

**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 24, 2016
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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

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. [16-12003](#)-A-7 TATIANA LANDY
JES-1
JAMES SALVEN/MV

MOTION TO RECONSIDER
7-18-16 [[18](#)]

Tentative Ruling

Motion: Rule 60(b) Relief from Order Granting Application for Waiver of Chapter 7 Filing Fee

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

Disposition: Denied

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).

DISCUSSION

Chapter 7 trustee, James E. Salven, moves to vacate the order granting the debtor's application for waiver of the chapter 7 filing fee. In that application the debtor represented (1) her family size was 2; (2) net income was \$1,320.00 per month and gross income was \$1,733.33 per month; and (3) the debtor was otherwise unable to pay the filing fee in installments. As of the date of the petition, the Office of Management and Budget defined 150% of the poverty line of that size to be \$2,002.50 per month. Based on those representations, the court granted that the fee waiver.

Rule 60(b) allows the court to relieve a party from an order based on (1) "mistake, inadvertence, surprise, or excusable neglect," (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)," or (3) fraud. Fed. R. Civ. P. 60(b)(1)-(3), *incorporated by* Fed. R. Bankr. P. 9024; *see also*, Rule 9023 (requiring motions for a new trial not later than 14 days after judgment). Such a motion must be no later than one year after the order from which relief is sought. Fed. R. Civ. P. 60(c)(1), *incorporated by* Fed. R. Bankr. P. 9024.

In forma pauperis fee waivers are governed by 28 U.S.C. § 1930(f). That section authorizes the court to waive fees for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line...applicable to a family of the size involved"; and (2) who is otherwise unable to pay the filing fee in installments. The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

Here, the trustee has not made a prima facie showing of entitlement to relief. The trustee contends that adjusted Schedule J Line 23c shows net projected disposable income of \$83.33 per month, which is sufficient to pay the fee in installments. Trustee Salven adjusts Line 23c by taking the \$3.33 per month that the debtor reported on Schedule J and adding back \$80.00 per month from the debtor's recreation budget, which he contends is unnecessary or excessive. The

court disagrees. The debtor is a household of two persons, i.e. herself and her 3.5 year old son. Some recreation is a necessity, even for bankrupts. And a recreation budget of \$80.00 per month is less than 5% of the debtor's gross income. That amount is not unreasonable in this case.

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 motion to vacate the order granting debtor's application for waiver of the chapter 7 filing fee 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 motion is denied.

2. [16-12609](#)-A-7 BRENDA MELGAR
ALG-1
BRENDA MELGAR/MV
JANINE ESQUIVEL/Att. for dbt.

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
7-19-16 [\[5\]](#)

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

3. [16-11316](#)-A-7 WESLEY/SUSAN ROBERTSON MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
CITIBANK, N.A./MV 7-21-16 [[20](#)]
DAVID JENKINS/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 520 Denton Avenue, Corcoran, 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.

Citibank, N.A., as Trustee for Cwabs, Inc. Asset-Backed Certificates, Series 2007-Qx1, has filed a motion for relief from the automatic stay, which 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 520 Denton Avenue, Corcoran, 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.

4.	16-10422 -A-7 MANUEL/GUILLERMINA TOG-10 BUSTAMANTE MANUEL BUSTAMANTE/MV THOMAS GILLIS/Atty. for dbt.	MOTION TO AVOID LIEN OF TULARE COUNTY TAX COLLECTOR 7-20-16 [73]
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Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien

upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

5.	<u>16-10422</u> -A-7	MANUEL/GUILLERMINA	MOTION TO AVOID LIEN OF
	TOG-2	BUSTAMANTE	EMPLOYMENT DEVELOPMENT
	MANUEL BUSTAMANTE/MV		DEPARTMENT
			7-15-16 [<u>25</u>]
	THOMAS GILLIS/Atty. for dbt.		

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE INSUFFICIENT

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party.

Although a motion in a contested matter must comply with the local rules' notice requirements as to the respondent, see LBR 2002-1(b), the motion also must be served under Rule 7004 because a motion to avoid a lien is a contested matter, see 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).

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), incorporated by Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served

by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6).

Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Any proof of service for matter in which a state or local government agency or entity is named as a respondent shall contain either one of the following affirmative statements: (i) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 7004(b)(6) of the Federal Rules of Bankruptcy Procedure"; or (ii) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 4(j)(2) of the Federal Rules of Civil Procedure."

EXEMPTION ISSUE

The motion does not state the amount of the exemption. The motion merely concludes that the exemption is impaired. The points and authorities contain a statement that the exemption is \$175,000. But this is incorrect based on the amended Schedule C filed at docket 79.

CIVIL MINUTE ORDER

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

The debtors' motion to avoid the lien of the EDD has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [16-10422](#)-A-7 MANUEL/GUILLERMINA
TOG-3 BUSTAMANTE
MANUEL BUSTAMANTE/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO AVOID LIEN OF TULARE
COUNTY TAX COLLECTOR
7-15-16 [[31](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include security interest or judicial lien*, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other

legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

7.	16-10422 -A-7	MANUEL/GUILLERMINA	MOTION TO AVOID LIEN OF TULARE
	TOG-4	BUSTAMANTE	COUNTY TAX COLLECTOR
	MANUEL BUSTAMANTE/MV		7-20-16 [37]
	THOMAS GILLIS/Atty. for dbt.		

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include*

security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and they specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In

other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

8.	<u>16-10422</u> -A-7 MANUEL/GUILLERMINA TOG-5 BUSTAMANTE MANUEL BUSTAMANTE/MV THOMAS GILLIS/Atty. for dbt.	MOTION TO AVOID LIEN OF TULARE COUNTY TAX COLLECTOR 7-20-16 [43]
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Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include security interest or judicial lien*, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections

2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

9. 16-10422-A-7 MANUEL/GUILLERMINA MOTION TO AVOID LIEN OF TULARE
 TOG-6 BUSTAMANTE COUNTY TAX COLLECTOR
 MANUEL BUSTAMANTE/MV 7-20-16 [[49](#)]
 THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include security interest or judicial lien*, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These

sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

10.	16-10422 -A-7	MANUEL/GUILLERMINA	MOTION TO AVOID LIEN OF TULARE
	TOG-7	BUSTAMANTE	COUNTY TAX COLLECTOR
	MANUEL BUSTAMANTE/MV		7-20-16 [55]
	THOMAS GILLIS/Atty. for dbt.		

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as

13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include security interest or judicial lien*, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

11. [16-10422](#)-A-7 MANUEL/GUILLERMINA
TOG-8 BUSTAMANTE
MANUEL BUSTAMANTE/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO AVOID LIEN OF TULARE
COUNTY TAX COLLECTOR
7-20-16 [[61](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include security interest or judicial lien*, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other

legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and the specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

12.	16-10422 -A-7	MANUEL/GUILLERMINA	MOTION TO AVOID LIEN OF TULARE
	TOG-9	BUSTAMANTE	COUNTY TAX COLLECTOR
	MANUEL BUSTAMANTE/MV		7-20-16 [67]
	THOMAS GILLIS/Atty. for dbt.		

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

BACKGROUND

The motion requests avoidance of a tax lien of Tulare County Tax Collector on real property owned by the debtors commonly known as 13630 Avenue 336, Visalia, CA. The exhibits include a certificate of lien filed by the tax collector. This certificate references the California statutes, section 2191.3 and 2191.4 of the Revenue and Taxation Code.

The certificate of lien further certifies that delinquent personal property taxes are on record in the tax collector's office. It also provides: "From the time of recordation of this certificate, this lien has the force, effect and priority of a judgement [sic] lien for a period of ten years or any extension [sic] thereof."

While the motion uses the term judicial lien to describe the lien of the respondent, and references an abstract of judgment, no abstract of judgment is included in the exhibits.

SECTION 522(f) LIEN AVOIDANCE

Types of Liens Avoidable under § 522(f)

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). Under § 522(f), the only types of liens that may be avoided are (1) judicial liens (other than liens securing debts specified in § 523(a)(5)), or (2) non-possessory, non-purchase-money security interests.

The term *judicial lien* is defined in § 101 of the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36). The term *statutory lien* is also defined in § 101 of the Code as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, *but does not include*

security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." *Id.* § 101(53) (emphasis added). The Code expressly excludes judicial liens, therefore, from the definition of statutory liens, making them mutually exclusive. *Id.*

"The Bankruptcy Code recognizes three types of liens: judicial, statutory, and consensual. As it is clear that the City's lien was not created consensually, it is either judicial or statutory. A judicial lien is 'obtained by judgment, levy, sequestration or other legal or equitable process or proceeding.' But there was no legal process or proceeding in this case. Those terms inherently relate to court procedures or perhaps similar administrative proceedings." *Graffen v. City of Philadelphia*, 984 F.2d 91, 96 (3d Cir. 1992) (citations omitted).

The court notes that administrative proceedings giving rise to a lien must be "similar" to court procedures to qualify as creating a judicial lien. In *Graffen*, the court of appeals rejected the contention that a water lien that was a judicial lien that could be avoided by the debtors under § 522(f) and reasoned that "the Water Department *administratively* determined the amount of the lien." *Id.* (emphasis added). Thus, the mere existence of an administrative action giving rise to a lien is not sufficient to create a "judicial lien" when that action is not part of a process similar to a judicial process.

Respondent's Tax Lien

In this case, the lien of the respondent is a statutory lien for delinquent personal property taxes. No evidence has been offered that the lien is in any way judicial in nature, i.e., created through court proceedings, or administrative proceedings that are similar to court proceedings.

Sections 2191.3 and 2191.4 of the California Revenue and Taxation Code are the state statutes referenced in the certificate of lien. These sections indicate that the lien is not a judicial lien, but a statutory lien. Section 2191.4 specifies that "[f]rom the time of filing the certificate for record pursuant to Section 2191.3, the amount required to be paid together with interest and penalty constitutes a lien upon all personal and real property in the county owned by and then assessed to and in the same name as the assessee named in the certificate or acquired by him or her in that name before the lien expires" Cal. Rev. & Tax. Code § 2191.4.

The respondent's tax lien constitutes a lien arising solely by force of a statute on specified circumstances or conditions. Sections 2191.3 and 2191.4 of the Revenue and Taxation Code provide the conditions under which a filing for record in the office of the county recorder may be made by the tax collector, and they specify the circumstances under which the certificate filed constitutes a lien upon personal and real property of the assessee named in the certificate. The lien is plainly given its validity, force and effect solely by a statute. Therefore, the respondent's lien is not a judicial lien that is avoidable under § 522(f).

Section 522(c)(2)(B), moreover, makes plain that exempt property remains subject to tax liens, notice of which is properly filed. In

other words, § 522(f) does not alter the specific rule that exempt property is always liable for tax liens. "In short, it is pellucid that property exempted from the estate remains subject to tax liens. Congress could hardly have been more direct in declaring that result." *In re DeMarah*, 62 F.3d 1248, 1251 (9th Cir. 1995).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a lien has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The respondent's lien is a statutory lien, which is not the type of lien that may be avoided under section 522(f).

13. [07-12925](#)-A-7 TIMOTHY/JOANNE KUBELKA CONTINUED MOTION TO SUSPEND
MRE-1 PROCEEDINGS
LEANNA GERRITSEN/MV 4-26-16 [[124](#)]
STEVEN STANLEY/Atty. for dbt.
MARSHALL WHITNEY/Atty. for mv.
OPPOSITION

No tentative ruling.

14. [07-12925](#)-A-7 TIMOTHY/JOANNE KUBELKA CONTINUED PRE-TRIAL CONFERENCE
MRE-1 RE: MOTION FOR CONTEMPT AND/OR
TIMOTHY KUBELKA/MV MOTION TO DISMISS CIVIL
COLLECTION ACTION , MOTION FOR
SANCTIONS
11-18-15 [[74](#)]
STEVEN STANLEY/Atty. for dbt.
OPPOSITION

No tentative ruling.

15. [14-13225](#)-A-7 CARMEN RAMIREZ
JTW-2
JANZEN, TAMBERI, AND WONG/MV

SUSAN HEMB/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
7-20-16 [[98](#)]

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Janzen Tamberi & Wong, 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 \$1111.50 and reimbursement of expenses in the amount of \$16.17.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1111.50 and reimbursement of expenses in the amount of \$16.17.

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.

16. [16-12029](#)-A-7 JESSICA DIAZ
JES-1
JAMES SALVEN/MV

MOTION TO RECONSIDER
7-18-16 [[16](#)]

Tentative Ruling

Motion: Rule 60(b) Relief from Order Granting Application for Waiver of Chapter 7 Filing Fee

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

Disposition: Denied

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).

DISCUSSION

Chapter 7 trustee, James E. Salven, moves to vacate the order granting the debtor's application for waiver of the chapter 7 filing fee. In that application the debtor represented (1) her family size was 5; (2) income was \$2,200.00 per month; and (3) the debtor was otherwise unable to pay the filing fee in installments. As of the date of the petition, the Office of Management and Budget defined 150% of the poverty line of that size to be \$3,555.00 per month. Based on those representations, the court granted that the fee waiver. Salven contends that order granting the in forma pauperis fee waiver should be vacated because (1) the debtor had \$314 in the bank (apparent remnants of a \$4,964 received two months before the petition) on the date of the petition, and (2) these funds are unnecessary for augment the debtor's monthly budget because Schedule J shows a positive cash flow of \$2 per month.

Rule 60(b) allows the court to relieve a party from an order for the following reasons (1) "mistake, inadvertence, surprise, or excusable neglect," (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)," or (3) fraud. Fed. R. Civ. P. 60(b)(1)-(3), *incorporated by* Fed. R. Bankr. P. 9024; see also, Rule 9023 (requiring motions for a new trial not later than 14 days after judgment). Such a motion must be no later than one year after the order from which relief is sought. Fed. R. Civ. P. 60(c)(1), *incorporated by* Fed. R. Bankr. P. 9024.

In forma pauperis fee waivers are governed by 28 U.S.C. § 1930(f). That section authorizes the court to waive fees for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line...applicable to a family of the size involved"; and (2)

who is otherwise unable to pay the filing fee in installments. The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

Here, the trustee has not made a prima facie showing of entitlement to relief for two reasons. First, accepting the pleadings on their face, the filing fee is \$335 and \$314 in the bank plus payments of \$2 per month is insufficient to pay the remaining balance. Second, and more importantly, the court believes that the debtor has inadvertently understated (probably inadvertently) her monthly expenses such that the last \$314 of the tax refund is necessary for living expenses. The debtor is filed her petition pro se and may not fully appreciate her financial situation. The debtor is a family of five (including the debtor and four minor children) with gross income of \$2,200. Schedule J does not include expenses for (1) children's education expenses; (2) personal care products; (3) medical or dental expenses; (4) entertainment; or (5) insurance. But the court believes that the debtor probably does incur these expenses. Also the debtor's monthly transportation expense of \$100 appears to understate that expense. The motion will be denied.

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 motion to vacate the order granting debtor's application for waiver of the chapter 7 filing fee 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 motion is denied.

17. 16-11431 -A-7 BRUCE/SUSAN GROVES UST-1 TRACY DAVIS/MV VINCENT GORSKI/Atty. for dbt. ROBIN TUBESING/Atty. for mv. NON-OPPOSITION	MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 7-20-16 [15]
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Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

The U.S. Trustee argues that the presumption of abuse is established and the case should be dismissed. The debtor has filed a non-opposition to the relief requested. The court will therefore grant the motion given the non-opposition to the relief sought.

18. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-15
TRUDI MANFREDO/MV

MOTION TO SELL AND/OR MOTION TO
CARVE-OUT WITH BANK OF THE WEST,
MOTION FOR PAYMENT OF REAL
ESTATE BROKER'S COMMISSIONS
(731 EAST RIVER PROPERTY)
8-3-16 [[373](#)]

JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 731 East River Avenue, Porterville, CA (APNs: 261-270-020, 261-270-007, 261-270-019)

Buyer: Sukhjinder S. Gill

Sale Price: \$335,000

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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE

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.

BROKER'S COMMISSION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed

under § 327 and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

CARVE-OUT

“A carve-out agreement is generally understood to be an agreement by a party secured by all or some of the assets of the estate to allow some portion of its lien proceeds to be paid to others, i.e., to carve out its lien position.” *In re KVN Corp., Inc.*, 514 B.R. 1, 6 (B.A.P. 9th Cir. 2014) (internal quotation marks omitted) (quoting and citing cases). In deciding *In re KVN Corp.*, The bankruptcy appellate panel in this circuit presented an analytical framework for a court’s analysis of a trustee’s sale of fully encumbered collateral that is made subject to a carve-out agreement between the trustee and a lienholder. *Id.* at 3-6.

The starting point is the rule that “[a] sale of a fully encumbered asset is generally prohibited.” *Id.* at 5. But this is not a per se rule. *Id.* at 6. “[T]rustees may seek to justify the sale through a negotiated carve-out agreement with the secured creditor.” *Id.*

“To rebut the presumption [of impropriety arising from a sale of a fully encumbered asset], the case law directs the following inquiry: [1] Has the trustee fulfilled his or her basic duties? [2] Is there a benefit to the estate; i.e., prospects for a meaningful distribution to unsecured creditors? [3] Have the terms of the carve-out agreement been fully disclosed to the bankruptcy court? If the answer to these questions is in the affirmative, then the presumption of impropriety can be overcome.” *Id.* at 8.

The trustee has fulfilled her basic duties by investigating the property to be sold, determining how the property is held (in a self-settled trust), reviewing the preliminary title report to determine all valid liens against the property, hiring a broker to market and sell the property, and performing a tax analysis. The estate plainly benefits from the sale. And the terms of the carve-out have been disclosed. Finally, Bank of the West has consented to the carve-out agreement.

19.	16-11245 -A-7	SERGIO/STACY MARTINEZ	MOTION FOR RELIEF FROM
	JHW-1		AUTOMATIC STAY
	TD AUTO FINANCE LLC/MV		7-21-16 [54]
	TIMOTHY SPRINGER/Atty. for dbt.		
	JENNIFER WANG/Atty. for mv.		

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2013 Chevrolet Silverado 1500

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).

"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. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, 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 Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

Here, the equity cushion is 4% of the collateral's value. Payments are not being made to movant sufficient to protect movant's interest in the decline in the collateral's value, as the loan account secured by the collateral was charged off on 12/30/2015. This is 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.

TD Auto Finance 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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2013 Chevrolet Silverado 1500, 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.

20.	<u>16-11245</u> -A-7 SERGIO/STACY MARTINEZ KAZ-1 BANK OF AMERICA, N.A./MV TIMOTHY SPRINGER/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-27-16 [<u>61</u>]
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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: 5916 West Robinson Avenue, Fresno, 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

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 3 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.

Bank of America, 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 with respect to the property described in the motion, commonly known as 5916 West Robinson Avenue, Fresno, 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.

21. [16-10246](#)-A-7 ROBIN VANTASSEL
ETL-1
WELLS FARGO BANK, N.A./MV
ERICA LOFTIS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-21-16 [[48](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1017 Trinity Ave., Chowchilla, 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.

Wells Fargo 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 with respect to the property described in the motion, commonly known as 1017 Trinity Ave., Chowchilla, 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.

22. [12-60549](#)-A-7 MARIBEL TAMEZ
PFT-3
PETER FEAR/MV

STEPHEN LABIAK/Atty. for dbt.
PETER FEAR/Atty. for mv.

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARIBEL TAMEZ
4-19-16 [[38](#)]

No tentative ruling.

23. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-3
GROSS MORTGAGE CORPORATION/MV

PRETRIAL CONFERENCE OBJECTION
TO CLAIM OF ERNSTER LAW
OFFICES: JOHN H. ERNSTER, CLAIM
NUMBER 13
5-12-16 [[303](#)]

LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
ORDER #350, OPPOSITION

No tentative ruling.

24. [15-11256](#)-B-7 SUPASIRI/SHAUNA
SJS-4 SIRAYANONE
SUPASIRI SIRAYANONE/MV

RESCHEDULED HEARING RE: MOTION
FOR VIOLATION OF THE DISCHARGE
INJUNCTION
6-20-16 [[42](#)]

SCOTT SAGARIA/Atty. for dbt.
ORDER TRANSFERRING #58,
OPPOSITIONS

Tentative Ruling

Motion: Contempt for Violation of the Discharge Injunction

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following acts that the debtors contend support a violation of the discharge injunction: (1) prosecution of a collection action through judgment in *United Credit Corp. of New Iberia v. Sayer*, No. 39768-SCB (New Iberia City Court, Parish of Iberia, Louisiana 2015); (2) garnishments of Shauna Sirayanone's wages; and (3) retention of funds, if any, by United Credit of New Iberia, or its agents, after notification of the bankruptcy.

This motion poses murky legal issues. It appears that United Credit of New Iberia was not scheduled in the petition (and that United Credit did not otherwise know of the filing) and the case closed as a no asset chapter 7. If true, any debt due United Credit was discharged, if not of the species described in 11 U.S.C. § 523(a)(2), (4), (6). 11 U.S.C. § 523(a)(3)(B); *In re Nielsen*, 393 F.3d 922 (9th Cir. 2004) (declining to apply 11 U.S.C. § 523(a)(3)(A) in no asset cases). Insofar as the court is aware, there has never been a determination as to whether New Credit's debt falls within 11 U.S.C. § 523(a)(3)(B).

In light of the unsettled question of whether United Credit's debt was, in fact, discharged, the parties are requested to consider whether (1) United Credit knew of the discharge injunction and knew that its debt was subject to the discharge injunction; and (2) given the lack of notice, whether United Credit's actions actually violated the discharge injunction. *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 287-88 (9th Cir. BAP 2016); *Desert Pine Villas Homeowners Ass'n*

v. Kabiling (In re Kabiling), 551 B.R. 440,444-45 (9th Cir. 2016).

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

25. [15-14060](#)-A-7 MARYLOU HERNANDEZ
APN-1
WELLS FARGO BANK, N.A./MV
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-19-16 [[32](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied as moot in part

Order: Civil minute order

Subject: 2008 Nissan Altima

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).

Inadequate Protection

"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. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, 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 Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

Here, the equity cushion is only 8% of the property's fair market value. This is inadequate protection given that the nature of the collateral, a vehicle, is known to depreciate significantly over time. This constitutes cause for stay relief.

Missed Postpetition Payments

"[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 also constitutes cause for stay relief.

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 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 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 a 2008 Nissan Altima. 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. [16-11562](#)-A-7 MARK BISPO
EGS-1
GUILD MORTGAGE COMPANY/MV
R. BELL/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-26-16 [[17](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 10606 Avenida Frasca Drive, Bakersfield, CA

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

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective

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

CIVIL MINUTE ORDER

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

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

Guild Mortgage Company'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 10606 Avenida Frasca Drive, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

27. [16-12364](#)-A-7 MARTIN GALVAN
HDN-2
MARTIN GALVAN/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
8-4-16 [[38](#)]

No tentative ruling.

28. [16-11967](#)-A-7 RALPH DELANO
AP-1
PNC BANK, NATIONAL
ASSOCIATION/MV
MICHAEL ARNOLD/Atty. for dbt.
ALEXANDER LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-14-16 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 4875 N. Backer Avenue Unit 169, Fresno, 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.

PNC Bank, National Association'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 4875 N. Backer Avenue Unit 169, Fresno, 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.

29. [16-10469](#)-A-7 JEFFREY BOHN
JES-2
JAMES SALVEN/MV

MOTION TO EMPLOY JEFFERY S.
BAIRD AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
7-19-16 [[61](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Personal property described in the notice of hearing

Sale Type: Public auction

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

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

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

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

30. [12-18573](#)-A-7 BRAZILLIAN BBQ, INC.
JES-2
PETER FEAR/MV
RANDY RISNER/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
7-20-16 [[61](#)]

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 \$1500.00 and reimbursement of expenses in the amount of \$465.13.

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 \$1500.00 and reimbursement of expenses in the amount of \$465.13.

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.

31. [12-18573](#)-A-7 BRAZILLIAN BBQ, INC. MOTION FOR ADMINISTRATIVE
PFT-3 EXPENSES
PETER FEAR/MV 7-27-16 [[70](#)]
RANDY RISNER/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

Order: Civil minute order

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

ALLOWANCE OF ADMINISTRATIVE EXPENSE

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court allows \$822.00 (FTB 2013), \$822.00 (FTB 2014), \$822.00 (FTB 2015), and \$822.00 (FTB 2016) as an administrative expense under 11 U.S.C. § 503(b)(1)(B). The court also authorizes payment of any penalty assessed by the FTB up to 50% of the above amounts owed.

32. [15-13379](#)-A-7 SERGIO/LISA PEREZ
RWR-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF COLEMAN &
HOROWITT, LLP FOR RUSSELL W.
REYNOLDS, TRUSTEES ATTORNEY(S)
7-20-16 [\[42\]](#)

EDDIE RUIZ/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

Given that the party named in the employment order is Coleman & Horowitt, LLP, the court will not allow fees and costs to attorney named in the application. However, the court will deem the application to have named Coleman & Horowitt, LLP as the applicant.

In this Chapter 7 case, Coleman & Horowitt, LLP (the party named in the employment order), 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 \$4740 and reimbursement of expenses in the amount of \$144.79.

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.

Coleman & Horowitz, LLP'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 \$4740.00 and reimbursement of expenses in the amount of \$144.79.

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.

33. [16-11479](#)-A-7 LEAH MEUX
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-5-16 [[20](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for September 6, 2016, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

34.	16-12089 -A-7 EDUARDO/SANDRA REYES APN-1 FORD MOTOR CREDIT COMPANY/MV THOMAS ARMSTRONG/Atty. for dbt. AUSTIN NAGEL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-13-16 [14]
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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: 2014 Ford Explorer

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 movant is in possession of the vehicle. And debtors have not opposed the relief sought.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Ford Explorer, 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.

35. [16-12090](#)-A-7 CARMEN LEMUS HERNANDEZ MOTION TO RECONSIDER
JES-1 7-18-16 [[18](#)]
JAMES SALVEN/MV

Final Ruling

Motion: Rule 60(b) Relief from Order Granting Application for Waiver of Chapter 7 Filing Fee

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).

DISCUSSION

Chapter 7 trustee, James E. Salven, moves to vacate the order granting the debtor's application for waiver of the chapter 7 filing fee. In that application the debtor represented (1) her family size was one; (2) income was \$900 per month; and (3) the debtor was otherwise unable to pay the filing fee in installments. As of the date of the petition, the Office of Management and Budget defined 150% of the poverty line of that size to be \$1,485.00 per month. Based on those representations, the court granted that the fee waiver. The gist of trustee's Salven's argument is that (1) the debtor has undisclosed income of \$250, which he learned of at the meeting of creditors, (2) thought adding the undisclosed income to that in her application to proceed in forma pauperis, the debtor is still below the 150% of the poverty line, and (3) adding the undisclosed income to Line 23c of Schedule J results in results in a positive \$152 per month, which could be used to pay the filing fee in installments. The court agrees and the motion will be granted.

Rule 60(b) allows the court to relieve a party from an order for the following reasons (1) "mistake, inadvertence, surprise, or excusable neglect," (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)," or (3) fraud. Fed. R. Civ. P. 60(b)(1)-(3), *incorporated by* Fed. R. Bankr. P. 9024; see also, Rule 9023 (requiring motions for a new trial not later than 14 days after judgment). Such a motion must be no later than one year after the order from which relief is sought. Fed. R. Civ. P. 60(c)(1), *incorporated by* Fed. R. Bankr. P. 9024.

In forma pauperis fee waivers are governed by 28 U.S.C. § 1930(f). That section authorizes the court to waive fees for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line...applicable to a family of the size involved"; and (2) who is otherwise unable to pay the filing fee in installments. The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

Here, the trustee has made a prima facie showing of entitlement to relief. At the meeting of creditors the trustee learned that had undisclosed income of \$250 per month. This information demonstrates that debtor has positive cash flow of \$152 per month and, therefore, has sufficient ability to pay the fee in installments. The trustee learned of that income occurred more than 14 days but less than one year after the court entered an order approving the fee waiver. Because the debtor's application for waiver of the chapter 7 filing fee, as well as petition, schedules and statements, suggest the true state of the facts to be otherwise, and because the trustee's first, and usually only, opportunity to examine the debtor is the meeting of creditors, the trustee did not know, and couldn't not have reasonably discovered, these facts within 14 days of the date the court granted the fee waiver. The motion will be granted.

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 motion to vacate the order granting debtor's application for waiver of the chapter 7 filing fee 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: (1) the motion application is granted; (2) debtor's Order on Debtor(s)'s Application for Wavier of the Chapter 7 Filing Fee, June 10, 2016, ECF 10 is vacated; (3) the Clerk of the Court issue an order allowing payment of the filing fee in installments and establishing a schedule for the debtor to do so; and (4) if the debtor does not pay the filing fee, the Clerk may close the case without issuing a discharge, Fed. R. Bankr. P. 4004(c)(1)(G).

36. [15-14523](#)-A-7 KATYE SHOCKLEY
BN-1
THE GOLDEN 1 CREDIT UNION/MV
NEIL SCHWARTZ/Atty. for dbt.
VALERIE PEO/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-9-16 [[19](#)]

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 motion was not served on the debtor.

37. [15-11835](#)-A-7 JAMES/JAMIE CANNON
KDG-24
RANDELL PARKER/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
8-11-16 [[560](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.
OST 8/11/16

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, Klein DeNatale, 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 \$40,323.00 and reimbursement of expenses in the amount of \$2,204.60. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Klein DeNatale'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 \$40,323.00 and reimbursement of expenses in the amount of \$2,204.60. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

38. [15-11835](#)-A-7 JAMES/JAMIE CANNON MOTION TO COMPEL
KDG-25 8-10-16 [[554](#)]
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

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

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

Disposition: Granted in part, denied in part

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). 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).

TURNOVER OF PROPERTY

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

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to

turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." Id. § 521(a)(4).

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

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover (a motorcycle, a truck, and a boat). The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

ACCESS TO REAL PROPERTY IN IDAHO

The trustee requests that the court authorize the trustee, or his agents, to access the real property located at 1134 W. Galloway, Wesier, Idaho. The trustee's motion does not provide sufficient authority for court granting such relief. The court will accordingly deny this relief.