

**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: NOVEMBER 1, 2017
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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

1. [17-11704](#)-A-7 JULIE MENDOZA
[FJG](#)-1
JULIE MENDOZA/MV
F. GIST/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF BARBARA BLADE
8-9-17 [[37](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted in part, denied in part

Order: Prepared by the movant

ATTACHMENT LIENS UNDER CALIFORNIA LAW

Title 6.5 of the California Code of Civil Procedure (Attachment) is titled "The Attachment Law." Cal. Civ. Proc. Code § 482.010. This law contains highly detailed procedures and requirements for a plaintiff to obtain both a "right to attach order" and an attachment lien on the defendant's property.

Creation of Attachment Lien

The Attachment Law defines the method for (1) creation of an attachment lien, (2) its duration, and (3) its extension. *Id.* §§ 488.500-488.510.

To obtain a writ of attachment, the plaintiff must first obtain a "right to attach order." See Hon. Alan M. Ahart, *California Practice Guide: Enforcing Judgments and Debts* ¶ 4:129, at 4-32 (rev. 2016); see also Cal. Civ. Proc. Code § 484.010. Such an order operates as declaratory relief, and it determines "that the plaintiff's claim is one for which a [writ of attachment] may issue, then or later." Ahart, *supra*, ¶ 4:129. The right to attach order requires a hearing on a noticed application, or in rare instances, may be obtained by an ex parte application. *Id.* ¶¶ 4:130-4:131.

Although a right to attach order is a necessary condition to creation of an attachment lien, it is not sufficient by itself. The attachment lien is created only after a proper levy occurs under a writ of attachment. "A levy on property under a writ of attachment creates an attachment lien on the property from the time of levy until the expiration of the time provided by Section 488.510." *Id.* § 488.500(a) (emphasis added); see also Hon. Alan M. Ahart, *California Practice Guide: Enforcing Judgments and Debts* ¶ 4:493, at 4-106 (rev. 2016).

Methods of Levy

For various types of property, the attachment-lien statutes incorporate the method of levy under a writ of execution in Article 4, Chapter 3, Division 2, of Title 9 (Enforcement of Judgments) of the Code of Civil Procedure. When such cross-referencing appears in the attachment levy provisions, the term *writ of execution* means *writ of attachment*, the term *notice of levy* means *notice of attachment*, the term *judgment creditor* means the attachment plaintiff, and the term *judgment debtor* means the attachment defendant. See *id.* § 488.300(a)-(d).

Tangible Personal Property

To levy on tangible personal property in the possession or under the control of the defendant, the levying officer must take the property into custody. Cal. Civ. Proc. Code § 488.335 ("Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of the defendant, the levying officer shall take the property into custody."). For tangible personal property in a third party's possession, the levy occurs in the same manner as under a writ of execution. "[T]o levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person." *Id.* § 700.040.

Real Property

To levy on real property of the defendant, "the levying officer shall comply with Section 700.015 and the recorder shall index the copy of the writ of attachment and a notice of attachment as provided in that section." Cal. Civ. Proc. Code § 488.315. Complying with § 700.015 of the California Code of Civil Procedure means that "the levying officer shall record with the recorder of the county where the real property is located a copy of the writ [of attachment] and a notice of [attachment] that describes the property levied upon and states that the [attachment defendant's] interest in the described property has been levied upon." *Id.* §§ 700.015, 488.315.

Equipment

To levy on equipment, there are different procedures depending on the status of ownership of the equipment and also depending on the type of equipment. For "equipment of a *going business* in the possession or under the control of the defendant, the levying officer shall file with the office of the Secretary of State a notice of attachment, in the form prescribed by the Secretary of State" *Id.* § 488.375(a) (emphasis added). The contents of this notice of attachment are statutorily prescribed, *id.* § 488.375(a)(1)-(5), and a filing fee must also be tendered to the Secretary of State, *id.* § 488.375(b). The notice of attachment is then filed, marked and indexed in the same way as a financing statement. For equipment that constitutes a vehicle or vessel, however, this method of levy does not apply. See *id.* §§ 488.375(a), 488.385.

For non-business equipment (including equipment not used by a business that is a going concern), the levying officer must take the equipment into custody. Ahart, *supra*, ¶ 4:470 (citing the comment to Cal. Civ. Proc. Code § 488.375). Equipment levied by this method of custody includes equipment owned by a business that has failed or ceased to operate. See *id.*

SECTION 522(f) LIEN AVOIDANCE

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).

DISCUSSION

What constitutes a judicial lien is defined in § 101 of the Bankruptcy Code. "The term 'judicial lien' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101. This definition is broad enough to include attachment liens, which are created by legal process set forth in California's attachment law under Title 6.5 of the California Code of Civil Procedure.

Real Property

In this case, the debtor has offered evidence of the existence of an attachment lien on her real property in Merced County, California. The Merced County Sheriff, the levying officer, filed with the Merced County Recorder a notice of attachment and a writ of attachment. The notice of attachment recorded in the real property records indicates that the property attached by recording the notice is "Julie Mendoza's interest in real property located at 1947 Fall Brook Court, Merced, CA 95340."

Personal Property and Other Property

The writ of attachment directs that the levying officer attach real property, personal property, equipment, motor vehicles, chattel paper, securities, and other tangible and intangible property. But no evidence is in the record showing the existence of a levy on any property other than the debtor's real property. Without a levy, no attachment lien is created. Therefore, the order shall avoid a lien only on the real property.

CONCLUSION

The responding party's judicial lien (approximately \$668,652.63), all other liens (\$307,671.14) and the exemption amount (\$500.00) together exceed the real property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely as to the real property.

As to the personal property and other property, the motion will be denied because no evidence exists that an attachment lien has been created on this property.

2. [17-10106](#)-A-7 RANDEEP SINGH
[GCL](#)-3
UMPQUA BANK/MV
PATRICK GREENWELL/Atty. for dbt.
GEORGE LAZAR/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-18-17 [[93](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 3110 East Belmont 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). 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 (\$1,902,573.70) exceeds the value of the collateral (\$1,400,000), so there is no equity in the property. As to the estate, the court also notes that the trustee has filed a notice of intent to abandon the collateral from the estate filed October 11, 2017, ECF No. 91. The deadline for objection is October 25, 2017, and no objection has been filed. And the notice states that the property is burdensome and of inconsequential value to the estate.

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.

Umpqua Bank'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 3110 East Belmont 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.

3. [17-10808](#)-A-7 MAYSEE YANG MOTION FOR COMPENSATION FOR
[JES-2](#) JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 10-4-17 [[56](#)]

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1075.00 and reimbursement of expenses in the amount of \$187.56.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1075.00 and reimbursement of expenses in the amount of \$187.56.

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.

4. [17-13411](#)-A-7 GABRIAL/STACEY RODRIGUEZ MOTION FOR RELIEF FROM
[NLL](#)-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 9-22-17 [[16](#)]
DAVID JENKINS/Atty. for dbt.
NANCY LEE/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 755 Monte Cir., Lindsay, CA

STAY RELIEF

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the

bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

"Ninth Circuit courts generally divide the equity remaining (after subtracting liens of the movant and any liens *senior* to the movant from the property's fair market value) by the fair market value of the collateral." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1077, at 8(II)-7 (rev. 2015) (citing *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984)).

In this case, the equity cushion is only 2.6%, which is insufficient to constitute adequate protection given the history of prepetition payments that became delinquent. This inadequate equity cushion constitutes cause for stay relief.

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

CIVIL MINUTE ORDER

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

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

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 755 Monte Cir., Lindsay, 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.

5. [17-11824](#)-A-7 HORISONS UNLIMITED
FW-3
SEELIG AND CUSSIGH HCO, LLC/MV

MOTION FOR COMPENSATION FOR
SEELIG & CUSSIGH HCO, LLC,
OTHER PROFESSIONAL(S)
10-11-17 [[304](#)]

CECILY DUMAS/Atty. for dbt.

Tentative Ruling

Application: Allowance of First Interim 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, Seelig & Cussigh HCO, LLC, patient records consultant 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 \$73,886.00 and reimbursement of expenses in the amount of \$8,837.46.

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

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

Seelig & Cussigh HCO, LLC'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 \$73,886.00 and reimbursement of expenses in the amount of \$8,837.46. 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.

6. [17-11824](#)-A-7 HORISONS UNLIMITED
[JES](#)-2
JAMES SALVEN/MV

MOTION TO EMPLOY BAIRD'S
AUCTIONS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
10-3-17 [[264](#)]

CECILY DUMAS/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 10 vehicles and a trailer described more fully in the notice of hearing

Sale Type: Public auction

SALE BY PUBLIC AUCTION

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.

EMPLOYMENT OF AUCTIONEER

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

COMPENSATION OF AUCTIONEER

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

OPPOSITION

The "Harr Properties and associated parties" have filed an opposition and request for a continuance. They assert that they have filed a motion to dismiss in a related adversarial matter. They argue that "[i]f this motion is granted, and the underlying bankruptcy case is dismissed, then whether the court should grant the Trustee's motions to sell property belonging to the debtor, (including at least 10 vehicles) would be moot." Harr Props.' Opp'n at 2.

The opposition has presented no evidence that would tend to show the relief sought in the motion should be denied. The opposition presents only a speculative argument that *if* the motion to dismiss is granted and the case is dismissed, then this motion will be moot. But this argument assumes that the hearing on the dismissal motion should precede the sale motion. The motion to sell at public auction and to employ and compensate an auctioneer is the only motion before the court, not the motion to dismiss. The present motion is not moot on the date of its hearing. The specified motion to dismiss has been denied.

To consider a future dismissal motion's effect on this present motion is not ripe and would involve speculation. The court can only decide rulings that are before it at the present time, and such decision must be based on relevant evidence.

REQUEST FOR CONTINUANCE

The request for a continuance will be denied. The court has already denied the motion to dismiss.

7. [17-11824](#)-A-7 HORISONS UNLIMITED
[WFH](#)-11
JAMES SALVEN/MV
CECILY DUMAS/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO PAY
10-11-17 [[299](#)]

Tentative Ruling

Motion: Pay Expense to Dispose of Medical Waste

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

Disposition: Granted

Order: Civil minute order

James E. Salven, Chapter 7 trustee, moves for authority to pay the actual expenses, not to exceed \$6,000.00, to dispose of medicines and medical waste. Motion, October 11, 2017, ECF # 299. Disposal is to

be accomplished by Biomedical Waste Disposal, Inc., which estimates the cost to be 4,950.00. Salven's motion does not specify the legal basis, e.g. code provision, rule or common law doctrine, that authorizes the relief requested. *Id.* But the court presumes Salven is proceeding under 11 U.S.C. §§ 507(a) (2), 503(b) (1) (A).

RULES 9013 AND 9014-1(d) (3)

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013.

Moreover, local rules amplify this requirement. "Motion or Other Request for Relief. **The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor.** Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d) (3) (A) (emphasis added)

Here, the motion does not specify the legal basis for the relief sought and, therefore does not comply with either national or local rules. The court presumes that the trustee is proceeding under 11 U.S.C. §§ 507(a) (2), 503(b) (1) (A).

SECTION 503(B) (1) (A)

11 U.S.C. s 507(a) grants priority to payment of claims under 11 U.S.C. § 503(b). Section 503(b) (1) (A) allows as an administrative expense "the actual, necessary and costs and expenses of preserving the estate." "A creditor claiming administrative expense treatment under § 503(b) (1) (A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and substantially benefited the estate. [*In re DAK Indus., Inc.* (9th Cir. 1995) 66 F3d 1091, 1094; *In re Abercrombie* (9th Cir. 1998) 139 F3d 755, 757; see also *In re Sierra Pac. Broadcasters* (9th Cir. BAP 1995) 185 BR 575, 579—conduct involved in preserving estate must be for "benefit" of the estate as opposed to some other party]." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Enforcement of Claims and Interests § 17:507 (Rutter Group 2016).

Payment of Biomedical Waste Disposal, Inc. to dispose of unused medicines and/or medical waste satisfied each of these elements and the motion will be granted.

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 motion 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.

IT IS FURTHER ORDERED that James E. Salven may pay Biomedical Waste Disposal, Inc. the actual costs of disposal of unused medicines and medical wastes, not to exceed \$6,000.00.

IT IS FURTHER ORDERED that nothing in this order shall relieve the trustee of compliance with applicable non-bankruptcy law with respect to the destruction of the unused medicines and medical waste.

8.	17-11824 -A-7 HORISONS UNLIMITED WFH -5 JAMES SALVEN/MV CECILY DUMAS/Atty. for dbt. PETER FEAR/Atty. for mv.	MOTION TO SELL 10-11-17 [285]
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Tentative Ruling

Motion: Assign Five Leases and Sell

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

Disposition: Granted

Order: Prepared by moving party]

Property: Assignment of five leases (55 N. Salado Avenue, Patterson, California; 5320 Hwy 49 N. Mariposa, California; 1221 Main Street, Newman, California; 1120 W. 1st Street, Suite B, Los Banos, California; 1120 W. 1st Street, Suite D, Los Banos, California), personal property as described in Purchase and Sale Agreement (Exh. A, ECF # 288)

Buyer: Community Health Centers of America

Sale Price: \$135,000.00

Sale Type: Private sale subject to overbid opportunity

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

REQUEST FOR CONTINUANCE

Haar Properties prays a continuance of the motion pending resolution of her motion to dismiss the Chapter 7. The continuance will be denied. The court has already denied that motion. And even had the court not done so, the risk of loss of the buyer outweighs the probability of success on the motion.

SCOPE OF RELIEF

Most fairly read, the motion prays relief under 11 U.S.C. § 363(b), but not under 11 U.S.C. § 363(f), (m). As a result, the court will rule only on relief under § 363(b).

SECTION 363(b) SALE

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

9. [17-11824](#)-A-7 HORISONS UNLIMITED MOTION TO ASSUME LEASE OR
[WFH-7](#) EXECUTORY CONTRACT
JAMES SALVEN/MV 10-11-17 [[290](#)]
CECILY DUMAS/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Assume and Assign Real Property Leases and Sequester Post-Petition Cure Payments

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

Disposition: Granted

Order: Civil minute order

James E. Salven, Chapter 7 trustee, moves to assume five commercial leases and assign those leases with Sandra Harr and related entities to Community Healthcare Centers of America as a part of a § 363 sale. Those leases are for (1) 55 N. Salado Avenue, Patterson, California; (2) 5320 Hwy 49 N. Mariposa, California; (3) 1221 Main Street, Newman, California; (4) 1120 W. 1st Street, Suite B, Los Banos, California; and (5) 1120 W. 1st Street, Suite D, Los Banos, California.

RULES 9013 AND 9014-1(d)(3)

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013.

Moreover, local rules amplify this requirement. "Motion or Other Request for Relief. **The** application, **motion**, contested matter, or other request for relief shall set forth the relief or order sought and **shall state with particularity** the factual and **legal grounds therefor**. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d)(3)(A) (emphasis added)

Here, there are two species of relief sought. First, the trustee seeks to assume and assign leases to Community Healthcare Centers of America. The court presumes that the trustee is proceeding under 11 U.S.C. § 363(b), (c). Second, the trustee seeks to place the cure funds, approximately \$107,980 (but actually funded at \$116,980) in a "segregated account" pending resolution of the adversary proceedings against Sandra Haar and Norman Haar. The court presumes that the trustee seeks to segregate funds under 11 U.S.C. § 365(b)(1) (adequate assurance) or 11 U.S.C. § 502(d) (disallowance of claim).

ASSUMPTION AND ASSIGNMENT OF FIVE LEASES

Section 365 of Title 11 gives the trustee, see 1322(b)(7)] three options for its unexpired leases and executory contracts. 11 U.S.C. § 365(a), (f). The trustee has the option to assume, to assume and assign, or to reject. See *id.*; *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 201 (B.A.P. 9th Cir. 1991). "By 'assumption,' the trustee or DIP elects to be bound by the terms of the agreement so that the other party must continue to perform thereunder. The contract or lease remains in force" Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 16:2 (rev. 2011).

Statutory conditions precedent must be satisfied before a court may approve an assumption of an unexpired lease or executory contract. See 11 U.S.C. § 365(b). These conditions include curing defaults, compensating the other party to the lease or executory contract for actual pecuniary losses, or providing adequate assurance that these conditions will be met. *Id.* § 365(b)(1)(A)-(B). Another condition for assumption is providing adequate assurance of future performance under the lease or executory contract. *Id.* § 365(b)(1)(C).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); March, Ahart & Shapiro, *supra*, ¶¶ 16:1535-1536, 16:515 (rev. 2015). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the [trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670. The assumption or rejection of an unexpired lease or executory contract should be approved absent a finding that the decision is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

Here, trustee Salven proposes to assume and assign the five leases to Community Healthcare Centers of America as a part of a § 363(b) sale. Trustee believes post-petition cure amounts are \$107,980.00. He proposes payment of \$116,980 be placed into a final account pending resolution of other adversary proceedings against landlord Sandra Haar and/or related entities.

SEQUESTRATION OF CURE FUNDS

Sequestration of funds in a segregated account is consistent with Section 365(b)(1) which only requires that the trustee cure or "provide adequate assurance that the trustee will promptly cure." Placement of funds into a blocked account satisfies the adequate assurance standard.

Moreover, this is consistent with the disallowance of claims provision of Section 502. "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C. § 502(d). No known case answer the question of whether cure payments, 11 U.S.C. § 365(b)(1) may be disallowed under 11 U.S.C. § 502(d). But the definition of claim may extend to cure payments. 11 U.S.C. § 101(d) ("The term "claim" means . . .right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . .). But the sequestration will be without prejudice to Sandra Haar and related persons and/or entities who claim that the funds may not be withheld.

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 motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent herein.

IT IS FURTHER ORDERED that James E. Salven may assign (1) 55 N. Salado Avenue, Patterson, California; (2) 5320 Hwy 49 N. Mariposa, California; (3) 1221 Main Street, Newman, California; (4) 1120 W. 1st Street, Suite B, Los Banos, California; and (5) 1120 W. 1st Street, Suite D, Los Banos, California to Community Healthcare Centers of America or such other bidder as maybe approved by this court for the sale of the debtor's equipment. Motion to Sell, October 11, 2017, ECF # 285.

IT IS FURTHER ORDERED that James E. Salven may executed such documents as are reasonable, necessary and customary to effectuate that assignment.

IT IS FURTHER ORDERED that not later than 7 days after the close of the sale of the sale of the debtors' equipment, Motion to Sell, October 11, 2017, ECF # 285, James E. Salven shall deposit into a blocked account at an FDIC insured deposit institution \$116,980.00 (the cure payment due Sandra Haar and related persons and entities) not to be released without further order of this court after

resolution of adversary proceedings, motions and other proceedings by which the estate claims funds due to it from Sandra Haar.

IT IS FURTHER ORDERED THAT this order is without prejudice to Sandra Haar, and such other related persons and entities, seeking release of those funds prior to the date specified in preceding paragraph.

IT IS FURTHER ORDERED that not later than 7 days after depositing said funds into the blocked account James E. Salven shall file the signature card for that account with the Clerk of the Court, account number redacted, except for the last four digits). Said signature card shall specifically show that the account may not be accessed by anyone (including the Chapter 7 trustee) without court order. The trustee shall serve a copy of that signature card on Sandra Haar and her attorney David M. Spieker and shall file the Certificate of Service.

IT IS FURTHER ORDERED that all other relief is denied.

10. [17-11824](#)-A-7 HORISONS UNLIMITED
[WFH](#)-9
JAMES SALVEN/MV

MOTION FOR ORDER ESTABLISHING
OVERBID PROCEDURE AND BREAKUP
FEE
10-11-17 [[295](#)]

CECILY DUMAS/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Establish Overbid Procedure and Breakup Fee

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

Disposition: Denied in part, granted in part.

Order: Civil minute order

James E. Salven, Chapter 7 trustee moves to establish overbid procedures and breakup fees for a transaction involving the sale of the medical equipment used in the debtor's former clinics and assignment of five leases to Community Healthcare Centers of America for an aggregate of \$135,000. Motion, October 11, 2017, ECF # 295. In particular, Salven prays that the court require an initial overbid of not less than \$30,000.00 (with subsequent overbids of not less than \$5,000.00) and a breakup fee of \$25,000.00.

OVERBID PROCEDURES

Bankruptcy courts are granted wide discretion in conducting sales under 11 U.S.C. § 363. *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (9th Cir. BAP 2001). And the discretion extends to overbid procedures. The court's obligation in a § 363(b) sale is to assure the greatest value to the estate under the circumstances presented. *In re Lahijani*, 325 B.R. 282, 288-89 (9th Cir. BAP 2005). "The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection." *Id.* at 289.

Here, the court is not convinced that an initial overbid of \$30,000.00, or 22%, is a proper exercise of the trustee's business judgment. And the court will disapprove that component of the sale. The court will approve a \$5,000 overbid for both the initial and subsequent overbids.

BREAKUP FEES

"A 'breakup fee' is a fee the DIP or trustee agrees to pay the purchaser whose offer is subject to overbidding if the court ultimately approves the sale to another party. The breakup fee compensates the original purchaser for the risk it shoulders in being the first bidder. [*In re Integrated Resources, Inc.* (SD NY 1992) 147 BR 650, 655]." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Selling Property Outside the Ordinary Course of Business § 14:608 (Rutter Group 2016).

The Ninth Circuit has not definitively ruled on breakup fees. But courts general use three approaches: (1) business judgment test, (2) best interests test, and (3) administrative claim test. *Id.* at 14:609-12.

"Some bankruptcy courts apply the "business judgment" test developed outside the bankruptcy context: i.e., a breakup fee is appropriate if: [1] the debtor believes in its business judgment that the fee will benefit the estate; [2] there is no proof of self-dealing; and [3] there is no proof of specific harm to the bankruptcy estate. [*In re Twenver, Inc.* (BC D CO 1992) 149 BR 954, 956; *In re Integrated Resources, Inc.*, *supra*, 147 BR at 656; see also *In re JW Resources, Inc.* (BC ED KY 2015) 536 BR 193, 196-197-business justification shown for \$375,000 breakup fee]." *Id.* at 14:610.

"Other courts approve or deny a breakup fee based on a determination of whether the fee is in the "best interests" of the bankruptcy estate in light of the following factors: [1] whether the bid is higher than it would have been had the breakup fee not been granted; [2] whether the breakup fee provided net value to the estate; [2] whether a breakup fee is necessary to start the bidding process; and [3] whether the amount of the fee is small relative to the overall benefit to the estate. [*In re America West Airlines, Inc.* (BC D AZ 1994) 166 BR 908, 912; *In re Hupp Indus., Inc.* (BC ND OH 1992) 140 BR 191, 194-196]." *Id.* at 14:611.

"Another line of cases evaluates breakup fees in the context of § 503(b) administrative claims: i.e., the allowance of an administrative expense depends on the claimant's ability to show that the fees were actually necessary to preserve the value of the estate or, that the fees benefited the estate in a demonstrable way. [*In re O'Brien Environmental Energy, Inc.* (3rd Cir. 1999) 181 F3d 527, 536-537]." *Id.* at 14:611.

In the limited context of breakup fees, this court rejects the business judgment test as too deferential. It needs not decide whether to apply the best interest or administrative claim test. The common element of each of those tests is whether the estate, and not the aggrieved bidder, is the beneficiary of the breakup fee. Here, there is an insufficient, if any, showing that the estate has benefited by breakup fee. As a result, the trustee' request for a breakup fee is 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.

James E. Salven's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied in part.

IT IS FURTHER ORDERED that overbids, if any, be in increments of not less than \$5,000.00.

IT IS FURTHER ORDERED that all other relief is denied.

11. [17-12929](#)-A-7 MARY CLAY
[JHW](#)-1
TD AUTO FINANCE LLC/MV
ERIC ESCAMILLA/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-28-17 [[20](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Fiat 500

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Fiat 500, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

12. [17-13131](#)-A-7 X-TREME AG LABOR, INC. MOTION TO DISMISS CASE
[PSB-1](#) 9-29-17 [[11](#)]
ANTONIA NAVARRO-SANDOVAL/MV
RILEY WALTER/Atty. for dbt.
ROBERT GLASSMAN/Atty. for mv.

Final Ruling

Motion: Dismiss Case or, in the Alternative, for Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Twenty two personal injury plaintiffs move for dismissal of this Chapter 7 case or, in the alternative, for stay relief to pursue insurance proceeds. The debtor was a labor contractor. Plaintiffs are employees of the debtor or the next of kin of former employees who were injured or killed in a tragic vehicular accident. Regrettably, procedural problems preclude this court from granting relief.

DISCUSSION

Service

Motions for stay relief or for dismissal are contested matters. "The term "contested matter" is not defined in the Code or the FRBP. A motion with an identifiable adverse party (e.g., motion to avoid a judicial lien) is a contested matter from the outset." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Motions, Overview § 19;2 (Rutter Group 2016). Contested matters must be served on the parties effected. Fed. R. Bankr. P. 9013-9014.

Here, the Certificate of Service does not reflect service on the trustee Robert Hawkins or on debtor's counsel Walter Wilhelm. This failure deprives the court of jurisdiction. *In re Scott*, 437 BR 376, 379 (9th Cir. BAP 2010).

Evidence

Motion must be supported by admissible evidence. Fed. R. Bankr. P. 9006(d); LBR 9014-1(d)(3)(D). Here, it is supported only by the declaration of counsel. Glassman decl., September 29, 2017, ECF # 13. Attorneys are not presumed to have personal knowledge. While attorney Glassman presumably can testify as to the filing of the personal injury action. *Navarro-Sandoval v. Valley Garlic Inc.*, No. 16CV-00315 (February 1, 2016). The other facts in the declaration appear beyond the declarant's personal knowledge. More importantly, the facts central to the motion, particularly as to the bad faith, are not supported by an evidence, even inadmissible evidence.

National and Local Rules

Joinder of Claims

Movant has failed to comply with the national and local rules. Joinder of claim for relief, e.g. dismissal and stay relief, is not authorized. Fed. R. Bankr. P. 9014(c) (omitting Fed. R. Bankr. P. 7018 and Fed. R. Civ. P. 18). Equally important, local rules preclude such joinder. **"Every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules . . ."** LBR 9014-1(d)(5).

Amalgamated Motion and Memorandum of Points and Authorities

Generally, a motion, notice of hearing, memorandum of points and authorities, supporting declaration, and certificate of service must each be filed as separate documents. LBR 9014-1(d)(1), (4). As a result, the motion and the memorandum of points and authorities may not be filed as an amalgamated document. See *id.*

Written motions are defined by their content in the Federal Rules of Bankruptcy Procedure. They must state the relief or order sought and the grounds for that relief or order. Fed. R. Bankr. P. 9013. "Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request *but does not include a discussion of those authorities or argument for their applicability.*" LBR 9014-1(d)(3)(A) (emphasis added). In contrast, a memorandum of points and authorities is "a succinct and reasoned explanation of the moving party's entitlement to relief." LBR 9014-1(d)(3)(C).

The rule prohibiting a combined motion and memorandum of points and authorities contains an exception when the total length of the combined document does not exceed 6 pages. LBR 9014-1(d)(4).

Here, the movants have combined the motion and memorandum of points and authorities. That document exceeds six pages. As a consequence, the movant has not complied with the separate document requirement of LBR 9014-1(d)(4). Counsel for movants is reminded to comply with

applicable provisions of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules.

For each of these reasons the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

Antonia Navarro-Sandoval et al.'s motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

13. <u>16-11036</u> -A-7 ROCCO FAZIO <u>FW-5</u>	MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S) 10-3-17 [<u>61</u>]
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HILTON RYDER/Att. 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, Fear Waddell, P.C., general counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$12,266.00 and reimbursement of expenses in the amount of \$491.20.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$12,266.00 and reimbursement of expenses in the amount of \$491.20.

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.

14. [17-13341](#)-A-7 NATALIE SALAZAR
[BDA](#)-1
FINANCIAL SERVICES VEHICLE
TRUST/MV
R. BELL/Atty. for dbt.
BRET ALLEN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-12-17 [[16](#)]

Final Ruling

The matter is dropped from calendar. The motion has been re-noticed for November 15, 2017, at 9:00 a.m.

15. [15-14447](#)-A-7 ASHLEY RANDOLPH
[PPR](#)-1
BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
CASSANDRA RICHEY/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-25-17 [[103](#)]

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: 727 S. Rosemont Road, Unit D-1 #727, Virginia Beach, VA

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

AS TO THE DEBTOR

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.*

The debtor has missed 14 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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

AS TO THE ESTATE

The subject property was abandoned from the estate on October 12, 2017. The automatic stay terminates once property leaves the estate. § 362(c)(1). The motion will be denied as moot as to the estate.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the debtor in the property described in the motion, commonly known as 727 S. Rosemont Road, Unit D-1 #727, Virginia Beach, VA. Relief from the automatic stay as to the interest of the trustee in such property is denied as moot given the abandonment of the subject property. 11 U.S.C. § 362(c)(1).

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.

16. [17-11447](#)-A-7 MAVRA PATROPULOS
[HAR](#)-2
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.
ORDER #88 CONTINUING TO
11/29/17

CONTINUED MOTION TO AVOID LIEN
OF CHASE BANK USA, N.A.
8-8-17 [[22](#)]

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

17. [17-11447](#)-A-7 MAVRA PATROPULOS
[HAR](#)-3
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.
ORDER #90 CONTINUING TO
11/29/17

CONTINUED MOTION TO AVOID LIEN
OF CAPITAL ONE BANK
8-8-17 [[26](#)]

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

18. [17-11447](#)-A-7 MAVRA PATROPULOS CONTINUED MOTION TO AVOID LIEN
[HAR](#)-4 OF DISCOVER BANK
MAVRA PATROPULOS/MV 8-8-17 [[30](#)]
HILTON RYDER/Atty. for dbt.
ORDER #92 CONTINUING TO
11/29/17

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

19. [17-11447](#)-A-7 MAVRA PATROPULOS CONTINUED MOTION TO AVOID LIEN
[HAR](#)-5 OF DISCOVER BANK
MAVRA PATROPULOS/MV 8-8-17 [[34](#)]
HILTON RYDER/Atty. for dbt.
ORDER #94 CONTINUING TO
11/29/17

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

20. [17-11447](#)-A-7 MAVRA PATROPULOS CONTINUED MOTION TO AVOID LIEN
[HAR](#)-6 OF NATIONAL CREDIT ADJUSTERS,
MAVRA PATROPULOS/MV LLC 8-8-17 [[38](#)]
HILTON RYDER/Atty. for dbt.
ORDER #96 CONTINUING TO
11/29/17

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

21. [17-11447](#)-A-7 MAVRA PATROPULOS CONTINUED MOTION TO AVOID LIEN
[HAR](#)-7 OF ASSET ACCEPTANCE, LLC 8-8-17 [[42](#)]
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.
ORDER #98 CONTINUING TO
11/29/17

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

22. [17-11447](#)-A-7 MAVRA PATROPULOS CONTINUED MOTION TO AVOID LIEN
[HAR](#)-8 OF CAVALRY SPV I, LLC
MAVRA PATROPULOS/MV 8-8-17 [[46](#)]
HILTON RYDER/Atty. for dbt.
ORDER #100 CONTINUING TO
11/29/17

Final Ruling

The hearing will be continued to November 29, 2017, at 9:00 a.m.

23. [17-12750](#)-A-7 BRIAN/LOURIE FOLLAND CONTINUED MOTION FOR RELIEF
[NLL](#)-1 FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 8-15-17 [[26](#)]
COMPANY/MV
DAVID JENKINS/Atty. for dbt.
NANCY LEE/Atty. for mv.
RESPONSIVE PLEADING

No Ruling

24. [17-13655](#)-A-7 JAMES COWHERD MOTION FOR RELIEF FROM
[MRG](#)-1 AUTOMATIC STAY
PLANET HOME LENDING, LLC/MV 10-17-17 [[19](#)]
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d) (1)

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c) (1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c) (1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b) (3). Under § 362(c) (2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c) (2) (A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

RELIEF UNDER SECTION 362(d) (4)

The movant requests relief from the automatic stay under § 362(d) (4). The basis for this request is the debtor's filing of 4 bankruptcy petitions in the previous year, including the present one. These petitions have all been dismissed.

Section 362(d) (4) authorizes binding, in rem relief from stay with to respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d) (4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.* The motion will be denied as moot.

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d) (4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay—(4) with respect to a *stay of an act* against real property *under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" 11 U.S.C. § 362(d) (4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d) (4), once granted, may be effective in a subsequent bankruptcy case if the order granting relief is properly recorded, such relief requires as prerequisite an effective automatic stay under § 362(a).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c) (1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c) (1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b) (3).

Under § 362(c) (2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c) (2) (A)-(C).

Because this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay. 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:

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

25. [15-13569](#)-A-7 AMY PADILLA
[KDG](#)-5
JEFFREY VETTER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OWEN R. DAY AND
VICKI L. DAY AND/OR MOTION FOR
COMPENSATION FOR DAVID JAMES
REINARD, SPECIAL COUNSEL(S)
10-4-17 [[75](#)]

NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No Ruling

26. [10-12576](#)-A-7 SHERMAN FUJIOKA
[RH-7](#)
PETER FEAR/MV

MOTION FOR COMPENSATION FOR
ROBERT HAWKINS, TRUSTEES
ATTORNEY(S)
10-3-17 [[191](#)]

RICHARD HARRIS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

No Ruling