

**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: Thursday
DATE: OCTOBER 13, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

ORAL ARGUMENT

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-13412](#)-A-7 BASILA CONSTRUCTION, MOTION TO COMPROMISE
RHT-7 INC. CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH CAMPAGNE AND
CAMPAGNE, AND/OR MOTION FOR
ADMINISTRATIVE EXPENSES
9-14-16 [[144](#)]

RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Matter: (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

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

Disposition: (1) Motion to approve compromise granted; and (2) Application for compensation and expense reimbursement 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 motion and application 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).

COMPROMISE

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

The movant requests approval of a compromise that settles a negligence claim against Campagne and CAMPAGNE, a law firm. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 146. 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.

COMPENSATION AND EXPENSES

In this Chapter 7 case, Farley Law Firm, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$12,000.00 and reimbursement of expenses in the amount of \$0.00.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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.

Robert Hawkin's motion to approve the present compromise and application for allowance of final compensation and reimbursement of expenses have 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 motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 146.

IT IS FURTHER ORDERED that the application for compensation and reimbursement of expenses is approved on a final basis. The court allows final compensation in the amount of \$12,000.00 and reimbursement of expenses in the amount of \$0.00.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay immediately from the estate the aggregate

amount of compensation and expenses allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

2. [16-12517](#)-A-7 JAVIER HERNANDEZ AND MOTION TO DISMISS VERONICA
UST-1 VERONICA CRUZ EDITH CRUZ
TRACY DAVIS/MV 9-13-16 [[12](#)]
ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Dismiss Chapter 7 Case

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).

SECTION 707(a) DISMISSAL

Section 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result). This subsection provides examples of cause. "The grounds that § 707(a) lists as providing "cause" for dismissal are illustrative and not exhaustive." *In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000) (citing 11 U.S.C. § 102(3)).

The U.S. Trustee requests dismissal on grounds that this joint case has been improperly filed. Section 302 provides that a joint case is commenced by the filing of a single petition by an individual and such individual's spouse. The debtors are not legally married. Accordingly, this case cannot be a joint case. The court will dismiss the case as to Ms. Veronica Cruz without prejudice.

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 U.S. Trustee's motion to dismiss this case pursuant to § 707(a) 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. Veronica Edith Cruz's bankruptcy case is hereby dismissed without prejudice.

3. [16-12718](#)-A-7 MANUEL GAONA

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
8-29-16 [[21](#)]

RESPONSIVE PLEADING

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

4. [16-12621](#)-A-7 SERGIO MARTINEZ
CMB-1
SERGIO MARTINEZ/MV
CATARINA BENITEZ/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
8-9-16 [[14](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to November 9, 2016, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2)

Order: Civil minute order

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a),

to be provided notice of a motion requesting abandonment under Rule 6007(b).

The court cannot grant the motion at this time due to insufficient notice of the motion. The United States Trustee for the *Fresno division* of this district has not received notice of the motion. Fed. R. Bankr. P. 6007(a), (b). For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to November 9, 2016, at 9:00 a.m. No later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2).

5. [13-11123](#)-A-7 MARIO/RACHEL GUTIERREZ TRUSTEE'S FINAL REPORT (TFR)
7-19-16 [[132](#)]
ALBERT GARCIA/Atty. for dbt.
PETER FEAR/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 \$5,280.00 and reimbursement of expenses in the amount of \$251.14.

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 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 \$5,280.00 and reimbursement of expenses in the amount of \$251.14.

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.

6. [16-11125](#)-A-7 JUDITH HURST
AP-1
NATIONSTAR MORTGAGE, LLC/MV
IRMA EDMONDS/Atty. for dbt.
ALEXANDER LEE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-24-16 [[28](#)]

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: 4919 North Millbrook Avenue #128, Fresno, CA

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

AS TO DEBTOR

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

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

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Nationstar Mortgage, 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 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 4919 North Millbrook Avenue #128, Fresno, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

7. [16-11928](#)-A-7 DERREL/DEBRA BONDS CONTINUED MOTION FOR DENIAL OF
UST-1 DISCHARGE OF BOTH DEBTORS UNDER
TRACY DAVIS/MV 11 U.S.C. SECTION 727(A)
8-11-16 [[15](#)]

C. HUGHES/Atty. for dbt.
TERRI DIDION/Atty. for mv.

Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

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

Disposition: Granted

Order: Prepared by the movant

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).

The U.S. Trustee has moved for denial of discharge pursuant to § 727(a)(8). The debtors have received a chapter 7 discharge in a prior case. The prior case was commenced within 8 years before the petition date in the current case. Pursuant to § 727(a)(8), the debtors are not entitled to receive a discharge in this case.

8. [16-11937](#)-A-7 CHARLES/MARILEE DOUGLASS MOTION TO APPROVE STIPULATION
UST-1 TO EXTEND TIME TO FILE
TRACY DAVIS/MV COMPLAINT OBJECTING TO
DISCHARGE AND MOTION PURSUANT
TO 11 U.S.C. SECTION 707(B) TO
DISMISS
8-29-16 [[18](#)]

DAVID JENKINS/Atty. for dbt.
TERRI DIDION/Atty. for mv.

Final Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

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

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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

The court will approve the stipulation extending this deadline. Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through October 6, 2016.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

The court will approve the stipulation extending this deadline. Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through October 6, 2016.

ORDER INSTRUCTIONS

A copy of the stipulation extending the deadlines discussed, which will be approved by the order, shall be attached to the order as an exhibit.

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| 9. | <u>16-12537</u> -A-7 PORFIRIO/ARACELI SALAS AP-1 WELLS FARGO BANK, N.A./MV THOMAS GILLIS/Atty. for dbt. ALEXANDER LEE/Atty. for mv. | MOTION FOR RELIEF FROM AUTOMATIC STAY 8-26-16 [<u>15</u>] |
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 7365 Crabapple Ct., Winton, CA

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

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

STAY RELIEF

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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 7365 Crabapple Ct., Winton, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

10. [11-63440](#)-A-7 TROY JACQUES
THA-2
ROBERT HAWKINS/MV
JANINE ESQUIVEL/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO EMPLOY STEPHEN ROY
CORNWELL AS SPECIAL COUNSEL
8-22-16 [[34](#)]

Final Ruling

Application: Retroactive Employment of Special Counsel

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

Disposition: Approved

Order: Prepared by the applicant

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).

STANDARDS

In a previous case, this court has set forth the standards for retroactive approval of special counsel under § 327(e) of the Bankruptcy Code and Ninth Circuit decisional law:

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir.1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir.1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "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," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

Second, the applicant must show "exceptional circumstances" that justify *nunc pro tunc* approval. *Atkins*, 69 F.3d at 974; *Mehdipour*, 202 B.R. at 479. "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must ... (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Atkins*, 69 F.3d at 975-76; accord *Occidental Fin. Grp.*, 40 F.3d at 1062; *In re Gutterman*, 239 B.R. 828, 830 (Bankr.N.D.Cal.1999).

In re Grant, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014).

DISCUSSION

The chapter 7 trustee's application requests that the court employ special counsel, Cornwell & Sample, LLP, and Stephen Cornwell, retroactively.

Special counsel has no interest adverse to the applicant or the estate with respect to the matter upon which it is to be employed. The employment is in the best interest of the estate by reason of special counsel's expertise in civil tort and employment law claims. Special counsel has further satisfactorily explained his failure to receive prior judicial approval.

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

[This matter will be called subsequent to the debtors' motion to extend time, DRJ-1.]

Tentative Ruling

Objection: Trustee's Final Report

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

Disposition: Overruled

Order: Civil minute order

Debtors Raymond M. Ladd and Stephanie v. Ladd ("Ladds") object to Trustee's Final Report, August 10, 2016, ECF # 17, "to conform the relief, if any, granted pursuant to the Debtor's [Motion to Extend, August 29, 2016, ECF # 23]." Notice of Hearing on Debtors' Response to Trustee's Final Report, August 29, 2016, ECF 28.

DISCUSSION

Federal Rule of Bankruptcy Procedure 5009 provides, "If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered."

Here, a timely objection was made. The objection assumes that the court will grant debtors' motion to extend, August 29, 2016, ECF #23. The court has denied that motion. As a result, the objection will be overruled.

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.

Debtors Raymond M. Ladd and Stephanie v. Ladd's objection 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 overruled.

12. [15-14040](#)-A-7 RAYMOND/STEPHANIE LADD MOTION TO EXTEND TIME
DRJ-1 8-29-16 [[23](#)]
RAYMOND LADD/MV
DAVID JENKINS/Atty. for dbt.

Tentative Ruling

Motion: Extend Time to File Claim under Rule 3004

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

Disposition: Denied

Order: Civil minute order

Debtors Raymond M. Ladd and Stephanie V. Ladd ("Ladds") move (1) to ratify the "tardily filed proof of claim," i.e. Claim No. 11 for priority taxes on behalf of the Internal Revenue Service; (2) for "an extension of the deadline for filing a claim by the Debtors for the IRS as authorized by Federal Rule of Bankruptcy Procedure 3004"; and (3) "an extension of the deadline for the filing of a tardy priority claim that is payable with priority status pursuant to Title 11 USC Section 726(a)." Mot. at 1:19-24, August 29, 2016. Neither the trustee, nor any party in interest, opposes the motion.

DISCUSSION

The central aim of this motion is to move the surrogate priority claim filed by the debtors on behalf of the Internal Revenue Service from a second priority distribution, 11 U.S.C. § 726(a)(2)(C)(ii), to a first priority distribution, 11 U.S.C. §§ 726(a)(1), 507(a)(8). If the motion is granted, the priority scheme of § 726(a) will compel the Chapter 7 trustee to pay the claim in full from available funds when he distributes money to creditors. If it is not granted, the claim will not be paid by the trustee and, since it arises from pre-petition non-dischargeable taxes, that debt will follow the Ladds out the backdoor of the Bankruptcy Court and require payment by the debtors from their own funds.

Facts

The facts of this motion are not in dispute. In 2013, and 2014, the Ladds filed federal income tax returns that did not include certain 1099 income received during those years. As a consequence, the refund received by the debtors for those years was \$2,650.86 in excess of the amount to which they were actually entitled.

In 2015, the debtors also filed tax returns and, without considering the overpaid refunds of 2013 and 2014, the Ladds were entitled to a federal tax refund of \$3,876.00 and a state tax refund of \$745.00.

On October 15, 2015, the debtors filed a Chapter 7 bankruptcy. James E. Salven was appointed the trustee. At the time the Ladds filed their Chapter 7 bankruptcy, they scheduled their federal and state income tax refunds as non-exempt. They anticipated that the Internal Revenue Service either would recoup the 2013, and 2014, overpayments from the 2015 refund (now due the Chapter 7 trustee) or would file a priority proof of claim under 11 U.S.C. § 507(a)(8). Since the only anticipated claim with a higher distribution priority than the Internal Revenue Service was a modest administrative-expense claim by the trustee, 11 U.S.C. § 507(a)(2), the Ladds believed that even if the tax authority did not exercise its recoupment rights, that trustee

Salven would have sufficient monies to pay expenses of administration and their pre-petition priority tax debt.

Salven convened the meeting of creditors on December 15, 2017. Finding assets, i.e., the federal and state income tax refunds, Salven reported the case as one with some assets for the payment of creditors. The Clerk of the Court filed and served a "Notice to File Proof of Claim Due to Possible Recovery of Assets," January 1, 2016, ECF 13, which set a claims bar date of April 5, 2016.

In due course, Salven received (and now holds) the Ladds' 2015 federal tax refund of \$3,876.00 and 2015 state tax refunds of \$745. Those amounts aggregate \$4,621.00.

For reasons not clear, the Internal Revenue Service neither recouped its overpayment on the 2013, and 2014, tax years, nor filed a proof of claim. No secured or priority claims were filed. General unsecured creditors filed claims totaling \$11,720.72.

On or about August 1, 2016, the Ladds first learned that the Internal Revenue Service had not recouped their 2013, and 2014, overpayment from the 2015 tax refund (now belonging to the estate).

On August 10, 2016, Salven filed his final report. It showed estate funds of \$4,621, which comprised the debtors' 2015 federal and state tax refunds. Salven's compensation under 11 U.S.C. § 326(a) totaled \$1,302.41, and, after deducting other administrative costs, i.e. bank charges, there remains \$3,304.71 for payment to creditors. Salven proposes distribution of those funds to general unsecured creditors and not to priority debt due the Internal Revenue Service.

A Notice of the Trustee's Final Report and a summary of that report were mailed to the debtors and to creditors on August 12, 2016. Parties in interest were given 21 days to object to it.

On August 29, 2016, the debtors filed Claim No. 11 (reflecting 11 U.S.C. § 507(a)(8) priority taxes of \$2,750.86) on behalf of the Internal Revenue Service, a notice of objection to Salven's final report, and the instant motion.

Analysis

11 U.S.C. § 726(a)

The key to this motion is Bankruptcy Code § 726(a). In the pertinent part, that section provides:

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of--(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or (B) the date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this

subsection, proof of which is--(A) timely filed under section 501(a) of this title;(B) timely filed under section 501(b) or 501(c) of this title; or(C) tardily filed under section 501(a) of this title, if--(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and(ii) proof of such claim is filed in time to permit payment of such claim. . ."

11 U.S.C. § 726(a)(1)-(2).

Bankruptcy Code § 507 provides a distribution scheme for the priority claims described in Section 726(a)(1). As applicable here, the first claims to be paid within the § 507(a) scheme are administrative expenses of the Chapter 7 case and, if funds are available after payment of administration costs, the next claims to be paid in this case are the debtors' pre-petition tax debts accrued within the three years prior to the date of the petition. 11 U.S.C. § 507(a)(8).

In plain language, Section 726(a)(1) provides that timely filed priority (administrative and priority taxes) are paid before other claims, if and only if they are "timely filed" or "tardily filed on or before the earlier of" 10 days after service of a "summary of the trustee's final report" or the date on which the trustee commences distribution of funds.

Was the Surrogate Claim Timely or within the Safe Harbor?

Surrogate claims are governed by Federal Rule of Bankruptcy Procedure 3004. That rule provides, "If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee."

Here, the claims bar date was April 5, 2016. Notice to File Proof of Claim Due to Possible Recovery of Assets, January 1, 2016, ECF 13; see also Fed. R. Bankr. P. 3002(c)(5). As a result, the Ladds had 30 days thereafter, till May 5, 2016, to file a claim. They did not do so until August 29, 2016, more than three months after this deadline under Rule 3004.

Nor was the claim filed within the safe harbor of § 726(a). To fall within this safe harbor the Ladds must have filed the claim before the earlier of 10 days after service of the trustee's final report or before distribution. The earliest date was service of the trustee's final report on August 12, 2016. Since the claim was not filed until August 29, 2016, it does not fall within the safe harbor of § 726(a).

If the Surrogate Claim Was Untimely May the Court Now Enlarge Time?

The Ladds argue the applicability of Federal Rule of Bankruptcy Procedure 9006(b)(1) (excusable neglect). *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993).

This court disagrees this case applies. As a general proposition, claims deadlines cannot be extended. "The claim-filing deadline in Chapter 7, 12 and 13 cases ordinarily cannot be extended except as provided in FRBP 3002(c). [FRBP 9006(b)(3); see *In re Coastal Alaska*

Lines, Inc. (9th Cir. 1990) 920 F2d 1428, 1431-1433 (Chapter 7); *Matter of Greenig* (7th Cir. 1998) 152 F3d 631, 634 (Chapter 12)]." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, 17:200 (Rutter Group 2016). That treatise acknowledges only two exceptions: five classes of claims described in Rule 3002(c) and extraordinary circumstances. The only vaguely applicable portion of Rule 3002 is subdivision (c)(1), which governs claims due the government. But that rule limits its reach to claims "filed by a governmental unit," not by the debtor on its behalf. As a consequence, Rule 3002(c) does not provide shelter to the debtors.

Extraordinary circumstances are limited in reach. "The Ninth Circuit has established two "extraordinary circumstances" exceptions to the claim-filing deadline: 1) [17:1201] Creditor misled by court notice: Late claims have been allowed as timely when the creditor relied on a court notice setting an erroneous claim-filing deadline ... unless the late filing would prejudice other parties. [In re Anwiler (9th Cir. 1992) 958 F2d 925, 927-929] 2) [17:1202] Timely filing prevented by "force majeure": Late-filed claims have also been allowed where catastrophic circumstances beyond the creditor's control—e.g., earthquake, flood, fire, or explosion—made a timely filing absolutely impossible. [In re Edelman (9th Cir. BAP 1999) 237 BR 146, 151-154—earthquake rendering it impossible for creditor's attorney to enter his office on day of deadline was not sufficient ground to treat late-filed claim as timely]." March, Ahart and Shapiro, *California Bankruptcy Guide: Bankruptcy*, § 17:1200.6-1202 (Rutter Group 2016).

Argument can be made that *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993), was decided three years after *In re Coastal Alaska Lines, Inc.* (9th Cir. 1990) 920 F2d 1428, 1431-1433 (Chapter 7), the watershed case in the Ninth Circuit, and overruled it. The argument is a fair one but falls short. No known authority, case, or second source, so holds. Commentators limit the reach of *Pioneer Investment Services Co.* to Chapter 11 cases. One commentator noted citing *Pioneer Inv. Services Co.*, "**The court may extend the deadline for filing proofs of claim in a Chapter 11 case**, either before or after the deadline has expired." (emphasis added). March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Enforcement of Claims and Interests, Filing or Amending Proof of Claim or Interest § 17:1205-1207 (Rutter Group 2016).

Moreover, the Ninth Circuit Bankruptcy Appellate Panel confronted the issue in a Chapter 7 case six years after *Pioneer Investment Services Co.* was decided. See *In re Edelman*, 237 B.R. 146 (9th Cir. BAP 1999). There the court rejected the argument that in Chapter 7 the court possessed equitable powers, in that case based on an earthquake that occurred before the claims bar date, to enlarge the time to file a proof of claim. Consider the following quoted material from *In re Edelman* case:

"The time within which proofs of claim must be filed in Chapter 7 cases is governed by Rule 3002(c). That Rule requires filing within ninety days after the date first set for the meeting of creditors called under § 341(a), with five exceptions: (1) governmental units may file within 180 days after the date of the order for relief and such period may be extended for cause; (2) the court may extend the time for filing by infants or incompetent persons, or their representatives, if extension serves the interest of justice and will not unduly delay the administration of the case; (3) a claim arising

from a judgment in favor of the bankruptcy estate for money or property, or denying or avoiding an interest in property, may be filed within 30 days after the judgment becomes final; (4) a claim arising from the rejection of an executory contract or unexpired lease of the bankruptcy debtor may be filed within such time as the court may direct; (5) claims may be filed within ninety days after the clerk's office mails a notice of possible dividend.

Enlargement of time is permitted to some extent by Rule 9006, but enlargement is limited with respect to the time fixed by certain rules, including Rule 3002(c):

'The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.'

Rule 9006(b)(3). As set forth above, Rule 3002(c) provides only five exceptions to the ninety day filing period, none of which applies to this case In *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428 (9th Cir.1990) . . . , **the Ninth Circuit considered whether bankruptcy courts have discretion, based on equitable jurisdiction and the powers granted by § 105, to enlarge the time for filing claims in Chapter 7 cases, despite the strictures of Rule 9006(b)(3) and Rule 3002(c): 'This argument is inconsistent with the express limitations imposed by Rule 9006(b)(3) on the bankruptcy court's discretion to extend time. Several courts have rejected Zidell's argument, holding that "Bankruptcy Rule 3002(c) is peremptory and that a bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists."** [citations and footnote omitted] We agree with these cases and hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists. [footnote omitted]' *Coastal Alaska*, at 1432-33.7 And see *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 389, 113 S.Ct. 1489, 1495, 123 L.Ed.2d 74 (1993) . . . , which points out that, while Rule 9006 generally permits enlargement of time based on a showing of excusable neglect: 'Subsections (b)(2) and (b)(3) of Rule 9006 enumerate those time requirements excluded from the operation of the 'excusable neglect' standard. One of the time requirements listed as excepted in Rule 9006(b)(3) is that governing the filing of proofs of claim in Chapter 7 cases. Such filings are governed exclusively by Rule 3002(c).'

Creditor acknowledges that excusable neglect is not a defense against failure to abide by the requirements of Rule 3002(c), but argues that an 'Act of God' is a different basis for relief and one that is not foreclosed by *Coastal Alaska*. **It is true that the creditor in *Coastal Alaska* merely failed to file timely rather than having been prevented from filing timely (as Creditor alleges is the situation here), but that case nevertheless does address the precise issue of whether bankruptcy courts have any discretion to alter the limitations imposed by Rule 3002(c), and its ruling that such discretion does not exist is unqualified.** The holding is that 'the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists', not that enlargement is not permitted under the facts of that case, or that enlargement is not permitted in the absence of an 'Act of God' or similarly-caused impossibility or prevention. **The rule of *Coastal Alaska* simply is that no source of**

discretion exists—neither equitable jurisdiction, nor § 105, nor anything else—and a source is not created even if a good reason is presented for why a source should exist. To excuse lateness that is caused by prevention would be to exercise discretion that *Coastal Alaska* has found bankruptcy courts do not possess. Creditor cites *Pioneer*, which recognizes the concept of prevention by 'Act of God' but does so in the context of considering what constitutes excusable neglect, **whereas excusable neglect (as *Pioneer* points out and as Creditor concedes) does not apply to Rule 3002(c)**. Creditor offers no authority in support of courts having discretion to alter the requirements of Rule 3002(c) under circumstances of prevention or impossibility, nor does there appear to be any. *Coastal Alaska* does cite less extreme examples of situations in which courts have seen fit to enlarge time under Rule 3002(c) (e.g., erroneous information from court clerk's office, lack of notice of bar date, etc.) but finds that 'we do not believe that those cases can be reconciled with Rule 3002(c)', *id.*, at 1433." (emphasis added).

In re Edelman, 237 B.R. 146, 151–53 (B.A.P. 9th Cir. 1999) (emphases added).

For each of these reasons, the motion will be denied.

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.

Raymond M. Ladd and Stephanie V. Ladd's motion has been presented to the court. Having considered the well-pleaded facts of the motion, and the arguments and authorities provided in support,

IT IS ORDERED that the motion is denied.

13. [13-17341](#)-A-7 HOWARD SAGASER
JES-1
JAMES SALVEN/MV

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
9-15-16 [[670](#)]

HAGOP BEDOYAN/Atty. for dbt.
DANIEL EGAN/Atty. for mv.

No tentative ruling.

14. [13-17341](#)-A-7 HOWARD SAGASER
JTW-2
JANZEN, TAMBERI AND WONG/MV

HAGOP BEDOYAN/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
9-13-16 [[662](#)]

Final Ruling

Application: Allowance of Interim 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, Janzen, Tamberi & Wong, accountants for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$19,806.50 and reimbursement of expenses in the amount of \$40.89.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Janzen, Tamberi & Wong's application for allowance of interim 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. The court allows interim compensation in the amount of \$19,806.50 and reimbursement of expenses in the amount of \$40.89. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

15. [13-17341](#)-A-7 HOWARD SAGASER
SAS-1
SHERYL STRAIN/MV

MOTION FOR COMPENSATION FOR
SHERYL A. STRAIN, CHAPTER 7
TRUSTEE(S)
9-11-16 [[652](#)]

HAGOP BEDOYAN/Atty. for dbt.
OPPOSITION

No tentative ruling.

16. [13-17341](#)-A-7 HOWARD SAGASER
WFH-23

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WILKE, FLEURY,
HOFFELT, GOULD AND BIRNEY, LLP
FOR DANIEL L. EGAN, TRUSTEES
ATTORNEY(S)
9-13-16 [[657](#)]

HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Application: Allowance of Interim 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, Wilke, Fleury, Hoffelt, Gould & Birney, LLP, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests

that the court allow compensation in the amount of \$26,771.00 and reimbursement of expenses in the amount of \$1,704.78.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP's application for allowance of interim 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. The court allows interim compensation in the amount of \$26,771.00 and reimbursement of expenses in the amount of \$1,704.78. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

17. [16-12742](#)-A-7 CHRIS/SHIRLEY LEMKE

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-23-16 [[13](#)]

BANK OF AMERICA, N.A./MV
THOMAS ARMSTRONG/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 4202 North Gregory Ave., Fresno, CA

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

STAY RELIEF

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 4202 North Gregory Ave., Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

18. [16-12742](#)-A-7 CHRIS/SHIRLEY LEMKE MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
BMW FINANCIAL SERVICES NA, 8-24-16 [[19](#)]
LLC/MV
THOMAS ARMSTRONG/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: Unexpired lease of personal property described as a 2015 BMW X5

DEEMED REJECTION OF AN UNEXPIRED LEASE OF PERSONAL PROPERTY

In chapter 7 cases, an unexpired lease of personal property of the debtor must be assumed or rejected by the trustee within 60 days after the order for relief, i.e., 60 days after the petition date in a voluntary case, see § 301(a) and (b). 11 U.S.C. § 365(d)(1). The court may extend the time to assume or reject for cause, but such extension may only occur within such 60-day period. *Id.*

If the lease is not assumed or rejected by the end of such 60-day period or a court-ordered extension of such period, then the lease is deemed rejected. See *id.* Further, a chapter 7 debtor may assume a lease of personal property as provided in § 365(p).

AUTOMATIC TERMINATION OF THE STAY

"If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated." *Id.* § 365(p)(1).

In this case, more than 60 days has passed since the petition date. The petition date was 7/29/16. The 60th day after the petition was 9/27/16.

Furthermore, no respondent has opposed with evidence of a timely assumption of the lease of personal property described above. Because this lease has not been timely assumed, the lease has been rejected. As a result, the stay has automatically terminated as to such property, and it is no longer property of the estate.

DOCTRINE OF MOOTNESS

The court adheres to the principle that federal courts have no authority to decide moot questions. *Arizonans for Official English v.*

Arizona, 520 U.S. 43, 67-68, 72 (1997)). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Because the stay has automatically terminated, no effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists. The motion will be denied as moot.

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.

IT IS ORDERED that the motion is denied as moot. On the date that was 61 days after the voluntary petition was filed, the stay automatically terminated as to the leased personal property, the 2015 BMW X5 described in the motion.

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| 19. | 15-12344 -A-7 TRAVIS/CHARITY GODDEN APN-1 WELLS FARGO BANK, N.A./MV SUSAN HEMB/Atty. for dbt. AUSTIN NAGEL/Atty. for mv. DISCHARGED | MOTION FOR RELIEF FROM AUTOMATIC STAY 8-29-16 [81] |
|-----|---|--|

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: 2010 Chevrolet Suburban

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).

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

In this case, the debtors have become delinquent in the amount of 14 postpetition payments. This constitutes cause for stay relief.

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 a 2010 Chevrolet Suburban. 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.

20. [12-60054](#)-A-7 DWIGHT/NELLIE LONG CONTINUED OBJECTION TO CLAIM OF
JLG-2 GILMORE, WOOD, VINNARD &
GROSS MORTGAGE CORPORATION/MV MAGNESS, P.C., CLAIM NUMBER 16
5-12-16 [[299](#)]

LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

21. [16-11054](#)-A-7 CARMEN/SUSAN ZABALDO ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-6-16 [[64](#)]

MARK ZIMMERMAN/Atty. for dbt.
\$30.00 FEE PAID ON 9/8/16

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

22. [16-11860](#)-A-7 ERIC/SUSAN DIAS MOTION TO AVOID LIEN OF FIRST
FJG-1 NATIONAL BANK OF OMAHA, A
ERIC DIAS/MV NATIONAL BANKING ASSOCIATION
8-19-16 [[14](#)]

F. GIST/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.

23. [16-11860](#)-A-7 ERIC/SUSAN DIAS
FJG-2
ERIC DIAS/MV
F. GIST/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
8-19-16 [\[19\]](#)

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.

24. [16-12272](#)-A-7 YVONNE ANI MOTION TO AVOID LIEN OF CAPITAL
THA-1 ONE BANK (USA), N.A.
YVONNE ANI/MV 9-13-16 [[13](#)]
THOMAS ARMSTRONG/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. 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 FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h) (1)-(3).

25. [16-12475](#)-A-7 ORLANDO/ANDREA VEGA MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY
AMERICAN HONDA FINANCE 9-9-16 [[14](#)]
CORPORATION/MV
STEVEN ALPERT/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Honda Accord

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.

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

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

26. [11-19687](#)-A-7 ROBERT SCARPITTO
JES-1
STEVEN SIEVERS/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

TRUSTEE'S FINAL REPORT
7-19-16 [[117](#)]

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 \$18,250.00 and reimbursement of expenses in the amount of \$227.67.

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 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 \$18,250.00 and reimbursement of expenses in the amount of \$227.67.

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.

27. [16-12890](#)-A-7 PATRICIA BROWNE
APN-1
SANTANDER CONSUMER USA INC./MV
ERIC ESCAMILLA/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-13-16 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Jeep Cherokee

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.

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

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

28. [11-10594](#)-A-7 TUGAR HUGHES
JRL-2
TUGAR HUGHES/MV
GARY HUSS/Atty. for dbt.
JERRY LOWE/Atty. for mv.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK
9-9-16 [[35](#)]

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.

29. [11-10594](#)-A-7 TUGAR HUGHES
JRL-3
TUGAR HUGHES/MV
GARY HUSS/Atty. for dbt.
JERRY LOWE/Atty. for mv.

MOTION TO AVOID LIEN OF LVNV
FUNDING LLC
9-9-16 [[37](#)]

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.

30. [11-10594](#)-A-7 TUGAR HUGHES
JRL-4
TUGAR HUGHES/MV
GARY HUSS/Atty. for dbt.
JERRY LOWE/Atty. for mv.

MOTION TO AVOID LIEN OF LVNV
FUNDING LLC
9-9-16 [[39](#)]

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.

31. [11-10594](#)-A-7 TUGAR HUGHES
JRL-5
TUGAR HUGHES/MV
GARY HUSS/Atty. for dbt.
JERRY LOWE/Atty. for mv.

MOTION TO AVOID LIEN OF LVNV
FUNDING LLC
9-9-16 [[41](#)]

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.

32. [11-10594](#)-A-7 TUGAR HUGHES
JRL-6
TUGAR HUGHES/MV
GARY HUSS/Atty. for dbt.
JERRY LOWE/Atty. for mv.

MOTION TO AVOID LIEN OF COLLECT
ACCESS LLC
9-9-16 [[43](#)]

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.