

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** FEBRUARY 28, 2018  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

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

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

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

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

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

1. [16-13301](#)-A-7     **IN RE: ERIC/RONDA KOZLOWSKI**  
[JTW-2](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG,  
ACCOUNTANT(S)  
2-6-2018    [\[184\]](#)

JANZEN, TAMBERI & WONG/MV  
THOMAS ARMSTRONG

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Janzen, Tamberi & Wong, the accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,520.00 and reimbursement of expenses in the amount of \$0.00.

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 \$4,520 and reimbursement of expenses in the amount of \$0.

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.

2. [16-13301](#)-A-7     **IN RE: ERIC/RONDA KOZLOWSKI**  
[RHT-9](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, CHAPTER 7  
TRUSTEE(S)  
2-6-2018    [\[191\]](#)

ROBERT HAWKINS/MV  
THOMAS ARMSTRONG  
ROBERT HAWKINS/ATTY. FOR MV.

#### **Tentative Ruling**

**Application:** Allowance of 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**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[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." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

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 \$80,000.00 and reimbursement of expenses in the amount of \$1,211.71.

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. [10-61605](#)-A-7      **IN RE: VINCENTE BERNABE**  
[MOK-2](#)

MOTION FOR CONTEMPT  
1-12-2018    [[81](#)]

VINCENTE BERNABE/MV  
HAGOP BEDOYAN  
RESPONSIVE PLEADING

**No Ruling**

4. [10-61605](#)-A-7      **IN RE: VINCENTE BERNABE**  
[MOK-3](#)

MOTION TO SET DEADLINE TO FILE COMPLAINT FOR DETERMINATION  
OF DISCHARGEABILITY  
1-12-2018    [[89](#)]

VINCENTE BERNABE/MV  
HAGOP BEDOYAN  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Set Deadline to Determine Dischargeability of Debt

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

**Disposition:** Denied

**Order:** Civil minute order

Vincente Bernabe, a now discharged Chapter 7 debtor, moves for an order setting a deadline for Uriel Hansen and Rick Hansen to file a complaint to determine the dischargeability of debt. Creditors Uriel Hansen and Rick Hansen oppose the motion.

**DISCUSSION**

Bankruptcy courts do not have authority to impose a deadline to file an adversary proceeding to determine the dischargeability of debt. Federal Rule of Bankruptcy Procedure 4007(b) provides, "A complaint other than under § 523(a)(c) may be filed at any time. . . ." *In re Beezley*, 994 F.2d 1433, 1434 (9th Cir. 1993). And the debtor cites no authority for the proposition that the court may do so.

## CIVIL MINUTE ORDER

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

Vincente Randy Bernabe's motion has been presented to the court. Having considered the [motion/application/objection] together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

5. [15-13412](#)-A-7      **IN RE: BASILA CONSTRUCTION, INC.**  
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER L FEAR, TRUSTEES ATTORNEY(S)  
1-26-2018    [[216](#)]

RILEY WALTER  
PETER FEAR/ATTY. FOR MV.

### Final Ruling

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### COMPENSATION AND EXPENSES

In this Chapter 7 case, Fear Waddell, P.C., general counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$24,269.00 and reimbursement of expenses in the amount of \$798.72.

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

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$24,269.00 and reimbursement of expenses in the amount of \$798.72.

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

6. [18-10035](#)-A-7     **IN RE: MAGDALENA GONZALEZ**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-29-2018    [\[13\]](#)

AMERICAN HONDA FINANCE  
CORPORATION/MV  
THOMAS GILLIS  
VINCENT FROUNJIAN/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2015 Honda Accord

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

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

#### **STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Honda Accord, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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



7. [16-11036](#)-A-7     **IN RE: ROCCO FAZIO**  
[JTW-2](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG,  
ACCOUNTANT(S)  
2-2-2018    [\[78\]](#)

JANZEN, TAMBERI & WONG  
ACCOUNTANCY CORPORATION/MV  
HILTON RYDER

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Janzen, Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2020 and reimbursement of expenses in the amount of \$0.

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 \$2020 and reimbursement of expenses in the amount of \$0.

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.

8. [16-11036](#)-A-7     **IN RE: ROCCO FAZIO**  
[RHT-3](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, CHAPTER 7  
TRUSTEE(S)  
2-2-2018    [\[85\]](#)

ROBERT HAWKINS/MV  
HILTON RYDER  
GABRIEL WADDELL/ATTY. FOR MV.

#### **Tentative Ruling**

**Application:** Allowance of 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**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[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." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

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 \$16,538.67 and reimbursement of expenses in the amount of \$204.59.

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.

9. [16-12639](#)-A-7     **IN RE: EDUARDO/MARIA GALLARDO**  
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-12-2018    [\[79\]](#)

ALLY FINANCIAL INC./MV  
PETER BUNTING  
ADAM BARASCH/ATTY. FOR MV.  
DISMISSED

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2006 Chrysler 300

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

### **STAY RELIEF**

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security

interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 9 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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

#### **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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2006 Chrysler 300, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

10. [17-10841](#)-A-7     **IN RE: LLOYD HOLLINS**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-24-2018    [[66](#)]

WELLS FARGO BANK, N.A./MV  
D. GARDNER  
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:** 2008 BMW 6 Series

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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2008 BMW 6 Series. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

11. [14-10258](#)-A-7     **IN RE: HEATHER BRANDT**  
[TMT-5](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, CHAPTER 7  
TRUSTEE(S)  
1-31-2018    [[115](#)]

TRUDI MANFREDO/MV  
THOMAS ARMSTRONG  
PETER FEAR/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

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[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." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

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 \$3,751.71 and reimbursement of expenses in the amount of \$757.07.



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. [16-12465](#)-A-7     **IN RE: GURMINDER SINGH**  
[DMG-2](#)

MOTION TO AVOID LIEN OF TRANSPORTATION TRUCK AND TRAILER  
SOLUTIONS, LLC  
1-29-2018    [\[19\]](#)

GURMINDER SINGH/MV  
D. GARDNER

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party

**Judicial Lien:** \$256,113.56 plus 10% post-judgment interest since the date of the judgment

**All Other Liens:** \$167,531

**Exemption:** \$75,000

**Value of Property:** \$257,893

**Extent Judicial Lien Not Avoided:** \$15,362

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption

that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The court finds that the liens, exemption amount, and property's value are as set forth above. The motion is granted in part and denied in part. The respondent's judicial lien, all other liens, and the exemption amount together do not exceed the property's value by an amount equal to the respondent's judicial lien. The responding party's judicial lien is not avoided to the extent set forth above, and the remaining balance of the judicial lien is avoided.

13. [15-10966](#)-A-7     **IN RE: RODNEY HARON**  
[JTW-1](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG,  
ACCOUNTANT(S)  
2-2-2018    [[323](#)]

JANZEN, TAMBERI AND WONG/MV  
TIMOTHY SPRINGER

#### **Tentative Ruling**

**Application:** Allowance of Final 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).

#### **NON-COMPLIANCE WITH LOCAL RULES**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number for two separate matters filed in the same case.

In this matter, the applicant has used a docket control number that duplicates a motion to employ the applicant. This does not comply with the local rules. Failure to comply with this rule in the future may result in denial of a motion or disapproval of an application.

## **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Ratzlaff, Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2940 and reimbursement of expenses in the amount of \$0.

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.

Ratzlaff, 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 \$2940 and reimbursement of expenses in the amount of \$0.

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

14. [15-10966](#)-A-7     **IN RE: RODNEY HARON**  
[RHT-5](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, CHAPTER 7  
TRUSTEE(S)  
2-2-2018    [[317](#)]

ROBERT HAWKINS/MV  
TIMOTHY SPRINGER  
PETER FEAR/ATTY. FOR MV.

### **Tentative Ruling**

**Application:** Allowance of 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**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[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." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

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 \$33,043.07 and reimbursement of expenses in the amount of \$299.19.

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.

15. [17-12866](#)-A-7     **IN RE: KHALID CHAOU**  
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-31-2018    [[136](#)]

U.S. BANK NATIONAL  
ASSOCIATION/MV  
JOEL WINTER  
JAMIE HANAWALT/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Relief from Stay

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

**Disposition:** Continued to March 28, 2018, at 9:00 a.m.

**Order:** Civil minute order

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 service of the motion was insufficient and did not comply with Rules 7004 and 9014. The trustee's attorney has not been served or has not been served at the correct address.

The court will continue the hearing on this matter to March 28, 2018, at 9:00 a.m. No later than March 14, 2018, the movant shall (1) serve the motion on the trustee's attorney and (2) file and serve a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2).

16. [17-14468](#)-A-7     **IN RE: BRUCE GREER**  
[TMT-3](#)

MOTION TO SELL  
1-31-2018    [[28](#)]

TRUDI MANFREDO/MV  
DAVID JENKINS  
ROBERT HAWKINS/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 115 E. Firebaugh Avenue, Exeter, CA

**Buyer:** Lucila Leon Pedraza and Agustin Jaime Ibarra Ojeda

**Sale Price:** \$87,000

**Sale Type:** Private sale subject to overbid opportunity

**Compensation:** 6% commission to be shared according to agreement or custom with any buyer's broker

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.

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.

17. [17-14373](#)-A-7     **IN RE: MARIO/SUSAN CRUZ**  
[PPR-1](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
1-30-2018    [[15](#)]

BANK OF AMERICA, N.A./MV  
JOEL WINTER  
SYLVIA BLUME/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification in Chapter 7 Case

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

**Disposition:** Denied as moot

**Order:** Civil minute order

### **LOAN MODIFICATION**

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-65 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

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

In this case, the discharge has not been entered, so a mortgage loan modification at this time would constitute a reaffirmation (to the

extent the loan is recourse debt). Because court approval is not required to reaffirm a consumer debt secured by real property, the court will deny the motion as moot.

#### **CIVIL MINUTE ORDER**

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

Having considered the motion for approval of a mortgage loan modification together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

18. [10-12576](#)-A-7     **IN RE: SHERMAN FUJIOKA**  
[SAS-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
2-2-2018    [[228](#)]

SHERYL STRAIN/MV  
RICHARD HARRIS  
ROBERT HAWKINS/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

This matter is continued to March 28, 2018, at 9:00 a.m. Not later than March 14, 2018, the movant shall (1) file complete copies of documents, ECF # 229, 230, 231; (2) file and serve on persons entitled to such notice of continued hearing.



19. [15-11079](#)-A-7     **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA**  
CORPORATION  
[KDG-35](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH UNIVAR USA, INC.  
1-31-2018    [\[1013\]](#)

ROBERT HAWKINS/MV  
HAGOP BEDOYAN

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **APPROVAL OF COMPROMISE**

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

The movant requests approval of a compromise that settles a preference dispute. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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 entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 1016.

20. [15-11079](#)-A-7     **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**  
[KDG-36](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH IEH LABORATORIES AND CONSULTING GROUP  
1-31-2018    [[1019](#)]

ROBERT HAWKINS/MV  
HAGOP BEDOYAN

### Final Ruling

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

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

### APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also

find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles preference dispute. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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 entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 1022.

21. [18-10395](#)-A-7     **IN RE: CHARLEY/JAMEE STANKEWITZ**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-13-2018    [\[15\]](#)

CHARLEY STANKEWITZ/MV  
SCOTT LYONS

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

### **CIVIL MINUTE ORDER**

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

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

The present motion to extend the automatic stay 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

22. [18-10395](#)-A-7     **IN RE: CHARLEY/JAMEE STANKEWITZ**  
[SL-2](#)

MOTION TO COMPEL ABANDONMENT  
2-14-2018    [[29](#)]

CHARLEY STANKEWITZ/MV  
SCOTT LYONS  
HEARING ADVANCED TO 2/20/18 OST, ECF NO. 39

**Final Ruling**

The hearing advanced to and heard on February 20, 2018, this matter is dropped as moot.