

**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: TUESDAY
DATE: SEPTEMBER 18, 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. [16-14604](#)-A-7 **IN RE: RUBEN/LUZ GOMEZ**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,
ACCOUNTANT(S)
8-17-2018 [[62](#)]

RATZLAFF, TAMBERI & WONG/MV
THOMAS GILLIS

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, Ratzlaff, Tamberi & Wong, accountants 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 \$1,086.50 and reimbursement of expenses in the amount of \$18.33.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Ratzlaff, Tamberi & Wong'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 \$1,086.50 and reimbursement of expenses in the amount of \$18.33.

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.

2. [18-11508](#)-A-7 **IN RE: RICKY/SUZAN MOSHER**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-10-2018 [[20](#)]

WELLS FARGO BANK, N.A./MV
PATRICK KAVANAGH
JAMIE HANAWALT/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 5902 Cherry Blossom Court, Bakersfield, California 93313

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

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for

liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 5902 Cherry Blossom Court, Bakersfield, California 93313. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

3. [16-13315](#)-A-7 **IN RE: KASSANDRA HOELSCHER**
[JRD-1](#)

CONTINUED MOTION TO EXPAND EMPLOYMENT OF TRUSTEES SPECIAL
COUNSEL TO ALLOW REPRESENTATION OF DEBTOR AGAINST THIRD
PARTIES IN ACTION PENDING IN SAN MATEO COUNTY SUPERIOR COURT
7-25-2018 [[42](#)]

JAMES DONAHUE/MV
PETER BUNTING
JAMES DONAHUE/ATTY. FOR MV.

Tentative Ruling

Motion: Expand Employment of Trustee's Special Counsel

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

Disposition: Denied

Order: Civil minute order

James E. Salven ("Salven") moves to expand the role of his special counsel, Donahue Davis LLP and Dreyer Babich Buccola Wood Campora, LLP, to represent debtor Kassandra Hoelscher ("Hoelscher") in an action now pending in state court. Safeco Insurance Company, the defendant in the state court action opposes the motion.

FACTS

Hoelscher was insured by Safeco Insurance. While driving her vehicle she lost control of it, striking and hitting an El Dorado High School student, Carly Bray, aka Carly Rose, who was waiting for a bus. Bray suffered traumatic amputation of a portion of her leg and brought suit against Hoelscher. Hoelscher's policy limit for the accident was \$100,000. Hoelscher was defended in the original state court action by James D. Biernat ("Biernat"). Ultimately, judgment was entered against Hoelscher for \$4.9 million.

Hoelscher contends that Safeco Insurance breached its duties to her by failing to settle the case within policy limits ("first party bad faith") and that failed to exercise reasonable care in his defense of her.

She filed bankruptcy and Salven was appointed the chapter 7 trustee. Among her assets were claims of bad faith and breach of contract against Safeco and malpractice against Biernat.

James E. Salven hired special counsel Donahue Davis LLP and Dreyer Babich Buccola Wood Campora, LLP to prosecute an action for bad faith, breach of contract and legal malpractice against Safeco Insurance Company and James D. Biernat. *Salven v. Safeco Insurance*, No. 17CIV00329 (San Mateo Superior Court 2017). Insofar this court is aware Hoelscher is not a party to the San Mateo Superior Court action.

This motion followed. Salven and special counsel will (1) strengthen its case against Safeco Insurance by "allowing him greater control;" (2) "will greatly simplify the litigation

process;" and (3) allow the replacement of Russell Cook, a sole practitioner who he feels "is not competent" to represent the debtor in this matter.

DISCUSSION

Salven fails to specify the particular provision of the bankruptcy code that authorizes the trustee to hire counsel on behalf of the debtor.

As a result, this court assumes Salven does so under § 327. In the pertinent part, that section provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, **to represent or assist the trustee** in carrying out the trustee's duties under this title. . . .

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327 (emphasis added).

As one source explained:

The determinative question in approving the employment of a professional person is whether it is reasonably necessary during the administration of the estate to have professional persons, such as attorneys or accountants, employed. An attorney for a trustee should not be employed unless the attorney's special professional skills are necessary for the protection and benefit of the estate or will further the aims of the case. The court makes this determination, and a refusal to approve

the employment should be overturned only for an abuse of discretion.

3 Collier on Bankruptcy P 327.02 (16th 2018).

The motion will be denied for two reasons. First, this court does not believe that the recipient of professional services employed under § 327 may be anyone other than the trustee or the debtor in possession.

Second, even if the code authorized employment on behalf of a third party, viz. the debtor, the movant has not demonstrated how employing counsel for the debtor is reasonably necessary. The cause of action arose pre-petition and is property of the estate. 11 U.S.C. s 541(a). And Salven is the real party in interest. 11 U.S.C. § 323. And the San Mateo Superior Action shows only Salven as a party. So any benefit to the estate is, at best, indirect. The movant has not shown a sufficient benefit to the estate to justify such an order.

CIVIL MINUTE ORDER

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

James E. Salven's motion to expand employment of special counsel Donahue Davis LLP and Dreyer Babich Buccola Wood Campora, LLP has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

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

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
8-10-2018 [[95](#)]

HAGOP BEDOYAN

Final Ruling

Application: Allowance of First and 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, Trudi G. Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$7,263.00 and reimbursement of expenses in the amount of \$291.48.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Trudi G. Manfredo'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 \$7,263.00 and reimbursement of expenses in the amount of \$291.48.

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**
[WFH-35](#)

MOTION TO SELL
8-28-2018 [[791](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/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: 517 West Main Street, Livingston, California

Buyer: RAN Health Services

Sale Price: \$430,000

Sale Type: Private sale subject to overbid opportunity

Compensation: Gonella Realty

Amount: 6% (split with cooperating broker)

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).

SALE

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.

BROKER COMPENSATION

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

The court finds 6% of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

6. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-36](#)

MOTION TO SELL
8-28-2018 [[798](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/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: 1120 West I Street, Los Banos, California

Buyer: RAN Health Services

Sale Price: \$575,000

Sale Type: Private sale subject to overbid opportunity

Compensation: Gonella Realty

Amount: 6% (split with cooperating broker)

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).

SALE

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.

BROKER COMPENSATION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is

determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

The court finds 6% of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

7. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-37](#)

MOTION TO SELL
8-28-2018 [[805](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/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: 554 5ht Street, Gustine, California

Buyer: RAN Health Services

Sale Price: \$275,000

Sale Type: Private sale subject to overbid opportunity

Compensation: Gonella Realty

Amount: 6% (split with cooperating broker)

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).

SALE

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.

BROKER COMPENSATION

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

The court finds 6% of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

8. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-38](#)

MOTION TO SELL
8-28-2018 [[812](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/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: 5158 Campbell Lane, Mariposa, California

Buyer: Victoria DeRuyter and Kurt DeRuyter

Sale Price: \$275,000

Sale Type: Private sale subject to overbid opportunity

Compensation: Gonella Realty

Amount: 6% (split with cooperating broker)

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).

SALE

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.

BROKER COMPENSATION

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

The court finds 6% of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

9. [18-12333](#)-A-7 **IN RE: MASOUD MIRHADI**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2018 [[27](#)]

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
PETER BUNTING
JAMIE HANAWALT/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: 8230 North Marion Avenue, Clovis, California 93611

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

AS TO THE ESTATE

Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). "[T]he court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b).

The motion will be denied as moot. The court has ordered the trustee to abandon the real property described above. Order, filed September 6, 2018, ECF No. 38. The property no longer part of the estate, the motion is moot.

AS TO THE DEBTOR

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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the debtor in the property described in the motion, commonly known as 8230 North Marion Avenue, Clovis, California 93611. Relief from the automatic stay as to the interest of the trustee in such property is denied as moot given the abandonment of the property in this case. 11 U.S.C. § 362(c)(1), 554(b).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

10. [18-12333](#)-A-7 **IN RE: MASOUD MIRHADI**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-8-2018 [\[16\]](#)

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
PETER BUNTING
NANCY LEE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: 8230 North Marion Avenue, Clovis, California 93619

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

AS TO THE ESTATE

Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). "[T]he court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b).

The motion will be denied as moot. The court has ordered the trustee to abandon the real property described above. Order, filed September 6, 2018, ECF No. 38. The property no longer part of the estate, the motion is moot.

AS TO THE DEBTOR

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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the debtor in the property described in the motion, commonly known as 8230 North Marion Avenue, Clovis, California 93619. Relief from the automatic stay as to the interest of the trustee in such property is denied as moot given the abandonment of the property in this case. 11 U.S.C. § 362(c)(1), 554(b).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

11. [15-11535](#)-A-7 **IN RE: JOHN HALOPOFF**

STATUS CONFERENCE RE: CHAPTER 7 VOLUNTARY PETITION
4-21-2015 [[1](#)]

JUSTIN HARRIS

No Ruling

12. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[SFR-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-21-2018 [\[57\]](#)

TRUDI MANFREDO/MV
JUSTIN HARRIS
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.

Final 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).

CONTENTIONS

Here the trustee objects to the debtor's claim of a \$100,000 homestead. The debtor's residence was sold within the six months prior to the petition but only the debtor's non-filing spouse resided in the home. Trustee contends that the debtor is only entitled to a \$75,000 exemption.

DISCUSSION

Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. *See In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

California Homestead Exemption

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). This exemption is conceptually distinct from the declared homestead exemption provided in Article 5 of Part 2, Title 9, Division 2, Chapter 4 of the California Code of Civil Procedure. See §§ 704.910-704.995; *Kelley*, 300 B.R. at 18-19.

Principal-Dwelling Restriction

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 forced sale or bankruptcy petition date. *Id.* at 21 (stating that the debtor did not reside at a particular property at the time of the petition's filing).

Dollar Limitations

Section 704.730 of the C.C.P. provides the limits on the amount of the homestead exemption. The homestead exemption is limited to \$75,000, \$100,000, or \$175,000, depending on whether the debtor and the debtor's spouse or family satisfy certain conditions. Section 704.730(a) provides as follows:

The amount of the homestead exemption is one of the following:

- (1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who

resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. . . .

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

Cal. Civ. Proc. Code § 704.730(a).

Moreover, proceeds of a homestead are exempt for six-month. Cal. Code of Civ. Proc. 704.710(c)

Here, the trustee contends that a family-law court forced sale occurred pre-petition but only the debtor's non-filing spouse resided in the home. From that it follows that only \$75,000 is exempt. The debtor has not disputed that fact. 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.

Trudi G. Manfredo's objection to claim of exemption (homestead) 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; and

IT IS FURTHER ORDERED that debtor shall be entitled to a homestead exemption of not more than \$75,000.

13. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[TMT-2](#)

MOTION TO SELL
8-21-2018 [\[62\]](#)

TRUDI MANFREDO/MV
JUSTIN HARRIS
SHARLENE ROBERTS-CAUDLE/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: 8 Vehicles and Trailers (described in the motion)

Buyer: Tony Xavier

Sale Price: \$58,925.69 (subject to lien against 2015 Dodge Ram of \$12,925.69)

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.

14. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[TMT-3](#)

MOTION TO SELL
8-21-2018 [[68](#)]

TRUDI MANFREDO/MV
JUSTIN HARRIS
SHARLENE ROBERTS-CAUDLE/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: 2015 Cadillac SRX

Buyer: Debtor

Sale Price: \$17,000 (subject to lien \$8,028.00 and exemption credit \$3,050.00)

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.

15. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[TMT-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TONY XAVIER
8-21-2018 [[74](#)]

TRUDI MANFREDO/MV
JUSTIN HARRIS
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [18-10944](#)-A-7 **IN RE: SARINA CASARES**
[JES-1](#)

MOTION TO EMPLOY JEFFREY S. BAIRD AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
8-15-2018 [[18](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER

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: 2003 Honda Accord

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) SALE

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 328(a) EMPLOYMENT AND COMPENSATION

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.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

17. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-4](#)

MOTION TO AVOID LIEN OF CHRIS FRANKIAN PROPERTY MANAGEMENT
7-30-2018 [\[55\]](#)

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). A certificate of service has not been filed. The court cannot ascertain whether the motion has been served on the responding party in accordance with Rule 7004(b)(3).

The court will deny the motion without prejudice on grounds of lack of service of process. Local Bankruptcy Rule 9014-1(e)(2) requires the filing of a certificate of service concurrently with or not later than 3 days after the filing of the pleadings or documents served. A certificate of service has not been filed in this case in violation of Local Bankruptcy Rule 9014-1(e)(2). The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The present motion to avoid lien has been presented to the court. Having considered the motion together with papers filed in support and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

18. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-5](#)

MOTION TO AVOID LIEN OF CHRYSLER FINANCIAL SERVICES AMERICAS
LLC
7-30-2018 [[51](#)]

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). A certificate of service has not been filed. The court cannot ascertain whether the motion has been served on the responding party in accordance with Rule 7004(b)(3).

The court will deny the motion without prejudice on grounds of lack of service of process. Local Bankruptcy Rule 9014-1(e)(2) requires the filing of a certificate of service concurrently with or not later than 3 days after the filing of the pleadings or documents served. A certificate of service has not been filed in this case in violation of Local Bankruptcy Rule 9014-1(e)(2). The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The present motion to avoid lien has been presented to the court. Having considered the motion together with papers filed in support and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

19. [18-13059](#)-A-7 **IN RE: ARMANDO COSIO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-14-2018 [\[9\]](#)

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC/MV
JEFFREY ROWE
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2013 Mercedes Benz S Class

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.

Mercedes-Benz Financial Services USA LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Mercedes Benz S Class, 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.

20. [18-10061](#)-A-7 **IN RE: MAYRA ALVAREZ**
[JES-1](#)

MOTION FOR TURNOVER OF PROPERTY
8-16-2018 [[30](#)]

JAMES SALVEN/MV
RICHARD STURDEVANT

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by movant

Trustee James E. Salven moves to compel turnover of a 2007 BMW M5 and 2003 Chevrolet Suburban (each of which was listed on Schedule A/B filed January 21, 2018). The debtor opposes arguing that she has not been in possession "of this vehicle for several years" and the 2007 BMW M5 is partially exempt and wants the trustee to negotiate a payment plan in her favor.

DISCUSSION

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

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate. He need only prove: " To prevail in a turnover action under § 542, the party seeking turnover must establish that: [1] the property in which the estate has an interest is or was in the possession, custody or control of an entity during the pendency of the case; [2] the property may be used by the trustee in accordance with § 363 or exempted by the debtor under § 522; and [3] the property has more than inconsequential value or benefit to the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 21:1704, at 21-191 (rev. 2015).

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. Debtor admits ownership of the 2003 Chevrolet Suburban on Schedule A and the court finds not credible claims that she no longer has it. As to the 2007 BMW, the trustee is not under any obligation to negotiate a payment plan for the debtor. The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

21. [17-12866](#)-A-7 **IN RE: KHALID CHAOUTI**
[JES-3](#)

MOTION TO COMPEL AND/OR MOTION FOR DATA TO PREPARE RETURNS
8-15-2018 [\[180\]](#)

JAMES SALVEN/MV
JOEL WINTER
ROBERT HAWKINS/ATTY. FOR MV.

Final Ruling

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

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

Disposition: Granted

Order: Prepared by movant

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to

be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

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

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

22. [17-11968](#)-A-7 **IN RE: GLOBAL MULTISOLUTION, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
8-7-2018 [[65](#)]

JAMES SALVEN/MV
D. GARDNER

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,825.00 and reimbursement of expenses in the amount of \$356.24.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. §

330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,825.00 and reimbursement of expenses in the amount of \$356.24.

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.

23. [17-14468](#)-A-7 **IN RE: BRUCE GREER**
[RH-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
8-14-2018 [[101](#)]

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

Final Ruling

Motion: Allow Administrative Expense [Insurance Expense]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

A chapter 7 trustee may pay the costs of preserving the estate. 11 U.S.C. § 503(b)(1)(A) (expense of preserving the estate), *and* the trustee must insure that 'notice and a hearing' have been provided before doing so, *see id.* § 503(b)(1). The hearing requirement insures that interested parties . . . have an opportunity to contest the necessity and amount of expense paid before the estate's funds are diminished, perhaps irretrievably." It is error to approve a trustee's final report without first holding a hearing, *see* 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of an expense before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the expense in this case. No objection has been made. Accordingly, the insurance expense of \$5,634.51 specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that an insurance expense in the amount of \$5,634.51 is allowed on a retroactive basis.

24. [17-12272](#)-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
[US-2](#)

MOTION TO COMPEL ABANDONMENT
8-20-2018 [\[53\]](#)

UNITED STATES OF AMERICA/MV
DAVID JENKINS
JONATHAN HAUCK/ATTY. FOR MV.
CONTINUED TO OCT. 11, 2018

Final Ruling

Pursuant to Order, ECF #57, the hearing is continued to October 11, 2018, at 9:00 a.m.

25. [17-14373](#)-A-7 **IN RE: MARIO/SUSAN CRUZ**
[TMT-2](#)

MOTION TO SELL
8-6-2018 [\[39\]](#)

TRUDI MANFREDO/MV
JOEL WINTER
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: 2005 Chevrolet Silverado and 1967 Buick

Buyer: Debtors

Sale Price: 10,000.00 (exemption credit \$3,050.00 + cash \$6,950.00)

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.

26. [17-14774](#)-A-7 **IN RE: BILLY MCCARTY**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
8-21-2018 [[41](#)]

TRACY DAVIS/MV
BENNY BARCO
ROBIN TUBESING/ATTY. FOR MV.

Final Ruling

Motion: Extend Trustee's Deadline for Objecting to Discharge under § 727(a)

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).

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 trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through September 25, 2018.

27. [15-11283](#)-A-7 **IN RE: GLORIA ESTILLORE**
[TMT-5](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, CHAPTER 7
TRUSTEE(S)
8-13-2018 [[319](#)]

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

Final Ruling

Application: Allowance of First and 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, Trudi G. Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,740.00 and reimbursement of expenses in the amount of \$251.88.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Trudi G. Manfredo'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 \$2,740.00 and reimbursement of expenses in the amount of \$251.88.

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.

28. [18-12091](#)-A-7 **IN RE: HONG MOUA**
[FW-2](#)

MOTION TO SELL AND/OR MOTION TO PAY
8-24-2018 [\[31\]](#)

TRUDI MANFREDO/MV
PETER FEAR/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: 5392 N. Zediker Avenue, Sanger, California

Buyer: Pat DeSantis

Sale Price: \$380,000

Sale Type: Private sale subject to overbid opportunity

Compensation: Pearson Realty

Amount: 6% (split with cooperating broker)

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).

SALE

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.

BROKER COMPENSATION

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

The court finds 6% of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

29. [18-10592](#)-A-7 **IN RE: MELLO HAY, INC.**
[JES-3](#)

MOTION TO PAY
8-21-2018 [[28](#)]

JAMES SALVEN/MV
JEFFREY ROWE

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), *and* the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to

approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion for allowance of administrative expense 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 allows California state taxes of \$823.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

30. [18-13194](#)-A-7 **IN RE: SUSIE/JULIO SILVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-30-2018 [\[30\]](#)

Final Ruling

The fee paid in full, the order to show cause is discharged.

31. [18-12396](#)-A-7 **IN RE: MICHAEL MORRIS**
[RLM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-20-2018 [\[13\]](#)

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY/MV
JEFFREY ROWE
RICHARD MAHFOUZ/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation

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

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Subject: State court litigation against debtor for the limited purpose of proceeding against debtor's automobile insurance policy in relation to an automobile accident

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)(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).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(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 subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue through judgment the state-court litigation identified in the motion. The moving party may also file post-judgment motions, and appeals. 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 judgment, except: (1) from applicable insurance proceeds; or (2) by filing a 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.

State Farm Mutual Automobile Insurance Company'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.