

**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 27, 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. [14-14706](#)-A-7 STEVE GEISENHEIMER CONTINUED MOTION TO COMPEL  
PBB-1 ABANDONMENT  
STEVE GEISENHEIMER/MV 3-19-15 [[48](#)]  
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 as provided in this ruling

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

**Business Description:** Computer repair 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 funds in the business checking account at Farmer's and Merchant's Bank in the amount of \$44.52 and the accounts receivable of \$100 are not to be abandoned. 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).

2. [12-18709](#)-A-7 EDWARD/TINA GARCIA MOTION TO AVOID LIEN OF MERCED  
PBB-2 SCHOOL EMPLOYEES FCU  
EDWARD GARCIA/MV 4-14-15 [[28](#)]  
GEORGE ALONSO/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.

3. [13-17413](#)-A-7      LEWIS DUNIGAN      MOTION FOR COMPENSATION FOR  
JTW-2      JANZEN, TAMBERI & WONG,      JANZEN, TAMBERI & WONG,  
JANZEN, TAMBERI & WONG/MV      ACCOUNTANT(S)  
JUSTIN HARRIS/Atty. for dbt.      4-28-15 [[65](#)]

### **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, Janzen, Tamberi & Wong, an Accountancy Corporation, 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 \$1140.00 and reimbursement of expenses in the amount of \$11.52.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

## CIVIL MINUTE ORDER

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

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

Janzen, Tamberi & Wong's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1140.00 and reimbursement of expenses in the amount of \$11.52.

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.

- |    |                                                                                                                         |                                                                                                      |
|----|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 4. | <a href="#">15-10221</a> -A-7    MARIA/JOSHUA WICKARD<br>TMT-2<br>TRUDI MANFREDO/MV<br><br>TRUDI MANFREDO/Atty. for mv. | MOTION TO EMPLOY COLDWELL<br>BANKER GONELLA REALTY AS<br>BROKER(S)<br>4-29-15 [ <a href="#">45</a> ] |
|----|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|

## Final Ruling

**Application:** Approval of Employment

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

**Disposition:** Approved

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

5. [15-10221](#)-A-7 MARIA/JOSHUA WICKARD MOTION FOR TURNOVER OF PROPERTY  
TMT-3 4-29-15 [[40](#)]  
TRUDI MANFREDO/MV  
TRUDI MANFREDO/Atty. for mv.

#### **Final Ruling**

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

**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).

#### **TAX REFUNDS**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

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

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

In this case, the trustee has made the requisite showing of the estate's interest in the non-exempt portion of the tax refunds sought by turnover. Accordingly, the trustee's motion for turnover of the amount of \$7667.00 of the 2014 federal and state tax refunds, or their value, will be granted. The court will order turnover of the nonexempt portion of such refunds or their value if the refunds have been disposed of by the debtors.

#### **TAX RECORDS AND RETURNS**

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, co-debtor Joshua Wickard must comply with this statutory duty as to the tax-related records, in particular bank statements showing receipt of the 2014 tax refunds received by him. These records relate to property of the estate. The court will order the debtor's turnover to the trustee of such bank statements, whether they are complete or incomplete or in paper or electronic form.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 and that, no later than 7 days after the date of service of this order, the debtors Maria Wickard and Joshua Wickard shall turn over to the trustee the amount of \$7667, which constitutes federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control, or the value of such refunds if the debtor has disposed of such tax refunds.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the co-debtor Joshua Wickard shall turn over to the trustee bank statements showing receipt of the 2014 federal and state refunds received by him.

6. [15-10221](#)-A-7 MARIA/JOSHUA WICKARD  
TMT-4  
TRUDI MANFREDO/MV  
TRUDI MANFREDO/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-8-15 [[55](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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 debtors have claimed exemptions in (i) the amount of \$20 in "cash on hand," and (ii) the amount of \$35 on deposit at Chase Bank. The exemption was claimed in both instances under section 704.080(b)(3) of the California Code of Civil Procedure. The trustee objects to these claims of exemptions. The trustee asserts that there is no evidence that the debtors receive any public benefits. Section 704.080(b)(3) is an exemption provision intended for public benefits directly deposited. Moreover, the term "deposit account" in section 704.080 specifically means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

The debtor has also claimed an exemption in tax refunds in the amount of \$8,319.00. This amount has been claimed exempt under section 704.020(a) of the California Code of Civil Procedure. This exemption statute permits debtors to exempt "[h]ousehold furnishings, appliances, provisions, wearing apparel, and other personal effects," Cal. Civ. Proc. Code § 704.020, to the extent that such items are ordinarily and reasonably necessary to the debtor or the debtor's family at the debtor's principal residence (or the debtor's spouse's principal residence in some cases) and also personally used or procured for use by the debtor. Tax refunds and money in general does not fall within the intended scope of § 704.020(a). (The broadest term in the statute, the word "provisions," should be interpreted consistent with the other terms in the enumerated list.)

As a result, the debtors' exemptions discussed above are improper. The court will sustain the trustee's objection.

7. [15-11250](#)-A-7 GLORIA LLAMAS  
ALG-1  
GLORIA LLAMAS/MV  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), NA  
4-15-15 [[9](#)]

**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.

8. [15-11250](#)-A-7 GLORIA LLAMAS  
ALG-2  
GLORIA LLAMAS/MV  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA) NA  
4-17-15 [[14](#)]

**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.

9. [14-15364](#)-A-7      NARANN CHEA AND SEK VANN      MOTION FOR RELIEF FROM  
RDW-1      AUTOMATIC STAY  
CAM VII TRUST LLC/MV      4-29-15 [[27](#)]  
GARY HUSS/Atty. for dbt.  
REILLY WILKINSON/Atty. for mv.  
DISCHARGED: 02/23/2015

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted as to estate, denied as to debtor

**Order:** Prepared by moving party

**Subject:** 2414 S. Hayston Avenue, Fresno, 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).

## 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.

10. [15-11383](#)-A-7 VINCENT WILLIAMS MOTION FOR RELIEF FROM  
DVW-1 AUTOMATIC STAY  
U.S. BANK, N.A./MV 5-14-15 [[10](#)]  
SUSAN HEMB/Atty. for dbt.  
DIANE WEIFENBACH/Atty. for mv.

## 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:** 6728 North Western Avenue, Fresno, California

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.

11. [14-14995](#)-A-7      PAUL/CARRIE ESTES      MOTION TO SELL  
JES-3      4-23-15 [[30](#)]  
JAMES SALVEN/MV  
MARK ZIMMERMAN/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 consistent with this ruling

**Property:** Firearms described in the motion

**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. The commission shall be 15% of the gross sale price and the expenses shall be no more than \$300 applicable to storage and sale.

10:30 a.m.

1.    [15-10732](#)-A-7    ARMANDO GOMEZ CERVANTES    PRO SE REAFFIRMATION AGREEMENT  
WITH SPRINGLEAF FUNDING TRUST  
2013-B, SPRINGLEAF FINANCIAL  
SERVICES INC.  
5-8-15 [[13](#)]

**No tentative ruling.**

2.    [15-11032](#)-A-7    DOMINGO MORALES AND CAROL  
REYES    PRO SE REAFFIRMATION AGREEMENT  
WITH FRESNO COUNTY FEDERAL  
CREDIT UNION  
5-5-15 [[24](#)]

**No tentative ruling.**

3.    [15-11169](#)-A-7    LISA MARMOLEJO    PRO SE REAFFIRMATION AGREEMENT  
WITH FRESNO COUNTY FEDERAL  
CREDIT UNION  
5-5-15 [[12](#)]

**No tentative ruling.**

1:30 p.m.

1. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED MOTION FOR  
EVN-13 LLC COMPENSATION BY THE LAW OFFICE  
OF WEINTRAUB & SELTH, APC FOR  
ELAINE V. NGUYEN, DEBTORS  
ATTORNEY(S)  
3-25-15 [[282](#)]

ELAINE NGUYEN/Atty. for dbt.

#### **Final Ruling**

Because the applicant has filed a Second Interim Fee Application, filed April 29, 2015, ECF # 317, this matter is dropped as moot.

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR COMPENSATION BY THE  
EVN-13 LLC LAW OFFICE OF WEINTRAUB &  
SELTH, APC FOR ELAINE V.  
NGUYEN, DEBTORS ATTORNEY(S)  
4-29-15 [[317](#)]

ELAINE NGUYEN/Atty. for dbt.

#### **Final Ruling**

**Application:** Second 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, Weintraub & Selth, APC, counsel for the debtor in possession, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$169,295.20 and reimbursement of expenses in the amount of \$8,407.56.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession 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.

#### **VIOLATION OF LOCAL RULES**

Weintraub & Selth's application violates LBR 9004-1 and Revised Guidelines for Preparation of Documents, EDC 2-901. The Revised Guidelines ¶ 8 provides that each pleading must be filed separately. The applicant has filed the Declaration of Elaine V. Nguyen and the Declaration of Partesh Kumar as but a single pleading. See Declaration of Elaine V. Nguyen and Partesh Kumar, filed April 29, 2015, ECF # 319. This violates local rules and guidelines. Future violations may result in summary denial of the application or sanctions against counsel.

#### **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.

Weintraub & Selth, APC'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 \$169,295.20 and reimbursement of expenses in the amount of \$8,407.56. 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.

3. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR COMPENSATION FOR  
EVN-14 LLC HIRAMATSU & ASSOCIATES, INC.,  
HIRAMATSU & ASSOCIATES, CONSULTANT(S)  
INC./MV 4-29-15 [[321](#)]  
ELAINE NGUYEN/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, Hiramatsu & Associates, Inc. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$11,363.40 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.

Hiramatsu & Associates, Inc.'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 \$11,363.40 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.

4. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED MOTION FOR  
EVN-14 LLC COMPENSATION FOR HIRAMATSU &  
HIRAMATSU & ASSOCIATES, ASSOCIATES, INC., CONSULTANT(S)  
INC./MV 3-25-15 [[287](#)]  
ELAINE NGUYEN/Atty. for dbt.

**Final Ruling**

Because the applicant has filed a Second Interim Fee Application, filed April 29, 2015, ECF # 321, this matter is dropped as moot.

5. [14-11991](#)-A-11 CENTRAL AIR MOTION TO APPROVE STIPULATION  
JVC-3 CONDITIONING, INC. FOR RELIEF FROM THE AUTOMATIC  
SMEE BUILDERS, INC./MV STAY  
4-28-15 [[450](#)]  
HAGOP BEDOYAN/Atty. for dbt.  
JUNG CHO/Atty. for mv.

**Final Ruling**

**Motion:** Approval of Stipulation for Stay Relief

**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).

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). Cause includes stipulation of the debtor in possession and affected creditor, at least where neither the United States trustee or any other creditor has objected. The motion will be granted.



The moving party shall prepare and lodge an order granting the motion. The order shall append a copy of the stipulation approve and shall be approved by counsel for the debtor in possession.

2:00 p.m.

1.    [10-12709](#)-A-11    ENNIS COMMERCIAL                    MOTION FOR SUMMARY JUDGMENT  
      [12-1033](#)            PROPERTIES, LLC LRP-7                4-29-15 [[151](#)]  
      ENNIS COMMERCIAL PROPERTIES,  
      LLC V. NICHOLSON ET AL  
      MICHAEL GOMEZ/Atty. for mv.  
      NON-OPPOSITION

**Final Ruling**

The motion resolved by order prior to hearing, the matter will not be called.

2.    [10-12709](#)-A-11    ENNIS COMMERCIAL                    CONTINUED STATUS CONFERENCE RE:  
      [15-1009](#)            PROPERTIES, LLC                    COMPLAINT  
      ENNIS COMMERCIAL PROPERTIES,  
      LLC ET AL V. UNITED SECURITY        1-23-15 [[1](#)]  
      MICHAEL GOMEZ/Atty. for pl.  
      RESPONSIVE PLEADING

**No tentative ruling.**

3.    [10-62315](#)-A-11    BEN ENNIS                            MOTION TO COMPEL  
      [13-1108](#)            LRP-20                                4-27-15 [[337](#)]  
      STAPLETON ET AL V. NICHOLSON  
      ET AL  
      MICHAEL GOMEZ/Atty. for mv.  
      NON-OPPOSITION

**Final Ruling**

**Motion:** Compel Production of Documents

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

**Disposition:** Granted

**Order:** Prepared by moving party, approved by counsel for Baker Peterson

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).

Stapleton's motion to compel production of documents is granted. Counsel for the movant shall prepare the order, which shall set forth a description of the documents or categories of documents to be provided. Counsel for Baker Peterson shall approve the form of the order.

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#) LRP-21  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL GOMEZ/Atty. for mv.  
NON-OPPOSITION

MOTION FOR SUMMARY JUDGMENT  
4-29-15 [[344](#)]

#### **Final Ruling**

The motion resolved by order prior to hearing, the matter will not be called.