

**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: FEBRUARY 15, 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. [16-12706](#)-A-7 JESUS/LUCIA GARCIA MOTION TO SELL
 JES-1 1-9-17 [[23](#)]
 JAMES SALVEN/MV
 MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Two firearms (a S&W 9mm handgun and a 22 caliber rifle)

Buyer: Debtors

Sale Price: \$400 (no 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.

2. [17-10007](#)-A-7 FELIX BERNAL MOTION FOR RELIEF FROM
 KAZ-1 AUTOMATIC STAY
 HSBC BANK USA, NATIONAL 1-18-17 [[13](#)]
 ASSOCIATION/MV
 KRISTIN ZILBERSTEIN/Atty. for mv.
 DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

3. [16-13311](#)-A-7 DENNIS/HELEN MCCAUGHAN OBJECTION TO DEBTOR'S CLAIM OF
JES-1 EXEMPTIONS
JAMES SALVEN/MV 11-8-16 [[17](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

After this objection was filed, an amended Schedule C was filed at docket no. 30 on January 21, 2017. The objection will be overruled as moot.

4. [15-14815](#)-A-7 CATHEY LLOYD MOTION FOR COMPENSATION BY THE
RWR-4 LAW OFFICE OF COLEMAN &
HOROWITT FOR RUSSELL W.
REYNOLDS, TRUSTEES ATTORNEY(S)
1-6-17 [[56](#)]

GABRIEL WADDELL/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, Russell W. Reynolds, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3570.00 and reimbursement of expenses in the amount of \$568.24.

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.

Russell W. Reynolds'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 \$3570.00 and reimbursement of expenses in the amount of \$568.24.

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

5. [16-13315](#)-A-7 KASSANDRA HOELSCHER MOTION TO EMPLOY JAMES R.
JES-1 DONAHUE AS SPECIAL COUNSEL
JAMES SALVEN/MV 12-15-16 [[18](#)]
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Application: Approval of Employment

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).

SECTION 327(c) EMPLOYMENT

"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 trustee proposes to employ the law firm of Donahue Davies LLP and attorney James R. Donahue as special counsel to the trustee to pursue a bad faith / malpractice claim against Safeco Insurance and defense counsel assigned by Safeco Insurance to the debtor. No objection to the application has been made. See § 327(c).

The employment is required to pursue the bad faith / malpractice claims that arose out of certain state court litigation. The state court litigation is entitled *Carly Noelle Bray v. Kassandra Marie Hoelscher*, Superior Court of El Dorado County, California, Case No. PS20120677.

Based on the declaration of the attorney to be employed, this creditor's attorney qualifies for employment under §§ 327(a) and (c). The attorney is disinterested as defined in § 101(14) of the Code. The attorney has only one connection—representation of creditor Carly Bray. Ms. Bray is a judgment creditor of the debtor with a 4,900,000 judgment against the debtor. She is an unsecured creditor.

Based on the application and evidence, it appears that the attorney does not have a disqualifying conflict of interest with respect to the specific matter for which the attorney is to be employed—pursuit of a bad faith / malpractice claim that would, if successful, augment the estate. The interest of the creditor, Ms. Bray, and the estate are aligned and not adverse in that any recovery would be received by the estate primarily, and would then increase any distribution received by Ms. Bray as a creditor.

No facts show that representation of Ms. Bray in the state court litigation and as a judgment creditor involves lessening the value of the bankruptcy estate in a way other than that permitted by the Code (filing a claim under §§ 501, 502).

Accordingly, the employment will be approved.

SECTION 328(a) COMPENSATION

The court may approve a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only 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").

From the factual information provided in the motion and supporting papers, the court will approve the compensation on the terms specified. The contingency fee is 37% of the gross recovery if no appellate filings are required, and rises to 44% of the gross recovery if appellate filings are required. Costs and expenses are billed based on actual sums advanced.

This approval is subject to the proviso in § 328(a) that the court may allow, under the conditions of § 328(a)'s second sentence, compensation different from the compensation provided in the application and agreement.

6. [16-13018](#)-A-7 STEVEN/JACKIE BLODGETT MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
NISSAN MOTOR ACCEPTANCE 1-12-17 [[15](#)]
CORPORATION/MV
GABRIEL WADDELL/Atty. for dbt.
AUSTIN NAGEL/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: 2014 Nissan Versa

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 a 2014 Nissan Versa. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

7. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-17
TRUDI MANFREDO/MV
JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF VIKING
READY MIX, CLAIM NUMBER 3
12-28-16 [[400](#)]

No tentative ruling.

8. [17-10136](#)-A-7 FRESNO MOVING & STORAGE MOTION TO EMPLOY GOULD AUCTION
TMT-1 INC. & APPRAISAL COMPANY AS
TRUDI MANFREDO/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
1-27-17 [[10](#)]

JEFFREY ROWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
OST

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Supplies, office furniture, machinery, equipment and other personal property as more fully described in Exhibit 1 to the motion

Sale Type: Public auction

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.

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.

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.

9. [16-13737](#)-A-7 KERRY HANSON
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
1-18-17 [[38](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2009 Ford F-150

Buyer: Debtor

Sale Price: \$10,570 (\$8270 cash plus \$2300 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.

10. [16-13443](#)-A-7 R.L. SURGENER, INC.
KDG-2
JEFFREY VETTER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO BANK
1-25-17 [[25](#)]

LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Wells Fargo Bank, N.A. and Jeffrey M. Vetter, Trustee

Dispute / Issues Compromised: Whether the trustee will bring claims for surcharge, marshaling, or fraudulent transfer against Wells Fargo Bank, N.A., whether Wells Fargo's claims will be allowed, and whether the estate will receive a carve-out for collection and liquidation of Wells Fargo's collateral

Summary of Material Terms: In exchange for a carve-out for the estate of varying percentages depending on the asset type (and depending on date of recovery for accounts receivable), Wells Fargo agrees to allow the trustee to collect the debtor's accounts receivable and liquidate debtor's assets that are Wells Fargo's collateral, including inventory, office assets, machinery, cash, security deposit, and claims against third-parties. The trustee agrees to allow Wells Fargo's proofs of claim nos. 8, 9, and 10. The trustee releases any claims he has against Wells Fargo for surcharge, marshaling, or fraudulent transfer under state law.

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).

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 the disputes described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 29. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

The trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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 A and filed at docket no. 29.

11. [12-60054](#)-A-7 DWIGHT/NELLIE LONG MOTION FOR COMPENSATION FOR
RHT-14 ROBERT HAWKINS, CHAPTER 7
ROBERT HAWKINS/MV TRUSTEE(S)
1-6-17 [[414](#)]

LAYNE HAYDEN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, the chapter 7 trustee has applied for an allowance of final compensation and reimbursement of expenses. A trustee's compensation is considered in accordance with § 326(a) and § 330(a)(1), (7). Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

"[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *Id.* at 896 (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, Congress intended to establish trustee's compensation for the "vast majority of cases" at the commission rates set forth in § 326. *Id.* at 897.

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

(3) that expenses for which reimbursement is sought are actual and necessary.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$23,532.11 and reimbursement of expenses in the amount of \$2959.31.

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.

12. 16-13454 -A-7 MARVIN/MAUREKA DAVIS TMT-1 TRUDI MANFREDO/MV	MOTION TO EMPLOY GOLD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES 1-12-17 [42]
PETER BUNTING/Atty. for dbt. TRUDI MANFREDO/Atty. for mv.	

Final 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: 2003 Cadillac CTS

Sale Type: Public auction

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

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.

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.

13. [16-13454](#)-A-7 MARVIN/MAUREKA DAVIS MOTION TO SELL
TMT-2 1-17-17 [[51](#)]
TRUDI MANFREDO/MV
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/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: Phoenix Arms Model HP22A and Sturm, Ruger & Co. GP100

Buyer: Debtors

Sale Price:

Phoenix Arms Model HP22A: \$100 cash

Surm, Ruger & Co. GP100: 200 cash

Sale Type: Private sale subject to overbid opportunity

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

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

14. [16-14657](#)-A-7 ADRIENNE MACRI

ADRIENNE MACRI/MV

No tentative ruling.

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE

12-28-16 [[5](#)]

15. [14-13661](#)-A-7 LAWRENCE GOWIN

DRJ-4

JAMES SALVEN/MV

DAVID JENKINS/Atty. for mv.

OBJECTION TO CLAIM OF ANN
MCTEER, CLAIM NUMBER 1

12-30-16 [[58](#)]

Final Ruling

Objection: Objection to Claim No. 1

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 trustee objects to the claim of Ann Mcteer in the amount of \$61,847.38 for money loaned. The claim has no documentation in support of the claim that evidences the money loaned. The loan was made in 2004 according to the claimant's calculation sheet attached to the claim.

For the reasons stated in the objection, the loan is not evidenced by a written agreement but is an oral agreement subject to a 2-year statute of limitations. Cal. Civ. Proc. Code § 339. Because no time is specified for repayment of the loan, the loan is payable on demand, *Dorland v. Dorland*, 66 Cal. 189, 190 (1884), and the statute of limitations began to run when the loan was made in 2004, *Buffington v. Ohmert*, 253 Cal. App. 2d 254, 256 (Ct. App. 1967). Even if the loan was made the last day of 2004, the 2-year statute of limitations would have expired as of 2006 year-end. As a result, the loan is unenforceable, and the claim based on such loan will be disallowed in its entirety.

16. [10-61970](#)-A-7 BRIAN ENNIS
RH-13
JAMES SALVEN/MV

MOTION TO ALLOW INTERIM
DISTRIBUTION AND/OR MOTION FOR
COMPENSATION FOR JAMES SALVEN,
CHAPTER 7 TRUSTEE(S)
1-13-17 [[408](#)]

RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

No tentative ruling.

17. [10-61970](#)-A-7 BRIAN ENNIS
THA-13

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LAW OFFICE OF
THOMAS H. ARMSTRONG FOR THOMAS
H. ARMSTRONG, SPECIAL
COUNSEL(S)
1-18-17 [[413](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Thomas H. Armstrong, 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 \$6598.75 and reimbursement of expenses in the amount of \$752.37. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$6598.75 and reimbursement of expenses in the amount of \$752.37. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

18. [16-13477](#)-A-7 MICHAEL/TANYA SCAMBLER MOTION TO EMPLOY GOULD AUCTION
TMT-1 & APPRAISAL COMPANY AS
TRUDI MANFREDO/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
1-16-17 [[20](#)]
- SCOTT LYONS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final 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: 2003 Volkswagen Beetle

Sale Type: Public auction

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

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.

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.

19. [16-12881](#)-A-7 JAMES/SALLY KROB MOTION TO SELL
JES-2 1-17-17 [[32](#)]
JAMES SALVEN/MV
JULIE MORADI-LOPES/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Personal property described below

Buyer: Debtors

Sale Price:

-2004 Ford Explorer: \$2000 cash

-2002 Nissan Xterra: \$2000 cash

-Livestock (2 Holstein cows and one bull): \$1000 cash

Sale Type: Private sale subject to overbid opportunity

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

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

20. [16-13992](#)-A-7 HOPE MORIKAWA MOTION FOR RELIEF FROM
KSC-1 AUTOMATIC STAY
TONY FURTADO/MV 1-6-17 [[28](#)]
ROBERT ZUMWALT/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

21. [16-13710](#)-A-7 EDUARDO PEREZ MOTION TO EMPLOY GOULD AUCTION
TMT-1 & APPRAISAL COMPANY AS
TRUDI MANFREDO/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
2-8-17 [[24](#)]

TIMOTHY SPRINGER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
OST 2/8/17

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

Notice: LBR 9014-1(f) (3); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: 1995 Mallard 24-foot travel trailer, a 2000 Honda dirt bike,
a 2013 Interstate Cargo trailer, a 2006 Yamaha dirt bike, and a 2006
Ford E-150 Van

Sale Type: Public auction

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.

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.

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.