

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

MAY 20, 2015

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [14-14106](#)-A-7 GARY MURRAY MOTION TO COMPEL ABANDONMENT
PD-1 4-15-15 [[25](#)]
WELLS FARGO BANK, N.A./MV
SCOTT LYONS/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 1806 E. Evergreen Ct., 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). 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, and the trustee has filed a non-opposition. 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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED OBJECTION TO CLAIM OF
HDN-4 DEVELOPMENT INC. SIERRA PINES AT SHAVER LAKE
GORDON LOO/MV HOMEOWNERS ASSOCIATION, CLAIM
NUMBER 10
8-25-14 [[164](#)]
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Absent resolution in writing by all effected parties, the court intends to re-set the claim objection for evidentiary hearing. That hearing will likely occur June 15, 16 and 19 in Fresno.

3. [14-16110](#)-A-7 JOSEPH/SUZAN O'BRIEN MOTION TO SELL
TMT-2 4-8-15 [[43](#)]
TRUDI MANFREDO/MV
JEFF REICH/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Toyota Prius

Buyer: Debtors

Sale Price: \$5100 (\$2200 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

4. [15-11213](#)-A-7 JENIFFER ZAPOTOSKY MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 4-13-15 [[9](#)]
F. GIST/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Jeep Wrangler

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

Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

5. [14-13415](#)-A-7 RON/KARRIE HATLEY MOTION TO SELL
 TMT-3 4-15-15 [[68](#)]
 TRUDI MANFREDO/MV
 DAVID JENKINS/Atty. for dbt.
 TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1999 Polaris Scrambler 500 Quad

Buyer: Debtors

Sale Price: \$1225 cash

Sale Type: Private sale subject to overbid opportunity

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

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

6. [15-10221](#)-A-7 MARIA/JOSHUA WICKARD MOTION TO EXTEND DEADLINE TO
TMT-1 FILE A COMPLAINT OBJECTING TO
TRUDI MANFREDO/MV DISCHARGE OF THE DEBTOR
4-9-15 [[33](#)]

TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

7. [13-11829](#)-A-7 TRINIDAD CORTEZ MOTION FOR COMPENSATION FOR
JES-3 JAMES SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 4-7-15 [[88](#)]
TIMOTHY SPRINGER/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 \$1325.00 and reimbursement of expenses in the amount of \$195.80.

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 \$1325.00 and reimbursement of expenses in the amount of \$195.80.

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

8.	15-10234 -A-7 NORMAN/SUSANNE BISHOP KAZ-1 WELLS FARGO BANK, N.A./MV DAVID JENKINS/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-14-15 [14]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 11092 East Mitchell Peak Way, Clovis, California

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

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

9. 15-11039 -A-7 JOSE VARGAS UST-1 TRACY DAVIS/MV TERRI DIDION/Atty. for mv.	MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A) 4-14-15 [14]
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Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

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).

The debtor has filed a prior case, commenced within the 8-year period preceding the petition in the present case, and also received a discharge in the prior case. See 11 U.S.C. § 727(a)(8). For the reasons stated in the motion, the court will deny the discharge of the debtor. The movant will issue an order consistent with this ruling.

10. [15-10141](#)-A-7 EULALIA GARCIA
BHT-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
JERRY LOWE/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-17-15 [[15](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to June 24, 2015, at 9:00 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing along with a notice of continued hearing pursuant to LBR 9014-1(f)(2)

Order: Civil minute order

Subject: 2741 North Piedro Road, Sanger, 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).

SERVICE OF PROCESS

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 proof of services raises a question whether service of the motion was insufficient and did not comply with Rules 7004 and 9014. When 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 states that the debtor's attorney is "to be served" electronically. The use of the verb "to be" implies that service would be on a future date. The court cannot determine whether service has already been made on the debtor's attorney.

The court will continue the hearing to permit service on debtor's counsel. An amended proof showing service on debtor's counsel shall be filed no later than 14 days prior to the continued hearing date.

[At the continued hearing, if service on the debtor's counsel has been effectuated, and if no opposition has been raised, then the court will adopt the following as the ruling:]

STAY RELIEF AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

STAY RELIEF 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.

11. [15-10141](#)-A-7 EULALIA GARCIA
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
JERRY LOWE/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-1-15 [[25](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

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).

AS TO THE DEBTOR

The motion is denied as moot. 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 THE 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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

12. [14-15643](#)-A-7 BRAVO BEVERAGE, INC. MOTION TO SELL
JES-2 4-10-15 [[14](#)]
JAMES SALVEN/MV
THOMAS ARMSTRONG/Atty. for dbt.

Final Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Oro Di Milano custom Pop-up Tent and 3 Jockey Boxes with canisters

Sale Type: Public auction

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

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

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

13. [15-10444](#)-A-7 KELLY/STACY CARD
KDG-1
KELLY CARD/MV

MOTION TO AVOID LIEN OF
COLLECTIBLES MANAGEMENT
RESOURCES
4-22-15 [[13](#)]

HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

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

14. [13-16758](#)-A-7 DONNA BURKETT
SAS-2
SHERYL STRAIN/MV

CONTINUED MOTION FOR
COMPENSATION FOR SHERYL A.
STRAIN, CHAPTER 7 TRUSTEE(S)
3-24-15 [[31](#)]

GEORGE LOGAN/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Chapter 7 Trustee's Fees

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).

Sheryl A. Strain, the former trustee in this case, seeks fees from the commencement of the case on October 17, 2013, to the date of her resignation, September 23, 2014. She prays fees of \$1,502.50 (calculated at \$75/hour) and costs of \$41.97. The motion enjoys the support of the successor trustee, Peter Fear, and no party in interest has opposed the motion. The motion will be granted, provided that the total compensation to all Chapter 7 trustees is not increased and provided that the total compensation due all trustee is not greater than the amount specified in 11 U.S.C. § 326.

15. [15-10558](#)-A-7 NAOMI SMITH

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-17-15 [[24](#)]

Final Ruling

The case dismissed, the order to show cause is discharged.

16. [12-19661](#)-A-7 JORGE/MARY LOU SANTOS
JES-2
JAMES SALVEN/MV
RILEY WALTER/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
10-15-14 [[495](#)]

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 \$5,535.00 and reimbursement of expenses in the amount of \$565.04.

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 \$5,535.00 and reimbursement of expenses in the amount of \$565.04.

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

17. [14-14461](#)-A-7 DONALD/DAWN MCGOWEN
RHT-1
ROBERT HAWKINS/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LIZ ROGERS
3-25-15 [[17](#)]

GEOFFREY ADALIAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Robert Hawkins, Chapter 7 trustee, and Liz Rogers

Dispute Compromised: Debtors interest in revocable trust

Summary of Material Terms: \$37,716.00

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).

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

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

18. [15-11063](#)-A-7 JOSE BARAJAS
UST-1
TRACY DAVIS/MV

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
4-14-15 [[17](#)]

TERRI DIDION/Atty. for mv.

Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

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).

The debtor has filed a prior case, commenced within the 8-year period preceding the petition in the present case, and also received a discharge in the prior case. See 11 U.S.C. § 727(a)(8). For the reasons stated in the motion, the court will deny the discharge of the debtor. The movant will issue an order consistent with this ruling.

19. [11-18670](#)-A-7 LARDOW, INC. A
PLF-4 CALIFORNIA CORPORATION

MOTION FOR COMPENSATION FOR
PETER L. FEAR, TRUSTEES
ATTORNEY(S)
4-22-15 [[82](#)]

ADRIAN WILLIAMS/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Peter L. Fear, 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 \$6,592.00 and reimbursement of expenses in the amount of \$255.08.

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.

Peter L. Fear'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 \$6,592.00 and reimbursement of expenses in the amount of \$255.08.

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

20. [14-14370](#)-A-7 DAVID/DONNA SILER
JES-2
JAMES SALVEN/MV
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
4-22-15 [[35](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 6637 N. Knoll Ave., Fresno, CA

Buyer: Manuel Bojorquez

Sale Price: \$309,000 (includes \$19,428 exemption credit and approximately \$271,345 of secured debt that must be paid off in full or in accordance with Wells Fargo Bank, N.A.'s approval of a lesser amount)

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.

21.	15-10472 -A-7 ROSEMARIE FIGUEROA JHW-1 TD AUTO FINANCE LLC/MV JENNIFER WANG/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-8-15 [18]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Mazda Mazda3

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

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

22.	15-10983 -A-7 TAMRA WOLFE BHT-105956 DEUTSCHE BANK NATIONAL TRUST COMPANY/MV BRIAN TRAN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-3-15 [22]
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RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Subject: 17366 East Belmont Ave., Sanger, CA (the "Property")

BACKGROUND

The moving party, Deutsche Bank National Trust Company, is a trustee for an asset backed loan trust, "by Ocwen Loan Servicing, LLC, its attorney in-fact, by Ocwen Loan Servicing, LLC as servicer."

The moving party seeks stay relief from stay to allow it to proceed to enforce its remedies to obtain possession of the Property. The prayer for relief also indicates that the movant wishes to foreclose. But the remainder of the motion indicates the foreclosure already occurred.

Mike Aleali has filed a declaration in support of the relief requested. A foreclosure sale affecting the Property was held on September 30, 2014. Movant obtained title to the Property by way of a Trustee's Deed Upon Sale. This deed was recorded on November 4, 2014.

This bankruptcy case was filed on March 16, 2015. The debtor has opposed the motion as discussed more fully below.

PREPETITION FORECLOSURE AS CAUSE FOR STAY RELIEF

Nature of Stay Relief Hearing

"Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate." *In re Luz Int'l, Ltd.*, 219 B.R. 837, 842 (B.A.P. 9th Cir. 1998) (citing *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985)).

"The [stay-relief] hearing is not, nor was it intended to be, the forum in which to determine the merits of the claims presented in support of relief from the automatic stay. Rather the motion for relief from stay hearing is merely a threshold requirement which, if met by the creditor, allows a creditor to fully pursue its claims against the debtor without incurring liability for violating the automatic stay." *Id.*

Opposition by Debtor

The movant seeks stay relief for cause based on the debtor's loss of title due to a foreclosure sale that occurred before debtor filed for bankruptcy. A trustee's deed upon sale is attached as Exhibit 1. This document has not been contested by the debtor as being unauthentic or otherwise inadmissible. Nor has the debtor disputed that this deed conveys an interest in the subject Property described above.

The debtor argues that the movant does not have a valid security interest. But that argument is misplaced. After a foreclosure sale, the movant would not have a valid security interest in the property any longer. Thus, as of the motion's filing, movant does not have a valid security interest given the foreclosure sale that occurred prepetition.

The debtor also argues that the movant has not filed a proof of claim. But § 362(d)(1) does not require that a party to file a proof of claim as a condition of seeking stay relief.

The debtor states further conclusory facts in opposition. The debtor asserts that the movant has not properly established its claimed right in the subject collateral. The debtor states that title is confused making it difficult for the debtor or the court to determine which entity asserts rights in the collateral. The debtor argues that there is no record of the security instrument for the subject to ever have been assigned to Deutsche Bank or New Century Home Equity Loan Trust 2005-B. The debtor alleges that movant acquired its rights in the collateral through a foreclosure sale that was illegally conducted in violation of state law.

But such statements are conclusions, and no plausible factual detail has been given to support them. Further, no evidence has been offered to support any of these assertions. In addition, the debtor refers to the movant's failure to establish its right to the "collateral," which is not relevant to this motion. The motion is based on a foreclosure of collateral, and a transfer of that collateral to movant, which movant now owns by trustee's deed. Therefore, movant need not establish that the Property is movant's collateral, nor offer evidence of a "security instrument" that was assigned.

Movant has presented a trustee's deed that purports to transfer title to the Property to movant. The debtor has not argued that this trustee's deed transfers property other than the subject Property. Accordingly, movant has met its showing of a colorable claim of title.

Cause Shown for Stay Relief

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

CONCLUSION

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.

23. [11-61984](#)-A-7 JAIMIE PERCIVAL

JAIMIE PERCIVAL/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS, FSB
4-9-15 [[46](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. American Express Bank, FSB, is an FDIC-insured institution. So Rule 7004(h) applies. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

In addition, the original Schedule C on the docket does not show an exemption claimed in the real property located at 4205 W. Iris Ave., Visalia, CA. No amended Schedule C has been filed. An amended Schedule C showing an exemption in this property having a dollar value of at least \$1.00 must be filed before a motion to avoid a lien as impairing an exemption can be filed.

The motion's "denial without prejudice" means that the motion may be refiled with the court so long as the refiled motion appropriately addresses the court's concerns in this ruling.

24. [15-11291](#)-A-7 ROBERT JOHNSON

UST-1
TRACY DAVIS/MV

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
4-15-15 [[18](#)]

TERRI DIDION/Atty. for mv.

Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

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).

The debtor has filed a prior case, commenced within the 8-year period preceding the petition in the present case, and also received a discharge in the prior case. See 11 U.S.C. § 727(a)(8). For the reasons stated in the motion, the court will deny the discharge of the debtor. The movant will issue an order consistent with this ruling.

25. [15-11096](#)-A-7 BASMA KAFEETY

BASMA KAFEETY/MV

BASMA KAFEETY/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
3-23-15 [[5](#)]

No tentative ruling.

26. [15-10397](#)-A-7 MATHEW KOBZEFF

UST-1

TRACY DAVIS/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B)
4-14-15 [[15](#)]

PETER FEAR/Atty. for dbt.
TERRI DIDION/Atty. for mv.

Final Ruling

Motion: Extend Deadlines to Object to Discharge or to Dismiss Case under § 707(b)

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

Disposition: Granted

Order: Prepared by moving party 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).

For the reasons stated in the motion, the court will grant the motion and approve the stipulation attached as Exhibit B. The stipulation shall be attached to the proposed order submitted.

10:00 a.m.

1. [14-15856](#)-A-7 SOHIL ESCHEIK STATUS CONFERENCE RE: COMPLAINT
[15-1029](#) 3-16-15 [[1](#)]
NEXTGEAR CAPITAL, INC. V.
ESCHEIK
MATTHEW QUALL/Atty. for pl.

No tentative ruling.

2. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER STATUS CONFERENCE RE: AMENDED
[14-1111](#) COMPLAINT
SALVEN V. STRAIN ET AL 3-20-15 [[39](#)]
ROBERT HAWKINS/Atty. for pl.

No tentative ruling.

3. [14-12994](#)-A-7 ABDELBASET AWAWDEH PRETRIAL CONFERENCE RE:
[14-1081](#) COMPLAINT
TRAVELERS EXPRESS COMPANY, 8-4-14 [[1](#)]
INC., NOW KNOWN AS MONE V.
ROBERT RENTTO/Atty. for pl.
CONTINUED TO 7/22/15, ECF
NO. 28

Final Ruling

Pursuant to Amended Pretrial Order, ECF #28, the pretrial conference is continued to July 22, 2015, at 10:00 a.m.

4. [14-15699](#)-A-7 JASPAL/DALJEET DHESI STATUS CONFERENCE RE: COMPLAINT
[15-1025](#) 3-6-15 [[1](#)]
WELLS FARGO CARD SERVICES V.
DHESI ET AL
AUSTIN NAGEL/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to July 22, 2015, at 10:00 a.m. In the event a judgment or dismissal is not reflected on the docket, not later than 14 days prior to the continued status conference, the parties shall file a joint status report.

10:30 a.m.

1. [15-10207](#)-A-7 RAMIRO ORTIZ AND AMPARO
 ANDRADE

 THOMAS GILLIS/Atty. for dbt.

 No tentative ruling.
2. [15-10435](#)-A-7 TIM DATONO

 PRO SE REAFFIRMATION AGREEMENT
 WITH WELLS FARGO BANK, N.A.
 4-15-15 [[20](#)]

 No tentative ruling.
3. [15-11437](#)-A-7 MICHELLE MAIREL

 PRO SE REAFFIRMATION AGREEMENT
 WITH TOYOTA MOTOR CREDIT
 CORPORATION
 4-29-15 [[14](#)]

 SCOTT LYONS/Atty. for dbt.

 No tentative ruling.
4. [15-10896](#)-A-7 FREDDIE RODRIGUEZ

 REAFFIRMATION AGREEMENT WITH
 CAPITAL ONE AUTO FINANCE
 4-15-15 [[11](#)]

 VARDUHI PETROSYAN/Atty. for dbt.

 No tentative ruling.
5. [15-10797](#)-A-7 DAVID LEPINE

 PRO SE REAFFIRMATION AGREEMENT
 WITH NISSAN MOTOR ACCEPTANCE
 CORPORATION
 4-24-15 [[12](#)]

 RICHARD BAMBL/Atty. for dbt.

 No tentative ruling.

1:30 p.m.

1. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED STATUS CONFERENCE RE:
LLC VOLUNTARY PETITION
11-1-13 [[1](#)]

ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED MOTION TO CONFIRM
EVN-11 LLC CHAPTER 11 PLAN
BHAVIKA'S PROPERTIES, LLC/MV 3-4-15 [[274](#)]
ELAINE NGUYEN/Atty. for dbt.

Tentative Ruling

Motion: Confirmation of Chapter 11 Plan

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

Disposition: Denied

Order: Civil minute order

Debtor in possession Bhavika's Property, LLC moves to confirm its chapter 11 plan, filed January 9, 2015, ECF # 252. Confirmation is opposed by the United States Small Business Administration.

The parties concede that confirmation must occur pursuant to 11 U.S.C. § 1129(b), if at all. Motion for Order Confirming Chapter 11 Plan § VH, filed March 4, 2015, ECF # 274; Declaration of Jeffrey Lodge ¶ 5 in Support of Objection to First Amended Chapter 11 Plan, filed February 25, 2015, ECF #271 (indicating that the SBA voted against confirmation, though the court is unable to find SBA's ballot in the record).

On April 15, 2015, this matter first came on for hearing. The court suggested an evidentiary hearing. All parties waived an evidentiary hearing and submitted the matter be decided on the declarations provided. The matter was continued to May 20, 2015, for argument.

Having considered the evidentiary record, the record offered in support of the motion, the court intends to deny confirmation.

DISCUSSION

Legal Standards

The plan proponent has the burden of proving each of the elements of 11 U.S.C. § 1129 by a preponderance of the evidence. *In re Arnold Farms*, 177 B.R. 648, 654-655 (B.A.P. 9th Cir. 1994); *In re Monarch Beach Venture, Ltd.*, 166 B.R. 428, 431-432 (C.D. Cal. 1993). The proponent must provide admissible evidence affirmatively supporting plan confirmation. *In re Lenox*, 902 F.2d 737, 739 (9th Cir. 1990) (reversible error to confirm plan without hearing evidence of compliance with § 1129).

The Plan Does Not Comply with Federal Rule of Bankruptcy Procedure 3016(c)

The plan does not comply with Federal Rule of Bankruptcy Procedure 3016(c). That rule provides, "If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction."

The plan does include an injunction provision. First Amended Chapter 11 Plan § III(D)(9). But the language of that provision is not described in specific and conspicuous language.

The Plan Proponent Has Not Sustained Its Burden of Proof

Good Faith: 11 U.S.C. § 1129(a)(3)

Chapter 11 plans must be proposed in good faith. 11 U.S.C. § 1129(a)(3). In the absence of objection, the court may presume good faith. Fed. R. Bankr. P. 3020(b)(2). But an objection to plan confirmation, erases that presumption. *Id.* Generally, good faith is based on the totality of the circumstances. *In re General Teamsters, Warehousemen & Helpers Union Local 890*, 225 B.R. 719, 728-729 (Bankr. N.D. Cal. 1998). "Courts generally find that a plan is proposed in good faith where there is a reasonable likelihood the plan will achieve a result consistent with the objectives and purposes of the Code...Good faith also requires that the plan demonstrate a fundamental fairness in dealing with one's creditors." March, Ahart & Shapiro, *California Practice Guide-Bankruptcy*, Chapter 11 Cases-Consensual Plan Confirmation § 11:1388 (Rutter Group 2014).

Here, the SBA has objected to plan confirmation and specifically raised the issue of good faith. United States Small Business Administration Objection to First Amended Chapter 11 Plan, p. 5, filed February 25, 2015, ECF # 270. None of the declarations offered by the debtor in possession address this issue. See Declaration of Parthesh Kumar, filed March 4, 2015, ECF # 274; Declaration of Elaine V. Nguyen, filed March 4, 2015, ECF #274; Declaration of Parthesh Kumar, filed March 4, 2015, ECF # 276. As a result, the movant has not carried its burden of proof.

Liquidation: 11 U.S.C. § 1129(a)(7)

"The court shall confirm a plan only if all of the following requirements are met...(7) With respect to each impaired class of claims or interests--(A) each holder of a claim or interest of such class-- (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date..." 11 U.S.C. §1129(a)(7).

The court must make specific findings as to each impaired claim holder, ensuring that it will receive no less under the plan than it would in Chapter 7. *In re Amban La Mesa Ltd. Partnership*, 115 F.3d 650, 657 (9th Cir. 1997). "Applying the 'best interests' test requires the court to conjure up a hypothetical chapter 7 liquidation that would be conducted on the effective date of the plan." *In re Sierra-Cal*, 210 B.R. 168, 172 (Bankr. E.D. Cal. 1997).

Almost no evidence (and certainly an insufficient quantum to sustain the burden of proof) is submitted on this point. See Declaration of Parthesh Kumar, filed March 4, 2015, ECF # 274; Declaration of Elaine V. Nguyen, filed March 4, 2015, ECF #274; Declaration of Parthesh Kumar, filed March 4, 2015, ECF # 276. The only evidence is Elaine V. Nguyen's declaration which states, "The alternative to the Plan is liquidation which would result in no creditor, other than CAN, receiving any value." Declaration of Elaine V. Nguyen ¶ 4, filed March 4, 2015, ECF #274. Such a conclusory statement does not allow the court to fulfill its statutory duty of ensuring that each creditor receives as much as it would in Chapter 7. As a consequence, the movant has not sustained its burden of proof.

But more to the point, it does not appear that each impaired creditor would fare as well under the plan as it would in Chapter 7. For example, Fresno County did not vote to confirm the plan. The plan provides for payment of \$57,954.345 in ad valorem real property taxes over four years at 5% interest. First Amended Chapter 11 Plan, filed January 9, 2015, ECF # 252. But the Fresno County Tax Collector would do better in Chapter 7. Real property tax liens take priority of deeds of trust, including the deed of trust held by CNA. California Rev. & Tax Code §§ 2191.1, 3712; see also Miller & Starr, *California Real Estate, Recording and Priorities* § 11:163 (3rd ed. 2009). Taxes bear interest at 18% per annum, meaning that the County of Fresno does not do as well under the terms of the movant's plan as it would under a Chapter 7.

Feasibility: 11 U.S.C. § 1129(a)(11)

"The court shall confirm a plan only if all of the following requirements are met...(11) confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11).

"Demonstrating feasibility under 11 USC § 1129(a)(11) requires a showing that the plan has a "reasonable probability of success." March, Ahart & Shapiro, *California Practice Guide-Bankruptcy*, Chapter 11 Cases-Consensual Plan Confirmation § 11:1503 (Rutter Group 2014), quoting *In re Acequia, Inc.*, 787 F2d 1352, 1364 (9th Cir. 1986).

The plan proposes monthly payments on secured debt of \$17,530.02. First Amended Chapter 11 Plan § III(C)(1), filed January 9, 2015, ECF # 252. It also proposes quarterly payments to unsecured creditors, which average \$1,795.79 per month. *Id.* at § III(C)(3). This suggests a monthly outlay under the plan of \$19,325.81.

Sources of funding for payment of these debts are: (1) Sonal Kumar's contribution of \$140,000.00; (2) rent increases from \$17,000 to \$20,000 from BHI; and (3) cash on hand of \$120,776 (estimated).

But this does not support a finding of feasibility. First, Sonal Kumar has not offered a declaration that demonstrates willingness and ability to make such a payment. Second, there is no declaration from a person with knowledge showing the ability of the hotel to generate rent of \$20,000, rather than \$17,000. Cash flow projects are unsupported by a declaration from someone with personal knowledge. See Declaration of Nguyen ¶ 11, filed March 4, 2015, ECF # 274 (lacking personal knowledge). But more importantly, the record supports a conclusion that the debtor is not able to make these payments. During

the course of the bankruptcy, the hotel has only generated \$16,268.53 per month in revenue. See Monthly Operating Report, p. 1 Total Cash Receipts (Cumulative Since Filing) \$276,565, filed April 14, 2015, ECF #297 (\$276,565 ÷ 17 months = \$16,268.53).

Fair and Equitable: 11 U.S.C. § 1129(b)

"Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1)

As to the Fresno County Tax Collector and the United States Small Business Administration, the movant concedes that absent application of the new value rule, *In re Bonner Mall Partnership*, 2 F.3d 899, 906 (9th Cir. 1993), the absolute priority rule, codified in § 1129(b) precludes confirmation.

"The 'new value' contributed must be *reasonably equivalent* to the value of the interest received or retained. [*In re Ambanc La Mesa Ltd. Partnership* (9th Cir. 1997) 115 F3d 650, 654-656] "(The) equivalency requirement ensures that equity holders will not eviscerate the absolute priority rule by means of gratuitous, token cash infusions proposed primarily to 'buy' cheap financing." [*In re Crosscreek Apts., Ltd.* (BC ED TN 1997) 213 BR 521, 548 (parentheses added; internal quotes omitted)]" March, Ahart & Shapiro, *California Practice Guide-Bankruptcy*, Chapter 11 Cases-Consensual Plan Confirmation § 11:1680 (Rutter Group 2014). The same commentator continued:

"Determining whether the 'new value' contributed is reasonably equivalent to the interest received ordinarily requires the value of the DIP's business to be determined on a 'going concern' basis. [*Consolidated Rock Products Co. v. Du Bois* (1941) 312 US 510, 525-526, 61 S.Ct. 675, 685] A DIP's 'going concern' value is generally determined by estimating the DIP's future earnings and discounting those earnings to present value using an appropriate discount rate. [*In re Crosscreek Apts., Ltd.*, supra, 213 BR at 547-548-going concern value determined by capitalization of future earnings; *In re Muskegon Motor Specialties* (6th Cir. 1966) 366 F2d 522, 525; and see *In re Jartran, Inc.* (BC ND IL 1984) 44 BR 331, 368-379 (detailed description of 'going concern' valuation)]" March, Ahart & Shapiro, *California Practice Guide-Bankruptcy*, Chapter 11 Cases-Consensual Plan Confirmation § 11:1681 (Rutter Group 2014).

In support of the new value of \$140,000 offered by Sonal Kumar the movant offers the unauthenticated opinion of Lawrence Hopper. Exh. D. But unauthenticated documents are not evidence. LBR 9014-1(d)(6). Moreover, the Order Granting the Motion to Value, filed September 25, 2013, ECF # 213, does not save the debtor. It values only the real property and improvements 4278 W. Ashlan Avenue, Fresno. It does not value the personal property or going concern value. *Id.* at p. 2, lines 8-12. As a result, the movant has not sustained its burden.

Finding that the movant has not sustained its burden of these elements, the court does not reach the United States Small Business Administration's other objections to confirmation.

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.

Bhavika's Property, LLC's motion to confirm chapter 11 plan 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 denied.

3. [14-14241](#)-A-11 ARTHUR FONTAINE

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-25-14 [[1](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.

4. [14-14241](#)-A-11 ARTHUR FONTAINE

AMENDED DISCLOSURE STATEMENT
4-29-15 [[168](#)]

DMG-13

D. GARDNER/Atty. for dbt.

No tentative ruling.

5. [15-10366](#)-A-11 ELLIOTT MANUFACTURING

MOTION FOR COMPENSATION FOR
TERENCE J. LONG, OTHER
PROFESSIONAL(S)
4-20-15 [[101](#)]

FLG-6 COMPANY, INC.
ELLIOTT MANUFACTURING COMPANY,
INC./MV

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 11 case, Terence J. Long, certified public accountant/financial consultant has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$11,157.75 and reimbursement of expenses in the amount of \$148.01.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed 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.

Terence J. Long'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 on an interim basis. The court allows interim compensation in the amount of \$11,157.75 and reimbursement of expenses in the amount of \$148.01. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that 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 debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

6. [13-13284](#)-A-11 NICOLETTI OIL INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-7-13 [[1](#)]

DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.

7. [13-13284](#)-A-11 NICOLETTI OIL INC.
UST-1
TRACY DAVIS/MV

MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
3-27-15 [[435](#)]

DAVID GOLUBCHIK/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

Tentative Ruling

Motion: Dismiss or Convert Chapter 11 Case

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

Disposition: Granted, case dismissed

Order: Civil minute order

The United States Trustee moves to dismiss or convert this Chapter 11 case. The movant finds cause under 11 U.S.C. § 1112(b) in the debtor in possession's delay in prosecuting the case. The debtor filed its petition on May 7, 2013. No plan or disclosure statement has been filed. On December 17, 2014, the court ordered the debtor to file a plan and disclosure statement by March 4, 2015, or show the reason why such plan and disclosure statement cannot be filed. The motion is opposed by the debtor and by ExxonMobile Oil Corporation. No other creditor has expressed support or opposition for the motion. The United States Trustee has the better side of the argument and the case will be dismissed.

DISCUSSION

Legal Standards

Motions to dismiss or convert a Chapter 11 case are governed by 11 U.S.C. § 1112(b). Nicoletti Oil, Inc. correctly points out that such motions proceed in a three-step analysis: (1) does cause exist; (2) if cause does exist, are creditors and the estate best served by dismissal, conversion or appointment of a trustee or examiner; and (3) do unusual circumstances exist that dictate against dismissal or conversion. 11 U.S.C. § 1112(b); *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2014). The moving party bears the burden of proof. *In re Wide West Services, LLC*, 2013 WL 5201383 (Bankr. E.D. Cal. September 12, 2013).

Discussion

Cause

Cause is not a defined term. 11 U.S.C. § 1112(b). But the Code lists 16 non-exclusive examples of cause. *In re Young*, 409 B.R. 508, 512 (Bankr. D. Idaho 2009). "For purposes of this subsection, the term 'cause' includes—(E) failure to comply with an order of the court;...(J) failure to file a disclosure statement, or to file or confirm a plan,

within the time fixed by this title or by order of the court..." 11
U.S.C. § 1112(b)(4)(E),(J).

This case is two years old. No plan or disclosure statement has been filed. On December 17, 2014, this court ordered the status conference continued to March 18, 2015, and that: "It is further ordered that not later than March 4, 2015, the debtor must either: 1) file a confirmable plan and disclosure statement; and set the disclosure statement for hearing on the first date available, which provides forty-two (42) days notice, consistent with Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1); or 2) provide a strong showing, as to why it has not complied." Civil Minute Order, filed December 23, 2014, ECF #438. No plan or disclosure statement has been filed. This constitutes cause under § 1112(b).

Best Interests of Creditors and the Estate: Dismiss, Convert or Appointment of a Trustee/Examiner

The court finds that creditors and the estate are best served by dismissal, and not conversion or appointment of a trustee or examiner. The majority of the debtor's assets are encumbered, apparently, by liens in favor of Wells Fargo Bank. As a consequence, absent avoidance of that lien, the majority of the debtor's assets will be paid, eventually, to the secured lender. As a consequence, the administrative burden associated with a trustee or examiner is not warranted. Conversion is also not warranted. That is the case because most assets are encumbered and because the primary driving force behind the Chapter 11 is environmental cleanup litigation. *ExxonMobile Oil, Corp. v. Nicoletti Oil, Inc.*, Case 1:08-cv-01488-AWI-SAB (E.D. Cal. 2008). Over the life of this Chapter 11 the debtor has operated profitably. See Monthly Operating Report, filed March 12, 2015, ECF # 422 (receipts over disbursements of \$827,936.70 cumulative total). Profitable operations provides an avenue for resolution of debts. And for these reasons, the court finds dismissal in the best interests of the estate.

Unusual Circumstances

"The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that--(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)--(i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court."

The environmental litigation does not bring the case within the unusual circumstances exception. The time periods described in § 1112(b)(2)(A) have expired. Moreover, since early August 2014 (some nine months ago), the Nicoletti Oil and ExxonMobile have contended that they have a settlement in concept. But for reasons unclear to the court, the parties have been unable or unwilling to execute and implement the settlement. For these reasons, the court finds that unusual circumstances capable of being remedied do not exist.

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

The United States Trustee's motion to dismiss 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,

8. [14-11991](#)-A-11 CENTRAL AIR CONTINUED STATUS CONFERENCE RE:
CONDITIONING, INC. VOLUNTARY PETITION
4-17-14 [[1](#)]
HAGOP BEDOYAN/Atty. for dbt.

9. [14-11991](#)-A-11 CENTRAL AIR CONFIRMATION OF PLAN
KDG-21 CONDITIONING, INC. 1-6-15 [[309](#)]
HAGOP BEDOYAN/Atty. for dbt.

Matter: Hearing on Confirmation of the Chapter 11 Plan
Notice: Order Approving Disclosure Statement, Rules 2002(b), 3017(d), 3020(b); written objections required
Disposition: Confirmed
Order: Prepared by the debtor pursuant to the instructions below

The order of confirmation shall conform to the appropriate Official Form and the other requirements of Rule 3020(c). A copy of the plan shall be appended to the order. The order shall not contain any provisions that materially alter the plan except as expressly provided by the court at the confirmation hearing. At its option, the moving party may also lodge findings of fact and conclusions of law in support of confirmation.

10. [14-11991](#)-A-11 CENTRAL AIR CONTINUED OBJECTION TO CLAIM OF
KDG-23 CONDITIONING, INC. CAPITAL INSURANCE GROUP, CLAIM
CENTRAL AIR CONDITIONING, NUMBER 12
INC./MV 1-15-15 [[320](#)]
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The matter is resolved by stipulation. See Stipulation, filed May 12, 2015, ECF # 464. If they have not already done so, the parties shall lodge an order approving the stipulation.

11. [14-11991](#)-A-11 CENTRAL AIR MOTION FOR COMPENSATION FOR
KDG-28 CONDITIONING, INC. GILMAN, HARRIS AND TRAVIOLI,
CENTRAL AIR CONDITIONING, ACCOUNTANT(S)
INC./MV 4-9-15 [[436](#)]
HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Application: Fourth 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 11 case, Gilman, Harris and Travioli has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$8,175.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed 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.

Gilman, Harris and Travioli'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 on an interim basis. The court allows interim compensation in the amount of \$8,175.00 and reimbursement of expenses in the amount of \$0.00. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that 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 debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

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| 12. | <u>14-11991</u> -A-11 CENTRAL AIR
KWH-1 CONDITIONING, INC.
FOXWOOD RESIDENTIAL INVESTORS,
LLC/MV
HAGOP BEDOYAN/Atty. for dbt.
KYLE HOLMES/Atty. for mv. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-6-15 [456] |
|-----|--|--|

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted only to the extent specified in this ruling

Order: Prepared by movant consistent with this ruling, approval by Klein DeNatale

Subject: Appaloosa and Colby Park matters

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

Section 362(d)(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).

Courts considering a request to pursue litigation in a collateral forum frequently consider: "(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.*

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 pursue the pending state court litigation identified in the motion through judgment. 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 judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim 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.

2:00 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:
[15-1010](#) PROPERTIES, LLC COMPLAINT
 ENNIS COMMERCIAL PROPERTIES, 1-23-15 [[1](#)]
 LLC ET AL V. HERITAGE OAKS
 MICHAEL GOMEZ/Atty. for pl.

Final Ruling

The status conference is continued to June 17, 2015, at 2:00 p.m.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO DISMISS ADVERSARY
[15-1010](#) PROPERTIES, LLC KYL-1 PROCEEDING/NOTICE OF REMOVAL
ENNIS COMMERCIAL PROPERTIES, 3-25-15 [[12](#)]
LLC ET AL V. HERITAGE OAKS
STACEY GARRETT/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to June 17, 2015, at 2:00 p.m. The record is closed and neither party may file additional supporting or opposing pleadings with respect to this motion.