

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

FEBRUARY 18, 2015

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [12-11008](#)-A-7 RAFAEL ALONSO
PWG-12
VINCENT GORSKI/MV

CONTINUED MOTION TO EMPLOY
PHILLIP GILLET, JR. AS SPECIAL
COUNSEL
1-14-15 [[243](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Employ Phillip Gillet

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

Disposition: Granted

Order: Prepared by moving party

This is a continued hearing on Chapter 7 trustee Vincent Gorski's motion to employ Phillip W. Gillet Jr. To date, in these proceedings Gillet has represented creditor Marko Zubcic. The motion makes inconsistent representations as to whether the representation is general or limited. Compare, Chapter 7 trustee's Application to Authorize Employment of Phillip W. Gillet, Jr. ¶¶ 4-5, filed January 14, 2015, ECF # 243 (describing the representation as general), with Declaration of Vincent A. Gorski ¶ 6, filed January 14, 2015, ECF #245 (describing the representation as limited). But at the first hearing on this matter on January 21, 2015, and again in the supplemental pleadings filed in support of this motion, Gillet and Gorski limit the scope of Gillet's engagement to that of special counsel to pursue: (1) motion to compel turnover, VG-5; and (2) fraudulent transfer and/or preference actions against (A) Mauriela Camacho, (B) Gabriella Alonso, (C) Rogelio Mendez, (D) Reyna Mexia, (E) Christian Geve, (F) Maria Melendez, and (G) Jenny Angulo. Chapter 7 trustee's Reply Memorandum of Points and Authorities IV, filed February 6, 2015, ECF # 306.

The motion is opposed by debtor Rafael Alonso, who cites California Rule of Professional Conduct 3-300 and focuses on a disqualifying interest arising from Gillet's employment in connection with a state court action against John Dulcich, his co-counsel in the representation of Marko Zubic.

LEGAL STANDARDS

A Chapter 7 trustee may employ counsel. 11 U.S.C. § 327. Section 327 sets the minimum qualifications for employment. The professional seeking to be employed bears the burden of proof on qualification. *Official Comm. Of Unsecured Creditors v. ABC Capital Mkts. Grp. (In re Capitol Metals Co., Inc.)*, 228 B.R. 724, 727 (B.A.P. 9th Cir. 1998).

The standards for employing creditors counsel to represent the Chapter 7 trustee as special counsel are well-established and are subjects on which this court has previously expressed its views. *In re Hummer Transportation, Inc.*, 2013 WL 8013588 (Bankr. E.D. Cal. September 12, 2013), *aff'd* 2014 WL 412534 (E.D. Cal. February 3, 2014). As this court noted in *Hummer Transportation*, "Employment may be for a general or limited, specific purpose. See 11 U.S.C. § 327(a), (c), (e); *Bank*

Brussels Lambert v. Coan (In re AroChem Corp.), 176 F.3d 610, 622 (2d Cir.1999) (distinguishing between employment of general counsel and special counsel for purposes of conflicts and eligibility analysis); *Fondiller v. Robertson (In re Fondiller)*, 15 B.R. 890, 892 (B.A.P. 9th Cir.1983) (same), *appeal dismissed*, 707 F.2d 441 (9th Cir.1983)."
Hummer Transportation at * 2 (Bankr. E.D. Cal. 2013).

"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." 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. See *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993); *Coan*, 176 F.3d at 622-29; *Fondiller*, 15 B.R. at 892." *Hummer Transportation* at * 3 (Bankr. E.D. Cal. 2013).

DISCUSSION

Standing

At the outset, Gillet argues that Alonso, the debtor, lacks standing under § 327(c) and, therefore, that the conflict analysis is inapplicable to him. The court agrees but retains the authority to apply the conflict analysis of § 327(c) sua sponte. See *In re Barnes*, 2013 WL 3760570 (Bankr. D. Or. 2013), citing *In re Am. Energy Trading Co.*, 291 B.R. 154, 157-158 (Bankr. W.D. Mo. 2003); *In re Penney*, 334 B.R. 517, 520 (Bankr. D. Mass. 2005); *In re BH&P, Inc.*, 2013 B.R. 556, 565 (Bankr. D.N.J. 1989), *aff'd in part, rev'd in part and remanded on other grounds*, 949 F.2d 1300 (3rd Cir. 1991). As a result, the court considers Gillet's application on the merits.

Section 327(a) Elements

Since the relief requested is narrowly tailored to the motion to compel and to the seven avoidance actions, the conflicts analysis will be similarly limited. See *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993); *Coan*, 176 F.3d at 622-29; *Fondiller*, 15 B.R. at 892." *Hummer Transportation* at * 3 (Bankr. E.D. Cal. 2013). And Alonso's arguments as to the conflict interest associated with the action against Gillet's co-counsel, John Dulcich, miss the mark.

Disinterestedness

"The term "disinterested person" means a person that--(A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." As this court observed in *Hummer Transportation*, "Creditors are not disinterested persons. *Id.* § 101(14) (A). "Yet, § 327(c) makes clear that an attorney's representation of a creditor does not per se deprive that attorney of 'disinterested' status, but rather becomes a potential disqualifier for employment" if an "actual conflict of interest" exists. See *In re Kobra Props.*, 406 B.R. 396, 403 (Bankr. E.D. Cal.2009) (citing §

327(c)) (distinguishing between a creditor and creditor's counsel)."
Hummer Transportation at * 3 (Bankr. E.D. Cal. 2013).

Gillet is not a creditor of the estate. Since the debtor is not an entity the director, officer or employee provisions of § 327(c) are not triggered. While argument can be made that Gillet's association with John Dulcich (defendant in the state court action) for the purposes of representing Marko Zubic might create an interest materially adverse to the state, the court does not so find. That is so because that relationship is unrelated to the scope of the work now to be performed, i.e. motion for turnover and avoidance actions. Gillet is disinterested.

No Adverse Interest

As this court explained in *Hummer Transportation*, "Section 327(a) also requires that prospective counsel not hold or represent an interest adverse to the estate. To *hold* an interest adverse to the estate means "(1) to possess or assert any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate." *Tevis*, 347 B.R. at 688 [*Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006)]." "To *represent* an adverse interest means to serve as an attorney for an entity holding such an adverse interest." *Id.* But in the context of special counsel employed for a limited purpose, "the attorney must not represent an adverse interest relating to the services which are to be performed by that attorney." *Fondiller*, 15 B.R. at 892." *Hummer Transportation* at * 4 (Bankr. E.D. Cal. 2013).

The proposed representation includes two matters. The first matter involves the representation of Gorski in the Motion to Compel Turnover, filed June 13, 2014, ECF # 34. One of the central issues in that matter is whether specified assets are property of the estate. See Scheduling Order § 3.2 (iii), (iv), (v), (vi), (viii), (ix), filed August 23, 2014, ECF #98. If these assets are property of the estate, proceeds would need to be divided among all creditors; if not, those assets would be available for payment of Marko Zubic exclusively. At first blush this appears create an adverse interest for Gillet, who might be forced to choose between steering the assets to the estate as a part of his representation of Gorski or steering them out of the estate for payment solely to Marko Zubic, it does not do so. Aside from Zubic there are only two other creditors who have filed claims: Elmer F. Kapre, who holds a fully secured claim for \$100,146.94, and California Desert Grape Administrative Committee, who holds a claim for \$638.67. Total claims in this case, including Zubic's claim, are \$169,352.67. Since Zubic's claim represents 99.62% of all unsecured claim, the court does not find an adverse interest. The second group of matters involves seven avoidance actions. Since there is no suggestion of an adverse interest by Gillet.

Actual Conflict

Once again, as this court observed in *Hummer Transportation*, "If a creditor or the U.S. Trustee objects, § 327(c) mandates that the court disapprove the trustee's employment of a creditor's attorney if an actual conflict of interest exists. But "where the trustee seeks to appoint counsel only as 'special counsel' for a specific matter, there

need only be no conflict between the trustee and counsel's creditor client with respect to the specific matter itself." *Stoumbos*, 988 F.2d at 964. "[A] conflict of interest is actual and warrants disqualification under § 327(c) if there is active competition between two interests, in which one interest can only be served at the expense of the other." *Johnson v. Richter, Miller & Finn (In re Johnson)*, 312 B.R. 810, 822 (E.D. Va. 2004) (internal quotation marks omitted). "[T]here is no 'actual conflict of interest' warranting disqualification unless (i) the interests of the trustee and the creditor are in fact directly conflicting or (ii) the creditor is actually afforded a preference that is denied to other creditors." *Id.* (footnote omitted), quoted in *Byrd v. Johnson*, 467 B.R. 832, 848-49 (D. Md. 2012)." *Hummer Transportation* at * 4 (Bankr. E.D. Cal. 2013).

Alonso has not pointed to an active competition between the interests of Marko Zubic and the estate with respect to either the motion to avoid or the seven avoidance actions. And the court finds none. As a result the motion will be granted.

ORDER

Gillet shall prepare and lodge an order consistent with the terms of this ruling. Payment shall be on a lodestar method with no particular hourly rate approved. The order shall specify precisely the scope of the work to be performed. It shall close with the sentence, "Except as expressly approved by this order, all relief is denied."

2. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI & WONG, JANZEN, TAMBERI & WONG,
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S)
JERRY LOWE/Atty. for dbt. 1-19-15 [[102](#)]

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

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.

Janzen, Tamberi & Wong'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 \$925.00 and reimbursement of expenses in the amount of \$13.16.

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.

3. [14-10911](#)-A-7 LITCONN, INC.
HW-2
CADLES OF GRASSY MEADOWS II,
L.L.C./MV
JERRY LOWE/Atty. for dbt.
HOLLY WALKER/Atty. for mv.

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
1-21-15 [[35](#)]

Tentative Ruling

Motion: For Order Approving Stipulation For Relief from the Automatic Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by the moving party consistent with this ruling and the final paragraph of the pre-hearing disposition

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).

The court will grant the motion in part and deny the motion in part. The court will issue an order approving the stipulation for relief from the automatic stay so long as the stipulation is attached as a

clearly readable exhibit to the order submitted for the court's signature.

The court will grant the motion in part as to the following relief: the request for an order (i) approving the stipulation and (ii) authorizing the parties to the stipulation to take any and all acts necessary to consummate the stipulation. The court will deny the motion in part without prejudice as to the request for injunctive relief directing the parties to comply with the stipulation's terms. Such relief is premature in the absence of non-compliance with the stipulation. Finally, because this motion is brought under Federal Rule of Bankruptcy Procedure 4001(d), no stay of the order exists that need be waived, but such term may remain a part of the signed stipulation.

4. [13-17413](#)-A-7 LEWIS DUNIGAN
APN-1
SANTANDER CONSUMER USA INC./MV
JUSTIN HARRIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-15 [[47](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to March 11, 2015, at 9:00 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

PROCEDURAL ISSUE

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the motion was not served on the trustee's attorney. The court prefers that the trustee's attorney be either given notice of the motion or served according to Rule 5(b) of the Federal Rules of Civil Procedure, incorporated by Rule 7005 of the Federal Rules of Bankruptcy Procedure.

MERITS

If the hearing is continued at the movant's option, and if the trustee has not opposed the motion after his attorney has been given notice,

the court will grant the motion under § 362(d)(2) given the debtor's lack of equity in the property. The valuation of the property is \$5695.00 but the secured debt against it totals \$9481.00.

5. [15-10013](#)-A-7 WILLIAM/NETA VALENTINE MOTION FOR WAIVER OF THE
WILLIAM VALENTINE/MV CHAPTER 7 FILING FEE OR OTHER
FEE
1-5-15 [[5](#)]
WILLIAM VALENTINE/Atty. for mv.

Tentative Ruling

Application: Waiver of Chapter 7 Filing Fee

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

Disposition: Denied

Order: Civil minute order

Debtors William Valentine and Neta Valentine pray waiver of the Chapter 7 filing fee. Because Schedule B reflects an anticipated 2014 income federal and state tax refund in an "unknown" amount, the matter was set for hearing. See Schedule B # 18, filed January 5, 2015, 2015, ECF #1.

DISCUSSION

Application for Chapter 7 filing fee waivers are governed by 28 U.S.C. § 1930(f)(1). That statute provides, "Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments...." The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

In this case, the debtors have not supplemented the record with respect to the amount of the 2014 federal and state income tax refunds. The debtors did seek, and obtain, an order authorizing payment of the fee in installments. Order Approving Payment of Filing Fee in Installments, filed February 12, 2015, ECF #19. Because the debtors have not augmented the record, they have not sustained their burden of proof as to the second prong of § 1930(f)(1) and the motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The application for Wavier of Chapter 7 Filing Fee filed by William F. Valentine and Neta L. Valentine having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the application is denied; and (2) the Order Approving Payment of Filing Fee in Installments, filed February 12, 2015, ECF #19, will remain in effect.

6.	<u>14-15523</u> -A-7 JENNIFER HUBBARD ASW-1 LAKEVIEW LOAN SERVICING, LLC/MV MARK ZIMMERMAN/Atty. for dbt. JOELY BUI/Atty. for mv. NON-OPPOSITION	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-21-15 [<u>17</u>]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1669 Brookglen Drive, Olivehurst, 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).

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).

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. The debtor has also missed 28 prepetition payments due on such debt. Further the debtor has filed a non-opposition to the motion. These facts constitute cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [14-15026](#)-A-7 RALPH/DELCIE RATLIFF MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
PENNYMAC LOAN SERVICES, LLC/MV 1-30-15 [[21](#)]
JERRY LOWE/Atty. for dbt.
CHRISTINA O/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2909 Huntington Blvd. APT 208, Fresno, CA

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

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.

8. [14-15636](#)-A-7 NATALIE ROBERTS MOTION TO AVOID LIEN OF
DRJ-1 ITTLESON SJS HOTEL, LLC
NATALIE ROBERTS/MV 1-29-15 [[21](#)]
DAVID JENKINS/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: \$7,379,629.07

Property Value: \$235,577.00

Judicial Lien Avoided: \$7,100,976.81

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 (\$7,379,629.07) exceed the property's value (\$235,577.00) by an amount (\$7,144,052.07) that is greater than or equal to the debt secured by the responding party's lien (\$7,100,976.81). As a result, the responding party's judicial lien will be avoided entirely.

9. [14-15636](#)-A-7 NATALIE ROBERTS
NLG-1
SETERUS, INC./MV
DAVID JENKINS/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-15 [[15](#)]

No tentative ruling

10. [14-15937](#)-A-7 JOHN SHAW
PSJ-1
JOHN SHAW/MV
PAUL JAMES/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
1-28-15 [[17](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to March 11, 2015; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f)(2)

Order: Civil minute order

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

same action that is described in Rule 6007(a) and for which notice to creditors is required.

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

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, although the motion was served on the trustee and U.S. Trustee, all creditors and other parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court cannot grant the motion at this time due to insufficient notice of the motion.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

11. [15-10237](#)-A-7 JULIAN/DANNIELLE CARNERO MOTION TO COMPEL ABANDONMENT
MAZ-1 1-29-15 [[17](#)]
JULIAN CARNERO/MV
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: Independent realtor business, a sole proprietorship (associated with All Family Lending)

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).

12. [13-18043](#)-A-7 TARSEM PABLA
MDE-1
THE BANK OF NEW YORK MELLON/MV
PETER FEAR/Atty. for dbt.
MARK ESTLE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-15-15 [[42](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1434 Chianti Dr., Livingston, 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).

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.

13. [14-14645](#)-A-7 MILDRED NULICK MOTION TO AVOID LIEN OF DATA
RR-1 CENTRAL COLLECTION BUREAU, LLC
MILDRED NULICK/MV 1-19-15 [[16](#)]
RANDY RISNER/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to March 17, 2015; a supplemental proof of service shall be filed no later than March 3, 2015, along with a notice of continued hearing filed pursuant to LBR 9014-1(f)(2)

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

The proof of service does not unambiguously indicate that the motion was mailed to the attention of an officer or other appropriate agent of the respondent. The court prefers that an officer or agent's status be clearly stated whenever service on an entity is accomplished by mail addressed to an officer or other agent. Further, the proof of service should reflect exactly how the motion was transmitted (e.g., first class mail and the officer or agent to whose attention the motion was sent). The officer or agent's status as an officer or agent must be expressly indicated.

The motion also names a respondent entity different from the entity served. The title of the motion names "Data Central Collect[i]on Bureau, LC." The prayer for relief, paragraph 7, names essentially the same entity: "Data Central Collection Bureau, LLC." By contrast, the certificate of service shows service on an entity named "Data-Central LLC." Attached to the certificate of service is a copy of a webpage printout from the California Secretary of State's "Business Entity Detail"—the likely result of an entity search in this office's business entities database. This printout shows that the entity searched was "Data-Central, LLC." The difference in the names here is significant in the context of business entity names. However, the court will accept the attorney's explanation for this discrepancy. Certificate of Service at p. 2 (last paragraph).

14. [14-13153](#)-A-7 ALFREDO GONZALEZ AND MOTION TO SELL
JES-2 LETICIA VAZQUEZ 1-22-15 [[48](#)]
JAMES SALVEN/MV
STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party consistent with this ruling

Property: 1999 Dodge Conversion 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).

PROCEDURAL PROBLEMS

The notice of hearing was not served on the court's matrix but only on the debtors, the debtors' attorney, and the U.S. Trustee. By contrast, the motion was mailed to the court's matrix. The court in this instance will waive this defect because the motion was sent to the court's matrix, the motion contains information regarding the date, time, and place of the public auction. Rule 2002(c)(1) essentially requires the that notice contain the time and place of any public sale. The motion does this and was sent to all creditors as required by Rule 2002(a)(2).

But Rule 2002(c)(1) also requires sale notices to provide information regarding the time fixed for filing objections. The motion does not contain this information. The court prefers that in the future, the movant comply with this requirement.

Because of the procedural problems with the motion, the court will treat the motion as having been noticed under LBR 9014-1(f)(2). Any party in interest may raise an objection at the hearing.

SALE OF PROPERTY AT PUBLIC AUCTION

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

COMMISSION AND EXPENSES

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 15% commission sought is reasonable and will approve this aspect of the compensation sought. However, the motion requests an unspecified amount of expenses applicable to storage and sale. The court does not approve what amounts to a blank check for professional's expenses. The court will only approve expenses in a specified amount, so the court will deny the motion in part as to the request for approval of expenses.

15. [10-11054](#)-A-7 RONALD/SUSAN SMITH
KDG-3
RANDELL PARKER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROMAN CATHOLIC
DIOCESE OF HELENA AND URSULINE
NUNS OF HELENA
2-4-15 [[58](#)]

LISA HOLDER/Atty. for mv.
OST 2/5/15

Tentative Ruling

Motion: Approve Settlement and Compensate Special Counsel

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

Disposition: Granted in part, denied without prejudice in part

Order: Civil minute order

Randell Parker, Chapter 7 trustee, moves for approval of settlement and to compensate special counsel under the Order Authorizing Employment of Special Counsel, filed September 18, 2013, ECF #57. This motion is brought on 14 days notice. Order Shortening Time, filed February 5, 2015, ECF # 68. The need for a hearing on shortened notice is that one of the settling parties, Roman Catholic Diocese of Helena, is itself a Chapter 11 debtor and a portion of the settlement calls for a return of ballots on the Diocese's Chapter 11 plan not later than February 25, 2015. For the reasons set forth below, absent objection at the hearing, that portion of the motion seeking approval of the settlement will be granted and that portion of the motion seeking compensation of special counsel will be denied without prejudice.

DISCUSSION

Approval of Settlement

The proposed settlement has two components. First, Parker proposes settlement with the Roman Catholic Diocese of Helena. Under the terms of the settlement and a Chapter 11 plan, set for confirmation hearing on March 4, 2015, the Diocese will provide a fund of \$15,000,000 to fund the settlement of 360 persons alleging childhood sexual abuse. The precise amount received by each claimant (or in this case, the estate) will be determined by a claims evaluator (Hon. William L. Bettinelli, retired). Parker prays an order to resolve a claim held by Ronald Smith through the process in the Diocese's plan and authority to vote in favor the Diocese's plan. Second, Parker proposes settlement with The Ursuline Nunes of The Western Province, who has offered \$3.95 million dollars to resolve claims of childhood

sexual abuse. The settlement with the Ursuline Nuns will be administered in conjunction with the Diocese plan and subject to liquidation by the same claims evaluator. The precise settlement due the estate has not yet been determined but is estimated to be between \$20,000 and \$40,000, gross.

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.*

Though unusual not to do so, rule 9019 does not explicitly require that the terms of the settlement in dollars. Even more unusual is a procedure that calls for a determination of the precise amount of the settlement by a third party at a subsequent date. But the circumstances here present a situation where a more favorable settlement to the estate is unlikely and where another procedural mechanism for resolution not practicable. Absent objection at the hearing and based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C Properties factors. The compromise will be approved.

Compensation of Special Counsel

Parker retained special litigation counsel in this case. Those attorneys are (1) Joseph A. Blumel, III, P.S.; (2) James Vernon Weeks, P.A.; (3) McDonald & Lind, P.C.; and Kosnoff PLLC. Order Authorizing Employment, filed September 18, 2013, ECF #57. Litigation counsel was employed under 11 U.S.C. § 328 for a 40% fee plus costs. *Id.*

The court's purview to set fees under § 328 is more narrowly circumscribed than it would otherwise be. "The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, 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. *Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.*" 11 U.S.C. § 328(a). (emphasis added).

Three reasons require denial without prejudice that portion of this motion that seeks compensation for Litigation counsel.

Ambiguity as to the Relief Sought

A motion, including applications for compensation, must clearly and unequivocally specify the relief sought. Rule 9013 states, "A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought...." (emphasis added).

The motion prays leave to pay "Litigation Counsel." See *Motion*, p. 2 ¶ 3, Prayer ¶ 7, filed February 4, 2015, ECF #58. But three (apparently) different firms were hired: (1) Joseph A. Blumel, III, P.S.; (2) James Vernon Weeks, P.A.; (3) McDonald & Lind, P.C.; and Kosnoff PLLC. Order Authorizing Employment, filed September 18, 2013, ECF #57. It is unclear whether the request pertains only to attorney Blumel (who filed the declaration in support of the motion) or to all of the attorneys and, if the later, how the amount would be divided among these three firms.

No Showing of the Need for Expedited Resolution

The notice required for motions for compensation is spelled out in Fed. R. Bankr. P. 2002(a)(6). "Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of...(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000...." This motion was filed and set for hearing on 14 days notice. But unlike the motion to approve the settlement, which had inherent deadlines, insofar as may be ascertained, this portion of the motion contains no such deadlines and no reason it must be heard on shortened notice. *Inability to Review Fees Until the Debtor's Claim Has Been Liquidated* Finally, the court is unable to perform its statutory duty to review fees and reduce the 40% contingency "if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a).

For each of these reason, the request for compensation is denied without prejudice.

FUTURE MOTIONS UNDER RULE 9019

Future motions under Rule 9019 by the Chapter 7 trustee should include a copy of the proposed settlement agreement that he will be required to execute as a part of the settlement. Failure to do so, may result in continuance or summary denial of the motion.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The motion to approve compromise and for compensation of special counsel filed by Randell Parker, Chapter 7 trustee, having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

It is hereby ordered that Chapter 7 trustee Randell Parker may: (1) cast a ballot in favor of confirmation of the Chapter 11 plan filed by the Roman Catholic Diocese of Helena; (2) settle the case for the amounts to determined by the claims evaluator in the Chapter 11 filed by Roman Catholic Diocese of Helena; and (3) execute such document as are necessary to complete the settlement. All other request for relief are denied without prejudice.

16. [14-12558](#)-A-7 SHARON OLSON MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI AND WONG,
JANZEN, TAMBERI AND WONG/MV ACCOUNTANT(S)
12-16-14 [[62](#)]
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: First and Final Application for Compensation

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

Disposition: Continued to March 17, 2015, at 9:00 a.m.

Order: Civil minute order

Janzen, Tamberi and Wong seeks compensation of \$758.50 for professional services rendered.

DISCUSSION

Applications for compensation are motions. Fed. R. Bankr. P. 9013. Ordinarily, service of motions for compensation is governed by Fed. R. Bankr. P. 2002(a)(6). That rule provides, "Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of...(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000." Janzen Tamberi properly recognizes that since its application is less than \$1,000, that service on all creditors is not required.

But Fed. R. Bankr. P. 9013, and its imbedded notice provisions, remains applicable. That rule provides, "A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on: (a) the trustee or debtor in possession and on those entities specified by these rules; or (b) the entities the court directs if these rules do not require service or specify the entities to be served." This application is supported by two different Certificates of Service. See Proof of Service, filed December 16, 2014, ECF #66; Proof of Service, filed December 23, 2014, ECF #68. Neither Certificate of Service reflects service on the Chapter 7 trustee, Trudi Manfredo. That Ms. Manfredo supports the application does not excuse compliance. See Trustee's Statement Re Receipt of

Certified Public Accountant's Bill and Statement of No Objection,
filed December 16, 2014, ECF #64.

The application is continued to March 17, 2015, at 9:00 a.m. Not later than March 3, 2015, the applicant will either: (1) file a Waiver of Service Defect, executed by Chapter 7 trustee Trudi Manfredo; or (2) file and serve on trustee Manfredo the motion, and all ancillary pleadings, as well as a notice of continued hearing.

CIVIL MINUTE ORDER

It is hereby ordered that: (1) the application is continued to March 17, 2015, at 9:00 a.m; and (2) not later than March 3, 2015, the applicant will either: (A) file a Waiver of Service Defect, executed by Chapter 7 trustee Trudi Manfredo; or (B) file and serve on trustee Manfredo the motion, and all ancillary pleadings, as well as a notice of continued hearing, and a Certificate of Service.

17. [13-17574](#)-A-7 MARIA BUSTOS MOTION TO SELL
JES-3 1-20-15 [[35](#)]
JAMES SALVEN/MV

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 Toyota Yaris

Buyer: Debtor

Sale Price: \$5900 (\$3000 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.

18. [14-12575](#)-A-7 ALICE RODRIGUEZ

CONTINUED ORDER TO SHOW CAUSE
FOR DISGORGEMENT OF FEES
12-10-14 [[123](#)]

RICHARD MENDEZ/Atty. for dbt.

No tentative ruling

19. [14-14793](#)-A-7 PATRICIA ZUNIGA
SL-1
PATRICIA ZUNIGA/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
1-30-15 [[38](#)]

No tentative ruling

20. [14-12994](#)-A-7 ABDELBASET AWAWDEH
RR-1
TRAVELERS EXPRESS COMPANY,
INC./MV
PETER FEAR/Atty. for dbt.
DAVID RENTTO/Atty. for mv.

CONTINUED MOTION FOR AN ORDER
DISPOSING OF CERTAIN PROPERTY
12-9-14 [[20](#)]

Final Ruling

Motion: Order Disposition of Certain Property

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).

Creditor Travelers Express Company, Inc. prays an order under 11 U.S.C. § 725 disposing of the proceeds of a bank account at Chase Bank against which it contends it holds a lien. Section 725 provides, "After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title."

As one commentator stated, "The purpose of § 725 is to ensure that (i) encumbered collateral (or the proceeds thereof) is returned to the proper secured creditor; and (ii) consigned or bailed goods are returned to the consignor or bailor, etc. This gives the court flexibility to dispose of property as appropriate under the circumstances (e.g., property subject to a co-ownership interest). [H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 382-83 (1977); see *Matter of Ralph A. Veon, Inc.* (BC WD PA 1981) 12 BR 186, 189-under § 725, trustee may dispose of property that debtor holds as bailee]." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Chapter 7

trustees Duties and Powers § 10:101 (Rutter Group 2013). Disposition is proper either on the motion of the Chapter 7 trustee or on the motion of a creditor. Fed. R. Bankr. P. 7001(1).

Travelers Express contends it has a properly perfected security in the proceeds of the account at Chase Bank. No party in interest has opposed the motion or contested the movant's interest. As a result, the motion will be granted.

21. [14-15898](#)-A-7 DENNIS/TRACY LANCASTER MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON 1-30-15 [[15](#)]
TRUST COMPANY, N.A./MV
DEDE AGRAVA/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: Prepared by moving party

Subject: 2006/Champion Southwood

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 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.

10:00 a.m.

1. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN MOTION FOR AWARD OF ATTORNEYS'
[13-1075](#) WW-1 FEES
KOZLOWSKI ET AL V. MCCLARAN 1-21-15 [[54](#)]
TRACY BLAIR/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The court continues the hearing on this matter to March 17, 2015, at 10:00 a.m. At the continued hearing, the court will hear oral argument.

2. [14-14479](#)-A-7 FABIO GALVEZ
[14-1153](#)
GALVEZ ET AL V. THE UNITED
STATES OF AMERICA, THE

STATUS CONFERENCE RE: COMPLAINT
12-19-14 [[1](#)]

No tentative ruling

10:30 a.m.

1. [14-15702](#)-A-7 JULIAN/MELINDA MACIEL

PRO SE REAFFIRMATION AGREEMENT
WITH VALLEY OAK CREDIT UNION
1-26-15 [[17](#)]

No tentative ruling.

2. [14-15958](#)-A-7 KAREN YOST

PRO SE REAFFIRMATION AGREEMENT
WITH 21ST MORTGAGE CORPORATION
1-28-15 [[17](#)]

No tentative ruling.

1:30 p.m.

1. [15-10164](#)-A-11 VALLEY MEDICAL SYSTEMS,
INC.

ORDER TO APPEAR AND SHOW CAUSE
WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
1-21-15 [[5](#)]

PERRY POPOVICH/Atty. for dbt.

Tentative Ruling

Matter: Order to Appear and Show Cause Why a Patient Care Ombudsman
Should Not Be Appointed

Notice: Order described above permits appearance and response at
hearing; written opposition filed by debtor

Disposition: Order discharged

Order: Civil minute order as set forth below

APPOINTMENT OF A PATIENT CARE OMBUDSMAN

The debtor has had no patient complaints during 2014. The debtor has received no patient complaints since the petition was filed. The debtor has not recently cut back on patient care; instead, the debtor has been hiring more caregivers. The debtor has an administrative structure in place to handle any complaints from its patients as described in paragraph 5 of Warren Wheelock's declaration.

Lastly, the bankruptcy filing in this case is filed to resolve tax payroll debts for years 2008-2011. The debtor represents that its bankruptcy filing is precipitated by old tax debts and is unrelated to current patient matters or current business operations.

For the reasons given in the debtor's opposition and supporting declaration, the court will discharge the order to show cause. The court finds that the appointment of a patient care ombudsman is not necessary under the specific facts of this case. See 11 U.S.C. § 333(a)(1).

CIVIL MINUTE ORDER

The civil minute order shall state as follows: "The order to show cause is discharged pursuant to the reasons stated in the civil minutes from the hearing on February 18, 2015."

2. [15-10366](#)-A-11 ELLIOTT MANUFACTURING COMPANY, INC.
PLF-1
ELLIOTT MANUFACTURING COMPANY, INC./MV
PETER FEAR/Atty. for dbt.
- FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
2-3-15 [\[4\]](#)

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: California Bank & Trust and Corporation Service Company

Expiration: January 31, 2016

Adeq. Protection: As Specified Exhibit to the Motion

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2), (e), 361; Fed. R. Bankr. P. 4001(b).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(i)-(iv); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted

creditor and any other party in interest so requesting approval.

3. [14-11991](#)-A-11 CENTRAL AIR CONTINUED STATUS CONFERENCE RE:
CONDITIONING, INC. VOLUNTARY PETITION
4-17-14 [[1](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling

4. [14-11991](#)-A-11 CENTRAL AIR DISCLOSURE STATEMENT FILED BY
KDG-21 CONDITIONING, INC. DEBTOR CENTRAL AIR
CONDITIONING, INC.
1-6-15 [[308](#)]

HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling

5. [14-11991](#)-A-11 CENTRAL AIR MOTION FOR COMPENSATION BY THE
KDG-25 CONDITIONING, INC. LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB AND
KIMBALL, LLP FOR HAGOP T.
BEDOYAN, DEBTORS ATTORNEY(S)
1-26-15 [[342](#)]

HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

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.

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP'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 an interim basis. The court allows interim compensation in the amount of \$18,850.50 and reimbursement of expenses in the amount of \$1378.00.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2:00 p.m.

- | | | | |
|----|---------------------------------------|-----------|--|
| 1. | <u>10-62315</u> -A-11 | BEN ENNIS | MOTION TO CERTIFY ORDER |
| | <u>13-1108</u> | LRP-7 | 1-21-15 [<u>146</u>] |
| | STAPLETON ET AL V. NICHOLSON | | |
| | ET AL | | |
| | MICHAEL GOMEZ/Atty. for mv. | | |

Final Ruling

Motion: Certify Order

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).

The court may certify an order or judgment for appeal under Fed. R. Civ. P. 54(b) when (1) the complaint contains more than a single claim; (2) a final adjudication has occurred as to at least one claim; and (3) no good reason exists to delay the appeal. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). The parties have stipulated as to each of these three elements and, upon independent review, the court agrees. The motion will be granted.