

**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: SEPTEMBER 30, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-12301](#)-A-7 JAMEY PECK
ASW-1
QUICKEN LOANS INC./MV
DANIEL FUJIMOTO/Atty. for mv.
DISCHARGED

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-17-15 [[30](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 14959 Oscar Avenue, Visalia, CA

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

AS TO DEBTOR

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

AS TO ESTATE

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. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, 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).

The equity cushion is only 4.8% after dividing the movant's first lien by the property's value. Further, the debtor has missed 2 post-petition payments due on the debt secured by the moving party's lien. This slim equity cushion does not adequately protect the movant's interest when payments of interest and taxes are not being made. 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.

2. [15-13303](#)-A-7 ESTHER MENERA MOTION FOR RELIEF FROM
ABG-1 AUTOMATIC STAY
KINECTA FEDERAL CREDIT 8-28-15 [[13](#)]
UNION/MV
THOMAS GILLIS/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2015 Chevrolet Silverado

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 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.

3. [15-12805](#)-A-7 SIEGFRED CRUZ CRUZ
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-28-15 [[15](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Prepared by the trustee

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).

EXEMPTION FOR TOOLS OF THE TRADE

The debtor claims 2 guns under Cal. Civ. Proc. Code § 704.060 as exempt for \$350. The debtor also claims a 1987 Bayliner Boat exempt under this same provision. The debtor has been employed as a maintenance carpenter by the Fresno County Library for ten years. Further, debtor is not self-employed. By inference, these assets have no relationship to maintenance carpentry and therefore cannot be claimed as tools used by the debtor in the exercise of his trade, business or profession.

EXEMPTION FOR MATERIALS FOR PRINCIPAL RESIDENCE

The debtor also claims exempt a "Ferguson Tractor, Box Scraper" under Cal. Civ. Proc. Code § 704.030. He also claims exempt a "small air tool" under the same provision. The trustee objects to the debtor's claim of exemption in these items as not being "materials" as that word is used in § 704.030 and as not having been purchased for repair or improvement of the debtor's primary residence. The court will sustain the objection on the ground that under § 704.030(a), the materials were not purchased in good faith for use in the repair or improvement of the debtor's principal place of residence.

In addition, the court agrees with the trustee regarding the meaning of the term *materials* in this statute. A tractor and an air tool are not materials as that word is used in § 704.030. The term *materials*, especially given the statutory context of construction (repair or improvement) of a personal residence, plainly means the substances and components that become part of the principal residence that they are used to construct, repair or improve. See *Webster's Third New International Dictionary of the English Language* 1392 (Philip Babcock Gove et al. eds., 1986). Webster's dictionary defines *material* as "the basic matter (as metal, wood, plastic, fiber) from which the whole or the greater part of something physical (as a machine, tool, building, fabric) is made." *Id.* In this statutory context, the term refers to the basic wood, metal, or other components or matter from which the greater part or whole of the "repaired" or "improved"

portion of the principal residence is made. Tools and tractors and box scrapers do not count.

CONCLUSION

For the reasons stated in the objection, the court sustains the objection. From the well-pleaded facts, the debtor is not entitled to claim the assets described in the objection as exempt.

4. [15-12806](#)-A-7 PEDRO ZEPEDA MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 8-27-15 [[14](#)]
MARK DOMEYER/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1020 West King Avenue, Tulare, California

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 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.

5. [14-14518](#)-A-7 JESSICA CASTRO
FLG-2
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JESSICA LYNN
CASTRO
9-2-15 [[48](#)]

GABRIEL WADDELL/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles a dispute concerning the debtor's transfer of her one-half interest in real property located at 25793 El Vado Drive, Madera, CA. The transfer occurred on the day before the petition date, and the trustee contends that the transfer satisfies the requirements of a fraudulent transfer. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include (1) a payment of \$7000 by the debtor to the estate; and (2) trustee's release of her claims against the debtor. All unsecured claims will be paid in full, and the settlement takes into account an estimate of administrative claims. Mot. at p. 3. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court approves the parties' compromise, which settles a dispute about the debtor's transfer of her one-half interest in real property located at 25793 El Vado Drive, Madera, CA. The terms and conditions of the compromise include (1) a payment of \$7000 by the debtor to the estate; and (2) the trustee's release of her claims against the debtor.

6.	15-13136 -A-7	SAMUEL/CARLEY PENA	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	SANTANDER CONSUMER USA INC./MV		8-28-15 [13]
	MARIO LANGONE/Atty. for dbt.		
	AUSTIN NAGEL/Atty. for mv.		

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2006 Pontiac GTO

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 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.

7. [10-16342](#)-A-7 MANUEL/ENEDINA PEREZ CONTINUED MOTION FOR SANCTIONS
DAC-5 FOR VIOLATION OF THE DISCHARGE
MANUEL PEREZ/MV INJUNCTION
4-21-15 [[29](#)]

ERIN SAKATA/Atty. for dbt.
ORDER 7/10/15

No tentative ruling.

8. [09-15953](#)-A-7 JOSEPH/PATRICIA TKAC MOTION TO AVOID LIEN OF DANIEL
PBB-2 P. JELLADIAN
JOSEPH TKAC/MV 8-26-15 [[28](#)]
PETER BUNTING/Atty. for dbt.

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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

9. [09-15953](#)-A-7 JOSEPH/PATRICIA TKAC
PBB-3
JOSEPH TKAC/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF THOMAS
MACEDO
8-26-15 [34]

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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

10. [13-17453](#)-A-7 DANIEL/IVY ROCHA
TMT-5
TRUDI MANFREDO/MV

MOTION FOR ADMINISTRATIVE
EXPENSES AND/OR MOTION FOR
ADMINISTRATIVE EXPENSES
7-31-15 [[103](#)]

SCOTT MITCHELL/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

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 Cloobek*, 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, state and federal taxes in the amounts specified in the motion are 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 \$2086 (federal taxes) and \$274 (state taxes) as an administrative expense under 11 U.S.C. § 503(b)(1)(B). The court authorizes payment retroactively to the date of actual payment.

11. [10-11054](#)-A-7 RONALD/SUSAN SMITH MOTION FOR COMPENSATION BY THE
KDG-5 LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB AND
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
9-1-15 [[84](#)]

RESPONSIVE PLEADING

No tentative ruling.

12. [14-12558](#)-A-7 SHARON OLSON MOTION FOR COMPENSATION FOR
TMT-4 TRUDI G. MANFREDO, CHAPTER 7
TRUDI MANFREDO/MV TRUSTEE(S)
8-31-15 [[85](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$3250.00 and reimbursement of expenses in the amount of \$623.24.

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 to the trustee compensation in the amount of \$3250.00 and reimbursement of expenses in the amount of \$623.24.

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.

13. [15-12959](#)-A-7 HECTOR CHAIREZ MOTION TO COMPEL ABANDONMENT
MAZ-1 9-17-15 [[13](#)]
HECTOR CHAIREZ/MV
MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Hector Chairez Painting, a sole proprietorship

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

14. [09-62565](#)-A-7 BERNARDINO/THERESA SILVA MOTION TO COMPEL ABANDONMENT
SL-2 9-10-15 [[62](#)]
BERNARDINO SILVA/MV
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

Description: cause of action estimated at a value of \$1.5 million for personal injuries

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The cause of action described above is either burdensome to the estate or of inconsequential value to the estate. The debtor has claimed the cause of action exempt in its entirety under section 704.140(a) of the California Code of Civil Procedure. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the asset abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f) (1).

15. [14-14265](#)-A-7 JASON/NANCY REED MOTION FOR COMPENSATION FOR
RP-3 RANDELL PARKER, CHAPTER 7
RANDELL PARKER/MV TRUSTEE(S)
9-3-15 [[44](#)]
VINCENT GORSKI/Atty. for dbt.
RANDELL PARKER/Atty. for mv.

Tentative Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f) (2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v.*

Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$12,746.47 and reimbursement of expenses in the amount of \$476.80.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$12,746.47 and reimbursement of expenses in the amount of \$476.80.

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.

16. [12-13170](#)-A-7 AUGUSTINE PENA
THA-13

MOTION FOR COMPENSATION FOR
THOMAS H. ARMSTRONG, TRUSTEES
ATTORNEY(S)
9-1-15 [[649](#)]

FRANCISCO ALDANA/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The

court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Thomas H. Armstrong, 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 \$21,016.25 and reimbursement of expenses in the amount of \$1,707.61. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Thomas H. Armstrong'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 \$21,016.25 and reimbursement of expenses in the amount of \$1,707.61. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

17. [08-18473](#)-A-7 CYRUS CERRO
ASW-2
CYRUS CERRO/MV

ADRIAN WILLIAMS/Atty. for dbt.

PRETRIAL CONFERENCE RE: MOTION
FOR SANCTIONS FOR VIOLATION OF
THE AUTOMATIC STAY
4-28-15 [[30](#)]

No tentative ruling.

18. [15-12382](#)-A-7 PARAMJIT/SURINDERPAL
SAH-1 BARRING
PARAMJIT BARRING/MV

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, NATIONAL
ASSOCIATION
8-11-15 [[18](#)]

SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

19. [15-12382](#)-A-7 PARAMJIT/SURINDERPAL MOTION TO AVOID LIEN OF
SAH-2 BARRING AMERICAN EXPRESS BANK, FSB
PARAMJIT BARRING/MV 8-12-15 [[22](#)]
SUSAN HEMB/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

20. [15-12382](#)-A-7 PARAMJIT/SURINDERPAL MOTION TO AVOID LIEN OF VALLEY
SAH-3 BARRING FIRST CREDIT UNION
PARAMJIT BARRING/MV 8-12-15 [[26](#)]
SUSAN HEMB/Atty. for dbt.

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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

21. [15-12089](#)-A-7 FREDERICK/SARAH RICH CONTINUED MOTION TO DELAY
TCS-1 DISCHARGE
FREDERICK RICH/MV 7-28-15 [[15](#)]
TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

22. [15-10090](#)-A-7 GARY/MARY MCLAUGHLIN
TMT-1
TRUDI MANFREDO/MV
PAUL JAMES/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
8-27-15 [[19](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Personal property described below

Buyer: Debtors

Sale Price:

-2005 Jeep Liberty: \$5000 (\$2100 cash plus \$2900 exemption credit)

-1993 Chevrolet Pickup: \$500 cash

-.44 caliber Black Powder Kit, Ram & Rust Navy Arms, .50 caliber Black Powder Kit, .30 caliber Carbine: \$195 cash

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.

23. [15-12892](#)-A-7 DAVID DECK
RHT-1
ROBERT HAWKINS/MV
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
9-8-15 [[16](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2009 Toyota Prius

Buyer: Debtor

Sale Price: \$7250 (\$4350 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

24. [14-12498](#)-A-7 SEQUOIA PROSTHETICS AND
JES-2 ORTHOTICS, INC.
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CENTRAL VALLEY
COMMUNITY BANK
7-29-15 [[26](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received sufficient notice. Although it appears that some sort of transmission of documents occurred, no list of who received such documents was attached to the proof. The hearing on an approval of a compromise or settlement of a controversy must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a) (3).

25. [15-13543](#)-A-7 ANDREA LAHR
JDR-2
ANDREA LAHR/MV
JEFFREY ROWE/Atty. for dbt.
OST 9/23/15

MOTION TO COMPEL ABANDONMENT
9-21-15 [[13](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f) (3) and order shortening time; no written opposition required

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Lahr's Cleaning, a sole proprietorship

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f) (1).

26. [15-13436](#)-A-7 ROBERT HANCER
SL-1
ROBERT HANCER/MV
STEPHEN LABIAK/Atty. for dbt.

RESCHEDULED HEARING RE: MOTION
TO COMPEL ABANDONMENT
9-3-15 [[8](#)]

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f) (2) / continued by civil minute order to this date; no written opposition required

Disposition: Continued to October 21, 2015, at 9:00 a.m.

Order: Prepared by moving party pursuant to the instructions below

Business Description: 5th Avenue Jewelers

PROCEDURAL AND SUBSTANTIVE ISSUES

The attached list of fixtures and supplies used in the business does not comply with the court's guidelines for document preparation. The guidelines require typewritten, printed, computer generated text for all papers filed with the court. Revised Guidelines for the Prep. of Docs., Section I.C.

In addition, the handwritten list creates ambiguities by references to furniture that secures a debt. The chart in the declaration shows no liens, but the handwritten list implies the existence of liens as to some of the items on the list. These ambiguities should be resolved by the movant.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the Motion to Compel Abandonment is continued to October 21, 2015 at 9:00 a.m. Supplemental documents shall be filed no later than October 7, 2015.