

**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: AUGUST 19, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-12301](#)-A-7 JAMEY PECK
ASW-1
QUICKEN LOANS INC./MV
DANIEL FUJIMOTO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-17-15 [[30](#)]

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to September 30, 2015, at 9:00 a.m., and require that any supplemental declaration and amended stay relief summary sheet be filed and served no later than September 2, 2015

Order: Civil minute order

The motion seeks stay relief based on § 362(d)(1) and (2). Considering § 362(d)(1), the motion does not allege that any post-petition payments have been missed. The stay relief summary sheet indicates that 24 pre-petition payments were missed.

Considering § 362(d)(2), the motion shows \$5,430.70 of equity in the property for which relief from stay is sought, which amount includes an additional lien held by Discovery Bank. However, the motion indicates that the amount of \$120,034.44 owed to the movant is "exclusive of attorneys' fees and costs. If the attorneys' fees and costs are included in the secured debt as a result of the loan documents between movant and the debtor, then the movant may file a supplemental declaration and supplemental stay relief summary sheet that indicates the lack of any equity in the property after including such amounts in the total debt owed to the movant. Alternatively, the movant may file a declaration indicating any postpetition payments that have become delinquent.

2. [13-17712](#)-A-7 RUBEN OLVERA AND GLORIA
TOG-12 CHAVEZ
RUBEN OLVERA/MV

CONTINUED PRETRIAL CONFERENCE
RE: MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
2-7-15 [[85](#)]

THOMAS GILLIS/Atty. for dbt.
OPPOSITION WITHDRAWN,

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

Notice: LBR 9014-1(f)(1); written opposition filed by the trustee and withdrawn

Disposition: Granted; Pretrial Status Conference is concluded

Order: Civil minute order

CONVERSION OF CASE

The trustee's opposition to the conversion of this case to chapter 13 has been withdrawn. The debtors' status conference statement requests that the motion be granted and the trial vacated.

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.

VACATION OF TRIAL DATE

This case is converted by the court's ruling. No trial date had been set for this contested matter. Now that the trustee's opposition has been withdrawn, the pre-trial status conference will be concluded.

CIVIL MINUTE ORDER

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

The debtors' motion to convert this chapter 7 case to a case under chapter 13 of Title 11 has been presented to the court. The trustee having withdrawn opposition to the motion and all other potential respondents having waived opposition to the motion by failing to timely oppose,

IT IS ORDERED that the motion is granted and the case is converted to a case under chapter 13 of Title 11. The pretrial status conference is hereby concluded.

3. [15-12322](#)-A-7 LAVAR JOHNSON
APN-1
WELLS FARGO BANK, N.A./MV
JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-17-15 [[13](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Chevrolet Silverado

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). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. The debtor has not opposed the relief sought. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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| 4. | 15-12330 -A-7 JEFFREY/JEANETTE PFEIFFER
HTP-1
BANK OF THE SIERRA/MV
HILTON RYDER/Atty. for dbt.
HANNO POWELL/Atty. for mv. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-5-15 [15] |
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Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE INSUFFICIENT

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 proof of service shows that service on the debtor was not made to the correct address. The motion was served on the debtor at an address in Tulare, CA. The debtor's address for this case is in Exeter, CA.

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

RULE 9013

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion seeks relief as to two different pieces of real property. As to the commercial real property located at 400 Third Street, Exeter, CA, the motion does not describe with particularity how this property is property of the estate. The motion states that this property is owned by a corporation, California Custom Packing, Inc., and that all of this corporation's stock is owned by the debtors. But the fact that the stock is property of the estate does not mean that the commercial property is also property of the estate. If the commercial property is not property of the estate, then the motion is moot to the extent it seeks relief from stay as to the commercial property.

Furthermore, the motion does not provide a clear statement of the grounds under § 362(d)(2) as to the residential property located at 30732 Road 196, Exeter, CA. The value of this property is not provided in the motion. The motion should reference the value of real property when that fact is in issue and then cite to the applicable portions of the exhibits. In addition, the motion should contain the current outstanding amount of the debt. Presenting these facts by filing exhibits containing them is not sufficient when such factual grounds are essential to the relief requested in the motion.

STAY RELIEF SUMMARY SHEET

The movant also has not used a stay relief summary sheet. Local Rule 4001-1(a)(3) required the movant to file and serve as a separate document completed Form EDC 3-468.

5.	15-10635 -A-7 JOHN JANDA HRH-2 CITIZENS BUSINESS BANK/MV JERRY LOWE/Atty. for dbt. RAFFI KHATCHADOURIAN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-4-15 [119]
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Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 608 E. Center Street, Visalia, CA

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

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 4 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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

6. 15-10635 -A-7 JOHN JANDA LRP-1 SUMMITBRIDGE NATIONAL INVESTMENTS III LLC/MV JERRY LOWE/Atty. for dbt. RENE LASTRETO/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-22-15 [98]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: (1) 6045 North 1st Street, Fresno, CA and (2) Fresno County Superior Court Case 13 CE CG 00007

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).

REAL PROPERTY

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.

STATE COURT FORECLOSURE LITIGATION

The motion is somewhat unclear regarding whether stay relief is sought only to dismiss the state court litigation or whether it is sought to allow movant to either continue or dismiss such litigation. See Mot. at 1, 5-6. The court will construe this portion of the relief requested based on the "wherefore clause" at the end of the motion, at paragraph 2 of such clause.

Stay relief will only be granted to permit the movant to dismiss the Fresno County Action against debtor without prejudice, if movant

elects to cause such a dismissal. But this ruling does not permit movant to proceed with the complaint against debtor individually or *in personam* without seeking further relief from this court, unless such relief is sought through filing a claim in this court or an amendment of such claim.

7. [15-10635](#)-A-7 JOHN JANDA
LRP-2
SUMMITBRIDGE NATIONAL
INVESTMENTS III LLC/MV
JERRY LOWE/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-22-15 [[107](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: (1) 720 East Almond Ave., Madera, CA and (2) Fresno County Superior Court Case 13 CE CG 00007

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).

REAL PROPERTY

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.

STATE COURT FORECLOSURE LITIGATION

The motion is somewhat unclear regarding whether stay relief is sought only to dismiss the state court litigation or whether it is sought to allow movant to either continue or dismiss such litigation. See Mot. at 1, 5-6. The court will construe this portion of the relief requested based on the "wherefore clause" at the end of the motion, at paragraph 2 of such clause.

Stay relief will only be granted to permit the movant to dismiss the Fresno County Action against debtor without prejudice, if movant elects to cause such a dismissal. But this ruling does not permit movant to proceed with the complaint against debtor individually or *in personam* without seeking further relief from this court, unless such relief is sought through filing a claim in this court or an amendment of such claim.

8. [15-11235](#)-A-7 MARTIN/TAMBRA VALADOA MOTION TO AVOID LIEN OF
SAH-7 EMPLOYMENT DEVELOPMENT
MARTIN VALADOA/MV DEPARTMENT
7-14-15 [[62](#)]
SUSAN HEMB/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004).

Here, service of the motion was insufficient. The proof of service is unsigned. The court cannot rely on the proof of service and thus cannot assume service occurred.

9. [05-16245](#)-A-7 BRIAN BRADLEY MOTION TO AVOID LIEN OF
BKB-2 HOUSEHOLD FINANCE CORP. OF
BRIAN BRADLEY/MV CALIFORNIA
7-8-15 [[18](#)]
BRIAN BRADLEY/Atty. for mv.

Tentative Ruling

Motion: Avoid Lien

Disposition: Denied without prejudice

Order: Civil minute order

The motion states that the debtor filed a chapter 7 bankruptcy petition on August 9, 2005 as a pro se debtor. This case was reopened by an order dated July 8, 2015.

The motion seeks to avoid a judicial lien held by Household Finance Corp. of California on real property located at 5675 West Sample Avenue, Fresno, CA. This real property was not owned by the debtor at the time of filing. The debtor admits that he "did not own any real property at the time of filing." Mot. at 1, ECF No. 18. The debtor further admits that he did not claim an exemption in real property

because he did not have an ownership interest in any real property.

The motion does not seek relief warranted by the Bankruptcy Code. The grounds for avoiding a judicial lien under bankruptcy law require that the judicial lien impair an exemption to which the debtor would have been entitled under subsection (b) of § 522. See 11 U.S.C. § 522(f)(1)-(2). Section 522(b), in turn, allows the debtor to exempt from property of the estate certain property under state or local law. *Id.* § 522(b)(1), (3). To claim an exemption in property, therefore, the property must first be property of the estate. *Id.* § 522(b)(1).

Furthermore, as a condition of lien avoidance, this court requires that an exemption be claimed in the property subject to the lien to be avoided. Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Accordingly, because the debtor has established that the real property subject to the judicial lien of Household Finance Corp. of California was not property of the estate, the debtor could not claim an exemption in such property. Without an exemption to be impaired, the judicial lien of the respondent may not be avoided.

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| 10. 14-14455 -A-7 BRENDA RENTSCHLER
SAS-2
SHERYL STRAIN/MV
SCOTT LYONS/Atty. for dbt. | MOTION FOR COMPENSATION FOR
SHERYL A. STRAIN, ACCOUNTANT(S)
7-21-15 [38] |
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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, Sheryl A. Strain, 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 \$852.50 and reimbursement of expenses in the amount of \$127.26.

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.

Sheryl A. Strain'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 \$852.50 and reimbursement of expenses in the amount of \$127.26.

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.

11. [15-11561](#)-A-7 RAUL PICHE
JES-1
JAMES SALVEN/MV
PATRICIA CARRILLO/Atty. for dbt.

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
5-27-15 [\[15\]](#)

Tentative Ruling

Objection: Objection to Claim of Exemptions

Notice: LBR 9014-1(f)(1); written opposition filed as well as related Rule 60(b)(1) motion

Disposition: Overruled

Order: Civil minute order

OBJECTION BASED ON SPOUSAL WAIVER

The court has granted the debtor's Civil Rule 60(b)(1) motion having docket control no. PSC-1 on this calendar. As a result, the debtor is relieved from the binding effect, if any, of the spousal waiver filed in this case. The trustee's objection is grounded only on the filing

of a spousal waiver. Accordingly, the trustee's objection is overruled for the reasons stated in the related motion for relief from the waiver filed at docket PSC-1.

CIVIL MINUTE ORDER

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

The chapter 7 trustee James Salven's objection to the debtor's claim of exemptions has been presented to the court. The court has reviewed the objection, and has reviewed and granted the related motion for relief under Civil Rule 60(b)(1) from the effect of the spousal waiver of exemptions filed in this case.

IT IS ORDERED that the objection is overruled.

12.	<u>15-11561</u> -A-7 RAUL PICHE PSC-1 RAUL PICHE/MV PATRICIA CARRILLO/Atty. for dbt.	MOTION FOR RELIEF 7-22-15 [<u>33</u>]
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Final Ruling

Motion: Relief from Proceeding under FRBP 9024 and FRCP 60(b)(1)

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).

PROCEDURAL PROBLEMS

The motion does not comply with the court's Local Rules and Guidelines for the Preparation of Documents. Section III.A. of the Revised Guidelines for the Preparation of Documents requires that all documents relating to a matter be filed as separate documents. Local Rule 9004-1 requires compliance with the Revised Guidelines for the Preparation of Documents, EDC 2-901. Because the declaration and motion were filed as the same document, this provision has been violated. The court may sanction movant's counsel in the future for such noncompliance.

RULE 60(b)(1) RELIEF

The motion describes circumstances under which the court concludes that the filing of the spousal waiver in this case was the result of inadvertence or mistake. Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bank. P. 9024. The debtor has always maintained the default "regular exemptions" applicable to a married debtor filing individually in the absence of a spousal waiver. The attorney placed

the signed spousal waiver in the debtor's file and then later filed the document without remembering that the debtor's prior, and only, claim of exemptions was under the regular exemptions (CCP § 704.010 *et seq.*).

In the addition, after further review, the court notes that the spousal waiver attached as Exhibit B to the trustee's objection is not an effective waiver under § 703.140(a)(2). Under this paragraph, an effective waiver requires both the spouses to waive in writing the right to claim the regular bankruptcy exemptions under § 704.010 *et seq.* The waiver attached as an exhibit, though signed by both spouses, only is a waiver by Erica Piche under its express terms. Though this argument was not raised by the debtor, the court notes that the trustee's objection would not prevail given that the waiver is a facially invalid waiver by only Erica Piche, the non-filing spouse.

13. [12-13170](#)-A-7 AUGUSTINE PENA MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 7-15-15 [[630](#)]
FRANCISCO ALDANA/Atty. for dbt.

Final Ruling

Application: First and Final Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$45,247.50 and reimbursement of expenses in the amount of \$1,291.71.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$45,247.50 and reimbursement of expenses in the amount of \$1,291.71.

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

14. [15-12972](#)-A-7 JONATHAN CLAGUE
FLG-1
JONATHAN CLAGUE/MV
PETER FEAR/Atty. for dbt.
OST 8/10/15

MOTION TO COMPEL ABANDONMENT
8-7-15 [[9](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to September 9, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2)

Order: Civil minute order

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC* (*In re Hie of Effingham, LLC*), 490 B.R. 800, 807-08

(Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court cannot grant the motion at this time due to insufficient notice of the motion.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

15. 15-12278 -A-7 MATTHEW GOMEZ APN-1 WELLS FARGO BANK, N.A./MV AUSTIN NAGEL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-15 [24]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Chrysler 300 Limited Sedan

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). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien and several prepetition payments were also missed. The debtor has not opposed the relief sought. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

16.	15-12089 -A-7 FREDERICK/SARAH RICH TCS-1 FREDERICK RICH/MV TIMOTHY SPRINGER/Atty. for dbt. ORDER CONTINUING TO 9/30/15, ECF NO. 24	MOTION TO DELAY DISCHARGE 7-28-15 [15]
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Final Ruling

The matter is continued to September 30, 2015, at 9:00 a.m. A scheduling order will issue from chambers.

17. [15-11997](#)-A-7 MARICELA LEAL
RHT-1
ROBERT HAWKINS/MV
GRISELDA TORRES/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL FREE AND CLEAR
OF LIENS
7-17-15 [[15](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Toyota Corolla

Buyer: Debtor

Sale Price: \$4900 (\$2000 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

18. [15-11999](#)-A-7 MARY BRYANT

MARY BRYANT/MV
MARY BRYANT/Atty. for mv.

MOTION TO VACATE DISMISSAL OF
CASE
6-29-15 [[33](#)]

No tentative ruling.

19. [15-11999](#)-A-7 MARY BRYANT
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-9-15 [[34](#)]

DISMISSED

No tentative ruling.