

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: SEPTEMBER 14, 2020
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-22605](#)-A-7 **IN RE: SEAN/VIVIAN BABOT**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS
7-29-2020 [[10](#)]

PATRICK RIAZI/ATTY. FOR DBT.
JARED DAY/ATTY. FOR MV.

Final Ruling

Motion: Approve Stipulation to Dismiss

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

Disposition: Granted

Order: Prepared by movant

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

The movant requests the court's approval of a stipulation to dismiss the Chapter 7 case without entry of discharge. Based on the facts presented in the motion, the court will approve it.

2. [19-27507](#)-A-7 **IN RE: KENNETH/LIELANIE STEERS**
[HSM-8](#)

MOTION TO ABANDON
8-31-2020 [[144](#)]

WALTER DAHL/ATTY. FOR DBT.
AARON AVERY/ATTY. FOR MV.

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: 2018 Mercedes GLS550, 2018 Mercedes E400A, 2002 Honda ESV Quad, 2002 Honda FourTrax, 2004 Kymko Quad, 2000 Suzuki 160 Quad, 1999 ATK 605 MB, 2004 Suzuki 400 MB, Carryon Utility Trailer; personal property assets listed on Detail Sheets for Schedule A/B Part3 No. 6-10, 12, except any items identified therein as built in/bolted down/part of house (i.e., fixtures at 4901 Trails End Road, Cameron Park (Shingle Springs) CA), and Game

Room/Man Cave items: 1) Brand New small refrigerator still in a box (install pending completion of mold restoration); 2) 1 Garbage Compactor still in a box (install pending completion of mold restoration); and, 3) Boxed up flooring (install pending completion of mold restoration)

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

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

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

3. [20-20707](#)-A-7 **IN RE: JESSE FOSTER**

MOTION TO TRANSFER CASE/PROCEEDING TO ANOTHER DISTRICT
8-31-2020 [[99](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/11/2020

No Ruling

4. [18-24923](#)-A-7 **IN RE: JACQUELINE JAMES**
[KJH-5](#)

MOTION FOR COMPENSATION FOR KIMBERLY HUSTED, CHAPTER 7
TRUSTEE(S)
8-10-2020 [[81](#)]

GARY FRALEY/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTOR DISCHARGED: 12/04/2018; JOINT DEBTOR DISCHARGED:
12/04/2018

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be

a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

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 application for allowance of 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 to the trustee compensation in the amount of \$7,000.00 and reimbursement of expenses in the amount of \$81.54.

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.

5. [14-26335](#)-A-7 **IN RE: MATAIASHI/CHRISTINE AHOKAVA**
[MAC-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
8-26-2020 [\[24\]](#)

MARC CARPENTER/ATTY. FOR DBT.
DEBTOR DISCHARGED: 10/06/2014; JOINT DEBTOR DISCHARGED:
10/06/2014

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Continued to November 16, 2020
Order: Civil Minute Order

INSUFFICIENT SERVICE

Service of the motion was insufficient. Service of the motion was not made by certified mail to Discover Bank. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

Prior to the indicated next hearing date, Movant shall serve motion and all supporting documents, and notice of continued hearing at least 28 days before continued hearing. Notice shall indicate that written opposition must be filed and served at least 14 days ahead.

CIVIL MINUTE ORDER

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

The hearing is continued to November 16, 2020 at 9 a.m. Movant shall serve motion and all supporting documents consistently with Rule 7004(h), and notice of continued hearing no later than October 19, 2020. Notice shall indicate that written opposition must be filed and served at least 14 days ahead. Opposition must be filed by November 2, 2020.

6. [14-26335](#)-A-7 **IN RE: MATAIASHI/CHRISTINE AHOKAVA**
[MAC-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
8-26-2020 [[30](#)]

MARC CARPENTER/ATTY. FOR DBT.
DEBTOR DISCHARGED: 10/06/2014; JOINT DEBTOR DISCHARGED:
10/06/2014

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued to November 16, 2020
Order: Prepared by moving party

CONTINUANCE

Other motions to avoid judicial liens on the same subject real property are being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the other lien-avoidance motions.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to November 19, 2020 at 9:00 a.m.

7. [19-22038](#)-A-7 **IN RE: GREGORY/MICHELLE STITT**
[BLF-7](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES
ATTORNEY(S)
8-6-2020 [[104](#)]

CHARLES HASTINGS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/06/2019; JOINT DEBTOR DISCHARGED:
08/06/2019

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, Bakken Law Firm, 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 \$25,920.00 and reimbursement of expenses in the amount of \$498.20.

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.

Bakken Law Firm'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 \$25,920.00 and reimbursement of expenses in the amount of \$498.20.

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

8. [19-22038](#)-A-7 **IN RE: GREGORY/MICHELLE STITT**
[BLF-8](#)

MOTION FOR COMPENSATION FOR MARIA T. STOCKMAN, ACCOUNTANT(S)
8-6-2020 [[110](#)]

CHARLES HASTINGS/ATTY. FOR DBT.

DEBTOR DISCHARGED: 08/06/2019; JOINT DEBTOR DISCHARGED:
08/06/2019

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, Maria T. Stokman, 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 \$3,100.00 and reimbursement of expenses in the amount of \$0.00.

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.

Maria T. Stokman'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 \$3,100.00 and reimbursement of expenses in the amount of \$0.00.

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.

9. [19-22038](#)-A-7 **IN RE: GREGORY/MICHELLE STITT**
[BLF-9](#)

MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7
TRUSTEE(S)
8-6-2020 [[116](#)]

CHARLES HASTINGS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/06/2019; JOINT DEBTOR DISCHARGED:
08/06/2019

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

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 application for allowance of 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 to the trustee compensation in the amount of \$17,566.67 and reimbursement of expenses in the amount of \$177.65.

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. [19-26640](#)-A-7 **IN RE: LEO/MELODY RAINWATER**
[DNL-3](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR CENTURY 21
SELECT REAL ESTATE, BROKER(S)
8-17-2020 [[45](#)]

GARY FRALEY/ATTY. FOR DBT.

J. CUNNINGHAM/ATTY. FOR MV.

DEBTOR DISCHARGED: 02/10/2020; JOINT DEBTOR DISCHARGED:
02/10/2020

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 5476 Mount Aukum Road, Placerville, CA 95667

Buyer: Jessica J. Montanino and Magdalena Herren

Sale Price: \$415,000.00

Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: Century 21 Select Real Estate

Compensation Requested: 6% commission (\$24,900.00) plus \$1,345.72 expenses

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.

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.

11. [19-26640](#)-A-7 **IN RE: LEO/MELODY RAINWATER**
[DNL-4](#)

MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANT(S)
8-17-2020 [\[51\]](#)

GARY FRALEY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISCHARGED: 02/10/2020; JOINT DEBTOR DISCHARGED:
02/10/2020

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by applicant

Unopposed applications 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 a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only 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. The court further authorizes payment of the amount specified in the application without further hearing or order.

12. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-16](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FLEET CONCEPTS, INC.
8-24-2020 [[1428](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

No Ruling

13. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-17](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INDUSTRIAL SCIENTIFIC CORPORATION
8-24-2020 [[1432](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

No Ruling

14. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-18](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SOS SECURITY, LLC
8-24-2020 [[1436](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

No Ruling

15. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-19](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CNE DIRECT, INC.
8-24-2020 [[1440](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

No Ruling

16. [20-23463](#)-A-7 **IN RE: DESIREE OLDEN**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-27-2020 [\[16\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
MICHAEL MYERS/ATTY. FOR MV.
THE GOLDEN 1 CREDIT UNION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Jeep Cherokee

Value of Collateral: \$9,506.00

Aggregate of Liens: \$14,617.71

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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 exceed the value of the collateral and the debtor has no equity in the property. As a consequence, 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.

The Golden 1 Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

17. [19-26964](#)-A-7 **IN RE: LYNN HARRINGTON**
[DNL-2](#)

MOTION TO SELL
8-17-2020 [[56](#)]

PETER MACALUSO/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

DEBTOR DISCHARGED: 03/02/2020; JOINT DEBTOR DISCHARGED:
03/02/2020

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Bankruptcy estate's interest in claims asserted by the Debtor in El Dorado County Superior Court Case #PC20160402 ("State Court Action")

Buyer: the debtor

Sale Price: \$50,800.00

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.

The court further approves the trustee's requested overbid procedures that require a proposed overbidder, prior to the hearing on this motion, to provide the trustee with a cashier's check in the amount of \$51,800.00 (\$50,800.00 + 1st overbid in the amount of \$1,000.00) and proof of funds of an additional \$10,000.00. ECF 58. Any further overbidding shall proceed in increments of at least \$1,000.00.

18. [20-21671](#)-A-7 **IN RE: THOMAS NGUYEN**
[BRG-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
8-21-2020 [\[38\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.
BARBARA GROSS/ATTY. FOR MV.
DEBTOR DISCHARGED: 07/20/2020; JOINT DEBTOR DISCHARGED:
07/20/2020

Tentative Ruling

Motion: Stipulation for Relief from the Automatic Stay/Abandonment of property

Disposition: Denied without prejudice

Order: Civil minute order

STIPULATION FOR RELIEF FROM AUTOMATIC STAY

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 is ordinarily a party 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.

Moreover, neither the debtor, nor counsel, signed the stipulation to signal the debtor's approval of the stipulation. Since the stay protects the debtor, property of the debtor and property of the estate, *In re Casgul of Nev., Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982); accord *Gasprom, Inc. v. Fateh (In re Gasprom)*, 500 B.R. 598, 604-07 (9th Cir. BAP 2013), the debtor is a necessary party to any such stipulation.

ABANDONMENT

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. Rule 6007(b) states the movant shall serve the motion to abandon and any notice of the motion "on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code." See Fed. R. Bankr. P. 6007(a)-(b).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(b), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, the debtor and all creditors - except for Synchrony Bank, Heritage Bank of Commerce, and Michael Wilcox - have not received notice of the motion. The court will deny the motion without prejudice for lack of sufficient notice.

19. [19-25173](#)-A-7 **IN RE: MO/JAS CONSTRUCTION, INC.**
[BLF-3](#)

MOTION FOR TURNOVER OF PROPERTY
8-8-2020 [\[51\]](#)

T. O'TOOLE/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by movant

Subject: real properties and post-petition rent
-2408 Learned Avenue, Stockton CA 95205
-2314 Nightingale Avenue, Stockton CA 95205
-2314 Nightingale Avenue, Stockton, CA 95205
-2650 S. Lincoln Street, Stockton, CA 95206

DEFAULT OF RESPONDENTS

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).

TURNOVER

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.

Real Properties

Chapter 7 trustee Gary R. Farrar seek possession of four real properties owned by the debtor on the date of the petition: 2408 Learned Avenue, Stockton CA 95205; 2314 Nightingale Avenue, Stockton CA 95205; 2314 Nightingale Avenue, Stockton, CA 95205; and 2650 S. Lincoln Street, Stockton, CA 95206. Amended Schedule A, September 19, 2019, ECF No. 22. The motion is well-taken and will be granted.

Post-Petition Rents

The trustee has also requested turnover of post-petition rents. The case was originally filed as on August 16, 2019, as a Chapter 11; it converted to Chapter 7 on October 10, 2019. No monthly operating reports were filed. Subject to other applicable limitations, e.g. 11 U.S.C. § 363(c)(2) (cash collateral), the debtor may use rental income in the ordinary course during until the case converted from Chapter 11 to Chapter 7. 11 U.S.C. § 363(c)(1).

Rents collected between August 16, 2019, through October 9, 2019

As to rents collated between August 16, 2019, through October 9, 2019, the debtor shall either (1) if those funds are no longer no longer property of the estate and have not been turned over to the Chapter 7 trustee, the debtor shall provide the trustee with an appropriate accounting, supported by source data, that shows the disposition of those funds; or (2) if the debtor retains those funds the debtor shall turn them over to the chapter 7 trustee.

Rents collected on or after October 10, 2019

As to rents collected on or after October 10, 2019, the motion is well-taken and will be granted.

FORM OF ORDER

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 14 days from the date of service of the order on this motion.

20. [18-23582](#)-A-7 **IN RE: COLLEEN SCHENDEL**
[BHS-4](#)

MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
8-4-2020 [[46](#)]

JON ZITOMER/ATTY. FOR DBT.
DEBTOR DISCHARGED: 09/19/2018

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, Barry H. Spitzer, 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 \$6,952.00 and reimbursement of expenses in the amount of \$142.80.

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

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

CIVIL MINUTE ORDER

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

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

Barry H. Spitzer'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 \$6,952.00 and reimbursement of expenses in the amount of \$142.80.

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

21. [19-20391](#)-A-7 **IN RE: B & G DELIVERY SYSTEM, INC., A**
CALIFORNIA CORPORATION
[HCS-8](#)

MOTION TO SELL
8-14-2020 [\[82\]](#)

WALTER DAHL/ATTY. FOR DBT.
DANA SUNTAG/ATTY. FOR MV.

No Ruling