

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: JANUARY 10, 2017
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. [16-13301](#)-A-7 ERIC/RONDA KOZLOWSKI MOTION TO EXTEND DEADLINE TO
JLG-1 FILE A COMPLAINT OBJECTING TO
FRESNO FIRST BANK/MV DISCHARGE OF THE DEBTOR
12-9-16 [[36](#)]

THOMAS ARMSTRONG/Atty. for dbt.
JESSICA GIANNETTA/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-16505](#)-A-7 DOLLIE WARREN MOTION TO AVOID LIEN OF GCFS,
JRL-2 INC
DOLLIE WARREN/MV 11-30-16 [[23](#)]
LAYNE HAYDEN/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

3. [16-13011](#)-A-7 MARY BUTLER
TMT-1
TRUDI MANFREDO/MV
JOHN BIANCO/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
11-22-16 [[26](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2011 Nissan Rogue

Buyer: Debtor

Sale Price: \$7720.00 (\$2155 cash plus \$3050 exemption credit and the sale is subject to a lien held by Wells Fargo Dealer Services securing a debt of \$2515)

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.

4. [14-13415](#)-A-7 RON/KARRIE HATLEY
TMT-4
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RON S. HATLEY
AND KARRIE HATLEY
12-6-16 [[87](#)]

DAVID JENKINS/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 a dispute with the debtors, Ron S. Hatley and Karrie Hatley regarding an unscheduled assets, i.e. \$32,981.36 refund from the City of Tulare. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 87. 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.

Trudi G. Manfredo, Chapter 7 trustee's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit 1 and filed at docket no. 87.

5. [15-11617](#)-A-7 JOSE CARRILLO AND IRMA MOTION TO AVOID LIEN OF
TOG-2 VARGAS PORTFOLIO RECOVERY ASSOCIATES,
JOSE CARRILLO/MV LLC
12-19-16 [[35](#)]
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$194,460

Property Value: \$109,300

Judicial Lien Avoided: \$1960

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [16-13217](#)-A-7 GABRIEL/SOCORRO PARAMO MOTION TO AVOID LIEN OF CAPITAL
SL-1 ONE BANK (USA) N.A.
GABRIEL PARAMO/MV 12-9-16 [[21](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

7. [16-14025](#)-A-7 ARMANDO/ALEXANDRIA ORDER TO SHOW CAUSE - FAILURE
VICENCIO TO PAY FEES
MARK ZIMMERMAN/Atty. for dbt. 12-14-16 [[37](#)]
\$176.00 FEE PAID

Final Ruling

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

8. [16-14025](#)-A-7 ARMANDO/ALEXANDRIA CONTINUED MOTION TO COMPEL
MAZ-1 VICENCIO ABANDONMENT
ARMANDO VICENCIO/MV 11-30-16 [[30](#)]
MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: A. Vicencio Trucking, a sole proprietorship

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

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

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

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

9. [13-13727](#)-A-7 JOHN MCILWAINE
JRL-2
JOHN MCILWAINE/MV
WILLIAM COLLIER/Atty. for dbt.

MOTION TO AVOID LIEN OF
NATIONAL BANK OF KANSAS CITY
11-29-16 [[40](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$148,630.53

Property Value: \$112,000

Judicial Lien Avoided: \$4715.53

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will no longer be set at 60 days following the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for January 19, 2017, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

11.	16-14238 -A-7 JOHN/ARLENE THOMAS CJO-1 PENNYMAC LOAN SERVICES, LLC/MV ASHTON DUNN/Atty. for dbt. CHRISTINA O/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-20-16 [13]
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Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1109 W. Iowa Ave., Ridgecrest, 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.

PennyMac Loan Services, 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 1109 W. Iowa Ave., Ridgecrest, 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.

12. [16-10945](#)-A-7 ROGER POWELL
RH-3

MOTION FOR COMPENSATION FOR
ROBERT HAWKINS, TRUSTEES
ATTORNEY(S)
12-13-16 [[77](#)]

MARK ZIMMERMAN/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, Robert Hawkins, 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 \$6,690.00 and reimbursement of expenses in the amount of \$141.33.

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

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

CIVIL MINUTE ORDER

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

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

Robert Hawkin'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 \$6,690.00 and reimbursement of expenses in the amount of \$141.33.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

13. [12-60549](#)-A-7 MARIBEL TAMEZ
PFT-4
PETER FEAR/MV

CONTINUED MOTION FOR
COMPENSATION FOR DAVID KUTTLES,
SPECIAL COUNSEL(S)
11-14-16 [[99](#)]

STEPHEN LABIAK/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, denied in part

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, Lanier Law Firm, PLLC, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on this court's order. Order, July 27, 2016, ECF # 88. Therein, the court specifically declined to set a method of

compensation. *Id.* As a result, the focus of the court's is ascertaining a reasonable fee. 11 U.S.C. § 330(a)(1).

The court has broad discretion in fixing a reasonable fee. Like most federal courts, bankruptcy courts ordinarily employ the lodestar method, which calls for the court to multiply "the number of hours reasonably expended" by "a reasonable hourly" rate. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 960 (9th Cir. 1991); *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988). Use of the lodestar method is predicated upon: (1) the existence of well-documented time records, *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (9th Cir BAP 2000); (2) exclusion of non-compensable time and time billed upgrade, e.g. billing secretarial time at paralegal rates, *Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989); (3) omission of time spent on "duplicative, unproductive, excessive or unnecessary" work, *In re Sullivan*, 454 B.R. 1, 4, (D. Mass. 2011); accord 11 U.S.C. § 330(a)(4)(A); and (4) exercise of prudent billing judgment by the applicant, *Hensley v. Eckerhart*, 461 U.S. 424, 434, 437 (1983); *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 958-59 (9th Cir. 1991).

The court's discretion in fixing the fee is not limited to the lodestar method. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 958-59 (9th Cir. 1991). And departure from the lodestar method is frequently appropriate where one or more of the predicates are missing.

The applicant prays compensation of \$6,091.25 (22.15 hours x \$275 per hour) and costs of \$1,713.67.

In this case, the court believes that the lodestar method does, in fact, provide the best method for calculating a reasonable fee. And except as indicated herein, the court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. Section 330(a)(4)(A) mandates the court disallow duplicative, unproductive, excessive or unnecessary time. The court finds the following time to be unproductively spent: (1) preparation of the Supplemental Declaration of Kuttles, June 29, 2016, ECF # 79 (5 hours for preparation of 7 pages); (2) Supplemental Declaration of Kuttles, June 29, 2016, ECF # 82 (6 hours for preparation of 9 pages); and (3) Supplemental Declaration of Kuttles, August 10, 2016, ECF # 94 (2.5 hours spent for preparation of slightly more than 2 pages). Hours spent on these three declarations aggregate 13.5 hours. The court will allow one-half that amount, i.e. 6.75. Accordingly, the court will reduce compensation by \$1,856.25 (6.75 hours x \$275/hour).

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.

15. [16-13454](#)-A-7 MARVIN/MAUREKA DAVIS MOTION FOR RELIEF FROM
MAO-1 AUTOMATIC STAY
OCEAN VIEW BIBLE FELLOWSHIP/MV 12-6-16 [[20](#)]
PETER BUNTING/Atty. for dbt.
MARY ANN O'HARA/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief to Pursue State-Court Litigation

Notice: LBR 9014-1(f)(1); conditional non-opposition filed

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Subject: Ocean View Bible Fellowship v. Marvin Davis, Maureka Davis, Stephen Valerio, True Bible Baptist Church, San Mateo County Superior Court case no. CIV535073, filed August 14, 2015

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, and the conditional non-opposition filed by the debtors, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Ocean View Bible Fellowship's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend

in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as Ocean View Bible Fellowship v. Marvin Davis, Maureka Davis, Stephen Valerio, True Bible Baptist Church, San Mateo County Superior Court case no. CIV535073, filed August 14, 2015. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

16.	16-11074 -A-7 MARIA SANDOVAL ORS-1 MARIA SANDOVAL/MV OSCAR SWINTON/Atty. for dbt. NO NOTICE OF HEARING FILED	MOTION TO VACATE DISMISSAL OF CASE 12-7-16 [30]
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Final Ruling

Motion: Vacate Dismissal of Chapter 7 case

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

Disposition: Denied

Order: Civil minute order

Debtor Maria Sandoval seeks to vacate the dismissal of her Chapter 7 bankruptcy for failure to attend the meeting of creditors.

DISCUSSION

The court deems this to be a motion under Federal Rule of Civil Procedure 60(b), incorporated by Federal Rule of Civil Procedure 9024. Rule 60(b) allows a court to vacate an order entered for mistake, inadvertence, surprise or excusable neglect.

Two flaws preclude granting relief. First, a motion must specify not only the relief sought but must also "state with particularity the grounds therefor." Fed. R. Bankr. 9013. The motion does not specify which, if any, of the Rule 60(b) grounds, e.g. mistake, inadvertence, surprise or excusable neglect, under which the debtor proceeds. Second, it is unsupported by a declaration or other admissible evidence. LBR 9014-1(d)(7). As a result, this *ipse dixit* motion will be denied.

CIVIL MINUTE ORDER

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

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

Maria Sandoval'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.

17. [16-13875](#)-A-7 JOSE/EMILIA CAMACHO MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 12-13-16 [[10](#)]
SERVICES, INC./MV
DAVID JENKINS/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2007 Cadillac CTS

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2007 Cadillac CTS, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

18. [15-11079](#)-A-7 WEST COAST GROWERS, INC. CONTINUED MOTION TO COMPROMISE
KDG-20 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST LANDSBERG ORORA
11-16-16 [[811](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

19. [15-11079](#)-A-7 WEST COAST GROWERS, INC. CONTINUED MOTION TO COMPROMISE
KDG-21 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST THE CITY OF MORRO BAY
11-16-16 [[818](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

20. [15-11079](#)-A-7 WEST COAST GROWERS, INC. CONTINUED MOTION TO COMPROMISE
KDG-22 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST CHOOLJIAN BROS.
11-16-16 [[825](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

21. [15-11079](#)-A-7 WEST COAST GROWERS, INC. CONTINUED MOTION TO COMPROMISE
KDG-23 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST ROBERT V. JENSEN, INC.
11-16-16 [[832](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

22. [15-11079](#)-A-7 WEST COAST GROWERS, INC. MOTION TO COMPROMISE
KDG-24 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH ABC COOLING &
HEATING SERVICES, INC. ET AL.
12-8-16 [[839](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

23. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER MOTION FOR COMPENSATION FOR
RH-2 ROBERT HAWKINS, TRUSTEES
ATTORNEY(S)
12-13-16 [[87](#)]

BRIAN HADDIX/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Robert Hawkins, 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 \$4,020.00 and reimbursement of expenses in the amount of \$502.90.

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.

Robert Hawkins' 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 \$4,020.00 and reimbursement of expenses in the amount of \$502.90.

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.

24. 16-14096 -A-7 ERIK/LISA RIDDICK BDA-1 BMW FINANCIAL SERVICES NA, LLC/MV NEIL SCHWARTZ/Atty. for dbt. BRET ALLEN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-16-16 [13]
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Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 BMW X1 35XI

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

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement with the moving party, and 1 postpetition payment is past due. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default.

Therefore, cause exists to grant relief 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.

BMW Financial Services NA, 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 2012 BMW X1 35XI, 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.