADKA/ATTY. FOR MV.
DISCHARGED

No Ruling

14. [18-11963](#)-A-7 **IN RE: CRAIG/DEBRAH MURDOCK**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-2018 [[14](#)]

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS
NANCY LEE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 6728 Susan St., 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).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Here, the movant's equity cushion (ignoring junior liens) is less than 20%. And the debtor has missed 16 pre-petition payments and 1 post-petition payment due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 6728 Susan St., Bakersfield, CA, 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.

15. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[AAM-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-22-2018 [[184](#)]

PETER FEAR

Final Ruling

This motion is continued to August 29, 2018, at 9:00 a.m. The written record in support of or opposition to the motion is closed. Notice, June 22, 2018, ECF # 185. Absent an order of this court upon a showing of cause, no further submissions will be considered in ruling on this motion.

The continuance resulted from the court's need to attend the Ninth Circuit Conference last week and to address personal matters, viz., displacement from its personal residence from July 26-30, by the Carr fire. The court apologizes to the parties and counsel for any inconvenience.

16. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[JES-3](#)

ORDER TO SHOW CAUSE REGARDING VACATION OF ORDER APPROVING
MOTION/APPLICATION TO EMPLOY EUGEN C. ANDRES
6-25-2018 [[191](#)]

PETER FEAR

Final Ruling

This hearing on the order to show cause is continued to August 29, 2018, at 9:00 a.m. The written record in support of or opposition to the motion is closed. Order to Show Cause, June 25, 2018, ECF # 191. Absent an order of this court upon a showing of cause, no further submissions will be considered in ruling on this motion.

The continuance resulted from the court's need to attend the Ninth Circuit Conference last week and to address personal matters, viz., displacement from its personal residence from July 26-30, by the Carr fire. The court apologizes to the parties and counsel for any inconvenience.

17. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[JES-3](#)

CONTINUED MOTION TO EMPLOY EUGEN C. ANDRES AS SPECIAL
COUNSEL
8-23-2016 [[72](#)]

JAMES SALVEN/MV
PETER FEAR
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This motion is continued to August 29, 2018, at 9:00 a.m. The written record in support of or opposition to the motion is closed. Order to Show Cause, June 25, 2018, ECF # 191. Absent an order of this court upon a showing of cause, no further submissions will be considered in ruling on this motion.

The continuance resulted from the court's need to attend the Ninth Circuit Conference last week and to address personal matters, viz., displacement from its personal residence from July 26-30, by the Carr fire. The court apologizes to the parties and counsel for any inconvenience.

18. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[RWR-3](#)

CONTINUED MOTION FOR COMPENSATION FOR EUGEN C. ANDRES,
SPECIAL COUNSEL(S)
2-14-2018 [\[112\]](#)

JAMES SALVEN/MV
PETER FEAR
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This motion is continued to August 29, 2018, at 9:00 a.m. The written record in support of or opposition to the motion is closed. Absent an order of this court upon a showing of cause, no further submissions will be considered in ruling on this motion.

The continuance resulted from the court's need to attend the Ninth Circuit Conference last week and to address personal matters, viz., displacement from its personal residence from July 26-30, by the Carr fire. The court apologizes to the parties and counsel for any inconvenience.

19. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA**
CORPORATION
[RHT-2](#)

MOTION FOR COMPENSATION FOR ROBERT A. HAWKINS, CHAPTER 7
TRUSTEE(S)
6-29-2018 [\[1083\]](#)

ROBERT HAWKINS/MV
HAGOP BEDOYAN

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows compensation in the amount of \$34,446.01 and reimbursement of expenses in the amount of \$297.26.

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. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WFH-2](#)

MOTION FOR AUTHORITY TO ENTER INTO TURNOVER SUBORDINATION
AND RESERVATION OF RIGHTS AGREEMENT WITH SALLYPORT
COMMERCIAL FINANCE, LLC
7-17-2018 [\[860\]](#)

TRUDI MANFREDO/MV
RILEY WALTER
T. BELDEN/ATTY. FOR MV.

Tentative Ruling

Motion: Approve Stipulation

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

Disposition: Granted

Order: Prepared by movant according to instructions below

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

The movant requests the court's approval of a stipulation pursuant to Rule 4001(d)(1)(A)(iv) and (v). The stipulation provides that Sallyport Commercial Finance, LLC will subordinate its lien as to \$35,000 and consent to the trustee's use of such funds for estate administration. Sallyport's lien would then be subordinated as to this \$35,000 and cash collateral would be consented to as to this amount. More specifically, the funds will be used to pay "miscellaneous expenses of the estate pending the trustee's ability to liquidate remaining assets." In return, the trustee will turn over \$45,521.51 to Sallyport and to collect and turn over the "Pacific Pride Funds" (approximately \$84,763.28) when received. Lastly, the stipulation preserves the trustee's right to challenge the liens of Sallyport.

Based on the facts presented in the motion, the court will approve the stipulation. The proposed order shall attach a copy of the stipulation as an exhibit to the order.

21. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WFH-3](#)

MOTION TO USE CASH COLLATERAL
7-3-2018 [[850](#)]

TRUDI MANFREDO/MV
RILEY WALTER
T. BELDEN/ATTY. FOR MV.

Final Ruling

Motion: Authorizing Use of Cash Collateral

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).

The trustee has requested authority to use cash collateral to pay the expenses of renewing a mining claim for certain mineral rights including a renewal fee of \$4,030 and two recording fees of \$98 each, for a total of \$4,226. Sallyport Commercial Finance, LLC asserts a security interest in all assets of the estate, except avoidance actions, arising from prepetition and postpetition financing. The trustee does not concede the validity of Sallyport's liens.

The trustee has entered a stipulation with Sallyport that would provide Sallyport's consent to the use of its cash collateral sufficient to pay these expenses. Payment of these expenses will, moreover, protect and preserve any right the estate may have to the mineral rights, which rights are owned by the estate's subsidiary DRO Barite LLC and are valued in millions of dollars. The court will grant the motion and authorize this specific use of cash collateral.

22. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WFH-4](#)

MOTION FOR ORDER AUTHORIZING USE OF PROPERTY OUT OF THE
ORDINARY COURSE OF BUSINESS
7-3-2018 [\[855\]](#)

TRUDI MANFREDO/MV
RILEY WALTER
T. BELDEN/ATTY. FOR MV.

Final Ruling

Motion: Authorizing Use of Property Out of the Ordinary Course of
Business

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).

By separate motion, the trustee has requested authority to use cash collateral to pay the expenses of renewing a mining claim for certain mineral rights including a renewal fee of \$4,030 and two recording fees of \$98 each, for a total of \$4,226. Sallyport Commercial Finance, LLC asserts a security interest in all assets of the estate, except avoidance actions, arising from prepetition and postpetition financing. The trustee does not concede the validity of Sallyport's liens. But the trustee has entered a stipulation with Sallyport that would provide Sallyport's consent to the use of its cash collateral sufficient to pay these expenses. And the court granted the motion to use cash collateral for this purpose.

By the present motion, the trustee seeks authority under § 363(b) of the Code to use property of the estate to make a capital contribution in the amount of \$4,226 to DRO Barite LLC. This capital contribution will enable DRO Barite LLC to pay the renewal expenses discussed. Payment of these expenses will protect and preserve any right the estate may have to the mineral rights via its ownership of DRO Barite LLC. The court will grant the motion.

23. [18-11543](#)-A-7 **IN RE: TERRANCE TAYLOR**

MOTION TO IMPOSE AUTOMATIC STAY
7-3-2018 [[25](#)]

TERRANCE TAYLOR/MV
TERRANCE TAYLOR/ATTY. FOR MV.

No Ruling

24. [18-10450](#)-A-7 **IN RE: LINDA CRAIN**
[TGM-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-8-2018 [[21](#)]

JAMES SALVEN/MV
MARCUS TORIGIAN
TRUDI MANFREDO/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Overruled
Order: Civil minute order

In this bankruptcy case, the debtor has claimed an inherited IRA exempt on Schedule C. The court takes judicial notice of this schedule and its contents on its docket. Fed. R. Evid. 201(b)-(c). The debtor inherited this IRA from her son after his death. The inherited IRA has an approximate value of \$33,889.70.

The trustee has objected to this claim of exemption, arguing that as a matter of law, the debtor cannot exempt an inherited IRA under § 703.140(b)(10)(E) of the California Code of Civil Procedure. The parties do not dispute the facts, however. The debtor opposes the sustaining of the objection.

APPLICABLE LAW

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions").

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy

petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

An Ordinary IRA Qualifies under Federal and State Exemption Provisions

Because California is an opt-out state, debtors in bankruptcy may exempt property under California law and federal law other than § 522(d). Section 522(b)(3)(A) is the operative statute providing the scope of the exemptions available to debtors in any opt-out state. 11 U.S.C. § 522(b)(3)(A). It provides:

Property listed in this paragraph is--(A) subject to subsections (o) and (p), *any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located*

Id. (emphasis added). This statute clarifies that a state's opt-out authority, under § 522(b)(2), extends only to the exemptions available under § 522(d). 11 U.S.C. § 522(b)(2); *In re Antonie*, 432 B.R. 843, 850 (Bankr. D. Idaho 2010) (citation omitted), *aff'd*, 447 B.R. 610 (D. Idaho 2011) ("[T]he so called opt-out provision only gives states the authority to restrict the access of debtors in bankruptcy to the slate of exemptions found in § 522(d). It does not grant states the authority to restrict access to exemptions that would otherwise be available under § 522(b)(3).").

California's opt-out statute is consistent with this limitation on states' opt-out authority. It provides: "Pursuant to the authority of [§ 522(b)(2)] of Title 11 . . . , the exemptions set forth in subsection (d) of Section 522 of Title 11 . . . are not authorized in this state." Cal. Civ. Proc. Code § 703.130.

Given the limited scope of California's opt-out authority, bankruptcy debtors in California may rely on the entire body of federal exemption law except for § 522(d). 11 U.S.C. § 522(b)(3)(A). And a debtor need not search too far to find federal exemption law other than § 522(d). Section 522(b)(3) itself contains several such exemptions. 11 U.S.C. § 522(b)(3)(B)-(C).

Within § 522(b)(3), a retirement-fund exemption is available to California debtors. *Id.* § 522(b)(3)(C). This federal exemption for various retirement funds exempts traditional and Roth IRAs generally, which are created by 26 U.S.C. § 408 and § 408A respectively.

But California also provides its own exemption that covers retirement funds within its scope. It does so within the special bankruptcy exemptions under § 703.140(b) of the California Code of Civil Procedure. Cal. Civ. Proc. Code 703.140(b)(10)(E). The regular non-bankruptcy exemptions also contain an exemption for

retirement funds. See *id.* § 704.115. So an ordinary IRA (traditional or Roth IRA but not an inherited IRA) may qualify under both federal and state exemption provisions.

An Ordinary IRA Qualifies under California's Exemption

Section 703.140(b)(10)(E) provides an exemption for a debtor in bankruptcy in:

(10) The debtor's right to receive any of the following:

. . . .

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

Cal. Civ. Proc. Code § 703.140(b)(10)(E).

The Ninth Circuit has held that an IRA may be exempted under § 703.140(b)(10)(E) of the California Code of Civil Procedure. *In re McKown*, 203 F.3d 1188, 1190 (9th Cir. 2000).

An IRA may be exempted under this provision unless all three exclusionary conditions of subparagraph (E)(i) to (iii) are satisfied. "Though not identical to the listed kinds of plans (which would make the statutory inclusion of 'similar' plans superfluous), an IRA is similar enough to be treated as a 'similar plan or contract.' We thus hold, like our sister circuits, that an IRA qualifies for exemption under statutory language tracking 11 U.S.C. § 522(d)(10)(E), including the California language [under Cal. Civ. Proc. Code § 703.140(b)(10)(E)]." *In re McKown*, 203 F.3d at 1190.

As explained by the Ninth Circuit in *McKown*, the statutory language of § 703.140(b)(10)(E) tracks the statutory language of its federal analog found in 11 U.S.C. § 522(d)(10)(E), a federal exemption that debtors may use in states (other than California) that have not opted out of the federal exemption scheme. See *id.*; 11 U.S.C. § 522(b)(1)-(3), (d). Because the statutory language in these state and federal exemption provisions is materially identical, case law

construing § 522(d)(10)(E) of the Bankruptcy Code is relevant and persuasive in interpreting § 703.140(b)(10)(E).

In interpreting § 522(d)(10)(E), the Supreme Court similarly held that IRAs may be exempted. *Rousey v. Jacoway*, 544 U.S. 320, 326, 125 S. Ct. 1561, 1566 (2005) ("IRAs can be exempted from the bankruptcy estate pursuant to § 522(d)(10)(E).").

In applying the federal counterpart to § 703.140(b)(10)(E), the Supreme Court in *Rousey v. Jacoway* held that the statute contained three requirements for exempting an IRA.

(1) The right to receive payment must be from "a stock bonus, pension, profitsharing, annuity, or similar plan or contract"; (2) the right to receive payment must be "on account of illness, disability, death, age, or length of service"; and (3) even then, the right to receive payment may be exempted only "to the extent" that it is "reasonably necessary [to] support" the accountholder or his dependents.

Id. at 325-26 (citing 11 U.S.C. § 522(d)(10)(E)). The Supreme Court applied these requirements in reaching the conclusion that the IRAs qualified for the exemption. *See id.* at 326-34.

The IRAs in *Rousey* were being claimed exempt by debtors for whom the accounts were initially established. Stated differently, the debtors were the IRA accountholders who created the IRAs for their own retirement. *See id.* at 322, 324.

Applying the first requirement, the *Rousey* Court explained that the phrase "on account of" means "because of," so this phrase requires a causal connection between the term that the phrase "on account of" modifies and the factor specified in the statute. *Id.* at 326. The court reasoned that "on account of" in § 522(d)(10)(E) means "that the right to receive payment be 'because of' illness, disability, death, age, or length of service." *Id.* at 326-27.

The *Rousey* court concluded that "[t]he statutes governing IRAs persuade us that the [debtors'] right to payment from [their] IRAs is causally connected to their age. *Id.* at 327. It relied on the laws governing IRAs that mandate a "10-percent tax penalty applicable to withdrawals from IRAs before the accountholder turns 59 ½." *Id.* The Court noted that this penalty restriction was removed when the accountholder turns 59 ½. As a result, the Court found that an IRA was a right to receive payment on account of age. *Id.* at 328-29.

As to the second requirement, the Court held that an IRA is a "similar plan or contract" as the ones enumerated in § 522(d)(10)(E) of the Title 11. It reasoned that "it makes little sense to exclude from the exemption plans that fail to qualify under § 408, unless all plans that do qualify under § 408, including IRAs, are generally within the exemption. If IRAs were not within 11 U.S.C. § 522(d)(10)(E), Congress would not have referred to them in its exception [to § 522(d)(10)(E)]." *Id.* at 334 (noting that §

522(d)(10)(E)(iii) contains an exception to general IRA exemption provision that specifies that the excepted plan or contract cannot qualify under the statute governing IRAs, 26 U.S.C. § 408).

An Inherited IRA Qualifies under California's Exemption

Several years after *Rousey v. Jacoway* was decided, the Supreme Court considered whether an inherited IRA account qualifies for an entirely different federal bankruptcy exemption, 11 U.S.C. § 522(b)(3)(C). *Clark v. Rameker*, 134 S. Ct. 2242, 2244 (2014). The *Rameker* Court held that an inherited IRA does not qualify for the § 522(b)(3)(C) exemption. The *Rameker* decision, however, is not relevant in applying Cal. Civ. Proc. Code § 703.140(b)(10)(E). This is because the language of 11 U.S.C. § 522(b)(3)(C) and the language of § 703.140(b)(10)(E) differ significantly. But the *Rameker* Court's detailed analysis of the features of an inherited IRA provides guidance for ascertaining whether such an account qualifies under the terms of Cal. Civ. Proc. Code § 703.140(b)(10)(E).

An Inherited IRA Is a Similar Plan or Contract

The Ninth Circuit held that ordinary IRAs are similar enough to be treated as a "similar plan or contract." "Though not identical to the listed kinds of plans (which would make the statutory inclusion of 'similar' plans superfluous), an IRA is similar enough to be treated as a 'similar plan or contract.' We thus hold, like our sister circuits, that an IRA qualifies for exemption under statutory language tracking 11 U.S.C. § 522(d)(10)(E), including the California language [under Cal. Civ. Proc. Code § 703.140(b)(10)(E)]." *In re McKown*, 203 F.3d 1188, 1190 (9th Cir. 2000).

The Supreme Court in *Rousey* also held that an ordinary IRA qualifies under the same statutory language found in the federal counterpart to § 703.140(b)(10)(E) of the California Code of Civil Procedure. *Rousey v. Jacoway*, 544 U.S. 320, 329-34 (2005). It reasoned that "it makes little sense to exclude from the exemption plans that fail to qualify under § 408, unless all plans that do qualify under § 408, including IRAs, are generally within the exemption. If IRAs were not within 11 U.S.C. § 522(d)(10)(E), Congress would not have referred to them in its exception [to § 522(d)(10)(E)]." *Id.* at 334 (noting that § 522(d)(10)(E)(iii) contains an exception to general IRA exemption provision that specifies that the excepted plan or contract cannot qualify under the statute governing IRAs, 26 U.S.C. § 408).

Under this reasoning, the court concludes that an inherited IRA is also a similar plan or contract. An inherited IRA is defined in 26 U.S.C.A. § 408(d)(3)(C) ("An individual retirement account or individual retirement annuity shall be treated as inherited if . . . the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual."). If inherited IRAs were not within the scope of § 703.140(b)(10)(E), then the California legislature would not have referred to them in the exception by referencing the statute in which they are defined, 26 U.S.C. § 408(d)(3)(C).

The court recognizes that significant differences exist between inherited IRAs and ordinary IRAs. But the court is constrained by the statutory language of § 703.140(b)(10) from reaching a different result.

An Inherited IRA Cannot Qualify as a Right to Receive Payment on Account of Age

The Court in *Clark v. Rameker* observed that “[i]nherited IRAs do not operate like ordinary IRAs. Unlike with a traditional or Roth IRA, an individual may withdraw funds from an inherited IRA at any time, without paying a tax penalty.” *Rameker*, 134 S. Ct. at 2245. It explained this characteristic of an inherited IRA in more detail as follows:

[T]he holder of an inherited IRA may withdraw the entire balance of the account at any time—and for any purpose—without penalty. Whereas a withdrawal from a traditional or Roth IRA prior to the age of 59 ½ triggers a 10 percent tax penalty subject to narrow exceptions—a rule that encourages individuals to leave such funds untouched until retirement age—there is no similar limit on the holder of an inherited IRA. Funds held in inherited IRAs accordingly constitute “a pot of money that can be freely used for current consumption,” not funds objectively set aside for one’s retirement.

Id. at 2247 (citations omitted).

In short, inherited IRAs differ dramatically from ordinary IRAs. The holder of an inherited IRA may withdraw its entire balance without penalty for any purpose without regard to the holder’s age.

This feature of an inherited IRA, moreover, is critical in this analysis. Under § 703.140(b)(10)(E), an IRA only qualifies for the exemption if it is a right to receive payment on account of illness, disability, death, age, or length of service. See *Rousey v. Jacoway*, 544 U.S. 320, 325–26 (2005) (construing federal exemption provision with materially identical language to Cal. Civ. Proc. Code § 703.140(b)(10)(E)).

But in interpreting the federal analog to § 703.140(b)(10)(E), the *Rousey* Court relied on the tax penalty for early withdrawal before age 59 ½ to infer that an IRA qualified as a right to receive payment on account of age. So it follows that without the tax penalty for withdrawing funds before reaching a designated retirement age, an inherited IRA cannot satisfy the requirement of being a right to receive payment on account of age.

An Inherited IRA Qualifies as a Right to Receive Payment on Account of Death

The Supreme Court in *Clark v. Rameker* described the legal features of an inherited IRA. It stated:

An inherited IRA is a traditional or Roth IRA that has been *inherited after its owner's death*. See [26 U.S.C.] §§ 408(d)(3)(C)(ii), 408A(a). If the heir is the owner's spouse, as is often the case, the spouse has a choice: He or she may "roll over" the IRA funds into his or her own IRA, or he or she may keep the IRA as an inherited IRA (subject to the rules discussed below). See Internal Revenue Service, Publication 590: Individual Retirement Arrangements (IRAs), p. 18 (Jan. 5, 2014). When anyone other than the owner's spouse inherits the IRA, he or she may not roll over the funds; the only option is to hold the IRA as an inherited account.

134 S. Ct. 2242, 2245 (2014) (emphasis added). The specific statutory provision cited by the Supreme Court in defining an inherited IRA provides in pertinent part:

An individual retirement account or individual retirement annuity shall be treated as inherited if . . . the individual for whose benefit the account or annuity is maintained acquired such account *by reason of the death of another individual*.

26 U.S.C.A. § 408(d)(3)(C) (emphasis added). The plain text of this provision establishes that an inherited IRA is a right acquired by the inherited IRA beneficiary "by reason of" the death of another individual, the original IRA account holder.

The applicable language in § 703.140(b)(10)(E) of the California Code of Civil Procedure requires that the right to receive payment under the similar plan or contract be "on account of illness, disability, death, age, or length of service." The Supreme Court in *Rousey* explained that the phrase "on account of" means "because of" and that this phrase requires a causal connection between the term that the phrase "on account of" modifies and the factor specified in the statute. *Rousey*, 544 U.S. at 326.

Because an inherited IRA is statutorily defined as a right to payment acquired "by reason of the death of another individual," a sufficient causal connection exists between the right to payment and the factor of "death" listed in § 703.140(b)(10)(E). So an inherited IRA qualifies as a right to receive payment on account of death.

In deciding whether an inherited pension qualified for the exemption under § 703.140(b)(10)(E), another bankruptcy court reasoned that the debtor's right to receive payment under the inherited pension was "on account of the death of" the debtor's relative as required by the terms of the exemption provision. *In re Williams*, 556 B.R. 456, 462 (Bankr. C.D. Cal. 2016). The court aptly reasoned as follows:

The statute read narrowly, does not provide . . . that the payment must be made on account of one's own illness, disability, age, or service. In fact, giving significance to every word in the statute, the

legislature's inclusion of 'death' as one of the grounds for exemption supports Debtor's position that an inherited pension is exemptible under Section 703.140(b)(10)(E) because the legislature contemplated survivorship rights to a decedent's stock bonus, pension, profit sharing, or annuity. Trustee's insistence that the statute should be construed to mean "own illness, disability, age or service" would necessarily lead to the absurd implication that the statute includes 'own death' as a basis for the exemption. Here, the payment is on account of the death of Debtor's father

Id. (citation omitted).

The court agrees with the reasoning in *Williams*. If the legislature had intended to restrict the factors listed to the debtor's own illness, disability, death, age, or length of service, it would have added express language stating so. And as the court in *Williams* argued, it would be an absurd interpretation to read the statute as allowing an exemption in a right to receive payment on account of the debtor's own death.

Thus, the court concludes that an inherited IRA meets the second requirement of § 703.140(b)(10)(E): it is a right to receive payment on account of death. Another bankruptcy court in this state has disagreed. *Diamond v. Trawick*, 497 B.R. 572, 589 (Bankr. C.D. Cal. 2013) held that an inherited IRA was not a right to payment on account of age. The *Trawick* court then concluded that it also was not a right to payment based on any other of the statutory factors (illness, disability, death, or length of service). The *Trawick* court did not support this conclusion with any analysis or authority. See *id.* And it did not consider whether there was a causal connection between death and the right to receive payment under the inherited IRA. Its citation to other cases was to support its broader holding that an inherited IRA does not qualify for the exemption because it is not on account of a debtor's age. Such cases are not relevant to this court's analysis because they involve state exemption statutes materially different from § 703.140(b)(10)(E).

An Inherited IRA Must Be Reasonably Necessary For Support To Qualify for the Exemption

In applying the federal analog to § 703.140(b)(10)(E), the Supreme Court in *Rousey v. Jacoway* held that the statute contained three requirements for exempting an IRA.

(1) The right to receive payment must be from "a stock bonus, pension, profitsharing, annuity, or similar plan or contract"; (2) the right to receive payment must be "on account of illness, disability, death, age, or length of service"; and (3) even then, the right to receive payment may be exempted only "to the extent" that it is "reasonably necessary [to] support" the accountholder or his dependents.

Id. at 325-26 (citing 11 U.S.C. § 522(d)(10)(E)). Bankruptcy courts have applied this same three-factor test to exemption litigation under § 703.140(b)(10)(E) of the California Code of Civil Procedure. See *In re Williams*, 544 B.R. 456, 461 (Bankr. C.D. Cal. 2016).

The third requirement, therefore, applies to any inherited IRA claimed exempt under § 703.140(B)(10)(E). It will only be exempt to the extent reasonably necessary for the support of the debtor or the debtor's dependents.

DISCUSSION

The trustee's only ground for objection was the legal argument that an inherited IRA may not be exempted under Cal. Civ. Proc. Code § 703.140(b)(10)(E). The court rejects this argument given that an inherited IRA can qualify for this exemption because it is a right to receive payment on account of the original account owner's death. Thus, an inherited IRA may be exempted under this exemption provision provided that the funds are reasonably necessary for the support of the debtor or the debtor's dependents.

The debtor's evidence and her Schedules I and J reveal that the total value of the inherited IRA is reasonably necessary for her support. The debtor is 70 years of age. She has approximately \$1,352 per month from Social Security. She receives about \$800 per month from the inherited IRA. Schedule I, ECF No. 1; Crain Decl. ¶ 19. Her total income is about \$2,152 per month. She has no other sources of income. Crain Decl. ¶ 11.

She has, moreover, only about \$4,000 in savings. Her vehicle is 16 years old, and her residence's value is less than the secured debt against the residence. Crain Decl. ¶ 13; Schedule D, ECF No. 1.

The debtor affirms that the income from the inherited IRA has been used by her on a monthly basis to provide for the basic necessities of life, and that it is necessary for her support. Her Schedule J shows that her expenses are very limited. She has no scheduled expense for out-of-pocket medical and dental expenses. Her electricity expense per month is only \$125. And she has no expense allotted for entertainment and recreation.

After subtracting her minimal expenses from her low income, the debtor has only \$67 of disposable income per month. For these reasons, the court finds that the debtor's inherited IRA is fully exempt because it is reasonably necessary for her support at age 70. The trustee's objection will be overruled.

CIVIL MINUTE ORDER

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

The trustee's objection to the debtor's claim of exemption in an inherited IRA has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled.

25. [18-11952](#)-A-7 **IN RE: ROQUE RAMOS**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-19-2018 [\[13\]](#)

MARK ZIMMERMAN

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case
dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.
11 U.S.C. § 343. A continuing failure to attend this meeting may be
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.
2014) ("Some courts have ruled that the failure to attend the § 341
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting
of creditors required by 11 U.S.C. § 341. Because the debtor's
failure to attend this meeting has occurred once, the court will not
dismiss the case on condition that the debtor attend the next
creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an
extension of deadlines. The court extends the following deadlines
to 60 days after the next continued date of the creditors' meeting:
(1) the trustee and all creditors' deadline to object to discharge
under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and
all creditors' deadline to bring a motion to dismiss under § 707(b)
or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P.
1017(e). These deadlines are no longer set at 60 days after the
first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for August 13, 2018, 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 and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).