

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: SEPTEMBER 9, 2015**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**GENERAL DESIGNATIONS**

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

**COURT'S ERRORS IN FINAL RULINGS**

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

1.     [15-12910](#)-A-7       ANNETTE STEVENS-ESCALERA             MOTION FOR WAIVER OF THE  
  CHAPTER 7 FILING FEE  
  
ANNETTE STEVENS-ESCALERA/MV                               7-24-15 [[5](#)]  
SCOTT LYONS/Atty. for dbt.

## Final Ruling

**Application:** Waiver of 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).

**WAIVER OF FILING FEE**

Title 28 U.S.C. § 1930(f)(1) 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 debtor contends that she paid her attorney a \$1,000 fee. Her application for a fee waiver claims income of \$1,226.00 and expenses of \$880. But Schedules I and J (filed the same date as the application for fee waiver) show income of \$1,226.00 and expenses of \$1,248.00. This is problematic in two respects. Initially, the debtor has on the same date represented two inconsistent versions of the facts. And beyond that accepting Schedules I and J, payment of attorney fees of \$1,000 does not logically follow from a debtor with negative disposable income. The court offered the debtor an opportunity to file a further supporting declaration. Scheduling Order, July 24, 2015, ECF # 7. No declaration has been filed.

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.

Annette Rene Steven-Escalera's application for waiver of 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 application is denied; (2) the filing fee is not waived; and (3) the Clerk of the Court will issue an order for payment of the filing fee in installments.

2. [14-10911](#)-A-7 LITCONN, INC.  
JRL-1  
LITCONN, INC./MV  
JERRY LOWE/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
7-28-15 [[43](#)]

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted only as to such business assets described in the motion

**Order:** Prepared by moving party consistent with the ruling below

**Business Assets:** All personal property of the estate listed on the UCC-1 filed by Citibank, N.A. on November 30, 2007 that is also listed on Schedule B

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).

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. The motion asserts that Cadles of Grassy Meadows II, LLC is secured on over \$2.5 million of judgment debt against all personal property of the debtor that is now property of the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

3. [14-13624](#)-A-7 VINCENT/KATINA LATHAM MOTION FOR RELIEF FROM  
AP-1 AUTOMATIC STAY  
JPMORGAN CHASE BANK, NATIONAL 7-27-15 [[18](#)]  
ASSOCIATION/MV  
MARIO LANGONE/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 178 West Meadow Lane, Kingsburg, California

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

**AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

**AS TO ESTATE**

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

4. [15-11535](#)-A-7 JOHN HALOPOFF  
AP-1  
PROVIDENT FUNDING ASSOCIATES,  
L.P./MV  
JUSTIN HARRIS/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-7-15 [[129](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 15732 Orchard Way, Kerman, California

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

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.

5. [15-11835](#)-A-7 JAMES/JAMIE CANNON  
KDG-1  
RANDELL PARKER/MV

MOTION TO EMPLOY KLEIN,  
DENATALE, GOLDNER, COOPER,  
ROSENLIEB & KIMBALL, LLP AS  
ATTORNEY(S)  
8-26-15 [[95](#)]

ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by moving party

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

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

6. [14-13458](#)-A-7 PEDRO ESPINOZA AND MARIA MOTION TO SELL  
RHT-2 BLANCO 8-11-15 [[21](#)]  
ROBERT HAWKINS/MV  
THOMAS GILLIS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1979 Ford Pickup truck

**Buyer:** Debtors

**Sale Price:** \$750 cash

**Sale Type:** Private sale subject to overbid opportunity

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

7. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED STATUS CONFERENCE RE:  
[15-1017](#) CALIFORNIA CORPORATION COMPLAINT  
OAKHURST LODGE, INC. V. 2-11-15 [[1](#)]  
FIRST-CITIZENS BANK & TRUST  
DONNA STANDARD/Atty. for pl.

[This matter will be called on the 10:00 a.m. Chapter 7 adversary proceeding calendar.]

**No tentative ruling.**

8. [11-17165](#)-A-7 OAKHURST LODGE, INC., A MOTION TO DISMISS  
[15-1017](#) CALIFORNIA CORPORATION FIRST-CITIZENS BANK & TRUST  
FCB-1 COMPANY  
OAKHURST LODGE, INC. V. 8-6-15 [[24](#)]  
FIRST-CITIZENS BANK & TRUST  
AARON MALO/Atty. for mv.  
NON-OPPOSITION

*[This matter will be called on the 10:00 a.m. Chapter 7 adversary proceeding calendar.]*

**No tentative ruling.**

9. [12-13067](#)-A-7 MICHAEL JOHANNES CONTINUED MOTION TO COMPROMISE  
THA-5 CONTROVERSY/APPROVE SETTLEMENT  
TRUDI MANFREDO/MV AGREEMENT WITH MICHAEL THOMAS  
JOHANNES , MOTION FOR  
COMPENSATION FOR STEPHEN DANZ &  
ASSOCIATES, SPECIAL COUNSEL(S)  
6-1-15 [[71](#)]  
JERRY LOWE/Atty. for dbt.  
THOMAS ARMSTRONG/Atty. for mv.

### **Final Ruling**

**Matter:** (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

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

**Disposition:** (1) Motion to approve compromise granted; and (2) Application for compensation and expense reimbursement 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 motion and application 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).

### **COMPROMISE**

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

creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

#### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, John C. Fowler, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$48,000.00 and reimbursement of expenses in the amount of \$10,759.08.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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.

Trudi Manfredo's motion to approve the present compromise and application for allowance of final compensation and reimbursement of expenses have 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 to approve the present compromise litigation with Salson Logistics, Inc., Salson, Inc. and The Gap, Inc., for \$120,000 and under the terms specified in the Settlement Agreement and General Release of Claims (Exhibit A, filed June 1,



2015, ECF # 77) is granted and the application for compensation and reimbursement of expenses is approved on a final basis. The court allows final compensation in the amount of \$48,000.00 and reimbursement of expenses in the amount of \$10,759.08. Said amount, \$58,759.08, shall be allocated to the estate \$24,238.12 and to the debtor for pre-petition claims and post-petition claims \$34,520.96

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.

10. [15-12671](#)-A-7 MITCHELL/CINDY BROOKS MOTION FOR RELIEF FROM  
PPR-1 AUTOMATIC STAY  
BANK OF AMERICA, N.A./MV 7-27-15 [[19](#)]  
ASYA LANDA/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1529 South burke Street, Visalia, California

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

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.

11. [15-12972](#)-A-7 JONATHAN CLAGUE  
FLG-1  
JONATHAN CLAGUE/MV  
PETER FEAR/Atty. for dbt.

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

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Disposition:** Continued to September 23, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2)

**Order:** Civil minute order

Previously, this matter was continued because all creditors and parties in interest had not received notice of the motion. A supplemental proof of service has been filed. The proof states that service was made August 7, 2015.

The service date precedes (by 12 days) the date of the hearing at which the court found the original service of the motion to be deficient. Further, the computer-generated court mailing matrix shows a date of August 24, 2015. The court prefers that the computer-generated date on the attached mailing matrix pre-date the actual date of service.

The court will continue the hearing again to the date indicate above. This will allow a further supplemental proof of service to be filed along with a notice of continued hearing.

12. [15-12574](#)-A-7 GLORIA RODRIGUEZ  
GGL-1  
GLORIA RODRIGUEZ/MV  
GEORGE LOGAN/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
8-25-15 [[15](#)]

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted only as to the business and such business assets described in the motion

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

**Business Description:** Gloria's Daycare (assets including real and personal property used in that business and 2 vehicles)

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

13. [14-14376](#)-A-7     JOE PEREZ  
TGM-4

MOTION FOR COMPENSATION FOR  
TRUDI G. MANFREDO, TRUSTEES  
ATTORNEY(S)  
8-7-15 [[130](#)]

ASHTON DUNN/Atty. for dbt.

### **Final Ruling**

**Application:** Allowance of First and 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, Trudi G. Manfredo, 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 \$32,955.50 and reimbursement of expenses in the amount of \$541.24.

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.

Trudi G. Manfredo's application for allowance of first and 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 \$32,955.50 and reimbursement of expenses in the amount of \$541.24.

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

14.	<a href="#">15-12382</a> -A-7	PARAMJIT/SURINDERPAL	MOTION FOR RELIEF FROM
	MMW-1	BARRING	AUTOMATIC STAY
	PACIFIC WESTERN BANK/MV		8-20-15 [ <a href="#">30</a> ]
	SUSAN HEMB/Atty. for dbt.		
	MICHAEL WINTRINGER/Atty. for mv.		

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 6012 South Elm 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). 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 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.

15. [15-11283](#)-A-7 GLORIA ESTILLORE  
GAE-1  
GLORIA ESTILLORE/MV  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
8-12-15 [[83](#)]

**No tentative ruling.**

16. [15-11287](#)-A-7 JOSE/GLORIA RAMIREZ  
TMT-1  
TRUDI MANFREDO/MV  
NOEL KNIGHT/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
7-17-15 [[36](#)]

### **Final Ruling**

**Objection:** Objection to Claim of Exemption in Vehicle

**Notice:** LBR 9014-1(f) (1) / LBR 3007-1(b) (1); written opposition  
required

**Disposition:** Sustained

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **EXEMPTION IN A VEHICLE AS A TOOL OF THE TRADE**

A debtor may claim a vehicle other than a commercial vehicle as a tool of the trade. *In re Rawn*, 199 B.R. 733, 735-36 (Bankr. E.D. Cal. 1996) (Ford, J.); *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 577-78 (Cal. Ct. App. 1979) (interpreting prior but similar iteration of the statute to permit a real estate agent to claim an exemption in a vehicle as a "tool" or "implement" even though the vehicle did not qualify as a commercial motor vehicle).

The exemption statute also makes plain that a vehicle claimed exempt as a tool of the trade must be "reasonably necessary to and actually used by" the debtor or the debtor's spouse, or by both of them. Cal. Civ. Proc. Code § 704.060(a) (1)-(3). Furthermore, such vehicle must be reasonable necessary to and actually used "in the exercise of the trade, business, or profession by which the [the debtor or the debtor's spouse] earns a livelihood." Cal. Civ. Proc. Code § 704.060.

The bankruptcy court in *In re Rawn* considered whether the vehicle would qualify as a tool of the trade under section 704.060 of the California Code of Civil Procedure. *In re Rawn*, 199 B.R. at 734-36. The court found that the vehicle was not a tool of the trade because the debtors "offered no evidence that the vehicle is a necessary tool of [joint debtor's] trade." *Id.* at 736. "The mere fact that he is required to supply his own transportation in order to commute to and

from work is not, in and of itself, necessary to the execution of his trade." *Id.*

In this case, the debtor has claimed a 2003 Ford Explorer exempt under Cal. Civ. Proc. Code 704.060 in the amount of \$5000. The trustee objects, arguing that there is no basis for claiming this vehicle exempt under this provision. The debtor is not self-employed and his employment is tomato picking and processing. The debtors also answered Question No. 18a. in the negative on the Statement of Financial Affairs. The debtors Schedule I shows no self-employment income, and the debtors 2014 tax returns show no self-employment income.

The use of a vehicle as transportation does not suffice for claiming it as a tool of the trade. Further, the debtor's Schedule C offers no indication that the vehicle is used as a commercial vehicle. Accordingly, the objection will be sustained.

#### **COMPLIANCE WITH RULE 9037**

The tax returns attached as an exhibit reveal personal social security numbers even though a good faith attempt has been made at redaction. These numbers appear through the redaction. The person shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than September 16, 2015. A redacted copy of any restricted, sealed documents will be filed to replace the documents restricted and sealed.

#### **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 objection to the debtors' claim of exemption in a 2003 Ford Explorer has been presented to the court. Having entered the default of respondent debtors for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained.

IT IS FURTHER ORDERED that the movant shall file an ex parte application to seal and restrict public access to the exhibits, and any other documents containing confidential means of identification, under § 107(c)(1) and Rule 9037(c) or (d) no later than September 16, 2015.

17. [14-15988](#)-A-7     DALE/CATHLEEN BELLISOMI     MOTION FOR RELIEF FROM  
PPR-1     AUTOMATIC STAY  
U.S. BANK NATIONAL     8-4-15 [[27](#)]  
ASSOCIATION/MV  
SAMYEL GESHGIAN/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 463 South Whitney Avenue, Fresno, California

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

**AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

**AS TO ESTATE**

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

18. [15-12089](#)-A-7      FREDERICK/SARAH RICH      MOTION TO SELL  
JES-1      8-8-15 [[19](#)]  
JAMES SALVEN/MV  
TIMOTHY SPRINGER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **PROCEDURAL ISSUES**

The court will deny the motion on several procedural grounds. First, the notice does not state that the sale is subject to overbid at the hearing, a material term of the sale. The notice of a proposed private sale should contain all material terms and conditions of the sale. See Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); see also LBR 9014-1(d)(4). Conditioning a sale on the opportunity for higher and better bids is a material term of any private sale because it may substantially alter the price term and change the identity of the buyer. In the future, counsel should ensure that the notice of hearing contains all material terms and conditions of the sale.

Second, the motion also was not served on the debtors and the U.S. Trustee. Sale motions must be transmitted to the U.S. Trustee. Fed. R. Bankr. P. 9034(a). And it is appropriate to transmit the motion to the debtors. Fed. R. Bankr. P. 9013; LBR 9014-1(d)(5).

Third, the motion provides an aggregate price for both vehicles. Alternatively, the motion states the price for only one vehicle, the 2007 Toyota Camry (the price is listed only after the 2007 Camry). This makes the motion ambiguous on its face. Fed. R. Bankr. P. 9013.

The court prefers that such a sale motion separately identify each vehicle in the motion and separately state with particularity the price for that vehicle, rather than providing an aggregate price only along with an exemption credit that does not specifically apply to any vehicle. The motion should also make clear the vehicle to which the exemption credit applies.

### **CIVIL MINUTE ORDER**

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

The chapter 7 trustee James Salven's motion to sell property 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.



19. [15-11393](#)-A-7 LINDA CONOVER  
TMT-2  
TRUDI MANFREDO/MV  
JEFFREY ROWE/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL  
7-23-15 [[22](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2569 E. Gerard Ave., Merced, CA

**Buyer:** Letitia J. Harris

**Sale Price:** \$80,000

**Sale Type:** Private sale subject to overbid opportunity

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

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

20. [15-12696](#)-A-7 LAURENZO SWEATT AND  
TSC-1 REGINA BARRERA  
BANK OF AMERICA, N.A./MV  
THERON COVEY/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-3-15 [[22](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1821 Wigdal Avenue, Corcoran, California

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

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

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.

21. [15-11835](#)-A-7 JAMES/JAMIE CANNON  
KDG-3  
RANDELL PARKER/MV

MOTION TO AUTHORIZE TRUSTEE TO  
OPERATE BUSINESS ON INTERIM  
BASIS UNTIL JANUARY 15, 2016,  
EFFECTIVE AS OF AUGUST 13, 2015  
8-31-15 [[110](#)]

ROBERT WILLIAMS/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**No tentative ruling.**

22. [15-11835](#)-A-7 JAMES/JAMIE CANNON  
KDG-4  
RANDELL PARKER/MV

MOTION TO USE CASH COLLATERAL  
AND/OR MOTION FOR ADEQUATE  
PROTECTION  
8-31-15 [[119](#)]

ROBERT WILLIAMS/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**No tentative ruling.**