

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

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

PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [10-61605](#)-A-7 **IN RE: VINCENTE BERNABE**
[MOK-2](#)

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

VINCENTE BERNABE/MV
HAGOP BEDOYAN

Final Ruling

At the request of the parties, the motion is withdrawn and dropped from calendar.

2. [18-10507](#)-A-7 **IN RE: VERNICE ALFARO**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND/OR
MOTION/APPLICATION FOR ADEQUATE PROTECTION
2-28-2018 [[15](#)]

AMERICAN HONDA FINANCE
CORPORATION/MV
MARK ZIMMERMAN
VINCENT FROUNJIAN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Honda Civic

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

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the

collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Honda Civic, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

3. [18-10507-A-7](#) **IN RE: VERNICE ALFARO**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , MOTION/APPLICATION
FOR ADEQUATE PROTECTION
2-28-2018 [[21](#)]

HONDA LEASE TRUST/MV
MARK ZIMMERMAN
VINCENT FROUNJIAN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Honda Civic

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

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Honda Civic, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

4. [15-13412](#)-A-7 **IN RE: BASILA CONSTRUCTION, INC.**
[RHT-10](#)

MOTION FOR ADMINISTRATIVE EXPENSES
2-23-2018 [[225](#)]

ROBERT HAWKINS/MV
RILEY WALTER
PETER FEAR/ATTY. FOR MV.

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, state taxes in the amount specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court allows California state taxes of \$800.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

5. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[FW-10](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SEELIG &
CUSSIGH HCO, LLC OTHER PROFESSIONAL(S)
3-7-2018 [[587](#)]

SEELIG AND CUSSIGH HCO, LLC/MV
CECILY DUMAS

Tentative 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

In this Chapter 7 case, Seelig and Cusigh HCO, LLC, patient records consultation for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$41,262.50 and reimbursement of expenses in the amount of \$11,341.61.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Seelig and Cusigh HCO, LLC's application for allowance of interim 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. The court allows interim compensation in the amount of \$41,262.50 and reimbursement of expenses in the amount of \$11,341.61. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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. [17-13026](#)-A-7 **IN RE: LUIS TADEO**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-27-2018 [[56](#)]

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS
JAMIE HANAWALT/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2407 Lebow Court, Bakersfield, 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).

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2407 Lebow Court, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

7. [17-13026](#)-A-7 **IN RE: LUIS TADEO**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-27-2018 [[63](#)]

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS
JAMIE HANAWALT/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [16-12127](#)-A-7 **IN RE: STUEVE'S MILK TRANSPORT, INC. A**
CALIFORNIA CORPORATION
[DJR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2018 [[99](#)]

DAGOBERTO HERRERA/MV
HAGOP BEDOYAN
DANIEL RAFII/ATTY. FOR MV.

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

INSUFFICIENT SERVICE

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

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

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

NON-COMPLIANCE WITH LBR 4001-1

The movant has not filed and served completed Form EDC 3-468, "Relief from Stay Summary Sheet." But this was required by LBR 4001-1(a)(3). In the future, counsel for the movant must file this summary sheet or risk sanctions for noncompliance.

9. [13-13243](#)-A-7 **IN RE: MARIA RODRIGUEZ**
[FW-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARIA L. G. RODRIGUEZ AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE OF AKINMEARS, GP FOR TRUETT
AKIN, SPECIAL COUNSEL(S)
2-26-2018 [\[50\]](#)

TRUDI MANFREDO/MV
PETER FEAR/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Prepared by the movant

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

APPROVAL OF COMPROMISE

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

persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise that settles personal injury litigation arising from an allegedly defective medical device. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

COMPENSATION

The special purpose counsel attorneys are three law firms that were appointed pursuant to 11 U.S.C. § 327(e). Three different firms were appointed to assist in the prosecution of the estate's claims.

These firms' compensation was fixed as a contingency fee pursuant to § 328(a). The court finds no developments incapable of being anticipated at the time of the order employing these firms that would show the contingency fee to have been improvident. Accordingly, the court approves the compensation requested.

10. [16-14243](#)-A-7 **IN RE: DAMON JACKSON**
[TMT-2](#)

MOTION TO APPROVE STIPULATION BETWEEN TRUSTEE, DEBTOR AND
CHRISTINA JACKSON RE SALE OF RESIDENCE
2-23-2018 [\[19\]](#)

TRUDI MANFREDO/MV
SUSAN HEMB
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Motion: Approve Stipulation

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

Disposition: Granted

Order: Prepared by trustee pursuant to the instructions below

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

The trustee has filed a motion to approve a stipulation. The parties are the trustee, the debtor and the debtor's estranged spouse. Under the stipulation, the parties agree to the sale of real property located at 2696 Keats Ave., Clovis, CA, which property

is titled in the name of the debtor and his non-filing spouse. The property is subject to a \$75,000 homestead exemption, which the trustee does not dispute.

The court will approve the stipulation. The order shall attach a copy of the stipulation as an exhibit.

11. [16-14243](#)-A-7 **IN RE: DAMON JACKSON**
[TMT-3](#)

MOTION TO EMPLOY BERKSHIRE HATHAWAY HOMESERVICES AS
BROKER(S)
2-23-2018 [[25](#)]

TRUDI MANFREDO/MV
SUSAN HEMB
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

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

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date in a manner consistent with LBR 2014-1(b)(1).

12. [17-12046](#)-A-7 **IN RE: MEDICAL ARTS AMBULATORY SURGERY
CENTER, INC.
[NCK-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-23-2018 [\[72\]](#)

LYNDA VARGAS/MV
LEONARD WELSH
DANIEL BARADAT/ATTY. FOR MV.

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

INSUFFICIENT SERVICE

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

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

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

Further, the debtor was not served with the motion. And if service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney.

NON-COMPLIANCE WITH LBR 4001-1

The movant has not filed and served completed Form EDC 3-468, "Relief from Stay Summary Sheet." But this was required by LBR 4001-1(a)(3). In the future, counsel for the movant must file this summary sheet or risk sanctions for noncompliance.

13. [15-13655](#)-A-7 **IN RE: LEE BROGGI**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-20-2018 [\[71\]](#)

JAMES SALVEN/MV
PETER BUNTING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,025.00 and reimbursement of expenses in the amount of \$283.57.

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 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 \$4,025.00 and reimbursement of expenses in the amount of \$283.57.

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

14. [15-13655](#)-A-7 **IN RE: LEE BROGGI**
[TMT-2](#)

MOTION TO PAY
2-20-2018 [\[78\]](#)

TRUDI MANFREDO/MV
PETER BUNTING
DAVID JENKINS/ATTY. FOR MV.

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, state and federal taxes in the amount specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court allows as an administrative expense federal taxes of \$9,174 and California state taxes of \$6,064.

15. [18-10657](#)-A-7 **IN RE: RANA KHAN**
[PK-1](#)

MOTION TO COMPEL ABANDONMENT
3-14-2018 [[13](#)]

RANA KHAN/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Rana Brothers Enterprises, Inc.

Personal Property: 2007 Refrigerated Utility Trailer

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 only the business and its assets that are described in the motion.

16. [17-12866](#)-A-7 **IN RE: KHALID CHAOU**
[AP-2](#)

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

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

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1839 Cole Ave. E, 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).

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1839 Cole Ave. E, Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

17. [16-14367](#)-A-7 **IN RE: REBECCA ZHU**
[GT-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
2-27-2018 [\[34\]](#)

UL LLC/MV
SAM WU
MATTHEW GERSHMAN/ATTY. FOR MV.

Final Ruling

Motion: Approve Stipulation for Relief from Stay

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

Disposition: Granted

Order: Prepared by moving party pursuant to instructions below

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

Creditor UL LLC filed an action against the debtor in the United States District Court, Eastern District of California. UL LLC's claims included claims for federal trademark infringement, counterfeiting, unfair competition under federal and state law, and false advertising under state law. The action was filed in 2015 before this bankruptcy case was filed.

In 2016, the debtor filed bankruptcy under chapter 7. An adversary proceeding was instituted against the debtor by UL LLC objecting to the dischargeability of a debt. This adversary has now been settled. UL LLC and the debtor agreed to entry of a nondischargeable judgment in this adversary of \$660,000.

Federal Rule of Bankruptcy Procedure 4001(d) provides that a motion for approval of an agreement to modify or terminate the stay under § 362 shall be accompanied by a copy of the agreement. Fed. R. Bankr. P. 4001(d)(1)(A)(iii) The agreement to terminate the stay of the U.S. District Court litigation, in which the debtor is a defendant, is attached as Exhibit E.

The parties have reached a global settlement, which includes the settlement of the nondischargeability adversary proceeding. But the parties still need to resolve the litigation in the U.S. District Court with respect to non-monetary issues addressing future, post-petition conduct. The parties have stipulated for entry in the U.S. District Court of a consent decree and permanent injunction to be filed there upon the stay being lifted. The consent decree and permanent injunction will make the preliminary injunction permanent as to future conduct by the debtor and will modify the U.S. District Court's prior order regarding custody of the garments bearing counterfeit marks by directing UL LLC to dispose of them.

The court will approve the stipulation for relief from stay. The proposed order shall attach a copy of the stipulation at Exhibit E.

18. [17-14167](#)-A-7 **IN RE: CASTAN ORTIZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2018 [\[15\]](#)

JPMORGAN CHASE BANK, N.A./MV
L. HURST
JAMIE HANAWALT/ATTY. FOR MV.
DISCHARGED

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

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

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

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The trustee has not been served or has not been served at the correct address. The proof of service indicates that the trustee was served by electronic mail. But an email address was not provided at which the trustee was served. Instead, a post-office box was provided. But the proof of service does not represent that the trustee was served at that post-office box by mail.

19. [17-14468](#)-A-7 **IN RE: BRUCE GREER**
[RH-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-9-2018 [[37](#)]

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

Final Ruling

The parties have resolved the matter by stipulation. The matter will be dropped from calendar.

20. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[RWR-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH IRONSHORE INDEMNITY, INC. AND/OR MOTION FOR
COMPENSATION FOR EUGEN C. ANDRES, SPECIAL COUNSEL(S)
2-14-2018 [[112](#)]

JAMES SALVEN/MV
PETER FEAR
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve Compromise of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the movant

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a bad faith claim brought by the estate against an insurance company. This bad faith claim arose out of the insurance company's handling of a legal malpractice claim brought against the debtor, his employee and his firm.

The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

COMPENSATION

The court approved the employment of counsel for the trustee on a contingent fee basis. ECF No. 79. Pursuant to the contingency fee agreement, the court will award counsel for the trustee the fees and costs requested in the sum of \$221,112.39 (fees of \$200,000 and costs of \$21,112.39).

21. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[RWR-4](#)

MOTION TO SELL
2-14-2018 [[119](#)]

JAMES SALVEN/MV
PETER FEAR
RUSSELL REYNOLDS/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: Kimber handgun, model Ultra Carry II

Buyer: Mark Johnson

Sale Price: \$450.00

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.

22. [12-13170](#)-A-7 **IN RE: AUGUSTINE PENA**
[SFR-1](#)

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF
\$51,777.03
3-1-2018 [[698](#)]

AUGUSTINE PENA/MV
SHARLENE ROBERTS-CAUDLE
CLOSED

Tentative Ruling

Application: Return of Unclaimed Funds

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

Disposition: Denied

Order: Civil minute order

Chapter 7 debtor Augustine Pena III ("Pena") moves for an order compelling the Clerk of the Court to return to him unclaimed funds of \$45,685.12 paid to real property secured creditors by the trustee. Pena contends that those funds were rental proceeds improperly paid to secured creditors under the Trustee's Final Report because (1) those creditors had foreclosed their deeds of trust, extinguishing an obligation owed to them; and (2) under California law those funds held by the Clerk belong to him. This court disagrees.

FACTS

Pena filed a chapter 11 bankruptcy. On the date of his petition, he owned 30 real properties, almost all of which were rentals.

Shortly thereafter, over Pena's objection, the case was converted to Chapter 7. Trudi Manfredo ("Manfredo") was appointed the trustee.

Manfredo sought and received approval to continue to rent the properties out until she sold the properties, abandoned them or closed the case.

After approximately 50 months, Manfredo issued her final report and distributed funds, including the \$45,685.12 now in dispute. Pena did not object to the trustee's proposed distribution. And the trustee proceeded with the proposed distribution of funds. In excess of \$411,000 of creditor claims remain unpaid.

When those creditors did not negotiate the trustee's checks, just over two years ago, Manfredo deposited those funds with the Clerk of the Court.

Later, the Clerk of the Court issued a closing order. Pena has not filed a motion to reopen his case.

DISCUSSION

This application calls into question if and when a Trustee's Final Report and/or closing order may be attacked. See *In re T.G. Morgan, Inc.*, 394 B.R. 478 8th Cir. BAP 2008), *aff'd*. 343 Fed.Appx. 171 (2009) (res judicata and collateral estoppel); *In re McLaren*, 562 B.R. 309 (Bankr. E.D. Va. 2016) (res judicata); *Matter of Wade*, 991 F.2d 402 (7th Cir. 1993) (noting the finality of an improperly issued closing order). Mercifully, this court need not reach the more obtuse implications of such an application.

Standing

"[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81, 120 S. Ct. 693, 704 (2000). It is similar to the standing problem posed by a Chapter 7 debtor who wishes to object to a claim. *In re 60 East 80th Street Equities, Inc.* (2nd Cir. 2000) 218 F3d 109, 115-116 (2nd Cir. 2000)(limiting standing to those situations where it is, or by virtue of the objection could become, a solvent estate).

Here, Pena lacks standing. Contrary to Pena's argument, rents from estate properties are themselves property of the estate. 11 U.S.C. § 541(a)(6). Chapter 7 trustees distribute funds under 11 U.S.C. § 726(a), which returns funds to the debtor, if and only if all other claims are paid. This was not a surplus estate. In fact, in excess of \$411,000 in claims remain unpaid by the trustee. As a consequence, even if the court reached the merits and set aside the Trustee's Final Report it is other creditors, and not Pena, that should benefit under § 726(a).

Trustee's Compliance with Bankruptcy Law

Moreover, the trustee complied with applicable law, which provides a two-step analysis to the uncashed check problem. First, in the event a creditor fails to negotiate the Chapter 7 trustee's check, the trustee must pay it to the Clerk of Court, who retains the funds for five years allowing the impacted creditor to make a claim for those funds. 11 U.S.C. § 347(a). Second, if the creditor does not claim those funds in five years, they escheat to the United States. 28 U.S.C. 2042. See March, Ahart & Shapiro *California Practice Guide: Bankruptcy*, The Bankruptcy Estate, Unclaimed Property § 6:510 (Rutter Group 2017).

Here, the trustee did precisely that. Pena has not addressed the problem that since only two years have passed since the trustee has

paid the funds to the Clerk of the Court, these secured creditors might well still make claim to the funds. More importantly, it is not the prerogative of this court to disregard the clear instructions of Congress on this point.

CIVIL MINUTE ORDER

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

Augustine Pena III's application has been presented to the court. Having considered the application together with papers filed in support, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the application is denied.

23. [17-12971](#)-A-7 **IN RE: JOAN PENA**
[RHT-2](#)

MOTION TO SELL
2-28-2018 [[36](#)]

ROBERT HAWKINS/MV
ROBERT HAWKINS/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 709 South F. Street, Tulare, CA

Buyer: Jose Luis Cortes

Sale Price: \$105,000.00

Sale Type: Private sale subject to overbid opportunity

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.

24. [17-14873](#)-A-7 **IN RE: KATHERINE MUNSEY**
[PBB-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
3-8-2018 [\[22\]](#)

PETER BUNTING

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Civil minute order

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

CONVERSION UNDER § 706(a)

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 secured and unsecured debt amounts shown in the debtor's schedules 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.

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 debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

25. [10-12576](#)-A-7 **IN RE: SHERMAN FUJIOKA**
[RAH-1](#)

MOTION TO SET ASIDE
2-27-2018 [[241](#)]

SHERMAN FUJIOKA/MV
RICHARD HARRIS

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

26. [10-12576](#)-A-7 **IN RE: SHERMAN FUJIOKA**
[RAH-1](#)

TRUSTEE'S FINAL REPORT
1-26-2018 [[222](#)]

RICHARD HARRIS
ROBERT HAWKINS/ATTY. FOR MV.
ORDER, ECF NO. 261

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

27. [10-12576](#)-A-7 **IN RE: SHERMAN FUJIOKA**
[SAS-1](#)

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

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

No Ruling

28. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[LLE-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
3-12-2018 [[61](#)]

BANK OF THE SIERRA/MV
PETER FEAR
HANNO POWELL/ATTY. FOR MV.

Tentative Ruling

Motion: Approve Stipulation

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

Disposition: Granted

Order: Prepared by the movant pursuant to instructions below

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

The motion requests approval of a stipulation between Bank of the Sierra and the chapter 7 trustee. The stipulation terminates the automatic stay as to the interest of the trustee in certain real property located in Tulare County at 506 Channing Way, Exeter, CA. The court will approve the stipulation. The debtor's discharge has been entered, so the automatic stay has already terminated as to the debtor's interest in the real property. 11 U.S.C. § 362(c)(2).

The court will approve the stipulation. The stipulation shall be attached to the order as an exhibit.

29. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[SFR-2](#)

MOTION TO SELL
2-22-2018 [\[55\]](#)

JAMES SALVEN/MV
PETER FEAR
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 287 Old Line Ave., Exeter, CA

Buyer: Lukas J. Schuh

Sale Price: \$430,000

Sale Type: Private sale subject to overbid opportunity

Compensation awarded: 6% commission to be divided equally by custom or agreement with any participating broker

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

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

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

30. [17-14576](#)-A-7 **IN RE: GORDON/ANDREA BEGEMAN**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-1-2018 [[31](#)]

COASTHILLS CREDIT UNION/MV
HAGOP BEDOYAN
KAREL ROCHA/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: Ford F-150

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).

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 is moot as to the debtor.

AS TO ESTATE

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a Ford F-150. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

31. [18-10092](#)-A-7 **IN RE: JOSE GUERRERO FLORES AND JESSICA GUERRERO**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2018 [\[15\]](#)

SANTANDER CONSUMER USA INC./MV
JERRY LOWE
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Dodge Challenger

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Dodge Challenger, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

32. [17-12893](#)-A-7 **IN RE: IRENE GUTIERREZ**
[ALG-1](#)

TRUSTEE'S FINAL REPORT
2-14-2018 [\[15\]](#)

JANINE ESQUIVEL
ROBERT HAWKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

33. [13-15197](#)-A-7 **IN RE: CHAD LANGWORTHY**
[KDG-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
2-28-2018 [\[45\]](#)

RANDELL PARKER/MV
STEVEN ALPERT
LISA HOLDER/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a dispute between the estate and the debtor's former employer United Parcel Service. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Randell Parker's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 50.

34. [17-12389](#)-A-11 **IN RE: DON ROSE OIL CO., INC.**
[BTM-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2017 [[594](#)]

MACK FINANCIAL SERVICES/MV
RILEY WALTER
BENJAMIN MORTON/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

At the request of the moving party, ECF #797, the hearing is continued to April 11, 2018, at 1:30 p.m.