

**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

**TUESDAY**

**MARCH 17, 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. [14-13601](#)-A-7 LAWRENCE STIEB  
DRJ-2  
LAWRENCE STIEB/MV

MOTION TO AVOID LIEN OF VALLEY  
PACIFIC PETROLEUM SERVICES,  
INC.  
3-2-15 [[43](#)]

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:** \$253,193.32

**Property Value:** \$197,000.00

**Judicial Lien Avoided:** \$41,657.05

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.

2. [14-12107](#)-A-7 AMADO GOMEZ  
JES-3  
JAMES SALVEN/MV  
EXEMPTIONS

RESCHEDULED HEARING RE:  
OBJECTION TO DEBTOR'S CLAIM OF

9-30-14 [[43](#)]

OSCAR SWINTON/Atty. for dbt.  
ORDER 3/6/15

**Final Ruling**

Pursuant to Order, ECF #90, the hearing is continued to April 29, 2015, at 9:00 a.m.

3. [14-12107](#)-A-7 AMADO GOMEZ  
JES-4  
JAMES SALVEN/MV

RESCHEDULED HEARING RE: MOTION  
TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH AMADO LARA GOMEZ  
11-14-14 [[52](#)]

OSCAR SWINTON/Atty. for dbt.  
ORDER 3/6/15

**Final Ruling**

Pursuant to Order, ECF #90, the hearing is continued to April 29, 2015, at 9:00 a.m.

4. [13-15111](#)-A-7 MUEY SAECHAO  
JES-1  
JAMES SALVEN/MV

MOTION TO COMPEL  
2-4-15 [[35](#)]

MARK ZIMMERMAN/Atty. for dbt.

**Tentative Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

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

**Disposition:** Continued to April 15, 2015, at 9:00 a.m.; supplemental declarations to be filed no later than 14 days in advance of the continued hearing date

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to

turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

Here, the trustee seeks turnover of a vehicle and of tax refunds, returns, or tax information. The trustee has not demonstrated that all the property to be turned over is property of the estate. The motion fails to discuss facts with particularity showing precisely the prorated, nonexempt *portion* of the tax refund that is property of the estate. The entire tax refund is not property of the estate under applicable law. A supplemental declaration shall be filed no later than 14 days prior to the continued hearing date.

5. <a href="#">13-15912</a> -A-7    EUGENE/MARGARET AFONSO JES-5 JAMES SALVEN/MV  MARK ZIMMERMAN/Atty. for dbt. ORDER 2/12/15	RESCHEDULED HEARING RE: MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S) 10-3-14 [ <a href="#">50</a> ]
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#### **Tentative 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**

James E. Salven, certified public accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,552.50 and reimbursement of expenses in the amount of \$276.17.

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 E. Salven, certified public accountant'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 \$1,552.50 and reimbursement of expenses in the amount of \$276.17.

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. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC MOTION FOR COMPENSATION FOR  
SAS-2 SHERYL A. STRAIN, ACCOUNTANT(S)  
SHERYL STRAIN/MV 2-12-15 [[81](#)]  
PATRICK COSTELLO/Atty. for dbt.

### Final Ruling

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### COMPENSATION AND EXPENSES

Sheryl A. Strain, certified public accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,554.50 and reimbursement of expenses in the amount of \$126.25.

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.

Sheryl A. Strain'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 \$1,554.50 and reimbursement of expenses in the amount of \$126.25.

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.

7. <a href="#">13-15413</a> -A-7    SASCHA WILLIAMS JES-2 JAMES SALVEN/MV 11-4-14 [ <a href="#">60</a> ] JEFF REICH/Atty. for dbt.	MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
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#### **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**

James E. Salven, certified public accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,237.50 and reimbursement of expenses in the amount of \$155.96.

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 E. Salven'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 \$1,237.50 and reimbursement of expenses in the amount of \$155.96.

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.	<a href="#">14-12114</a> -A-7     CRYSTAL GARLICK JES-5 JAMES SALVEN/MV 2-12-15 [ <a href="#">104</a> ] THOMAS ARMSTRONG/Atty. for dbt	MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
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#### **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**

James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests

that the court allow compensation in the amount of \$900.00 and reimbursement of expenses in the amount of \$181.18.

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 E. Salven'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 \$900.00 and reimbursement of expenses in the amount of \$181.18.

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. [14-11336](#)-A-7 RAUL/REBECCA JARA  
JES-2  
JAMES SALVEN/MV

MOTION TO SELL  
1-31-15 [[68](#)]

STARR WARSON/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party



**Property:** 2004 Chevrolet Suburban

**Buyer:** Debtors

**Sale Price:** \$5200 (\$2300 cash plus \$2900 exemption credit)

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

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

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

10. [13-14939](#)-A-7 MONICA HERNANDEZ  
JES-1  
JAMES SALVEN/MV  
GARY SAUNDERS/Atty. for dbt.

MOTION TO COMPEL  
1-30-15 [[39](#)]

### **Tentative Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

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

**Disposition:** Continued to April 15, 2015, at 9:00 a.m.; supplemental declarations to be filed no later than 14 days in advance of the continued hearing date

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. *See* 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. *See id.* Other narrow exceptions and defenses are described in § 542. *See id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." *See* 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

Here, the trustee seeks turnover of tax refunds, returns, or tax information. The trustee has not demonstrated that all the property to be turned over is property of the estate. The motion fails to discuss facts with particularity showing precisely the prorated, nonexempt *portion* of the tax refund that is property of the estate. The entire tax refund is not property of the estate under applicable law. A supplemental declaration shall be filed no later than 14 days prior to the continued hearing date.

11. [14-13544](#)-A-7 ISELA TERAN MOTION TO COMPEL  
JES-1 2-4-15 [[20](#)]  
JAMES SALVEN/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

*[The hearing on this matter will follow the hearing on the debtor's motion to convert this case having docket control no. TOG-1.]*

#### **Tentative Ruling**

**Motion:** Compel Turnover

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

**Disposition:** Denied as moot

**Order:** Civil minute order

If the trustee does not oppose the debtor's motion to convert this case to a case under chapter 13, then the court will drop this matter as moot. Otherwise, the court will continue the hearing on this motion to compel and consider the merits of it once the motion to convert has been fully resolved.

12. [14-13544](#)-A-7 ISELA TERAN MOTION TO CONVERT CASE FROM  
TOG-1 CHAPTER 7 TO CHAPTER 13  
ISELA TERAN/MV 3-3-15 [[27](#)]  
THOMAS GILLIS/Atty. for dbt.

#### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2); no 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). 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 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)).

The debtor asserts that her noncontingent, liquidated, secured and unsecured debt amounts are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

13. [14-14645](#)-A-7 MILDRED NULICK CONTINUED MOTION TO AVOID LIEN  
RR-1 OF DATA CENTRAL COLLECTION  
MILDRED NULICK/MV BUREAU, LLC  
1-19-15 [[16](#)]  
  
RANDY RISNER/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:** \$378,165

**Property Value:** \$375,000

**Judicial Lien Avoided:** \$3165

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.

14. [13-11747](#)-A-7    ONTIVEROS CONCRETE, INC.    RESCHEDULED HEARING RE: MOTION  
JTW-2    FOR COMPENSATION FOR JANZEN,  
JANZEN, TAMBERI AND WONG,    TAMBERI AND WONG, ACCOUNTANCY  
ACCOUNTANCY CORPORATION/MV    CORPORATION, ACCOUNTANT(S)  
8-28-14 [[52](#)]  
  
HAGOP BEDOYAN/Atty. for dbt.  
ORDER 2/12/15

### **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**

Janzen, 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 \$2,201.50 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 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 \$2,201.50 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.

15. [14-13147](#)-A-7     DAVID WHITENDALE     MOTION FOR COMPENSATION FOR  
JES-2     JAMES E. SALVEN, ACCOUNTANT(S)  
JAMES SALVEN/MV     2-12-15 [[43](#)]  
STEPHEN LABIAK/Atty. for dbt.

#### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

#### **COMPENSATION AND EXPENSES**

James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,350.00 and reimbursement of expenses in the amount of \$201.98.

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 E. Salven'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 \$1,350.00 and reimbursement of expenses in the amount of \$201.98.

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.

16. [13-10150](#)-A-7 DEBRA DAVIS  
JES-4  
JAMES SALVEN/MV  
  
WILLIAM COLLIER/Atty. for dbt.  
ORDER 2/12/15

RESCHEDULED HEARING RE: MOTION  
FOR COMPENSATION FOR JAMES E.  
SALVEN, ACCOUNTANT(S)  
10-3-14 [[75](#)]

### **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**

James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,507.50 and reimbursement of expenses in the amount of \$145.46.

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 E. Salven'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 \$1,507.50 and reimbursement of expenses in the amount of \$145.46.

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.

17. [14-14455](#)-A-7     BRENDA RENTSCHLER  
JES-2  
JAMES SALVEN/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO SELL  
2-7-15 [[23](#)]

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** ½ interest (equity) in real property located at 40761 Cold Springs Lane, Shaver Lake, CA, subject to a lien in favor of Ocwen Loan Servicing in the approximate amount of \$125,000

**Buyer:** Debtor

**Sale Price:** \$32,495 (\$6000 cash plus exemption credit of \$26,495)

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

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the



Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

18. [14-13356](#)-A-7      HILDA TORRES AND ERNESTO      MOTION TO SELL  
JES-1      TREJO      2-12-15 [[21](#)]  
JAMES SALVEN/MV  
ALBERT GARCIA/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Vehicles described below

**Buyer:** Debtors

**Sale Price:**

–2010 Honda Civic: \$5900 (\$3000 cash plus \$2900 exemption credit)

–2000 Buick Century: \$2000 cash

–1999 Chevy Silverado truck: \$1000 cash

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

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

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



19. [14-12558](#)-A-7 SHARON OLSON  
JTW-2  
JANZEN, TAMBERI AND WONG/MV

CONTINUED MOTION FOR  
COMPENSATION FOR JANZEN,  
TAMBERI AND WONG, ACCOUNTANT(S)  
12-16-14 [[62](#)]

DAVID JENKINS/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

Janzen, 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 \$758.50 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 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 \$758.50 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.

20. [13-16459](#)-A-7      RICHARD BERNAL AND      MOTION FOR COMPENSATION FOR  
JES-5      SAENGKHET SYSONGKHAM      JAMES E. SALVEN, ACCOUNTANT(S)  
JAMES SALVEN/MV      2-11-15 [[49](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,282.50 and reimbursement of expenses in the amount of \$340.40.

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 E. Salven'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 \$1,282.50 and reimbursement of expenses in the amount of \$340.40.

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.

21. [14-11660](#)-A-7      ERICK/RONA CUENCA      MOTION FOR COMPENSATION FOR  
JTW-2      JANZEN, TAMBERI & WONG,  
JANZEN, TAMBERI AND WONG/MV      ACCOUNTANT(S)  
PETER FEAR/Atty. for dbt.      12-15-14 [[36](#)]

### **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**

Janzen, 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 \$795.50 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 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 \$795.50 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.

22. [13-17574](#)-A-7 MARIA BUSTOS  
JES-4  
JAMES SALVEN/MV

MOTION TO COMPEL  
1-30-15 [[40](#)]

### **Tentative Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

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

**Disposition:** Continued to April 15, 2015, at 9:00 a.m.; supplemental declarations to be filed no later than 14 days in advance of the continued hearing date

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

Here, the trustee seeks turnover of tax refunds, returns, or tax information. The trustee has not demonstrated that all the property to be turned over is property of the estate. The motion fails to discuss facts with particularity showing precisely the prorated, nonexempt *portion* of the tax refund that is property of the estate. The entire tax refund is not property of the estate under applicable law. A supplemental declaration shall be filed no later than 14 days prior to the continued hearing date.

23. [13-17477](#)-A-7 SERGIO QUIROZ  
JES-1  
JAMES SALVEN/MV

MOTION TO COMPEL  
1-30-15 [[14](#)]

#### **Tentative Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

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

**Disposition:** Continued to April 15, 2015, at 9:00 a.m.; supplemental declarations to be filed no later than 14 days in advance of the continued hearing date

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

Here, the trustee seeks turnover of tax refunds, returns, or tax information. The trustee has not demonstrated that all the property to be turned over is property of the estate. The motion fails to discuss facts with particularity showing precisely the prorated, nonexempt *portion* of the tax refund that is property of the estate. The entire tax refund is not property of the estate under applicable law. A supplemental declaration shall be filed no later than 14 days prior to the continued hearing date.

24. [14-14190](#)-A-7 LORENA RICE  
JES-1  
JAMES SALVEN/MV  
LAYNE HAYDEN/Atty. for dbt.

MOTION TO SELL  
2-7-15 [[16](#)]

#### **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:** Debtor

**Sale Price:**

-1994 Chevy truck: \$500 cash

-2006 Kia Spectra: \$4900 (\$2000 cash plus \$2900 exemption credit)

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

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

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

25. [13-16195](#)-A-7      AVELINO/MARIBEL ORMONDE      RESCHEDULED HEARING RE: CHAPTER  
7 TRUSTEE'S FINAL REPORT  
11-24-14 [[52](#)]  
  
GEOFFREY ADALIAN/Atty. for dbt.  
ORDER 2/12/15

### **Tentative Ruling**

**Application:** Chapter 7 trustee's Application for Compensation

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Chapter 7 trustee James E. Salven prays approval of his fees and costs. The application will be denied without prejudice.

### **DISCUSSION**

Chapter 7 trustee James E. Salven prays fees of \$8,552.57 and costs of \$606.23. This exceeds the amount remaining for general unsecured creditors, which is \$6,339.91. As a result, the application triggers review under *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014). Scoggins review requires the Chapter 7 trustee to submit time records, actual or estimated. General Order 14-05. Salven has not done so and, as a consequence, the court is unable to review the fees requested. The motion will be denied without prejudice.

### **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 E. Salven, Chapter 7 trustee, having presented to the court,

IT IS ORDERED that the application is denied without prejudice.

26. [13-16195](#)-A-7     AVELINO/MARIBEL ORMONDE     RESCHEDULED FINAL HEARING RE:  
JES-5     MOTION FOR COMPENSATION FOR  
JAMES SALVEN/MV     JAMES E. SALVEN, ACCOUNTANT(S)  
9-2-14 [[48](#)]  
GEOFFREY ADALIAN/Atty. for dbt.  
ORDER 2/12/15

### **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**

James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,957.50 and reimbursement of expenses in the amount of \$306.17.

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 E. Salven'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 \$1,957.50 and reimbursement of expenses in the amount of \$306.17.

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.

27. [14-15598](#)-A-7 RALPH/ANNA GERKEN  
JES-2  
JAMES SALVEN/MV  
JOHN BIANCO/Atty. for dbt.

MOTION TO SELL  
2-13-15 [[19](#)]

### **Final Ruling**

**Motion:** Sell Property and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2011 Hyundai Sonata

**Sale Type:** Public auction

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

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

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.



10:00 a.m.

1. [13-15928](#)-A-7      EDWARD/DENIECE MCARTHUR      RESCHEDULED STATUS CONFERENCE  
[14-1113](#)      RE: COMPLAINT  
SALVEN V. AMERICAN MORTGAGE      9-18-14 [[1](#)]  
FUND, INC.  
TRUDI MANFREDO/Atty. for pl.  
ORDER 2/12/15

**Final Ruling**

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

2. [13-17712](#)-A-7      RUBEN OLVERA AND GLORIA      CONTINUED STATUS CONFERENCE RE:  
[14-1133](#)      CHAVEZ      AMENDED COMPLAINT  
STRAIN V. VALENCIA      1-20-15 [[14](#)]  
PETER FEAR/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

11:00 a.m.

1. [14-12107](#)-A-7      AMADO GOMEZ      RESCHEDULED HEARING RE: ORDER  
TO SHOW CAUSE FOR DISGORGEMENT  
1-13-15 [[73](#)]  
  
OSCAR SWINTON/Atty. for dbt.  
ORDER 3/6/15

**Final Ruling**

Pursuant to Order, ECF #89, the hearing is continued to April 29, 2015, at 11:00 a.m.

1:30 p.m.

1.     [15-10366](#)-A-11    ELLIOTT MANUFACTURING                    CHAPTER 11 STATUS CONFERENCE  
                         COMPANY, INC.                                RE: VOLUNTARY PETITION  
   2-2-15 [[1](#)]  
  
PETER FEAR/Atty. for dbt.  
  
**No tentative ruling.**
  
2.     [13-13284](#)-A-11    NICOLETTI OIL INC.                                RESCHEDULED STATUS CONFERENCE  
   RE: CHAPTER 11 VOLUNTARY  
   PETITION  
   5-7-13 [[1](#)]  
  
DAVID GOLUBCHIK/Atty. for dbt.  
  
**No tentative ruling.**
  
3.     [14-11991](#)-A-11    CENTRAL AIR                                MOTION FOR RELIEF FROM  
                         JDF-1                                AUTOMATIC STAY  
                         H/S DEVELOPMENT COMPANY,                                1-29-15 [[357](#)]  
                         LLC/MV  
                         HAGOP BEDOYAN/Atty. for dbt.  
                         JASON FELD/Atty. for mv.  
                         RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to instructions below and signed by counsel for the debtor

**Subject:** state court litigation as described in the motion, and further or future litigation against insurance proceeds only for work performed by debtor on movants' projects

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).

The notice of hearing is ambiguous about which notice procedure under the local rules is being used. The notice requires an appearance at the hearing, which suggests use of LBR 9014-1(f)(2). Then the notice uses requirements of the notice procedure under LBR 9014-1(f)(1) by requiring debtor/respondent to file written opposition at least 14 days prior to the hearing date if the debtor/respondent intends to oppose the motion. LBR 9014-1(f)(1) and (f)(2) have notice procedures that are mutually exclusive. Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2).

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). For the reasons stated in the motion and the debtor's non-opposition, the court will grant relief from the automatic stay for the limited purpose of allowing the movants to proceed only against applicable insurance proceeds.

The order shall be signed by counsel for the debtor and include an attached and signed waiver by the movants of any direct claim, prepetition, postpetition, administrative, or other claim, against the estate beyond available insurance proceeds. Other conditions of the debtor's nonopposition may be included in the order as per agreement with debtors counsel.

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.

2:00 p.m.

1. [10-62315](#)-A-11 BEN ENNIS  
[15-1006](#)  
STAPLETON V. HERITAGE OAKS  
BANCORP  
MICHAEL GOMEZ/Atty. for pl.  
ORDER 2/26/15

RESCHEDULED STATUS CONFERENCE  
RE: COMPLAINT  
1-16-15 [[1](#)]

**Final Ruling**

Pursuant to Order, ECF #12, the hearing is continued to May 6, 2015, at 2:00 p.m.