

**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**

**MARCH 11, 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. [10-17007](#)-A-7 MAIYIA XIONG  
TMT-1  
TRUDI MANFREDO/MV

CONTINUED OBJECTION TO CLAIM OF  
HOUSTON FUNDING, II, LTD, CLAIM  
NUMBER 6  
11-26-14 [[89](#)]

PETER FEAR/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.

**Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1) / continued hearing date; written opposition required

**Disposition:** Sustained

**Order:** Prepared by the objecting party

In the civil minutes from the prior hearing, the court noted that the trustee had presented insufficient evidence to support disallowance of Claim No. 6 filed by Houston Funding, II, LTD ("Houston"). The fact that the Claim No. 8, filed by CR Evergreen, III, LLC ("CR Evergreen"), had been purchased from Houston did not necessarily warrant a finding that Claim Nos. 6 and 8 are duplicates as multiple claims against the debtor could have originally been held by Houston.

However, the manager and officer of CR Evergreen, Rory Liebhart, has offered evidence that supports a finding that the two claims are duplicates. Accordingly, the trustee's objection to the allowance of Claim No. 6 will be sustained on the ground that Claim No. 8 and Claim No. 6 are duplicates.

2. [12-18810](#)-A-7 JAMES MERCER  
JDM-4

MOTION FOR COMPENSATION FOR  
JAMES D. MILLER, TRUSTEES  
ATTORNEY(S)  
1-13-15 [[48](#)]

GARY HUSS/Atty. for dbt.

**Final Ruling**

**Application:** First and Final 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

James D. Miller, attorney for Chapter 7 trustee Trudi Manfredo, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,075.00 and reimbursement of expenses in the amount of \$22.00.

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.

James D. Miller'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 \$2,075.000 and reimbursement of expenses in the amount of \$22.00.

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. [14-11610](#)-A-7 DANIEL PEDRELLI  
RH-2  
JAMES SALVEN/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DANIEL L.  
PEDRELLI  
2-4-15 [[33](#)]

GEORGE LOGAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

## Final Ruling

**Motion:** Approve Compromise or Settlement of Controversy

**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).

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 first paragraph of the motion suggests that approval of a settlement between the estate and creditor Valley Pacific Petroleum Services, Inc. is requested. But the remainder of the motion and supporting declaration indicate that the settlement is intended to be between the estate and the debtor, and the court construes the motion as a seeking approval of a settlement between these intended parties despite the inconsistent designation of a creditor as a party to the settlement.

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.

4. [13-17712](#)-A-7 RUBEN OLVERA AND GLORIA MOTION TO CONVERT CASE FROM  
TOG-12 CHAVEZ CHAPTER 7 TO CHAPTER 13  
RUBEN OLVERA/MV  
2-7-15 [85]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Convert Chapter 7 to Chapter 13

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

## LEGAL STANDARDS FOR CONVERSION

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (I) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

## DISPUTED ISSUES

Preliminarily, the court identifies the following disputed, material factual issues:

- (1) whether the debtors substantially undervalued their real property located at 2278 Poplar Avenue, Palo Alto, California ("real property") in their original Schedule A and, if they did, whether they had an improper purpose for such undervaluation;
- (2) whether the debtors actively hindered and delayed the trustee's access to the real property or otherwise obstructed the trustee's attempt to ascertain the real property's value;
- (3) whether the debtors failed to cooperate with the trustee's requests for documents / information items that were related to property of the estate, see § 521(a)(4), or that were necessary for the trustee to perform her duties under title 11, see § 521(a)(3);
- (4) whether the debtors failed to provide timely to the trustee four of five separate information items or documents, relating to property of the estate and existing within the debtors' possession, control, or knowledge, after the trustee had requested such information items / documents at the initial meeting of creditors;
- (5) whether the debtors' first conversion motion was filed for an improper purpose or in bad faith;
- (6) during the discovery for the debtors' first conversion motion, whether the debtors substantially failed to comply with scheduling orders governing discovery or with discovery rules, other than Fed. R. Civ. P. 36 and Fed. R. Bankr. P. 7036;
- (7) during the discovery phase of the first conversion motion, whether debtors conduct constituted a failure to cooperate with the trustee, see § 521(a)(3);
- (8) whether debtors misrepresented to the trustee's counsel that their children lived at the real property with the Palo Alto, California, address;
- (9) whether the debtors' motion to compel abandonment and their motion to compel the trustee to take certain actions relating to time records and a statement of services and costs were filed for an improper purpose (such as the purposes described in Rule 9011(b)(1) or were filed in violation of Rule 9011(b)(2) or (3);
- (10) whether the debtors initial schedules contained material misrepresentations and omissions;
- (11) whether the actions, omissions or conduct described above, if proven, constitutes bad faith conduct sufficient to deny the debtors' conversion under *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007).

## **UNDISPUTED ISSUES**

What does not appear to be in dispute is the debtors' eligibility under § 109(e) based on the debtors' noncontingent, liquidated, secured and unsecured debt. The trustee's opposition does not argue that debtors are not eligible based on the debt limits of § 109(e).

## **ISSUES NOT CONSIDERED**

The court does not find that two issues raised by the trustee are relevant to resolution of this contested matter. First, unless the trustee has authority showing eligibility for a discharge in chapter 13 as a factor to consider on a conversion motion, the court does not consider this issue to be relevant to the grounds for conversion from chapter 7 to chapter 13.

Second, although the trustee has briefed the issue of the lack of feasibility of the "probable" chapter 13 plan, this issue is not proper for consideration. Even if the plan were not feasible, as the trustee argues, the debtors would not be prohibited from filing a different plan that may or may not be feasible. Thus, consideration of a specific, proposed chapter 13 plan's feasibility is not an appropriate ground for denying a conversion motion.

## **APPEARANCE AND SCHEDULING**

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

5. [13-17413](#)-A-7 LEWIS DUNIGAN  
APN-2  
WELLS FARGO BANK, N.A./MV  
JUSTIN HARRIS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-4-15 [[53](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

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

**Order:** Prepared by moving party

**Subject:** 2007 Attitude Travel Trailer

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.

6. [14-14518](#)-A-7 JESSICA CASTRO  
TMT-1  
TRUDI MANFREDO/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
1-8-15 [[30](#)]

TRUDI MANFREDO/Atty. for mv.

### **Final Ruling**

**Motion:** Extend Trustee and U.S. Trustee's Deadline for Objecting to Discharge under § 727(a)

**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).

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Although the motion references Rule 4007(c), which contains the deadline for filing an action to determine the dischargeability of a debt under § 523(c), the motion as a whole (the title and the prayer especially) implies that the trustee seeks only to extend the deadline to file a complaint objecting to discharge under § 727.

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through June 30, 2015.

7. [15-10018](#)-A-7 RACHEL DE LA ROSA  
APN-1  
WELLS FARGO BANK, N.A./MV  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-29-15 [[20](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2011 Hyundai Elantra

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.

8.	<a href="#">15-10125</a> -A-7     MARK/SHELLEY STOKES MRG-1 CAPITAL ONE, N.A./MV JOEL WINTER/Atty. for dbt. MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-9-15 [ <a href="#">11</a> ]
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**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 7837 North 9th Street, 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.

9. [14-15130](#)-A-7 PAUL ROMERO  
PSJ-1  
PAUL ROMERO/MV

MOTION TO AVOID LIEN OF  
CALIFORNIA BUSINESS BUREAU,  
INC.  
1-13-15 [[19](#)]

PAUL JAMES/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**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 by mailing a copy of the motion "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).

Service of the motion was insufficient. The last two addresses shown on the proof are insufficient because they do not show that service was made by mailing the motion to the attention of an officer or other authorized agent. The second to last address on the proof lists no agent. The last address on the proof shows that the motion was mailed to an attorney, which appears by implication to be the attorney for respondent shown on the judgment lien and schedules (given the heading appearing before the last two addresses). But "[a]n implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). Even if the attorney is a general attorney for respondent, no evidence has been presented in the proof of service that the attorney has been authorized to accept service of process on the responding party in this bankruptcy case.

Finally, the mailing to Michael J. Sigal is insufficient. The proof of service has a copy of search results from the California Secretary of State's website showing the business address for the respondent and the respondent's agent for service of process. The respondent's street address, and the respondent's agent's street address, as indicated on the California Secretary of State's website are both inconsistent with the street address given on the proof of service. Further, the zip codes for both the respondent and the respondent's agent as indicated on the Secretary of State's website are both inconsistent with the zip code shown on the proof.

10. [14-15935](#)-A-7 ALBERT/CHRISTINE VASQUEZ MOTION FOR RELIEF FROM  
PPR-1 AUTOMATIC STAY  
BANK OF AMERICA, N.A./MV 2-5-15 [[11](#)]  
DAVID JENKINS/Atty. for dbt.  
BONNI MANTOVANI/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 933 Haven Court, Tulare, 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).

"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. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, 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)).

According to the movant, the debtor has missed only 1 post-petition payment due on the debt secured by the moving party's lien. But 2 prepetition payments were missed as well.

The equity cushion is only \$151.62. As a percentage of the property's value (\$145,000), the equity cushion is approximately .001 or .1%. This cushion of one-tenth of one percent will not be sufficient to adequately protect the creditor against further missed payments, as accruing interest and taxes will quickly eliminate \$151.62 on a loan balance of the size asserted.

This lack of adequate protection against accruing interest and taxes 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.

11. [15-10435](#)-A-7      TIM DATONO      MOTION FOR RELIEF FROM  
SW-1      AUTOMATIC STAY  
ALLY BANK/MV      2-18-15 [[9](#)]  
TORIANA HOLMES/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:** 2014 GMC Sierra

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.

12. [14-15937](#)-A-7      JOHN SHAW      CONTINUED MOTION TO COMPEL  
PSJ-1      ABANDONMENT  
JOHN SHAW/MV      1-28-15 [[17](#)]  
PAUL JAMES/Atty. for dbt.

**Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

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

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** A flooring, installation and repair business, a sole proprietorship

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

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

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

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

13. [14-14643](#)-A-7 JIMMY/BARBARA TAYLOR MOTION TO SELL  
TMT-1 1-6-15 [[17](#)]  
TRUDI MANFREDO/MV  
GEORGE LOGAN/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Vehicles described below

**Buyer:** Debtors

**Sale Price:**

-2002 Mitsubishi Montero: \$4,000 (\$1100 cash plus \$2900 exemption credit)

-1999 Ford Taurus: \$1900 cash

-1999 Chevrolet Malibu: \$1700 cash

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

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

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

14. [13-17453](#)-A-7      DANIEL/IVY ROCHA      MOTION TO COMPROMISE  
TMT-2      CONTROVERSY/APPROVE SETTLEMENT  
TRUDI MANFREDO/MV      AGREEMENT  
2-9-15 [[58](#)]
- SCOTT MITCHELL/Atty. for dbt.  
KENNETH ABSALOM/Atty. for mv.

### **Final Ruling**

**Motion:** Approve Compromise or Settlement 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).

### **DISCUSSION**

Chapter 7 trustee Trudi Manfredo prays approval of an action against the City of Gustine and its former city manager, Margaret Silveira, entitled *Rocha v. City of Gustine*, No. CV0011789 (Merced County Superior Court May 18, 2011). The settlement arose out of a mediation between the parties. It has three essential components: (1) the defendants shall pay the estate \$82,725.00; (2) the City of Gustine shall reimburse Kenneth Absalom, trustee's counsel, \$2,275.00 (which represents one-half of the mediator's fee); and (3) each party shall bears its own fees and costs.

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.*

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.

#### **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.

Chapter 7 trustee Trudi Manfredo's motion to approve compromise of an action against the City of Gustine and its former city manager, Margaret Silveira, entitled *Rocha v. City of Gustine*, No. CV0011789 (Merced County Superior Court May 18, 2011), 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: (1) the motion is granted to the extent specified herein; (2) Chapter 7 trustee Trudi Manfredo may settle the estate's action against the City of Gustine and its former city manager, Margaret Silveira, entitled *Rocha v. City of Gustine*, No. CV0011789 (Merced County Superior Court May 18, 2011), in exchange for (A) payment of \$82,725.00 by the City of Gustine, Silveira or an entity on their behalf; (B) the City of Gustine's reimbursement of Kenneth Absalom, trustee's counsel, the amount of \$2,275.00; and (C) each party shall bears its own fees and costs; and (3) the Chapter 7 trustee's execution of the Settlement Agreement and Release appended as Exhibit A to the motion to approve compromise, filed February 9, 2015, ECF #58, is approved. No other relief is approved.

15. [13-17453](#)-A-7 DANIEL/IVY ROCHA  
TMT-3

MOTION FOR COMPENSATION FOR  
KENNETH C. ABSALOM, TRUSTEES  
ATTORNEY(S)  
2-9-15 [[63](#)]

SCOTT MITCHELL/Atty. for dbt.

#### **Tentative Ruling**

**Application:** First and Final Allowance of Compensation

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

**Disposition:** Continued to April 29, 2015, at 9:00 a.m.

**Order:** Civil minute order

#### **DISCUSSION**

This matter is continued to April 29, 2015, at 9:00 a.m. to allow the Chapter 7 trustee to make a motion to correct an apparent error in the Order Authorizing Trustee to Employ Special Counsel, filed June 6,



2015, ECF # 49. Fed. R. Civ. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9024.

Paragraph 3 of that order specifies that compensation shall be made on a lodestar basis. Order at ¶ 3. But the court believes that trustee's intent was to hire special counsel Kenneth C. Absalom on a contingent fee basis. See, Retainer Agreement ¶ 1(a) appended to Exhibit 1 to Order Authorizing Trustee to Employ Special Counsel, filed June 6, 2015, ECF # 49; see also, Motion to Employ Special Counsel ¶ 4, filed April 30, 2014, ECF # 43. Any such motion shall be made under LBR 9014-1(f)(1), and shall be noticed to the debtor, all creditors, parties requesting notice and the U.S. Trustee.

#### **CIVIL MINUTE ORDER**

IT IS ORDERED that: (1) the motion for compensation of special counsel Kenneth C. Absalom, filed February 9, 2015, ECF #63, is continued to April 29, 2015, at 9:00 a.m., to allow the trustee to make a Rule 60(b) motion to correct the Order Authorizing Trustee to Employ Special Counsel, filed June 6, 2015, ECF # 49; (2) not later than 28 days prior to the continued hearing, the trustee shall serve notice of the continued hearing date on all persons and entities described in Fed. R. Bankr. P. 2002(a)(6); and (3) the Rule 60(b) motion with respect to the Order Authorizing Trustee to Employ Special Counsel, filed June 6, 2015, ECF # 49, shall be made under LBR 9014-1(f)(1) and shall be notice to the debtor, all creditors, parties requesting notice and the U.S. Trustee.

16. [14-15157](#)-A-7 TALWINDER/HARWINDER JOHAL MOTION TO AVOID LIEN OF  
DRJ-1 DISCOVER BANK  
TALWINDER JOHAL/MV 2-16-15 [[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:** \$254,555.14

**Property Value:** \$159,000

**Judicial Lien Avoided:** \$14,555.14

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the



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

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

17. [14-15157](#)-A-7 TALWINDER/HARWINDER JOHAL MOTION TO AVOID LIEN OF GCFS,  
DRJ-2 INC.  
TALWINDER JOHAL/MV 2-16-15 [\[25\]](#)  
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:** \$253,523.06

**Property Value:** \$159,000.00

**Judicial Lien Avoided:** \$13,523.06

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

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

interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

18. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION FOR COMPENSATION FOR  
RHT-9 INC. ROBERT A. HAWKINS, CHAPTER 7  
ROBERT HAWKINS/MV TRUSTEE(S)  
2-11-15 [[331](#)]  
KENNETH ALLEN/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**

The chapter 7 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. The court approves the application and allows compensation in the amount of \$68,250.00 and reimbursement of expenses in the amount of \$586.32.

### **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.

Chapter 7 trustee Robert Hawkins'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 \$68,250.00 and reimbursement of expenses in the amount of \$586.32.

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.

19.	<u>14-15863</u> -A-7      TERESA MENDEZ KAZ-1 WELLS FARGO BANK, N.A./MV GARY HUSS/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-28-15 [ <a href="#">18</a> ]
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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:** 302 East Shoemake Avenue, Reedley, 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.

20. [14-15869](#)-A-7 SUZANNE ASHLEY  
PFT-2  
PETER FEAR/MV

MOTION TO EMPLOY GOULD AUCTION  
AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
1-28-15 [[15](#)]

PETER BUNTING/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Final Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2008 Nissan Xterra

**Sale Type:** Public auction

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

### **SALE**

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.

### **EMPLOYMENT**

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

### **COMPENSATION**

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.

### **SECTION 521(a)(6) RELIEF**

The trustee's motion was filed on January 28, 2015. The 45-day period

referred to in section 521(a)(6) expired on March 2, 2015. As a result, the trustee's motion is timely.

Further, the motion indicates that the property described above is of consequential value or benefit to the estate. The creditor is adequately protected because the vehicle is in the possession of the auctioneer and the creditor will be paid in full based on the trustee's representation at page 4 of the motion.

The order should not address the debtor's delivery of the vehicle to the trustee since the debtor has already done so.

21. [14-14472](#)-A-7 JASON/STACY PYZER MOTION TO SELL  
RHT-3 2-4-15 [[30](#)]  
ROBERT HAWKINS/MV  
MARIO LANGONE/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

### **Final Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2005 Copper Canyon 5th Wheel Trailer

**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). 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.

22. [14-12575](#)-A-7 ALICE RODRIGUEZ  
TMT-3  
TRUDI MANFREDO/MV  
RICHARD MENDEZ/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL  
1-15-15 [[130](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2007 Ford F350

**Buyer:** Debtor

**Sale Price:** \$12,657.00 (\$3000 cash plus \$2900 exemption credit plus a \$6757 lien held by Ford Motor Credit to which this sale is made subject)

**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.

23. [14-16075](#)-A-7 ERIC RIGHTMEIER  
APN-1  
SANTANDER CONSUMER USA INC./MV  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-26-15 [[16](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2008 Ford Taurus

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.

In addition, cause exists for stay relief under § 362(d)(1). No insurance is being maintained on the vehicle by debtor.

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.

24. [14-13578](#)-A-7 MARK/JACQUELINE SILVEIRA MOTION TO COMPEL  
RHT-1 1-28-15 [[27](#)]  
ROBERT HAWKINS/MV  
GARY HUSS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

25. [14-13578](#)-A-7 MARK/JACQUELINE SILVEIRA MOTION TO SELL  
RHT-2 2-6-15 [[34](#)]  
ROBERT HAWKINS/MV  
GARY HUSS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1988 Farallon 24' Boat and Trailer and 2006 Jeep Wrangler

**Buyer:** Debtors

**Sale Price:** \$5900 for all property described above (\$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). 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.

26. [14-15982](#)-A-7 WILLIAM/JENNIFER STIMPEL MOTION TO COMPEL ABANDONMENT  
SL-2 2-3-15 [\[28\]](#)  
WILLIAM STIMPEL/MV  
SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Disposition:** Continued to April 1, 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 of a proposed abandonment 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, all creditors and 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.

27. [14-12883](#)-A-7 F & J RECYCLING AND MOTION FOR COMPENSATION FOR  
JTW-2 ASSOCIATES, INC. JANZEN, TAMBERI AND WONG,  
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S)  
2-13-15 [[25](#)]

DAVID JENKINS/Atty. for dbt.

### **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**

Jazen, Tamberi and Wong has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,444.00 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.

Jazen, Tamberi and 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 \$1,4440.00 and reimbursement of expenses in the amount of \$0.00.

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.

**9:15 a.m.**

1.    [12-16876](#)-A-7     WILLIAM VANDER POEL                   PRE-TRIAL CONFERENCE RE: MOTION  
          WW-11   FOR SANCTIONS FOR VIOLATION OF  
          WILLIAM VANDER POEL/MV                                   THE DISCHARGE INJUNCTION  
  8-19-14 [[231](#)]  
  
          RILEY WALTER/Atty. for dbt.  
          RESPONSIVE PLEADING

**Final Ruling**

At the suggestion of the parties, this matter is continued to April 29, 2015, at 9:15 a.m. Not later than 14 days before the continued hearing, the parties shall file a joint status report.

2.    [12-16876](#)-A-7     WILLIAM VANDER POEL                   MOTION TO SET MATTER FOR  
          [14-1007](#)   FURTHER PROCEEDINGS  
          VANDER POEL, SR. V. MEDINA                               2-3-15 [[131](#)]  
          STAN MALLISON/Atty. for mv.  
          RESPONSIVE PLEADING

**Final Ruling**

At the suggestion of the parties, this matter is continued to April 29, 2015, at 9:15 a.m. Not later than 14 days before the continued hearing, the parties shall file a joint status report.

3. [12-16876](#)-A-7 WILLIAM VANDER POEL PRETRIAL CONFERENCE RE: AMENDED  
[14-1033](#) COMPLAINT  
VANDER POEL, SR. V. MEDINA ET  
9-12-14 [[89](#)]  
AL  
MICHAEL FLETCHER/Atty. for pl.  
AMENDED ORDER 12/17/14,  
RESPONSIVE PLEADING

**Final Ruling**

At the suggestion of the parties, this matter is continued to April 29, 2015, at 9:15 a.m. Not later than 14 days before the continued hearing, the parties shall file a joint status report.

**10:00 a.m.**

1. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND STATUS CONFERENCE RE: COMPLAINT  
[14-1150](#) ROBYN SOUZA 12-9-14 [[1](#)]  
SALVEN V. 4 K DAIRY FAMILY  
PARTNERSHIP ET AL  
TRUDI MANFREDO/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER PRETRIAL CONFERENCE RE:  
[14-1115](#) COMPLAINT  
CADLES OF GRASSY MEADOWS II, 9-30-14 [[1](#)]  
LLC. V. TEISINGER ET AL  
HOLLY WALKER/Atty. for pl.  
RESPONSIVE PLEADING,  
JUDGMENT 2/26/15

**Final Ruling**

Judgment entered on February 26, 2015, the pretrial conference is concluded.

3. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN MOTION FOR COSTS  
[13-1075](#) WW-2 2-9-15 [[71](#)]  
KOZLOWSKI ET AL V. MCCLARAN  
TRACY BLAIR/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Tax Costs

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

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

**Order:** Civil minute order

Defendant Glen S. McClaran moves to tax costs of \$14,116.48 to Plaintiffs Eric Kozlowski and Ronda Kozlowski. The motion follows an adversary proceeding under 11 U.S.C. § 523 in which McClaran was the prevailing party. Kozlowskis oppose the motion.

### **DISCUSSION**

#### Legal Standards

Unless a statute or rule provides otherwise, a party that prevails in an adversary proceeding is entitled to recover costs, exclusive of attorneys, from the other side. Fed. R. Bankr. P. 7054(b); see also, Fed. R. Civ. P. 54(d); LBR 1001-1(c) (incorporating LR 292); *Marx v. General Revenue Corp.*, 133 S.Ct. 1166, 1170, 1172 (2013) (construing Fed. R. Civ. P. 54(c)). Costs awards may be made under (1) Rule 54(d), which are limited to those costs enumerated in 28 U.S.C. § 1920; or (2) another statute or contract between the parties. *Crawford Fitting Co., v. J.T. Biggons, Inc.*, 482 U.S. 437, 441-442 (1987).

The party moving for costs bears the burden of proof. *Renfrow v. Draper*, 232 F.3d 688, 695 (9th Cir. 2000); *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1258-1259 (10th Cir. 1998). Where the costs are not taxed by the Clerk, a two-step process governs. First, under Rule 54(d), or other applicable statute, rule or contract, the court determines whether the party seeking to tax costs is the prevailing party. Second, the court determines whether the cost is of the type is allowable under the statute, rule or contract and the reasonable amount of those costs. When recovery is sought under Rule 54(d), only those costs set forth in 28 U.S.C. § 1920 are recoverable. *Crawford Fitting Co., v. J.T. Biggons, Inc.*, 482 U.S. 437, 441-442 (1987); *Mota v. University of Texas Houston Health Science Ctr.*, 261 F.3d 512, 529 (5th Cir. 2001); *Contra*, LR 292(f) (11) (suggesting the "interests of justice" is itself a basis for imposing costs). Costs not listed in § 1920 may not be taxed. *Crawford*, 482 U.S. at 441-442; *Mota*, 261 F. 3d 529.

#### Matters Not Before the Court

##### *Defendant's Basis to Recover Costs*

As presented by the motion, McClaran's sole basis to tax costs is Rule 54(d), and by extension 28 U.S.C. § 1920. McClaran makes no argument that another statute or contract, i.e. Purchase and Sale Agreement, Promissory Note or personal guaranty that comprise the transaction giving rise to the dispute, form a basis for recovering costs. See

Motion for Costs, filed February 9, 2015, ECF # 71. Since a motion must specify not only the relief sought but the grounds for that a relief, Fed. R. Bankr. P. 9013, and since no argument is offered under other statute or contract, the court considers McClaran's entitlement solely under Rule 54(d), and 28 U.S.C. § 1920.

### *Plaintiff's Objections*

Kozlowskis attempts to incorporate by reference their objections in dockets 50 and 51, and objections therein, to McClaran's Bill of Costs. "Plaintiff's objections (filed as Docs Nos. 50-51) do not need to be repeated here, but Plaintiffs (sic) take judicial notice of their objections and supporting documents." Plaintiff's Objections to Glen McClaran's Motion for Costs, p. 2, lines 1-2, filed February 25, 2015, ECF # 90. The court disagrees and declines Kozlowski's invitation to search these documents for such additional unspecified objections contained therein.

### Matters Before the Court

Kozlowski challenges three categories of costs: (1) witness and service of subpoena fees; (2) printing costs; and (3) other costs. Opposition, filed February 25, 2015, ECF # 90.

### *Witness and Subpoena Service Fees*

McClaran claims witness fees of \$151.00 and subpoena service fees of \$334.10 for Mark Gallagher, Jon Warren and Rachel Hagenzeiker. Kozlowski argues the fees should be disallowed because (1) the witnesses were not called; (2) could provide no relevant testimony; and (3) would have provided cumulative testimony.

Witness fees and subpoena service fees by private process servers are recoverable under § 1920. 28 U.S.C. §§ 1821, 1920(3); *Alfex Corp. v. Underwriters Laboratories, Inc.*, 914 F.2d 175, 178 (9th Cir. 1990). Actual testimony at trial is not a prerequisite to recovery. *Spanish Action Comm. Of Chicago v. City of Chicago*, 811 F.2d 1129, 1138-1139 (7th Cir. 1987).

Trial is a dynamic situation. And it is not always possible to predict up front which witnesses will actually be called at trial. One of Kozlowskis' main theories at trial was that McClaran did not intend after consummation of the sale to produce biofuel. Tracy Blair's belief that Mark Gallagher, Jon Warren and Rachel Hagenzeiker might need to be called to give testimony on this subject was not unreasonable, Declaration of Blair ¶¶ 3-5, filed February 9, 2015, ECF # 74, and is a sufficient evidentiary basis to tax these costs. The objection will be overruled.

### *Printing*

McClaran claims printing costs of \$7,582.93. These costs represent copy charges between July 1, 2013, and January 6, 2015. Kozlowski argues that McClaran has not sustained his burden that these costs are, in fact, taxable.

The court agrees. Exemplification and copy costs necessarily obtained for use in the case are recoverable. 28 U.S.C. 1920(4); *Summit Technology, Inv. v. Nidek Co., Ltd.*, 435 F.3d 1371, 1378-1380 (Fed. Cir. 2006). But copying and/or exemplification costs must be

necessary to a party's case. *Allison v. Bank One-Denver*, 289 F.3d 1223, 1249 (10th Cir. 2002). Costs of discovery are generally not recoverable. *Rundus v. City of Dallas, Texas*, 634 F.3d 309, 316 (5th Cir. 2011). Specificity is required. "The mere recitation of the phrase 'necessarily obtained for use in the case' is not sufficient. *American Key Corp. v. Cumberland Assocs.*, 102 FRD 496, 499 (N.D. Ga. 1984); *In re Ricoh Co., Ltd. Patent Litig.*, 661 F.3d 1361, 1367-1368 (Fed. Cir. 2011). Copies made for convenience of counsel are not recoverable. *Kalitta Air L.L.C. v. Central Texas Airborne System, Inc.*, 741 F.3d 955, 959 (9th Cir. 2013).

Neither Tracy Blair's supporting declaration, Declaration of Blair ¶ 6, filed February 9, 2015, ECF # 74, nor her supplemental declaration, Supplemental Declaration of Tracy Blair ¶¶ 4-15, filed March 4, 2015, ECF # 98 provide a sufficiently detailed and specific basis to tax these costs. The original declaration provides only conclusions, not facts. LBR 9014-1(d)(6). The supplemental declaration offers paragraphs 4-15 which states only that each reproduction costs was "associated with" a particular activity. This is insufficient to sustain the burden of proof. The objection will be sustained as to reproduction costs.

#### *Other Costs*

McClaran seeks to tax "Other Costs" of \$947.14. These are comprised of conference calls, telephonic court appearances, electronic research, faxes, mileage, parking and postage. Motion p. 3, lines 9-14, filed February 9, 2015, ECF #71.

Communication charges., e.g. courier, mail, telephone, and fax costs are not taxable. *El-Fadl v. Central Bank of Jordan*, 163 FRD 389, 390 (D. D.C. 1995); *Duckworth v. Whisenant*, 97 F.3d 1393, 1399 (11 Cir. 1996) (postage fees not recoverable). As a result, the court disallows costs for (1) conference calls; (2) telephonic appearances; (3) faxes; and postage.

Legal research (online charges) is not taxable. *Trustees of Const. Industry & Laborers Health Welfare Trust v. Redland Ins. Co.*, 406 F.3d 1253, 1258-1259 (9th Cir. 2006); *InvesSys., Inc. v. McGraw-Hill Cos., Ltd*, 369 F.3d 16, 22-23 (1st Cir. 2004). As a result, costs for Lexis research are disallowed.

Mileage is not authorized. 28 U.S.C. § 1920. As a result, mileage costs are disallowed.

Parking is not a recoverable cost. *Duckworth v. Whisenant*, 97 F.3d 1393, 1399 (11 Cir. 1996). And the court will disallow parking costs. As a consequence, the objection is sustained as to all "Other Costs."

#### Conclusion

McClaran is allowed costs of \$5,586.41 calculated as follows: From the total costs requested of \$14,116.48, Motion for Costs, p. 2, line 25, through p. 3, line 15, filed February 9, 2015, ECF # 71, the court disallows and subtracts (1) printing costs of \$7,582.93; and (2) other costs of 947.14. The net costs allowed to be taxed is \$5,586.41 and the remainder of the costs is disallowed.

## **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.

Glen S. McClaran's motion for costs 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 in part.

IT IS ORDERED that: (1) costs of 5,586.41 are taxed in favor of Glen S. McClaran and against Eric Kozlowski and Ronda Kozlowski, jointly and severally; and (2) all other relief is denied.

4. [13-17712](#)-A-7 RUBEN OLVERA AND GLORIA  
[14-1133](#) CHAVEZ
- CONTINUED STATUS CONFERENCE RE:  
FIRST AMENDED COMPLAINT  
1-20-15 [[14](#)]
- STRAIN V. VALENCIA
- PETER FEAR/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

5. [14-11316](#)-A-7 VINCENT/SARAH CARABBA  
[14-1052](#)
- CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
9-18-14 [[22](#)]
- MAS FINANCIAL SERVICES V.  
CARABBA  
PAUL REZA/Atty. for pl.

### **Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

6. [10-61725](#)-A-7 PAMELA ENNIS  
[12-1160](#)
- CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
10-16-12 [[7](#)]
- STRAIN V. ENNIS ET AL
- THOMAS ARMSTRONG/Atty. for pl.  
RESPONSIVE PLEADING

### **Final Ruling**

The matter is continued to April 15, 2015, at 10:00 a.m.

7. [14-13625](#)-A-7 CHARLES DAILEY  
[14-1127](#)  
UNITED STATES V. DAILEY

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-27-14 [[1](#)]

**No tentative ruling.**

8. [14-13625](#)-A-7 CHARLES DAILEY  
[14-1127](#) USA-1  
UNITED STATES V. DAILEY  
JEFFREY LODGE/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
1-22-15 [[18](#)]

**No tentative ruling.**

9. [13-15067](#)-A-7 CARLOS BERBEREIA  
[14-1041](#)  
MANFREDO V. BERBEREIA  
TRUDI MANFREDO/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
7-3-14 [[24](#)]

### **Final Ruling**

### **DISCUSSION**

The plaintiff's motion for entry of default granted, the status conference is concluded.

### **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 motion for entry of default granted,

IT IS ORDERED that (1)the status conference is concluded; and (2) if a judgment is not entered within 90 days hereof the Clerk may dismiss the adversary proceeding for failure of prosecution.



10. [13-15067](#)-A-7 CARLOS BERBEREIA CONTINUED MOTION FOR ENTRY OF  
[14-1041](#) TGM-2 DEFAULT JUDGMENT  
MANFREDO V. BERBEREIA 10-30-14 [[37](#)]  
TRUDI MANFREDO/Atty. for mv.

**Final Ruling**

**Motion:** Entry of Default Judgment

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

**Disposition:** Granted

**Order:** Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

The Chapter 7 trustee shall lodge an order and judgment forthwith.

11. [10-61970](#)-A-7 BRIAN ENNIS CONTINUED STATUS CONFERENCE RE:  
[12-1161](#) AMENDED COMPLAINT  
SALVEN V. ENNIS 10-16-12 [[7](#)]  
THOMAS ARMSTRONG/Atty. for pl.  
RESPONSIVE PLEADING

**Final Ruling**

The matter is continued to April 15, 2015, at 10:00 a.m.

12. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER CONTINUED STATUS CONFERENCE RE:  
[14-1111](#) COMPLAINT  
SALVEN V. STRAIN ET AL 9-12-14 [[1](#)]  
ROBERT HAWKINS/Atty. for pl.

**Final Ruling**

The matter is continued to May 20, 2015, at 10:00 a.m. to allow the trustee to enter the defendant's default and obtain default judgments. Not later than May 6, 2015, the plaintiff shall file a status report, if a default judgment has not been entered.

10:30 a.m.

1. [14-15702](#)-A-7 JULIAN/MELINDA MACIEL REAFFIRMATION AGREEMENT WITH  
FINANCE AND THRIFT COMPANY  
2-17-15 [[21](#)]

**No tentative ruling.**

11:00 a.m.

1. [14-12107](#)-A-7 AMADO GOMEZ CONTINUED OBJECTION TO DEBTOR'S  
JES-3 CLAIM OF EXEMPTIONS  
JAMES SALVEN/MV  
9-30-14 [[43](#)]  
OSCAR SWINTON/Atty. for dbt.  
RESCHEDULED TO 3/17/15

**Final Ruling**

The hearing rescheduled to April 29, 2015, at 9:00 a.m., this hearing is dropped as moot.

2. [14-12107](#)-A-7 AMADO GOMEZ CONTINUED MOTION TO COMPROMISE  
JES-4 CONTROVERSY/APPROVE SETTLEMENT  
JAMES SALVEN/MV AGREEMENT WITH AMADO LARA GOMEZ  
11-14-14 [[52](#)]  
OSCAR SWINTON/Atty. for dbt.  
RESCHEDULED TO 3/17/15

**Final Ruling**

The hearing rescheduled to April 29, 2015, at 9:00 a.m., this hearing is dropped as moot.

1:30 p.m.

1. [13-17744](#)-A-11 SREP V, LLC CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-6-13 [[1](#)]  
PETER FEAR/Atty. for dbt.

**No tentative ruling.**

2. [13-17744](#)-A-11 SREP V, LLC  
PLF-2  
PETER FEAR/Atty. for dbt.

CONFIRMATION OF PLAN  
11-14-14 [[182](#)]

**No tentative ruling.**

3. [15-10164](#)-A-11 VALLEY MEDICAL SYSTEMS,  
INC.  
  
PERRY POPOVICH/Atty. for dbt.

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
1-20-15 [[1](#)]

**No tentative ruling.**

4. [15-10366](#)-A-11 ELLIOTT MANUFACTURING  
PLF-1 COMPANY, INC.  
ELLIOTT MANUFACTURING COMPANY,  
INC./MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO USE CASH  
COLLATERAL  
2-3-15 [[4](#)]

**No tentative ruling.**

5. [14-11991](#)-A-11 CENTRAL AIR  
CONDITIONING, INC.  
S & S HOMES OF THE CENTRAL  
COAST, INC./MV  
HAGOP BEDOYAN/Atty. for dbt.  
TOM FAMA/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-26-15 [[349](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party but the order must be signed by the debtor in possession's counsel before being submitted

**Subject:** Litigation in Kern County Superior Court including (I) Medina v. S&S Homes of the Central Coast, Inc., et al., and (ii) Zuniga v. S&S Homes of the Central Coast, Inc., et al. (the court construes the differently described litigation on page 4 of the notice and motion to refer to the same litigation described here).

The debtor has filed a non-opposition to the motion. No other opposition has been filed. 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 movants have insufficiently noticed the motion pursuant to the court's local rules. The notice and the motion are not separate documents. LBR 9014-1(d)(2).

The notice procedure confuses LBR 9014-1(f)(1) and (f)(2). One or the other should have been selected. Instead, the notice is confusing and appears to both require any opposition to be filed 14 days prior to the hearing and also permit opposition at the hearing without filing a written response. In addition, the notice also appears to make written opposition at the same time optional and mandatory (page 2).

Lastly, a docket control number does not appear on the motion or proof of service, although one does appear on the stay relief summary sheet. LBR 9014-1(c)(1) requires docket control numbers to be included by all parties on all documents, including proofs of service, filed in support of or opposition to motions.

## 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).

The court finds cause for stay relief. State court litigation is pending against the debtor. The debtor has filed a non-opposition. The movants request stay relief for the limited purpose of proceeding against the debtor's liability insurance carriers. Moreover, the movants do not seek any recovery against the estate, the debtor, or the debtor's shareholders, owners, officers and managers, beyond the insurance proceeds.

Thus, the estate will not be unaffected by such relief. 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.

- |  |  |
|--|--|
| 6. <a href="#">14-11991</a> -A-11   CENTRAL AIR<br>KDG-22                   CONDITIONING, INC.<br>CENTRAL AIR CONDITIONING,<br>INC./MV<br>HAGOP BEDOYAN/Atty. for dbt. | OBJECTION TO CLAIM OF SECURITY<br>NATIONAL INSURANCE COMPANY,<br>CLAIM NUMBER 15<br>1-9-15 [ <a href="#">315</a> ] |
|--|--|

## Final Ruling

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the

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

The claimant's claim was filed after the claims bar date established by the court. The claims bar date was close of business on October 3, 2014. The claimant filed its claim no. 15 on October 22, 2014. The exceptions in Rule 3002(c) (2), (c) (3), (c) (4), and (c) (6) are inapplicable. The court has not for cause shown extended the time within which proofs of claim may be filed.

7. [14-11991](#)-A-11 CENTRAL AIR CONDITIONING, INC.  
KDG-23  
CENTRAL AIR CONDITIONING, INC./MV  
HAGOP BEDOYAN/Atty. for dbt.  
ORDER 3/6/15
- OBJECTION TO CLAIM OF CAPITAL INSURANCE GROUP, CLAIM NUMBER 12  
1-15-15 [[320](#)]

## Final Ruling

The hearing has been continued by Stipulation, ECF #393, to April 15, 2015, at 1:30 p.m

8. [14-11991](#)-A-11 CENTRAL AIR  
KDG-24 CONDITIONING, INC.  
CENTRAL AIR CONDITIONING,  
INC./MV  
HAGOP BEDOYAN/Atty. for dbt.
- OBJECTION TO CLAIM OF ARCH  
SPECIALTY INSURANCE COMPANY,  
CLAIM NUMBER 11  
1-16-15 [[327](#)]

## Final Ruling

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The objection indicates that the claimant's claim is "unliquidated" and based on a general commercial liability policy. According to the objection, the debtor is obligated to pay the first \$25,000 per covered event, which is the "self-insured retention" amount ("SIR"). This SIR amount has never been met as the debtor has been able to settle each claim during the policy period (August 14, 2003 to August 14, 2004) for under the SIR amount.

Further, the objection states that the claimant is obligated to provide defense and indemnity for any third-party claim against the

debtor exceeding the SIR amount. But the claimant has no right to recovery against the debtor by virtue of meeting its obligations as insurer under the policy.

While there may be events which trigger the claimant's right to subrogation or reimbursement if the debtor is entitled to recovery from a third-party for an amount the claimant must or has paid, the claimant has not opposed the objection or indicated that such an event has occurred giving rise to such a right. In any case, the objection indicates that two of the three timely construction defect claims filed in this case have been withdrawn, and the third one has been settled and should be withdrawn. No other events have been described that would potentially lead to a right of the claimant to reimbursement or subrogation. For the reasons stated in the objection, the court will estimate and liquidate this claim at \$0.00 pursuant to § 502(c).

9. [14-11991](#)-A-11 CENTRAL AIR MOTION FOR COMPENSATION FOR  
KDG-26 CONDITIONING, INC. GILMAN, HARRIS & TRAVIOLI,  
GILMAN, HARRIS AND TRAVIOLI/MV ACCOUNTANT(S)  
2-9-15 [[372](#)]  
HAGOP BEDOYAN/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of Interim 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**

Gilman, Harris & Travioli has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,813.00 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 an employed professional 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. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed

