

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JULY 18, 2018
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

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

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

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

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

1. [17-14301](#)-A-7 **IN RE: HARRY/CHERRY COLES**
[JES-1](#)

CONTINUED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [[95](#)]

TIMOTHY SPRINGER

No Ruling

2. [17-14301](#)-A-7 **IN RE: HARRY/CHERRY COLES**
[TCS-4](#)

CONTINUED MOTION FOR ENTRY OF DISCHARGE
6-13-2018 [[104](#)]

HARRY COLES/MV
TIMOTHY SPRINGER

No Ruling

3. [17-14801](#)-A-7 **IN RE: FRESH FRUIT CUTS, A CALIFORNIA**
CORPORATION
[TGM-2](#)

MOTION TO EMPLOY T. LYNN DAVIS REALTY & AUCTION CO. INC. AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-27-2018 [[17](#)]

JAMES SALVEN/MV
HAGOP BEDOYAN
TRUDI MANFREDO/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: fruit processing equipment described on Exhibit 1 to the
motion

Sale Type: Public auction

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

SECTION 363(b) SALE

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 328(a) EMPLOYMENT AND COMPENSATION

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

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

4. [18-10004](#)-A-7 IN RE: CASEY ALESSO [TGM-5](#)

MOTION TO SELL
6-20-2018 [[88](#)]

RANDELL PARKER/MV
ROBERT WILLIAMS
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: 2 Airplanes more fully described in the motion and notice of hearing

Buyer: Jim Gribbens

Sale Price: \$7,500 for both airplanes

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.

5. [17-10106](#)-A-7 **IN RE: RANDEEP SINGH**
[TMT-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SUKHJIT KAUR
6-20-2018 [[112](#)]

TRUDI MANFREDO/MV
PATRICK GREENWELL
TRUDI MANFREDO/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: Civil minute order

Parties to Compromise: Trustee and Sukhjith Kaur, former spouse of the debtor

Dispute Compromised: Whether certain jewelry in a safe deposit box at a banking institution is property of the estate (community property) or not property of the estate (separate property)

Summary of Material Terms: Kaur will pay the estate \$5,000 in full settlement of the trustee's claim. The trustee will return the property to Kaur. And full releases will be executed by both parties.

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).

APPROVAL OF COMPROMISE

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

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

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 114.

6. [18-10510](#)-A-7 **IN RE: LINDA PEREZ**
[JES-1](#)

CONTINUED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [[13](#)]

PETER BUNTING

Final Ruling

Based on a docket entry on July 5, 2018, Fed. R. Evid. 201, the trustee has indicated that debtor appeared at the continued § 341 meeting on July 5, 2018, and the trustee has now filed a report of no distribution. The court will deny the motion as moot.

7. [18-12511](#)-A-7 **IN RE: DARIEN/JACQUELYN CRAWFORD**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
6-25-2018 [\[8\]](#)

DARIEN CRAWFORD/MV
GRISELDA TORRES

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: Jacquelyn Crawford Choreographer, a sole proprietorship

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

8. [17-13015](#)-A-7 **IN RE: DOS PALOS MEMORIAL HOSPITAL, INC.**
[HAR-3](#)

MOTION TO PAY AND/OR MOTION TO FIX BAR DATE FOR AMENDMENTS
TO PRIORITY WAGE CLAIMS
6-5-2018 [\[53\]](#)

JAMES SALVEN/MV
JEFFREY ROWE
HILTON RYDER/ATTY. FOR MV.

Final Ruling

Motion: For Authority to Pay Priority Wage Claims and Secured Claim No. 22 and For Authority to Fix Bar Date for Amendments to Priority Wage Claims

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

Disposition: Granted

Order: Prepared by the movant pursuant to the instructions below

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

The trustee requests authority to pay priority wage claims filed by individuals in this case. The priority claims for wages total \$23,004.57, and the trustee has not objected to these claims, agreeing that they are allowable. Exhibit A contains a spreadsheet showing the claimants and the taxes associated with each claimant's wage payment. The trustee has funds on hand to pay these claims. The court will authorize payment of these claims in these amounts. Exhibit A shall be attached to the proposed order.

Next the trustee requests authority to pay Claim No. 22, filed by McKesson Medical-Surgical Minnesota Supply, Inc. For the reasons given in paragraph 4 of the motion, the court will authorize payment of this claim in the amount of \$23,019.82.

Lastly, the trustee requests an order fixing August 17, 2018, as a bar date to amend four priority wage claims filed in an unknown amount. These claims were presumably filed timely, so without a bar date for amendment, any amendment would be considered timely even if the amendment were filed long after the deadline for filing proofs of claim. See 11 U.S.C. § 726(a); Fed. R. Bankr. P. 3002(c). "It has long been established in the Ninth Circuit that an amendment to a timely proof of claim relates back to a timely filed claim when the original claim provided fair notice of the conduct, transaction, or occurrence that forms the basis of the claim asserted in the amendment." *In re Jackson*, No. BAP EC-15-1072-DJUF, 2015 WL 7939568, at *4 (B.A.P. 9th Cir. Dec. 4, 2015) (internal quotation marks omitted). For the reasons given, the trustee needs a bar date for

amendments of these claims to provide some degree of certainty for distributing estate assets according to § 726. The court will issue the bar date requested.

9. [17-10417](#)-A-7 **IN RE: GEORGE REYES**
[FW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-2018 [[29](#)]

JAMES SALVEN/MV
NEIL SCHWARTZ
PETER FEAR/ATTY. FOR MV.
DISCHARGED

Tentative Ruling

Matter: Stay Relief to Litigate Adversary Proceeding to Avoid the Liens of George Reyes

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

Disposition: Denied as moot

Order: Civil minute order

George Reyes has alleged liens and claims against the Bohn bankruptcy estate, and these liens and claims are property of Reyes's bankruptcy estate. This request for relief from the stay in the George Reyes bankruptcy has been filed by the trustee in the Jeffrey Bohn bankruptcy case. Section 362(a)(3) prohibits any action to obtain possession of property of the estate or exercise control over estate property. So the trustee believes that stay relief in Reyes's bankruptcy case is necessary before proceeding to avoid liens that are property of Reyes's bankruptcy estate.

MOOTNESS PRINCIPLES

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

STAY'S APPLICABILITY

"The automatic stay does not apply to proceedings initiated against the debtor if the proceedings are initiated in the same bankruptcy court where the debtor's bankruptcy proceedings are pending." *Snively v. Miller (In re Miller)*, 397 F.3d 726, 730 (9th Cir. 2005) (citing *Teerlink v. Lambert (In re Teerlink Ranch Ltd.)*, 886 F.2d 1233, 1237 (9th Cir.1989); *Civic Center Square, Inc. v. Ford (In re Roxford Foods, Inc.)*, 12 F.3d 875, 878 (9th Cir.1993)).

But the automatic stay does apply to bankruptcy courts other than the home bankruptcy court. "For purposes of the automatic stay, the home bankruptcy court is the bankruptcy court in which the stay originates." *Id.* (internal quotation marks omitted). "11 U.S.C. § 362(b) provides 17 exceptions to the automatic stay provision. It does not exclude bankruptcy courts, however, from the application of an automatic stay. 'The stay of section 362 is extremely broad in scope and, aside from the limited exception[s] of subsection (b), should apply to almost any type of formal or informal action against the debtor or property of the estate.' Accordingly, we hold that an automatic stay issued by a home bankruptcy court applies to all other bankruptcy courts." *Id.* at 730-31 (9th Cir. 2005) (alteration in original) (quoting *Stringer v. Huet (In re Stringer)*, 847 F.2d 549, 552 n. 4 (9th Cir.1988)).

DISCUSSION

George Reyes filed a bankruptcy case in this bankruptcy court. Jeffrey Bohn has also done so. The trustee who is moving for stay relief represents the Bohn bankruptcy estate, which estate is also subject to the jurisdiction of this bankruptcy court.

A stay has arisen in the bankruptcy estate of George Reyes as to all property that remains property of the estate. 11 U.S.C. § 362(c). But the stay applicable in Reyes's bankruptcy estate does not apply to actions in this court against Reyes's estate because this court is properly denominated the home bankruptcy court with respect to Reyes's estate. So based on the location of the subject litigation, the stay does not apply. The motion will be denied as moot.

CIVIL MINUTE ORDER

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

James Salven, the trustee in the Jeffrey Bohn bankruptcy case, has been presented a motion for stay relief in the George Reyes bankruptcy case to this court.

IT IS ORDERED that the motion is denied as moot.

10. [17-14717](#)-A-7 **IN RE: GEORGE SEPEDA**
[JES-1](#)

MOTION FOR TURNOVER OF PROPERTY
6-14-2018 [\[21\]](#)

MARK ZIMMERMAN

Tentative Ruling

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

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

Disposition: Granted in part, denied in part

Order: Prepared by the movant 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).

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).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest some portion of the tax refunds. But the request is not specific enough because it does not ask for turnover of only the portion of the tax refund attributable to prepetition income, which portion is calculated based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed fully exempt by the debtor.

Accordingly, the trustee's motion for turnover will be granted in part: it will be granted only to the extent of the estate's portion of the 2017 federal and state tax refunds, which is a prorated portion of the tax refunds based on the percentage of days preceding the petition date (December 12, 2017).

ORDER INSTRUCTIONS

The order shall state that it is granted in part and denied in part. The order shall be consistent with the court's ruling by ordering turnover of only such portion of the 2017 refunds that is attributable to pre-petition income (calculated based on the percentage of days in 2017 preceding the petition date).

11. [18-11419](#)-A-7 **IN RE: KRISTI BOOS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-7-2018 [[13](#)]

ERIC ESCAMILLA

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines will no longer be set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for August 6, 2018, at 12:00 p.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

12. [18-11623](#)-A-7 **IN RE: BENITO GARZA**
[JRL-1](#)

MOTION TO AVOID LIEN OF NOBLE FEDERAL CREDIT UNION
6-12-2018 [\[17\]](#)

BENITO GARZA/MV
JERRY LOWE

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

13. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[PSZ-4](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
PACHULSKI STANG ZIEHL & JONES LLP FOR TEDDY M. KAPUR,
TRUSTEES ATTORNEY(S)
11-17-2017 [[387](#)]

CECILY DUMAS

No Ruling

14. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-29](#)

MOTION TO SELL
6-27-2018 [[700](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 55-59 N. Salado Ave., Patterson, CA

Buyer: Miner Joaquin Building Corporation

Sale Price: \$525,000

Sale Type: Private sale subject to overbid opportunity

Compensation: 6% commission to employed broker, Gonella Realty, to be shared with any cooperating broker according to contract or custom

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).

SALE PURSUANT TO SETTLEMENT AGREEMENT

According to the terms of a pending settlement, the Haar family is to pay \$2.4 million to the estate for a release of claims against them subject to the terms and conditions of that settlement agreement. To fund this payment obligation, the Haar Family authorizes the trustee to sell certain real properties they own.

The subject property is not property of the estate, so it is not subject to section 363(b). But § 704(a)(1) authorizes the trustee

to collect and reduce to money property of the estate for which such trustee serves. 11 U.S.C. § 704(a)(1). The estate's right to the settlement proceeds is property of the estate: it is "proceeds" of the claim against the Haar family that is being settled, § 541(a)(6), and it is property that the estate acquires after the commencement of the case, § 541(a)(7). As a result, selling the subject real property is a way of liquidating the estate's property interest in the settlement proceeds, so it falls within the scope of § 704(a). The court will grant the motion to sell.

COMPENSATION

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.

15. [18-11032](#)-A-7 **IN RE: RICARDO CORONA**
[TOG-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
6-4-2018 [[28](#)]

THOMAS GILLIS

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Civil minute order

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

CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's

conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

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

CIVIL MINUTE ORDER

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

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

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

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

16. [17-14234](#)-A-7 **IN RE: MAURICE/VIVIAN SAICON**
[JES-2](#)

MOTION TO SELL
6-6-2018 [[27](#)]

JAMES SALVEN/MV
HAGOP BEDOYAN

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Mossberg 12 gauge shotgun

Buyer: Debtors

Sale Price: \$400 cash (no 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.

17. [18-10436](#)-A-7 **IN RE: JUAN/JENNIFER BUSTAMANTE**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-13-2018 [\[21\]](#)

JAMES SALVEN/MV

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

EXEMPTION IN TAX REFUNDS

The trustee objects to the claims of exemptions in state and federal tax refunds. The exemption claim aggregates \$4,000. The exemption has been claimed under C.C.P. §§ 704.140(a) and 704.150(a). These exemption statutes, however, are wholly inapplicable to tax refunds. Rather, they apply to exemptions in personal injury and wrongful death causes of action. The objection will be sustained.

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 trustee's objection to exemptions 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 objection,

IT IS ORDERED that the objection is sustained. The exemption in tax refunds in the amount of \$4,000 will be disallowed.

18. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[TMT-1](#)

MOTION TO APPROVE STIPULATION
6-19-2018 [[41](#)]

TRUDI MANFREDO/MV
JUSTIN HARRIS
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Motion: Approve Stipulation

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

Disposition: Granted

Order: Prepared by moving party according to instructions below

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

The motion requests the court's approval of a stipulation. Based on the facts presented in the motion, the court will approve the stipulation.

The proposed order shall attach a copy of the stipulation as an exhibit to the order unless the stipulation is more than 50 pages. If the stipulation exceeds 50 pages, then the proposed order shall not attach the stipulation but shall incorporate it by reference to its title and docket number.

19. [16-14243](#)-A-7 **IN RE: DAMON JACKSON**
[TMT-4](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
6-18-2018 [\[61\]](#)

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

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 2696 Keats Avenue, Clovis, CA

Buyer: Sher Moua and Kristina Yang

Sale Price: \$389,000

Sale Type: Private sale subject to overbid opportunity

Sale Free and Clear of Lien: Relief granted as stated below and the order prepared pursuant to the instructions below

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).

SALE UNDER § 363(b)

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.

SALE FREE AND CLEAR UNDER § 363(f)

Standards

The term "bona fide dispute" in § 363(f)(4) means that "there is an objective basis for either a factual or legal dispute as to the validity of the debt." *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004); *see also 3 Collier on Bankruptcy* ¶ 363.06[5], at 363-53 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2017) (citing cases). Under this subsection of § 363, the trustee has the burden of proof to

show the existence of a bona fide dispute. See 3 Collier on Bankruptcy, supra, ¶ 363.06[5], at 363-53.

"Moreover, courts have recognized that to qualify as a 'bona fide dispute' under § 363(f)(4), the propriety of the lien does not have to be the subject of an immediate or concurrent adversary proceeding." *Burns*, 306 B.R. at 627. In *Burns*, the bankruptcy appellate panel for the Eighth Circuit found that an objective basis existed to avoid a bank's liens against two vehicles because the liens against those vehicles had not been perfected pursuant to the state statute governing perfection of liens against motor vehicles. *Burns*, 306 B.R. at 628-29.

Application

Here, the motion presents sufficient facts showing that an objective factual or legal dispute exists as to the validity of the lien or the debt that the lien secures. The judgment lien was created on September 6, 2016. This means that the lien was a transfer within the 90-day preference period. 11 U.S.C. § 547(b)(4). It was to the respondent creditor, and likely enabled the creditor to receive more than it would have received had its judgment remained unsecured.

Accordingly, the sale will be free and clear of Asset Capital Recovery Group, LLC's lien on the subject real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f).

The order shall state that the sale is free and clear of only the lien identified in this ruling and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or debtor in possession shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

BROKER COMPENSATION

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.

20. [18-11845](#)-A-7 **IN RE: TRACY PARKER**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-12-2018 [\[15\]](#)

SANTANDER CONSUMER USA INC./MV
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2011 Buick LaCrosse

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2011 Buick LaCrosse, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

21. [17-12046](#)-A-7 **IN RE: MEDICAL ARTS AMBULATORY SURGERY**
CENTER, INC.
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-19-2018 [[101](#)]

JAMES SALVEN/MV
LEONARD WELSH

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,050.00 and reimbursement of expenses in the amount of \$400.84.

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. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,050.00 and reimbursement of expenses in the amount of \$400.84. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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

22. [17-12046](#)-A-7 **IN RE: MEDICAL ARTS AMBULATORY SURGERY**
CENTER, INC.
[TGM-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-20-2018 [[108](#)]

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

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

Order: Civil minute order

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

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court allows California state taxes of \$829.28, plus penalties on such amount not to exceed \$100.00, as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

23. [18-11948](#)-A-7 **IN RE: MARTHA/JUAN GONZALEZ**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-8-2018 [\[18\]](#)

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
ROBERT ZAHRADKA/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 251 Valenzuela Street, Mendota, CA

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 251 Valenzuela Street, Mendota, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

24. [13-13749](#)-A-7 **IN RE: CHANSOUDA/NOH HER**
[PBB-5](#)

MOTION TO AVOID LIEN OF FRESNO CREDIT BUREAU
6-19-2018 [\[71\]](#)

CHANSOUDA HER/MV
PETER BUNTING

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

25. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-2](#)

MOTION TO AVOID LIEN OF CHRYSLER FINANCIAL SERVICES
6-15-2018 [\[41\]](#)

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT SERVICE

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 corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The individual named beneath the respondent's address does not appear to be an officer or other authorized agent. Instead, the individual appears to be named partner at a law firm that also appears to be served based on the proof of service. Even if this was the attorney who represented the creditor that obtained the judicial lien, "[a]n implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

INCORRECT DOCKET CONTROL NUMBER

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number (GDB-2) on separate matters filed in the same case. In this case, the movant's counsel has used GDB-2 on two prior motions and also on this motion for a total of three motions.

26. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-3](#)

MOTION TO AVOID LIEN OF CHRIS FRANKIAN PROPERTY MANAGEMENT
6-15-2018 [\[36\]](#)

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Disposition: Denied without prejudice
Order: Civil minute order

INSUFFICIENT SERVICE

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 corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The individual named beneath the respondent's address does not appear to be an officer or other authorized agent. Instead, the individual appears to be named partner at a law firm, which law firm also appears to be served based on the proof of service. Even if this was the attorney who represented the creditor that obtained the judicial lien, "[a]n implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial

lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

27. [18-10450](#)-A-7 **IN RE: LINDA CRAIN**
[TGM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-8-2018 [\[21\]](#)

JAMES SALVEN/MV
MARCUS TORIGIAN
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

OBJECTION TO EXEMPTION

The trustee objects to the debtor's claim of exemption in an inherited IRA. The IRA has a value of \$33,889.70. The trustee cites the recent Supreme Court decision in *Clark v. Rameker*, 134 S. Ct. 2242, 2245 (2014) interpreting a federal exemption provision to exclude inherited IRAs. In citing this case, the trustee argues that inherited IRAs are not consistent with the purpose of exemptions for retirement accounts, which purpose is to ensure debtors will be able to meet basic needs during retirement years.

In addition, the trustee cites two conflicting California cases interpreting the California exemption statute at issue, C.C.P. 703.140(b)(10)(E). One case determined that inherited IRAs are exempt and the other determined that they are not exempt. For the reasons stated in the objection and memorandum of points and authorities, the court will sustain the objection.

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 trustee's objection to the debtor's exemption in an inherited IRA 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 objection,

IT IS ORDERED that the objection is sustained.

28. [18-10866](#)-A-7 **IN RE: JONATHAN MURILLO**
[JES-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
6-12-2018 [[17](#)]

JAMES SALVEN/MV

Final Ruling

Motion: Extend Trustee's Deadline for Objecting to Discharge under
§ 727(a)

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 trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through November 1, 2018.

29. [18-10866](#)-A-7 **IN RE: JONATHAN MURILLO**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-7-2018 [\[14\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case
dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.
11 U.S.C. § 343. A continuing failure to attend this meeting may be
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.
2014) ("Some courts have ruled that the failure to attend the § 341
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting
of creditors required by 11 U.S.C. § 341. Because the debtor's
failure to attend this meeting has occurred once, the court will not
dismiss the case on condition that the debtor attend the next
creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests
extension of the trustee's deadlines. The court extends the
following deadlines to 60 days after the next continued date of the
creditors' meeting: (1) the trustee's deadline for objecting to
discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the
trustee's deadline for bringing a motion to dismiss under § 707(b)
or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P.
1017(e). These deadlines will no longer be set at 60 days after the
first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil
Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition
that the debtor attend the next continued § 341(a) meeting of
creditors scheduled for August 30, 2018, at 9:00 a.m. But if the
debtor does not appear at this continued meeting, the case will be

dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

30. [17-14468](#)-A-7 **IN RE: BRUCE GREER**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2018 [[73](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
DAVID JENKINS
ROBERT ZAHRADKA/ATTY. FOR MV.
DISCHARGED

Final Ruling

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

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

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

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The trustee's attorney has not been served the motion and notice of hearing. But the court requires the trustee's attorney to be served with a motion for stay relief when the trustee has retained an attorney in the case.

31. [18-11068](#)-A-7 **IN RE: DIANA LOPEZ**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2018 [\[15\]](#)

M&T BANK/MV
R. BELL
NANCY LEE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 6626 Silver Moon Drive, Bakersfield, CA

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

M&T Bank as attorney in fact for Lakeview Loan Servicing, LLC has filed a motion for relief from the automatic stay that has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 6626 Silver Moon Drive, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

32. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[RWR-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-5-2018 [[169](#)]

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

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

Order: Civil minute order

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

ALLOWANCE OF ADMINISTRATIVE EXPENSE

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court allows federal taxes of \$1,376.00 and California state taxes of \$172.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

33. [17-12971](#)-A-7 **IN RE: JOAN PENA**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
6-14-2018 [\[55\]](#)

JAMES SALVEN/MV

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

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

compensation in the amount of \$950.00 and reimbursement of expenses in the amount of \$205.94.

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. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$950.00 and reimbursement of expenses in the amount of \$205.94. The court also approves on a final basis any prior applications for fees and costs the court has approved on an interim basis under § 331.

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.

34. [14-12480](#)-A-7 **IN RE: LARRY HARRIS AND CHERYL ANDERSON**
[FW-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK AND/OR MOTION TO AVOID
LIEN OF UNIFUND CCR, LLC
6-14-2018 [\[22\]](#)

LARRY HARRIS/MV
PETER FEAR

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

35. [10-13783](#)-A-7 **IN RE: SUSAN VARELA**
[FW-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MULTI-DISTRICT LITIGATION AND/OR MOTION FOR
COMPENSATION FOR MICHAELA MCINNIS, SPECIAL COUNSEL(S)
6-22-2018 [\[90\]](#)

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

No Ruling

36. [18-10087](#)-A-7 **IN RE: ANTONIO DE LEON**
[JES-2](#)

MOTION TO SELL
6-7-2018 [\[44\]](#)

JAMES SALVEN/MV

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Various personal property listed below

Buyer: Debtor

Sale Price:

1. 1997 Bomba jet ski: \$500 cash
2. 1997 BRP jet ski: \$500 cash
3. 2001 Carrier jet ski trailer: \$100 cash
4. 1996 Carrier utility trailer: \$800 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.

37. [18-10587](#)-A-7 **IN RE: DAVID CASNER**
[HLF-1](#)

PRETRIAL CONFERENCE RE: MOTION TO COMPEL ABANDONMENT
2-28-2018 [[14](#)]

DAVID CASNER/MV
JUSTIN HARRIS
VACATED PER ECF ORDER NO. 59

Final Ruling

The underlying motion to compel abandonment has been granted after a stipulation was filed resolving the opposition. The court will drop the conference from calendar.

38. [18-10592](#)-A-7 **IN RE: MELLO HAY, INC.**
[JES-1](#)

MOTION TO SELL
6-7-2018 [[14](#)]

JAMES SALVEN/MV
JEFFREY ROWE

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2 office desks and chairs, 2 filing cabinets, 1 fax copier, and a 2006 Chevrolet Silverado truck

Buyer: Darrell Mello

Sale Price:

1. office equipment: \$300 cash

2. 2006 Chevrolet Silverado truck: \$5,700 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.

39. [18-11492](#)-A-7 **IN RE: OSCAR GOMEZ**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2018 [[30](#)]

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
TIMOTHY DUCAR
DON POOL/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 CFMOTO ZForce 800EX

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 CFMOTO ZForce 800EX, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

40. [18-11492](#)-A-7 **IN RE: OSCAR GOMEZ**
[DJP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2018 [[37](#)]

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
TIMOTHY DUCAR
DON POOL/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Wildwood by Forest River M-26TBSS

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

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of*

Nevada, Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Wildwood by Forest River M-26TBSS, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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