

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** APRIL 26, 2017  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

**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.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1.     [16-13301](#)-A-7     ERIC/RONDA KOZLOWSKI     MOTION FOR RELIEF FROM  
DPB-2     AUTOMATIC STAY  
BRANCH BANKING & TRUST     3-31-17 [[113](#)]  
COMPANY/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
DUSTIN BRANCH/Atty. for mv.  
DISCHARGED

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 5299 Saint Augustine Road, Jacksonville, Duval County,  
Florida

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.

Branch Banking & 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 5299 Saint Augustine Road, Jacksonville, Duval County, Florida, 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.

2. [17-10301](#)-A-7 LESLIE DANIELS  
NES-1

MOTION TO CONVERT CASE FROM  
CHAPTER 7 TO CHAPTER 13  
3-7-17 [[10](#)]

NEIL SCHWARTZ/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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.

3. [17-10104](#)-A-7      FRED/KARLA OLMSTEAD      CONTINUED MOTION FOR RELIEF  
BKC-1      FROM AUTOMATIC STAY  
AIR-WAY FARMS, INC./MV      3-13-17 [[18](#)]  
T. BELDEN/Atty. for dbt.  
BRIAN CUTTONE/Atty. for mv.

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

### **FACTS**

Several creditors have filed the present motion for relief from the automatic stay to allow pending state court litigation and arbitration to proceed in a non-bankruptcy forum against the debtor, Fred Olmstead, and his three entities (of which he owns and serves as an officer and agent). The movant-creditors include Air-Way Farms, Inc., Golden Westside Finance Co., Air-Way Partners III, Air-Way Partners IV, Air-Way Partners V, Travis Carberry Family Protection Trust, Travis Carberry, and Carberry Farms, Inc. (collectively, the "Creditors").

#### State-Court Litigation for Nearly 3 Years

Years ago, the Creditors filed a civil complaint in state court against the debtor and his three entities. The civil case was filed in October 2013. A copy of the first amended complaint has been filed by the debtor at docket 55, and the court treats this as a concession by the debtor of the first amended complaint's existence and authenticity.

The first amended complaint brings claims against the debtor for breach of contract, breach of fiduciary duties, fraud, conversion, accounting, "unjust enrichment-constructive trust." The creditors have sued for about \$3 million in damages, plus prejudgment interests, attorneys' fees, and costs. Punitive damages are sought as well.

The court will not attempt to provide the factual allegations, or recapitulate them, in this ruling as the parties are well aware of the factual allegations. All parties agree as to the existence and nature of the first amended complaint.

#### Parties' Stipulation for Arbitration in 2016

On June 20, 2016, a stipulation and order was filed in the state court. In this stipulation, the debtor and the Creditors agreed to forego a jury trial and to use binding arbitration to settle the Creditors' claims. The debtors companies, also defendants, were parties to this stipulation. The state court entered an approving this stipulation.

The arbitration was scheduled for January 17, 2017, and was to last until January 27, 2017. But three days before the arbitration was to begin, the debtor filed the present bankruptcy case. The bankruptcy case was filed January 14, 2017.

## **PRELIMINARY ISSUES**

### Consolidation of Both Motions

The court will consolidate both motions for stay relief (BKC-1 and BKC-2) and treat them as the same motion. All papers filed in support of and opposition to both motions will be treated as part of the same record for a single request for stay relief.

### Notice Deficiency

The debtor raises the issue that the amended motion (BKC-2) was filed on only 20 days' notice. But the debtor also concedes that the motions are duplicates and contain the same arguments. The notice insufficiency as to the amended motion is therefore harmless because the first motion was noticed sufficiently or any notice deficiency has been waived by the debtor's stipulation to continue the first hearing.

### Evidentiary Issues

The debtor argues that the motion lacks evidentiary support, while conceding that the motion (BKC-2) "is now supported by some evidence to support the procedural allegations." Debtor's Opp'n to Mot. Relief from Stay, ECF No. 52.

The court agrees that the motion and memorandum in support improperly cite a brief to support the factual allegations and arguments. To the extent the motion relies extensively on this brief, rather than the first amended complaint, the court will disregard the motion and memorandum in support.

Instead, the court considers as evidence only the declarations filed in support of and opposition to the motion, and the exhibits filed by the debtor. The debtor's exhibits include the first amended complaint and the Stipulation and Order re Binding Arbitration.

## **LEGAL STANDARDS**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether

the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

#### **APPLICATION**

Because courts may consider whichever factors are relevant to the particular case, the court will address only the *Curtis* factors that it deems both material to the outcome and applicable to this matter. It will address other factors to the extent there may be confusion regarding their applicability.

#### Whether Relief Would Result in a Partial or Complete Resolution of the Issues

The analysis of this factor depends on how one defines the scope of the issues to be resolved. If the scope of the issues includes only the claims in the first amended complaint, then relief from stay would result in complete resolution of the issues. If the scope of the issues is defined to include non-dischargeability questions, then relief would result in partial resolution of the issues.

Of course, if the debtor were to win on all claims in the arbitration, there would be no nondischargeability issues to decide. If the debtor were to lose, nondischargeability claims would be necessary and decided by this court. Bankruptcy courts have exclusive jurisdiction to determine dischargeability claims under § 523(a)(2), (a)(4), and (a)(6). 11 U.S.C. § 523(c); *Ackerman v. Eber (In re Eber)*, 687 F.3d 1123, 1128 (9th Cir. 2012). And the court notes that a non-dischargeability adversary proceeding has been filed in this court.

Given the potential for a nondischargeability proceeding, and the existence of an adversary complaint on the court's docket, the court defines the scope of the issues to include nondischargeability questions and claims. Because the necessity for a nondischargeability proceeding is tentative at this time, and conditioned on the debtor's being found liable on claims that could be determined nondischargeable, the court finds that this factor weighs marginally in favor of denying stay relief.

#### Lack of Connection with or Interference with the Bankruptcy Case

The debtor's argues that he would be "burdened with unrelated [dischargeable] claims notwithstanding the fact that he has subjected himself and his assets to adjudication by the bankruptcy court." Debtor's Opp'n to Mot. Relief from Stay at 7, ECF No. 52. This argument assumes incorrectly that stay relief means that the debtor will be required to litigate claims that are dischargeable. This

assumption is flawed. Stay relief only allows the arbitration to proceed. The debtor still has control over his part of the litigation. The debtor need not litigate claims that will be discharged in bankruptcy, such as a garden-variety breach of contract claim. The debtor can stipulate to be found liable on such claims, or the debtor can allow default to be entered (unless the debtor has a reason to suspect a surplus distribution after payment of creditors in full). Because the debtor is the one who has control over whether to litigate dischargeable claims, the court finds the debtor is not burdened by them.

The trustee and the estate would also not be burdened by the arbitration moving forward. Arbitration would provide a useful mechanism for liquidating any claims against the estate. The court notes that no proof of claim has been filed by the Creditors even though the trustee has found assets. As a result, granting stay relief would not interfere with the bankruptcy case. In fact, it would provide a benefit to the bankruptcy case of claim liquidation. This factor weighs strongly in favor of stay relief.

#### Whether the Other Proceeding Involves the Debtor as a Fiduciary

The other proceeding does not involve the debtor in his capacity as a fiduciary. While the other proceeding does involve the debtor's alleged breach of fiduciary duties as a trustee of a trust, the debtor as a litigant is not *litigating as a trustee*. See *In re Curtis*, 40 B.R. 795, 799 (Bankr. D. Utah 1984) (citing to the legislative history of § 362(d)(1), which reveals that this factor is meant to involve the debtor's role as a fiduciary in litigation). By contrast, the debtor's alleged breach of fiduciary duties is irrelevant to this factor even though this issue is the subject of litigation. This factor is inapplicable and does not affect the analysis.

#### Whether a Specialized Tribunal with the Necessary Expertise Has Been Established to Hear the Cause of Action

The debtor states that an arbitration panel is not a specialized tribunal. While the court agrees, the court also notes that arbitration panels routinely handle civil matters and claims and has expertise to hear this proceeding. However, because the arbitration panel is not specialized in the manner that a tax or probate tribunal is, the court will treat this factor as neutral in the analysis.

#### Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors

The debtor admits that granting the motion would not prejudice any creditors. The court agrees that no other creditors' interests would be harmed materially by allowing this litigation to proceed in another forum. Distributions to creditors may be delayed by the litigation, but that delay would occur regardless of the forum for litigation. Because no other creditor has been identified that would be harmed or prejudiced by allowing the arbitration to proceed, this factor weighs in favor of granting stay relief.

#### The Interests of Judicial Economy and the Expeditious and Economical Resolution of Litigation

The parties agree on the procedural history of this civil litigation. The litigation spanned several years in state court in the pre-trial

phase. During these three years, one can reasonably assume that extensive discovery took place. The debtor's opposition admits the existence of discovery, exchange of information, and trial preparation.

Because this case has been preparing for trial for years, and was about to begin trial by arbitration, allowing that arbitration to conclude would serve the interests of judicial economy and the expeditious resolution of the litigation. Arbitration was scheduled for January 2017 and would have begun except for the filing of this bankruptcy case. If this civil proceeding were to be re-started again in this court, the pre-trial phase would begin anew, albeit with narrower issues, and pre-trial motions would likely be necessary.

Therefore, denying stay relief and trying this civil case in this court would significantly lengthen a multi-year litigation that was two weeks from closure outside bankruptcy. This is true even though some of the discovery would be unnecessary perhaps given the discovery that already occurred in state court. And, as mentioned, arbitration would provide a useful mechanism for liquidating any claims (including dischargeable ones) against the estate.

To the extent that the Creditors have brought claims that could be the basis for a nondischargeability action under § 523(c), those claims will only be tried in this court if the Creditors prevail on them. The Creditors may not prevail. But if they do, and if such claims are litigated carefully to track the precise elements of the analogous nondischargeability claims, then any nondischargeability litigation in this court would be streamlined by the application of collateral estoppel to some or all of the issues. *See In re Khaligh*, 338 B.R. 817, 826 (B.A.P. 9th Cir. 2006), *aff'd*, 506 F.3d 956 (9th Cir. 2007) ("California decisional law permits an arbitration award to provide the basis for issue preclusion in the mutual context (i.e., between the same parties and those in privity with them), but not in the nonmutual (i.e., third party) context unless the arbitral parties agree to such nonmutual use.).

#### Whether the Parties Are Ready for Trial in the Other Proceeding

The parties have spent years litigating the claims in state court. After nearly three years of litigation, arbitration was scheduled for January 17, 2017. Three days before this arbitration was to begin, the debtor filed the present bankruptcy case. Because the parties are three days away from a trial by arbitration in the other proceeding, this factor weighs strongly in favor of stay relief.

#### Impact of the Stay on the Parties and the Balance of Harms

The debtor contends that he will be harmed by having to litigate both in the bankruptcy court and in the arbitration. As discussed above, this argument assumes incorrectly that stay relief means that the debtor will be required to litigate claims that are dischargeable. The debtor still has control over his part of the litigation. The debtor need not litigate claims that will be discharged in bankruptcy.

As to claims that may be found nondischargeable (fraud, misappropriation, breach of fiduciary duty as a trustee of a trust), the debtor is not harmed by allowing the arbitration to proceed. The parties can decide which issues are identical to the issues under § 523(a)(2), (4), or (6), and they can selectively litigate those



issues in the arbitration. All other issues can be stipulated in whatever manner the parties decide. And the parties can ensure that any award or judgment precisely sets forth the issues that were necessarily decided. This will prevent duplication of effort in litigating all or portions of the nondischargeability claims. Any strategic obfuscation by the parties in this regard resulting in re-litigation of issues by the bankruptcy court would be a self-imposed harm, not a harm resulting from granting this motion.

Finally, this multi-year civil case is approximately two weeks away from being concluded at arbitration. If this civil proceeding were to be re-started again in this court, the pre-trial phase would begin anew, albeit with narrower issues, and pre-trial motions would likely be necessary. Allowing the litigation to proceed outside bankruptcy will likely shorten the overall length of litigation between the parties. All parties would benefit from a decrease in the time of litigation.

#### Extent and Limitations of Relief

The automatic stay will be vacated to allow the Creditors to pursue the pending state court litigation and arbitration, as described in the motion, including pursuing any confirmation of any arbitration decision or award in state court, C.C.P. §§ 1280-1294.2, and pursue imposition of attorneys' fees and costs if applicable. The movant will also be permitted to file post-judgment motions and appeals. But the Creditors shall not, without further order of this court, take any action to collect or enforce any arbitration award or judgment except by (1) filing a proof of claim in this case or (2) filing an adversary proceeding in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

The movant-creditors include Air-Way Farms, Inc., Golden Westside Finance Co., Air-Way Partners III, Air-Way Partners IV, Air-Way Partners V, Travis Carberry Family Protection Trust, Travis Carberry, and Carberry Farms, Inc. (collectively, the "Creditors"). The Creditors' motion for relief from the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the Creditors to pursue the pending state court litigation and arbitration, as described in the motion, including pursuing any confirmation of any arbitration decision or award in state court, C.C.P. §§ 1280-1294.2, and pursue imposition of attorneys' fees and costs if applicable. The Creditors may also file post-judgment motions and appeals. But the Creditors shall not, without further order of this court, take any

action to collect or enforce any arbitration award or judgment against the debtors or against property of the estate except by (1) filing a proof of claim in this case or (2) filing an adversary proceeding in this court.

IT IS FURTHER ORDERED that the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief is awarded.

4.    [17-10104](#)-A-7    FRED/KARLA OLMSTEAD    MOTION FOR RELIEF FROM  
BKC-2    AUTOMATIC STAY  
AIR-WAY FARMS, INC./MV    4-5-17 [[29](#)]  
T. BELDEN/Atty. for dbt.  
BRIAN CUTTONE/Atty. for mv.

**Tentative Ruling**

The ruling for this matter appears on the calendar item above for the motion with docket control number BKC-1.

5.    [17-10404](#)-A-7    STEPHEN HAWKINS    MOTION FOR RELIEF FROM  
VVF-1    AUTOMATIC STAY  
HONDA LEASE TRUST/MV    3-30-17 [[19](#)]  
JANINE ESQUIVEL/Atty. for dbt.  
VINCENT FROUNJIAN/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:** 2014 Honda CR-V

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

**STAY RELIEF**

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

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief

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

The debtor has missed 2 post-petition payments due under the movant's lease to the debtor of the subject property. This constitutes cause for stay relief.

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

#### **CIVIL MINUTE ORDER**

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

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

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 2014 Honda CR-V, 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.

6.     [16-14407](#)-A-7     GARRETT CHOJNACKI     MOTION TO SELL  
          RHT-1     4-5-17 [[19](#)]  
          ROBERT HAWKINS/MV  
          THOMAS ARMSTRONG/Atty. for dbt.  
          ROBERT HAWKINS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1950 Ford F1 truck

**Buyer:** Debtor

**Sale Price:** \$4000 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). 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.

7. [16-14407](#)-A-7      GARRETT CHOJNACKI      MOTION TO SELL  
RHT-3      4-12-17 [[26](#)]  
ROBERT HAWKINS/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1962 Chevrolet Impala

**Sale Type:** Public auction

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

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.

8. [17-10509](#)-A-7 JOEL RAMIREZ  
EGS-1  
GUILD MORTGAGE COMPANY/MV  
LAYNE HAYDEN/Atty. for dbt.  
EDWARD SCHLOSS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-6-17 [[14](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 3729 North Fruit Avenue #A, 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.

Guild Mortgage Company'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 3729 North Fruit Avenue #A, 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.

9. [16-12818](#)-A-7 CATHERINE STEELE SMITH MOTION TO SELL  
RHT-1 3-31-17 [[21](#)]  
ROBERT HAWKINS/MV  
JEFF REICH/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2011 Honda Fit

**Buyer:** Debtor

**Sale Price:** \$7,050 (\$4000 cash plus \$3050 exemption credit)

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

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

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

10. [17-10518](#)-A-7 JATERICA SIMMONS MOTION FOR RELIEF FROM  
TCS-1 AUTOMATIC STAY  
LEIGHTON JONG/MV 4-4-17 [[31](#)]  
NANCY KLEPAC/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 7578 N. Mariposa St., Fresno, CA 93720, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of real property located at 7578 N. Mariposa St., Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Leighton Jong'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 7578 N. Mariposa St., Fresno, CA, 93720, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

11. [16-12639](#)-A-7 EDUARDO/MARIA GALLARDO  
JES-2  
JAMES SALVEN/MV

MOTION TO EMPLOY JEFFERY S.  
BAIRD AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT  
PUBLIC AUCTION AND AUTHORIZING  
PAYMENT OF AUCTIONEER FEES AND  
EXPENSES  
3-21-17 [[69](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2004 Mazda RX-8

**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.

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

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.



12. [16-11543](#)-A-7 FRANK NAPLES AND MARY MOTION FOR COMPENSATION FOR  
JES-2 LOPEZ JAMES E. SALVEN, ACCOUNTANT(S)  
JAMES SALVEN/MV 3-23-17 [[64](#)]  
RAJ WADHWANI/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**

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 \$1750.50 and reimbursement of expenses in the amount of \$325.50.

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 \$1750.50 and reimbursement of expenses in the amount of \$325.50.

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.

13. [16-11543](#)-A-7      FRANK NAPLES AND MARY      MOTION FOR COMPENSATION BY THE  
KDG-3      LOPEZ      LAW OFFICE OF KLEIN DENATALE  
GOLDNER FOR LISA HOLDER,  
TRUSTEES ATTORNEY(S)  
3-29-17 [[70](#)]

RAJ WADHWANI/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**

In this Chapter 7 case, Klein DeNatale Goldner, attorney 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 \$5763.00 and reimbursement of expenses in the amount of \$60.41.

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.

Klein DeNatale Goldner'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 \$5763.00 and reimbursement of expenses in the amount of \$60.41.

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. [17-11044](#)-A-7      EMILIO/CHRISTINA GARCIA      MOTION TO COMPEL ABANDONMENT  
PBB-1      4-12-17 [[13](#)]  
EMILIO GARCIA/MV  
PETER BUNTING/Atty. for dbt.

### **Tentative Ruling**

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

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

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

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

**Business Description:** Tina's, a hair-salon business

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).

### **STANDARDS**

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.

### **APPLICATION**

The motion references Schedules A/B and C in describing the property to be abandoned. The motion describes the business equipment as valued at \$2,260. But the business equipment also appears to include a \$400 "[n]ail desk and hair dresser furniture" valued at \$400, which is value that is in addition to the \$2260 equipment described in the motion. Schedule C does not appear to include the \$400 nail desk and hair dresser furniture.

But Schedule C claims an exemption of \$8000 for business equipment, which is sufficiently high to include the combined value of the \$2260 business equipment and the \$400 nail desk and hair dresser furniture. In addition, the \$400 nail desk and hair dresser furniture shall be considered of inconsequential value to the estate absent opposition by the trustee. The inventory will also be considered to be of inconsequential value to the estate.

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

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

15. [17-10745](#)-A-7      AMY MOE      MOTION TO COMPEL ABANDONMENT  
GT-1      3-17-17 [\[9\]](#)  
AMY MOE/MV  
GRISELDA TORRES/Atty. for dbt.

### **Tentative Ruling**

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

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

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

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

**Business Description:** Waxing by Amy (esthetician business)

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

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

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

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court

given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

16. [15-11046](#)-A-7 HUMBERTO AGUIRRE AND OBJECTION TO DEBTOR'S CLAIM OF  
JES-1 MARTINA SALGADO AGUIRRE EXEMPTIONS  
JAMES SALVEN/MV 2-27-17 [[36](#)]  
NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
RESPONSIVE PLEADING

## Tentative Ruling

### **Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained in part, overruled in part

**Order:** Civil minute order

## EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 (“[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition.”); *accord In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987).

## ANALYSIS

### Exemption Amounts on the Petition Date Apply

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A). Applying state law in effect on the petition date means that exemption amounts “are fixed at the time of the bankruptcy petition.” *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012).

Thus, exemption amounts applicable on the date of the petition apply. A debtor is not permitted to take advantage of a postpetition increase

in the amount of the exemptions under state law. *In re Wolf*, 248 B.R. 365, 367-68 (B.A.P. 9th Cir. 2000).

Here, exemption amounts under § 703.140(b)(1) and (5) of the California Code of Civil Procedure have increased as of April 2016. However, this case was filed in March 2015 before this increase occurred. The exemption amounts as of the petition date apply to this case.

#### Exemption in 2015 Tax Return

The trustee states, "Debtors claim various exemptions, in the amount of '100% of FMV' utilizing § 703.140(b) of the [CCP] . . . ; however, the various exemptions sections contain limitations, both as to quantity and dollar amounts, on the amount of allowable exemptions." Tr.'s Obj. to Exemptions ¶ 1, ECF No. 31.

Paragraphs 1, 5 and 6 of the trustee's objection appear to be directed at the exemption claimed in an item described as 2015 Tax Return. The court interprets this exemption as an exemption in a 2015 tax refund.

In any event, the court agrees with the trustee's objection. The debtors have not properly claimed the exemption in 2015 tax refunds. The form instructs the debtors to specify the amount of the exemption by either (1) stating a specific dollar amount as exempt, or (2) claiming the full fair market value of the property being exempted up to the amount of any applicable statutory limit.

On Schedule C, the debtors did not check the box for claiming the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Am. Schedule C, ECF No. 20. Nor did the debtors state a specific dollar amount. Because the debtors have not complied with the procedural requirements of the form, the objection will be sustained.

In addition, the debtor claims the exemption for this asset under C.C.P. § 703.140(b)(5). However, as noted below, the debtor has used up the dollar amount permitted for this wildcard exemption on all the other claims of exemption using this same provision. This provides an alternative ground for sustaining the trustee's objection to this exemption.

#### Exemption in Any and All Future Tax Returns, Assets, Claims, Interests, Savings, or Income Not Presently Known

Paragraph 2 is directed at an exemption in "[a]ny and all future tax returns, assets, claims, interests, savings, or income not presently known." This is an exemption with a dollar value of \$22,935.43 and is claimed under the wildcard provision, § 703.140(b)(5). As to this exemption, the trustee's argument is that this claim may cause the total claim of exemptions under § 703.140(b)(5) to exceed the statutory limit under that provision.

The court has calculated the total of all the exemptions claimed under § 703.140(b)(1) and (5). No exemptions are claimed under § 703.140(b)(1). The debtors have not exceeded the statutory limit applicable on the date of the petition in 2015. The limit was \$26,925. The total exemptions claimed under the wildcard provision, § 703.140(b)(5) equals exactly \$26,925. (However, this total excludes the improper exemption discussed above for the 2015 tax refunds.)

Accordingly, the objection is overruled to the extent it objects to this particular exemption.

#### Exemption in Personal Injury Settlement

The debtors have claimed an exemption in an interest in a personal injury claim and settlement of that claim. The description is "Personal Injury Settlement for a recalled medical product used in surgery." Am. Schedule C, ECF No. 31.

The debtors have claimed this interest exempt under C.C.P. § 703.140(b)(11)(D) (\$25,575.00) and § 703.140(b)(5) (\$861.47). The total value listed on Schedule C is \$26,436.47.

The trustee has not offered a legal basis under California law that the claim of exemption should be denied. The trustee's concerns relate to disclosure of a variety of details regarding the claim and settlement including the nature of the settlement, the amount of the settlement, whether or not the settlement has been received, whether or not the settlement was approved by the court, whether attorney's fees were paid (or deducted from) the settlement, and other such details.

The trustee is entitled to this information under 11 U.S.C. § 521(a)(3)-(4). But for purposes of claiming an exemption, what has been provided on Schedule C—the current value of the portion owned, the amount of the exemption claimed, and a brief description of the property, and the laws that allow the exemption—suffices. Schedule C instructs the debtor to provide a "[b]rief description of the property." This instruction does not require an exhaustive accounting, documentation, or information, as might be required by § 521(a)(3) and (4). The description on Schedule C is sufficient.

The court does note that the opposition to the objection may provide the trustee with answers to some of his questions in any event.

And while the trustee is entitled to these details regarding the claim and settlement, the lack of this information on Schedule C is not a legal basis for disallowing the exemption. This portion of the objection will be overruled.

#### **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 objection to the debtors' claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained in part and overruled in part. The objection is sustained to the extent that it objects to the claim of exemption in a 2015 tax refund for "100%" under Cal. Civ. Proc. Code § 703.140(b)(5). The remaining portions of the objection are overruled.

17. [17-10652](#)-A-7 EMIGDIO MENDOZA

EMIGDIO MENDOZA/MV

EMIGDIO MENDOZA/Atty. for mv.  
\$335.00 FILING FEE PAID  
3/27/17

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE

2-27-17 [[5](#)]

### **Final Ruling**

The fee paid in full, the motion is denied as moot.

18. [12-16968](#)-A-7 GREGORY/YVONNE HARK  
KDG-4

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER FOR LISA HOLDER,  
TRUSTEES ATTORNEY(S)

3-29-17 [[88](#)]

NEIL SCHWARTZ/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**

In this Chapter 7 case, Klein DeNatale Goldner, general counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4700.00 and reimbursement of expenses in the amount of \$191.60.

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.

Klein DeNatale Goldner'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 \$4700.00 and reimbursement of expenses in the amount of \$191.60.

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

19. [16-12376](#)-A-7      ABERNATHY COLLEGIATE      MOTION FOR COMPENSATION FOR  
JES-2      CHARTER SCHOOL      JAMES E. SALVEN, ACCOUNTANT(S)  
JAMES SALVEN/MV      3-27-17 [[12](#)]  
D. GARDNER/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

In this Chapter 7 case, James E. 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 \$2060.00 and reimbursement of expenses in the amount of \$218.68.

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 \$2060.00 and reimbursement of expenses in the amount of \$218.68.

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.

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| 20. | <a href="#">15-11079</a> -A-7    WEST COAST GROWERS, INC.<br>KDG-28            A CALIFORNIA CORPORATION<br>ROBERT HAWKINS/MV | MOTION TO COMPROMISE<br>CONTROVERSY/APPROVE SETTLEMENT<br>AGREEMENT WITH ARAMARK UNIFORM<br>SERVICES & CAREER APPAREL, LLC<br>3-20-17 [ <a href="#">928</a> ] |
|-----|--|---|

HAGOP BEDOYAN/Atty. for dbt.

#### **Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the

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

The movant requests approval of a compromise that settles preference dispute and unauthorized transfer claims aggregating \$52,729.42. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 931. 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.

Robert A. Hawkins'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 as Exhibit A and filed at docket no. 931.

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| 21. | <u>16-14282</u> -A-7     SUSAN CASTANEDA<br>RHT-1<br>ROBERT HAWKINS/MV<br>TIMOTHY SPRINGER/Atty. for dbt.<br>ROBERT HAWKINS/Atty. for mv. | MOTION TO SELL<br>3-31-17 [ <a href="#">17</a> ] |
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#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2006 Toyota Avalon

**Buyer:** Debtor

**Sale Price:** \$6050 (\$3000 cash plus \$3050 exemption credit)

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

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

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

22. [15-11283](#)-A-7 GLORIA ESTILLORE MOTION FOR RELIEF FROM  
KAZ-1 AUTOMATIC STAY  
U.S. BANK NATIONAL 3-20-17 [[272](#)]  
ASSOCIATION/MV  
JERRY LOWE/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.  
DISCHARGED, RESPONSIVE  
PLEADING

**No tentative ruling.**

23. [16-14484](#)-A-7 LISA JONES MOTION FOR RELIEF FROM  
DJP-1 AUTOMATIC STAY  
GAYLE HEARST/MV 4-12-17 [[30](#)]  
DON POOL/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 9563 N. Congress, Fresno, CA, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of real property located at 9563 N. Congress, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Gayle Hearst'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 9563 N. Congress, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

24. [13-18085](#)-A-7 PROVISIONS FOOD COMPANY, MOTION FOR COMPENSATION BY THE  
THA-4 INC. LAW OFFICE OF THOMAS H.  
ARMSTRONG TRUSTEES ATTORNEY(S)  
3-14-17 [[80](#)]

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**

In this Chapter 7 case, Thomas H. Armstrong, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court approve compensation in the amount of \$4332.00 and reimbursement of expenses in the amount of \$454.25. However, the applicant requests allowance of *payment* of only \$1750.00 and expense reimbursement of \$454.25.

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. And the court authorizes payment of the reduced fee amount and all costs.

### **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.

Thomas H. Armstrong'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 approves final compensation in the amount of \$4332.00 and

reimbursement of expenses in the amount of \$454.25. But the court allows payment of a reduced compensation of only \$1750.00 and expenses in the amount of \$454.25.

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 to be paid in accordance with the Bankruptcy Code and the distribution priorities of § 726.

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| 25. | <u>17-10586</u> -A-7     RAY/BRANDI JACKSON<br>CJO-1<br>BANK OF AMERICA, N.A./MV<br>MARK ZIMMERMAN/Atty. for dbt.<br>CHRISTINA O/Atty. for mv.<br>NON-OPPOSITION | MOTION FOR RELIEF FROM<br>AUTOMATIC STAY<br>3-30-17 [ <a href="#">18</a> ] |
|-----|--|--|

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1748 East Babcock Drive, Visalia, 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**

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

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

by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

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

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. The debtor has filed a non-opposition to the relief sought. These facts constitute cause for stay relief.

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

#### **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.

Bank of America, 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 1748 East Babcock Drive, Visalia, 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.



26. [11-62425](#)-A-7 JOSE/ARACELI LONGORIA  
SAH-2  
JOSE LONGORIA/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO AVOID LIEN OF  
HOUSEHOLD FINANCE CORPORATION  
4-14-17 [[39](#)]

### **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:** \$176,610.12

**Property Value:** \$132,300.00

**Judicial Lien Avoided:** \$5085.12

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.