

**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 23, 2017
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. [15-13304](#)-A-7 RAFAEL OROZCO ACEVEDO
RH-3
ROBERT HAWKINS/MV

MOTION FOR COMPENSATION FOR
ROBERT HAWKINS, SPECIAL
COUNSEL(S)
7-25-17 [[38](#)]

ROBERT HAWKINS/Atty. for 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, Robert Hawkins, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4710.00 and reimbursement of expenses in the amount of \$97.80.

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

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

CIVIL MINUTE ORDER

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

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

Robert Hawkins'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 \$4710.00 and reimbursement of expenses in the amount of \$97.80.

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

2. [17-11704](#)-A-7 JULIE MENDOZA MOTION FOR RELIEF FROM
BMJ-1 AUTOMATIC STAY
BARBARA BLADE/MV 7-21-17 [[20](#)]
F. GIST/Atty. for dbt.
JOHN WASTE/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. 17-11704-A-7 JULIE MENDOZA OPPOSITION/OBJECTION TO CHAPTER
BMJ-2 7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
7-24-17 [26]

F. GIST/Atty. for dbt.
JOHN WASTE/Atty. for mv.

Final Ruling

The opposition withdrawn, the matter is dropped as moot.

4. 17-10106-A-7 RANDEEP SINGH
GCL-2
UMPQUA BANK/MV
- PATRICK GREENWELL/Atty. for dbt.
GEORGE LAZAR/Atty. for mv.
- MOTION TO PREVENT USE OF CASH
COLLATERAL , TO REQUIRE DEBTOR
TO PROVIDE ACCOUNTING OF CASH
COLLATERAL, TO REQUIRE DEPOSIT
OF CASH COLLATERAL INTO CASH
COLLATERAL ACCOUNT , TO GRANT
UMPQUA BANK A SECURITY INTEREST
IN POST-PETITION PERSONAL
PROPERTY OF THE DEBTOR
8-9-17 [71]

Final Ruling

This matter is continued to September 19, 2017, at 9:00 a.m. Not later than September 5, 2017, the trustee, U.S. Trustee or any other party in interest may file opposition.

5. [15-13412](#)-A-7 BASILA CONSTRUCTION, MOTION TO COMPROMISE
FW-6 INC. CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH GREG SMITH AND
LORI SMITH
7-25-17 [[191](#)]

RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a dispute over a pre-petition payment that is alleged to constitute a preference payment. 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 entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 194.

6. <u>16-12615</u> -A-7 WILLIAM/DEBRA NEWMAN RWR-2 JAMES SALVEN/MV	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE INTERNAL REVENUE SERVICE 7-11-17 [<u>33</u>]
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PETER BUNTING/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a dispute with the United States Department of the Treasury, Internal Revenue Service, about whether a payment of \$25,830.21 constitutes an avoidable preference. The compromise is reflected in letters (reflecting offer and acceptance of the terms of the compromise)

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 James E. Salven's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 37.

7. [16-12016](#)-A-7 SATWANT VIRK
RH-3

MOTION FOR COMPENSATION FOR
ROBERT HAWKINS, TRUSTEES
ATTORNEY(S)
7-20-17 [[44](#)]

JERRY LOWE/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Robert Hawkins, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4080.00 and reimbursement of expenses in the amount of \$84.87.

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.

Robert Hawkins'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 \$4080.00 and reimbursement of expenses in the amount of \$84.87.

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

8. [15-10027](#)-A-7 ANDREY KARPIN
JES-1
JAMES SALVEN/MV
TRUDI MANFREDO/Atty. for dbt.

MOTION TO SELL
7-17-17 [[24](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 33% interest in a note receivable; the estate's 33% interest has a balance of \$18,165

Buyer: Debtor

Sale Price: \$16,000

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.

9. [10-60731](#)-A-7 REGINA/CLIFFORD CAKE MOTION TO COMPROMISE
FW-2 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH REGINA ROSE CAKE
AND CLIFFORD LELAND CAKE
7-17-17 [[32](#)]

MARIO LANGONE/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Disposition: Denied without prejudice

Order: Civil minute order

NOTICE

All creditors and parties in interest have not received sufficient notice. The hearing on an approval of a compromise or settlement of a controversy must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing 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 mailing list should indicate a date near in time to the date of service of the notice.

EVIDENCE

As to the settlement, the debtors believed that the product liability claim (from a medical device) is based on an injury that occurred after the case was filed. The trustee disputes this.

The motion should be supported by better evidence (e.g., a declaration and a copy of settlement or release with the third party tortfeasor) to support the trustee's contention that the settlement is or is not property of the estate.

10. [17-12332](#)-A-7 COETY/CRYSTAL SILVA
MJM-10
HUGHES FEDERAL CREDIT UNION/MV

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
8-7-17 [[17](#)]

JERRY LOWE/Atty. for dbt.
M. MICKLAS/Atty. for mv.

No Ruling

11. [12-18636](#)-A-7 CESAR/SANDRA CORTEZ
DMG-2
CESAR CORTEZ/MV
D. GARDNER/Atty. for dbt.

MOTION TO AVOID LIEN OF MIDLAND
FUNDING, LLC
7-26-17 [[26](#)]

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.

12. [17-10136](#)-A-7 FRESNO MOVING & STORAGE MOTION FOR COMPENSATION FOR
JES-2 INC. JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 6-26-17 [[94](#)]
JEFFREY ROWE/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$7825.00 and reimbursement of expenses in the amount of \$364.68.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$7825.00 and reimbursement of expenses in the amount of \$364.68.

IT IS FURTHER ORDERED that the trustee is authorized without further

order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

13. [16-11644](#)-A-7 TONI PHOEUN
RH-3
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TONI PHOEUN
7-20-17 [[43](#)]

ERIC ESCAMILLA/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles a homestead-exemption dispute. In this dispute, the trustee has challenged the debtor's homestead exemption based on the debtor's use of \$37,572 (tax refunds and gifted funds) to pay down the mortgage on his home. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise are that the trustee will release his objection to the debtor's homestead exemption in exchange for the debtor's payment of \$12,000. 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 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 approves the parties' compromise, which settles a homestead-exemption dispute. In this dispute, the trustee has challenged the debtor's homestead exemption based on the debtor's use of \$37,572 (tax refunds and gifted funds) to pay down the mortgage on his home. The terms and conditions of the compromise are that the trustee will release his objection to the debtor's homestead exemption in exchange for the debtor's payment of \$12,000.

14. [16-10945](#)-A-7 ROGER POWELL
JES-3
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
7-18-17 [[90](#)]

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1971.00 and reimbursement of expenses in the amount of \$217.91.

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 \$1971.00 and reimbursement of expenses in the amount of \$217.91.

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.

15. [17-11045](#)-A-7 ADRIAN RUIZ
TJS-1
CAPITAL ONE AUTO FINANCE/MV
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-25-17 [[18](#)]

Final Ruling

Motion: Relief from Stay

Disposition: Continued to September 19, 2017, at 9:00 a.m.

Order: Civil minute order

SERVICE ISSUE

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.

The debtor filed a change of address on July 25, 2017. This motion was

filed the same day. The change of address appears on the docket before the motion, but it is unclear whether the change of address was filed first (or docketed first).

Even if the change of address had been filed hours after the motion, the court prefers that the debtor be served with the motion. Pursuant to the court's authority under Rule 4001(a)(1) to direct the entities on whom service is required, the court orders that service be made on the debtor at the debtor's new address: 2577 Oak St., Selma, CA 93662.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to September 19, 2017. No later than September 8, 2017, the movant shall serve the motion on the debtor at the address indicated in the court's ruling.

16. [17-12359](#)-A-7 DON ROSE OIL CO., INC. SCHEDULING CONFERENCE RE:
CHAPTER 7 INVOLUNTARY PETITION
6-19-17 [[1](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

This motion is continued to September 19, 2017, at 9:00 a.m.

17. [17-12359](#)-A-7 DON ROSE OIL CO., INC. MOTION TO DISMISS CASE
CLF-1 7-10-17 [[10](#)]
DONALD ROSE/MV
RILEY WALTER/Atty. for dbt.
VONN CHRISTENSON/Atty. for mv.
CONTINUED TO 9/19/17

Final Ruling

This motion is continued to September 19, 2017, at 9:00 a.m.

18. [17-12163](#)-A-7 SUSAN BRAZELL
SL-1
SUSAN BRAZELL/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO AVOID LIEN OF
FINANCIAL PACIFIC LEASING LLC
8-7-17 [[18](#)]

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). 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.

Although the motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion, this is not sufficient. "An 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.

19. [17-12463](#)-A-7 RDX, INC.
HRH-1
BMO HARRIS BANK N.A./MV
H. KHARAZI/Atty. for dbt.
RAFFI KHATCHADOURIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-25-17 [[59](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Five 2014 Freightliner Cascadia Series, Model CA12564SLP
Tractor Trucks

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

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

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

The debtor has missed 2 post-petition payments (\$15,706.14) due on the debt secured by the moving party's lien, and the debtor has not provided evidence of insurance covering the subject property. These facts constitute cause for stay relief.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated as to all parties in interest with respect to the property described in the motion, commonly known as five 2014 Freightliner Cascadia Series, Model CA12564SLP Tractor Trucks. 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.

20. [17-12463](#)-A-7 RDX, INC.
MBG-1
EXCHANGE BANK/MV
H. KHARAZI/Atty. for dbt.
MITCHELL GREENBERG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-7-17 [[72](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Two 2010 Freightliners

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

STAY RELIEF

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

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

The debtor has missed 2 post-petition payments (\$4,925.66) due on the debt secured by the moving party's lien. The debtor has also failed to insure the subject property. This constitutes cause for stay relief.

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

CIVIL MINUTE ORDER

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

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

Exchange Bank'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 two 2010 Freightliners, 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. [17-12463](#)-A-7 RDX, INC.
MFG-1
PEOPLE'S CAPITAL AND LEASING
CORP./MV
H. KHARAZI/Atty. for dbt.
MARSHALL GOLDBERG/Atty. for mv.
OST

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-9-17 [[78](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(3); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: Ten 2017 Freightliner Model Cascadia Tractors

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.

People's Capital'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 ten 2017 Freightliner Model Cascadia Tractors, 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.

22. [17-12463](#)-A-7 RDX, INC.
RAS-1
WELLS FARGO EQUIPMENT,
FINANCE, INC./MV
H. KHARAZI/Atty. for dbt.
RICHARD SOLOMON/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-24-17 [[51](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Five 2010 Freightliners

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.

Wells Fargo Equipment Finance, 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 five 2010 Freightliners, 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.

23. [16-14476](#)-A-7 RAUL GUTIERREZ
MSK-1
EAGLE HOME MORTGAGE, LLC/MV
THOMAS GILLIS/Atty. for dbt.
MARK KRAUSE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-20-17 [[84](#)]

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 has not been served or has not been served at the correct address. Service on the standing chapter 13 trustee, Michael Meyer, is not sufficient for service on the chapter 7 trustee in this case.

24. [17-12078](#)-A-7 THELMA DOWNING
MAZ-1
THELMA DOWNING/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE
7-6-17 [[15](#)]

Final Ruling

Motion: Dismiss Chapter 7 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); see, e.g., *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The debtor seeks dismissal of her case because she filed another chapter 7 case within the 8-year period preceding the petition date, and she received a discharge in that previous case. Therefore, she is not eligible to receive a discharge in this case. The court will dismiss this case.

25. [16-14491](#)-A-7 EDUARDO GUTIERREZ AND
PPR-1 LINDA HERRERA
CARRINGTON MORTGAGE SERVICES,
LLC/MV
PATRICK KAVANAGH/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-10-17 [[23](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 730 Trenton Street, Delano, 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).

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

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

The debtor has missed 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.

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.

Carrington Mortgage Services, LLC'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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 730 Trenton Street, Delano, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given

the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

26.	17-10697 -A-7 ROBERTA CUMBERLAND NLL-1 U.S. BANK NATIONAL ASSOCIATION/MV PATRICK KAVANAGH/Atty. for dbt. NANCY LEE/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-18-17 [63]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 3106 Agnew Meadows Dr., 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.

U.S. Bank National Association, as trustee, as 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 3106 Agnew Meadows Dr., 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.

27. [17-12781](#)-A-7 DALIP NIJJAR
FW-7
JAMES SALVEN/MV

MOTION TO APPROVE STIPULATION
WITH TATEOSIAN FARMS REGARDING
PROCEEDS FROM AGRICULTURAL
LEASE AGREEMENT
8-14-17 [[107](#)]

ALAN THOMPSON/Atty. for dbt.
PETER FEAR/Atty. for mv.
OST 8/15/17

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(3) (order shortening time); no written opposition required

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Ruby Topoozian nee Tateosian, managing partner of Tateosian Farms ("Tateosian Farms) and the chapter 7 trustee

Dispute Compromised: Dispute relating to lease agreement (for premises consisting of a 40-acre vineyard in Selma, CA) entered into between Tateosian Farms and the debtor and his spouse prepetition, including dispute about the estate's interest in crops and sale proceeds of such crops and about the estate's liability for 2016 rent (\$12,000) and 2017 rent (\$19,000)

Summary of Material Terms: The estate is entitled to the crops and their proceeds. Tateosian Farms will have control of the farming and harvesting of the crops. Tateosian Farms shall be reimbursed for reasonable and necessary costs of farming, harvesting and selling the crops, and it shall also receive back rent for 2016 and 2017. All remaining crop proceeds shall be paid to the estate.

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. 111.

28. [17-12781](#)-A-7 DALIP NIJJAR
FW-5
JAMES SALVEN/MV
ALAN THOMPSON/Atty. for dbt.
PETER FEAR/Atty. for mv.
OST 8/15/17

MOTION TO COMPEL
8-14-17 [[115](#)]

No Ruling

29. [17-12781](#)-A-7 DALIP NIJJAR
FW-4
JAMES SALVEN/MV
ALAN THOMPSON/Atty. for dbt.
PETER FEAR/Atty. for mv.
OST 8/15/17

MOTION TO COMPEL
8-15-17 [[125](#)]

No Ruling

30. [17-12781](#)-A-7 DALIP NIJJAR
FW-6
JAMES SALVEN/MV

ALAN THOMPSON/Atty. for dbt.
PETER FEAR/Atty. for mv.
OST 8/15/17

MOTION TO APPROVE STIPULATION
WITH SAM AND MARGIE ESRAELIAN
FAMILY TRUST REGARDING PROCEEDS
FROM AGRICULTURAL LEASE
AGREEMENT
8-15-17 [[133](#)]

No Ruling