

**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 9, 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. [16-12321](#)-A-7 RIGOBERTO/CORINNA AVINA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
NISSAN MOTOR ACCEPTANCE 10-7-16 [[27](#)]
CORPORATION/MV
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2015 Nissan Sentra

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.

Nissan Motor Acceptance Corporation'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 2015 Nissan Sentra. 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.

2. [16-12621](#)-A-7 SERGIO MARTINEZ CONTINUED MOTION TO COMPEL
CMB-1 ABANDONMENT
SERGIO MARTINEZ/MV 8-9-16 [[14](#)]
CATARINA BENITEZ/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Self-employed truck driver

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

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

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

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

3. [16-12823](#)-A-7 JOSE ZAMARRIPA AND ANDREA MOTION TO SELL
RHT-1 SERRANO-BAUTISTA 10-14-16 [[15](#)]
ROBERT HAWKINS/MV
EDDIE RUIZ/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Nissan Armada

Buyer: Debtors

Sale Price: \$6750 (\$4000 cash plus \$2750 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

4. [16-12738](#)-A-7 RITA WEISENRITTER MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
MOUNTAIN WEST FINANCIAL, 10-19-16 [[14](#)]
INC./MV
RABIN POURNAZARIAN/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 8100 Nipa Avenue, California City, 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 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.

Mountain West Financial, 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 8100 Nipa Avenue, California City, 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. [16-13039](#)-A-7 OSCAR MORENO
KAZ-1
U.S. BANK N.A./MV
KRISTIN ZILBERSTEIN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-30-16 [[23](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

6. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-5
GROSS MORTGAGE CORPORATION/MV

PRE-TRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF BILL
LONG, CLAIM NUMBER 15
5-12-16 [[311](#)]

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

Final Ruling

The objection withdrawn, the matter is dropped as moot.

7. [16-13261](#)-A-7 RODNEY RAY
HTP-1
STANDARD CREDIT/MV
JUSTIN HARRIS/Atty. for dbt.
HANNO POWELL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-26-16 [[21](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1587 E. Cromwell Avenue, Fresno, CA 93720

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 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.

Standard Credit'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 1587 E. Cromwell Avenue, Fresno, CA 93720, 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.

8. [16-11364](#)-A-7 HERMES MARTINEZ MOTION TO EMPLOY DON J. POOL AS
DJP-1 SPECIAL COUNSEL
10-11-16 [[37](#)]
GEOFFREY ADALIAN/Atty. for dbt.

Final Ruling

Application: Approval of Employment of Special Counsel for Chapter 7 Trustee

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

Disposition: Approved

Order: Prepared by applicant

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

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining "disinterested person").

"Employment may be for a general or limited, specific purpose." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at *2-3 (Bankr. E.D. Cal. Sept. 12, 2013) (citing 11 U.S.C. § 327(a), (c), (e) and cases), *aff'd sub nom. In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

"A creditor's attorney may be employed by the trustee provided the attorney is 'disinterested,' 'do[es] not hold or represent an interest adverse to the estate,' and, if an objection is made, does not have an 'actual conflict of interest.'" *Id.* (alteration in original) (quoting 11 U.S.C. § 327(a), (c)). "When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the

specific matter for which the attorney is to be employed." *Id.*
(citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993)).

"Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full, candid, and complete." *Id.* (citing *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006)).

The person to be employed, Mr. Don J. Pool, and Wild, Carter & Tipton, P.C., represent a creditor in this case. They represent DCR Credit Recovery, Inc., an assignee for collection for Bank of the Sierra. DCR Credit Recovery has a judgment against debtor for \$47,153.10, and the Mr. Pool filed Proof of Claim No. 7-1 on behalf of DCR in this case.

The goals of DCR and the estate are aligned in this matter, which involves investigation of potential avoidable transfers by the debtor or the debtor's father against third parties not including DCR, and potential litigation of such avoidance actions. Given the absence of facts indicating that the estate's interests in this specified matter will actually conflict with DCR's interests as an unsecured creditor, the court will approve the employment under § 327(a) and (c).

9. [16-11674](#)-A-7 JEFF/MICKI PRINS MOTION TO SELL
TMT-3 9-16-16 [[34](#)]
TRUDI MANFREDO/MV
DAVID JENKINS/Atty. for dbt.
HILTON RYDER/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2004 Harley Davidson motorcycle

Buyer: Donald Owens

Sale Price: \$8000

Sale Type: Private sale subject to overbid opportunity

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

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the

Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

10. [16-12275](#)-A-7 MELINDA HATLER AND MOTION FOR RELIEF FROM
KAZ-1 VINCENT JIMENEZ AUTOMATIC STAY
JP MORGAN CHASE BANK, NA/MV 9-29-16 [[15](#)]
THOMAS ARMSTRONG/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

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: 1032 E Goshen Avenue, 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.

JP Morgan Chase Bank, National Association as servicing agent for Deutsche Bank National Trust Company, as Trustee, has filed a motion for relief from the automatic stay that 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 1032 E Goshen Avenue, 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.

11. [16-12181](#)-A-7 PRIMARY PACKAGE, INC. MOTION TO EMPLOY ALAN J. DROSTE
TMT-2 AS SPECIAL COUNSEL
TRUDI MANFREDO/MV 9-14-16 [[10](#)]
RILEY WALTER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

12. [16-11589](#)-A-7 ALFONSO ZINZUN MOTION TO COMPROMISE
TGM-3 CONTROVERSY/APPROVE SETTLEMENT
PETER FEAR/MV AGREEMENT WITH ALFONSO ZINZUN,
JR. AND ARMANDO ZINZUN
10-12-16 [[48](#)]
ERIC ESCAMILLA/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles fraudulent transfer dispute. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 50. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit 1 and filed at docket no. 50.

13. [15-13696](#)-A-7 JUAN RIVAS
TMT-2
TRUDI MANFREDO/MV
TIMOTHY SPRINGER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
9-8-16 [[28](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2000 GMC 1500 Savana

Buyer: Debtor

Sale Price: \$4450 (\$1550 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

14. [15-14897](#)-A-7 DEBORAH STEVENS
DEBORAH STEVENS/MV

MOTION TO APPROVE LOAN
MODIFICATION
10-19-16 [[21](#)]

Tentative Ruling

Motion: Approval of Mortgage Loan Modification in Chapter 7 Case

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

Disposition: Granted

Order: Civil minute order

LOAN MODIFICATION

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. *See In re Roderick*, 425 B.R. 556, 563-65 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified

after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. See *Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

Here, the loan is secured by a deed of trust on residential property owned by the debtor. But the debtor received her discharge as of April 11, 2016. Accordingly, the modification will not preserve the personal liability of the debtor as that has already been discharged.

As a result, the movant is not seeking in essence a reaffirmation that does not require court approval.

Instead, to the extent the deed of trust to be modified remains attached to the property, the loan remains non-recourse. The loan modification, if entered, would then affect the terms under which the lien would be released.

Accordingly, the court will authorize such a modification so long as it does not affect the debtor's personal liability.

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 debtor's motion for authority to enter into a loan modification agreement 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 debtor is authorized to enter into a loan modification agreement with Wells Fargo Bank, N.A., which agreement is not a reaffirmation agreement. The loan modification agreement will affect only the non-recourse debt secured by the debtor's real property and the terms under which the lien on the debtor's real property will be released. Such agreement shall not affect the debtor's personal liability on such debt.