

**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: TUESDAY
DATE: SEPTEMBER 19, 2017
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [05-60006](#)-A-7 JAMES OWENS AND JEANNETTE MOTION TO COMPROMISE
TGM-4 ROBLES-OWENS CONTROVERSY/APPROVE SETTLEMENT
PETER FEAR/MV AGREEMENT WITH JAMES R. OWENS
AND JEANNETTE ROBLES-OWENS
8-22-17 [[73](#)]

ROBERT HAWKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a dispute with respect to the debtor's ability to claim exemptions in a product liability settlement. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Peter L. Fear, Chapter 7 trustee's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 76.

2. [17-10106](#)-A-7 RANDEEP SINGH
GCL-2
UMPQUA BANK/MV

CONTINUED MOTION TO PREVENT USE
OF CASH COLLATERAL, TO REQUIRE
DEBTOR TO PROVIDE ACCOUNTING OF
CASH COLLATERAL, TO REQUIRE
DEPOSIT OF CASH COLLATERAL INTO
CASH COLLATERAL ACCOUNT, TO
GRANT UMPQUA BANK A SECURITY
INTEREST IN POST-PETITION
PERSONAL PROPERTY OF THE DEBTOR
8-9-17 [[71](#)]

PATRICK GREENWELL/Atty. for dbt.
GEORGE LAZAR/Atty. for mv.
RESPONSIVE PLEADING

No Ruling

3. [16-14108](#)-A-7 ROGER FRAPPIED
JLC-3
ROGER FRAPPIED/MV

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED MOTION TO AVOID
LIEN OF EDWIN K. NILES
5-23-17 [[103](#)]

JAMES CONKEY/Atty. for dbt.

No Ruling

4. [17-10608](#)-A-7 JOHN ANTONGIOVANNI
KDG-3
JEFFREY VETTER/MV
PATRICK KAVANAGH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

CONTINUED MOTION TO SELL
8-8-17 [[49](#)]

No Ruling

5. [15-13412](#)-A-7 BASILA CONSTRUCTION, MOTION TO COMPROMISE
FW-7 INC. CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH UNITED RENTALS
(NORTH AMERICA), INC.
8-23-17 [[198](#)]

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

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a preference dispute relating to prepetition payments made to defendant United Rentals (North America), Inc. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 201.

6. [17-11915](#)-A-7 BARBARA MILLER MOTION TO SELL
TMT-1 8-21-17 [[16](#)]
TRUDI MANFREDO/MV
JAMES MILLER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2011 Honda Accord

Buyer: Debtor

Sale Price: \$9,050 (\$6,000 cash plus \$3,050 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

7. [17-12816](#)-A-7 TRACY JACKSON
APN-1
SANTANDER CONSUMER USA,
INC./MV
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-15-17 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2010 Jaguar XF

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2010 Jaguar XF, 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.

8. [17-11824](#)-A-7 HORISONS UNLIMITED MOTION TO PAY
FWP-1 8-21-17 [[162](#)]
UNITEDHEALTHCARE INSURANCE
COMPANY/MV
CECILY DUMAS/Atty. for dbt.
PAUL PASCUZZI/Atty. for mv.

Final Ruling

Motion: Allowance and Payment of Administrative Expenses

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

Disposition: Granted

Order: Civil minute order

Description of Expenses: UnitedHealthcare Insurance Company

Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 and, in fact, the trustee filed a statement of non-opposition. Statement of Non-Opposition, September 13, 2017. 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

Creditor United healthcare Insurance Company seeks an order allowing administrative expenses and for approval of payment of such expenses, viz. \$218,065.74 for unpaid post-petition premiums for group health insurance. The expenses described are actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A). The movant correctly notes that § 503(b)(1)(A) has two elements: "the claim must have arisen from a transaction with the debtor in possession and must directly and substantially benefit the estate. *Abercrombie v. Hayden Corp. (In re Abercrombie)*, 139 F.3d 755, 757 (9th Cir.1998) (quoting *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091, 1094 (9th Cir.1995))." *In re 800Ideas.com, Inc.*, 496 B.R. 165, 175 (B.A.P. 9th Cir. 2013).

In this case, the expense for which § 503(b)(1)(A) allowance is sought is for health insurance premiums due employees during the period of time in which the debtor was in Chapter 11. These expenses will be allowed as an administrative expense under § 503(b)(1)(A) and may distributed in accordance with the priorities set forth in § 726(a)(1) and § 507(a) of the Bankruptcy Code.

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.

Creditor United healthcare Insurance Company's motion 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.

IT IS FURTHER ORDERED that Creditor United healthcare Insurance Company holds an allowed unsecured claim in the amount of \$218,065.74 under 11 U.S.C. § 503(b) (1) (A) .

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| 9. 17-11824 -A-7 HORISONS UNLIMITED
PGM-1
MANJIT NAGI/MV
CECILY DUMAS/Atty. for dbt.
PETER MACALUSO/Atty. for mv. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-22-17 [171] |
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No Ruling

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| 10. 15-11535 -A-7 JOHN HALOPOFF
TMT-16
TRUDI MANFREDO/MV

JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.
WITHDRAWN | OBJECTION TO CLAIM OF HUB
CONSTRUCTION SPECIALTIES, INC.,
CLAIM NUMBER 2
7-31-17 [466] |
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Final Ruling

The objection withdrawn, the matter is dropped as moot.

11. [16-11036](#)-A-7 ROCCO FAZIO
FW-4
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROCCO FAZIO,
DOMENIC FAZIO, AND UPTOWNE
INVESTMENTS, INC.
8-18-17 [[52](#)]

HILTON RYDER/Atty. for dbt.
GABRIEL WADDELL/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles four commercial properties. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 54.

12.	<u>17-12637</u> -A-7 OSWALDO/JAMIE PONCE BDA-1 BMW BANK OF NORTH AMERICA/MV KARNEY MEKHITARIAN/Atty. for dbt. BRET ALLEN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-24-17 [<u>11</u>]
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Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2007 Chevrolet Truck G3500 Extended Express Van

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

STAY RELIEF

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

"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 movant creditor has an equity cushion of 34%. But "under 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 pre-petition and 1 post-petition payment due on the debt secured by the moving party's lien. And the subject property was not scheduled. 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.

BMW Bank of North America'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 2007 Chevrolet Truck G3500 Extended Express Van, 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.

13. [17-12440](#)-A-7 ADRIAN RUBALCABA
RHT-1
ROBERT HAWKINS/MV
EDDIE RUIZ/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-16-17 [[13](#)]

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Prepared by the trustee

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 motion. 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 TAX REFUND

The debtor has claimed an exemption in 2016 federal and state tax refunds on Schedule C. The federal tax refund is valued at \$4,495.00. The state tax refund is valued at \$2,439.00. Together, these refunds total \$6,934.00.

The exemption in these refunds is claimed under § 704.070 of the California Code of Civil Procedure. The trustee objects to this claim of exemption as improper. The court agrees with the trustee's argument.

A debtor may claim an exemption in paid earnings under California Code of Civil Procedure section 704.070. Cal. Civ. Proc. Code § 704.070(a)(2), (b). The term "paid earnings" means "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." *Id.* § 704.070(a)(2). The term "earnings" means "compensation made payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." *Id.* § 706.011(a) (emphasis added).

Refunds from taxing agencies do not fall within the scope of the definition of earnings. The definition of earnings is plain. Tax refunds do not qualify because they are not compensation payable by the debtor's employer for personal services. Accordingly, the court will sustain this objection.

EXEMPTION IN FIREARMS

The debtor also claims an exemption in various firearms on Schedule C. These firearms include a 2016 2.45 Kimber, a 2016 2.45 Colt, a 2012 308 DPMS, a 1994 30/30 Winchester, and a 2006 223 AR. These firearms have an aggregate value of \$6,400.00. The exemption in them is claimed under Cal. Civ. Proc. Code 704.020.

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Section 704.020 provides an exemption in household furnishings, appliances, provisions, wearing apparel, and other personal effects to the extent that these items are "ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence." Cal. Civ. Proc. Code § 704.020(a)(1). Under § 704.020(b), the court determines whether an item of property is "ordinarily and reasonably necessary" by making two factual inquiries. Cal. Civ. Proc. Code § 704.020(b). The first is "[t]he extent to which the particular type of item is ordinarily found in a household." *Id.* The second is "[w]hether the particular item has extraordinary value as compared to the value of items of the same type found in other households." *Id.*

The debtor has not offered any evidence in opposition that would tend to show the firearms qualify under the terms of § 704.020. The court has no evidence to conclude that the firearms may or may not have extraordinary value compared to the value of items of the same type found in other households. Because the debtor has the burden of proof, the court will sustain the objection to the exemption in firearms.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

14. [17-12641](#)-A-7 YOLANDA MARTINEZ
RHT-1
ROBERT HAWKINS/MV
EDDIE RUIZ/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-16-17 [[12](#)]

Final Ruling

Objection: Objection to Claim of Exemptions

Notice: LBR 9014-1(f)(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 motion. 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 EXCEEDS STATUTORY LIMIT

The debtor has claimed an exemption in real property, a savings account, cash, and a 2016 federal tax refund under Cal. Civ. Proc. Code § 703.140(b)(1) and (5). The debtor's exemptions exceed the statutory limit of \$28,225.00 permitted under paragraphs (1) and (5) of this subsection. The trustee's objection is sustained, and the debtor's exemptions claimed under § 703.140(b)(1) and (5) will be disallowed to the extent the exemption exceeds the statutory limit of \$28,225.00.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemptions claimed under § 703.140(b)(1) and (5) will be disallowed to the extent the exemption exceeds the statutory limit of \$28,225.00.

15. [11-62642](#)-A-7 MARTIN/ROSA RODRIGUEZ MOTION TO AVOID LIEN OF
MAZ-2 COMMERCIAL TRADE INC.
MARTIN RODRIGUEZ/MV 8-1-17 [[28](#)]
MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

16. [16-13443](#)-A-7 R.L. SURGENER, INC. CONTINUED MOTION TO SELL
KDG-9 8-16-17 [[105](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No Ruling

17. [17-11045](#)-A-7 ADRIAN RUIZ
PFT-1
PETER FEAR/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARIA P. RUIZ
8-7-17 [[27](#)]

PETER FEAR/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles a preference dispute. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include (1) the defendant shall pay the trustee \$3000 to settle this preferential-transfer dispute; (2) the trustee's settlement and release of his claim against the defendant. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court approves the parties' compromise, which settles a dispute about an alleged preference payment made to an insider, the defendant, within 1 year of the petition. The terms and conditions of the compromise include (1) the defendant shall pay the trustee \$3000 to settle this preferential-transfer dispute; (2) the trustee's settlement and release of his claim against the defendant.

18. 17-11045 -A-7 ADRIAN RUIZ TJS-1 CAPITAL ONE AUTO FINANCE/MV TIMOTHY SILVERMAN/Atty. for mv. DISCHARGED	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 7-25-17 [18]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2008 Pontiac G6

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.

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.

Capital One 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 Pontiac G6. 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.

19. [15-14447](#)-A-7 ASHLEY RANDOLPH
RSW-4
ASHLEY RANDOLPH/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
8-29-17 [[93](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

Real Property Description: 727 So. Rosemont Road, Virginia Beach, VA

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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

20. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-2
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF CHASE
BANK USA, N.A.
8-8-17 [[22](#)]

Final Ruling

Motion: Avoid Lien on Real Property

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

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order if appropriate

DEFAULT ENTERED

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).

CONTINUANCE TO COINCIDE WITH RELATED MOTIONS

On this calendar, the movant has filed several motions to avoid liens, including the present motion, on the same parcel of real property. This real property is located at 6796 N. Chance Ave., Fresno, CA.

Some of the related motions to avoid liens on this real property have not been properly served. To avoid entering inconsistent orders regarding the value of the subject real property or the amounts of liens and exemptions, the court will continue this motion to coincide with all other lien avoidance motions for the subject real property located at 6796 N. Chance Ave., Fresno, CA.

The court will grant this motion at the continued hearing if all related motions to avoid liens on the subject real property have been properly served and are not opposed.

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 1, 2017, at 9:00 a.m.

21. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-3
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK
8-8-17 [[26](#)]

Final Ruling

Motion: Avoid Lien on Real Property

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

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order if appropriate

DEFAULT ENTERED

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).

CONTINUANCE TO COINCIDE WITH RELATED MOTIONS

On this calendar, the movant has filed several motions to avoid liens, including the present motion, on the same parcel of real property. This real property is located at 6796 N. Chance Ave., Fresno, CA.

Some of the related motions to avoid liens on this real property have not been properly served. To avoid entering inconsistent orders regarding the value of the subject real property or the amounts of liens and exemptions, the court will continue this motion to coincide with all other lien avoidance motions for the subject real property located at 6796 N. Chance Ave., Fresno, CA.

The court will grant this motion at the continued hearing if all related motions to avoid liens on the subject real property have been properly served and are not opposed.

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 1, 2017, at 9:00 a.m.

22. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-4
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-8-17 [[30](#)]

Final Ruling

Motion: Avoid Lien on Real Property

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

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order if appropriate

DEFAULT ENTERED

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).

CONTINUANCE TO COINCIDE WITH RELATED MOTIONS

On this calendar, the movant has filed several motions to avoid liens, including the present motion, on the same parcel of real property. This real property is located at 6796 N. Chance Ave., Fresno, CA.

Some of the related motions to avoid liens on this real property have not been properly served. To avoid entering inconsistent orders regarding the value of the subject real property or the amounts of liens and exemptions, the court will continue this motion to coincide with all other lien avoidance motions for the subject real property located at 6796 N. Chance Ave., Fresno, CA.

The court will grant this motion at the continued hearing if all related motions to avoid liens on the subject real property have been properly served and are not opposed.

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 1, 2017, at 9:00 a.m.

23. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-5
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-8-17 [[34](#)]

Final Ruling

Motion: Avoid Lien on Real Property

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

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order if appropriate

DEFAULT ENTERED

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).

CONTINUANCE TO COINCIDE WITH RELATED MOTIONS

On this calendar, the movant has filed several motions to avoid liens, including the present motion, on the same parcel of real property. This real property is located at 6796 N. Chance Ave., Fresno, CA.

Some of the related motions to avoid liens on this real property have not been properly served. To avoid entering inconsistent orders regarding the value of the subject real property or the amounts of liens and exemptions, the court will continue this motion to coincide with all other lien avoidance motions for the subject real property located at 6796 N. Chance Ave., Fresno, CA.

The court will grant this motion at the continued hearing if all related motions to avoid liens on the subject real property have been properly served and are not opposed.

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 1, 2017, at 9:00 a.m.

24. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-6
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF
NATIONAL CREDIT ADJUSTERS, LLC
8-8-17 [[38](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order

INSUFFICIENT SERVICE

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

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 1, 2017, at 9:00 a.m. The debtor shall file a supplemental proof of service and a notice of continued hearing no later than October 4, 2017. The notice of continued hearing shall use the notice procedure of LBR 9014-1(f)(1) and require written opposition at least 14 days before the continued hearing date.

25. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-7
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF ASSET
ACCEPTANCE, LLC
8-8-17 [[42](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order

INSUFFICIENT SERVICE

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

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 1, 2017, at 9:00 a.m. The debtor shall file a supplemental proof of service and a notice of continued hearing no later than October 4, 2017. The notice of continued hearing shall use the notice procedure of LBR 9014-1(f)(1) and require written opposition at least 14 days before the continued hearing date.

26. [17-11447](#)-A-7 MAVRA PATROPULOS
HAR-8
MAVRA PATROPULOS/MV
HILTON RYDER/Atty. for dbt.

MOTION TO AVOID LIEN OF CAVALRY
SPV I, LLC
8-8-17 [[46](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 1, 2017, at 9:00 a.m.

Order: Civil minute order

INSUFFICIENT SERVICE

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. The motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

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 1, 2017, at 9:00 a.m. The debtor shall file a supplemental proof of service and a notice of continued hearing no later than October 4, 2017. The notice of continued hearing shall use the notice procedure of LBR 9014-1(f)(1) and require written opposition at least 14 days before the continued hearing date.

27. [17-12750](#)-A-7 BRIAN/LOURIE FOLLAND MOTION FOR RELIEF FROM
NLL-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 8-15-17 [[26](#)]
COMPANY/MV
DAVID JENKINS/Atty. for dbt.
NANCY LEE/Atty. for mv.
RESPONSIVE PLEADING

No Ruling

28. [12-19754](#)-A-7 RALPH DE LOS SANTOS MOTION TO AVOID LIEN OF FIRST
MAZ-2 NATIONAL BANK OF OMAHA
RALPH DE LOS SANTOS/MV 8-11-17 [[29](#)]
MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

29. [17-10155](#)-A-7 LUCAS MONTANO
MDE-1
BANCO POPULAR DE PUERTO
RICO/MV
THOMAS GILLIS/Atty. for dbt.
MARK ESTLE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-8-17 [[19](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: 330 Alconiz Street, San Juan, Puerto Rico

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

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

The debtor has missed 2 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.

Banco Popular de Puerto Rico'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 330 Alconiz Street, San Juan, Puerto Rico. 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.

30. [17-11358](#)-A-7 PAMELA STUDLEY
AP-1
THE MONEY SOURCE, INC./MV
R. BELL/Atty. for dbt.
ALEXANDER LEE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-7-17 [[21](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 3509 Christmas Tree Lane, 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).

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.

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

IT IS ORDERED that the motion is granted 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 3509 Christmas Tree Lane, Bakersfield, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

31. [17-12359](#)-A-7 DON ROSE OIL CO., INC. CONTINUED SCHEDULING CONFERENCE
RE: CHAPTER 7 INVOLUNTARY
PETITION
6-19-17 [[1](#)]

RILEY WALTER/Atty. for dbt.

No Ruling

32. [17-12359](#)-A-7 DON ROSE OIL CO., INC. CONTINUED MOTION TO DISMISS
CLF-1 CASE
DONALD ROSE/MV 7-10-17 [[10](#)]
RILEY WALTER/Atty. for dbt.
VONN CHRISTENSON/Atty. for mv.
RESPONSIVE PLEADING

No Ruling

33. [17-12163](#)-A-7 SUSAN BRAZELL MOTION TO AVOID LIEN OF
SL-2 FINANCIAL PACIFIC LEASING LLC
SUSAN BRAZELL/MV 8-25-17 [[30](#)]
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$29,113.76

All Other Liens: \$52,836.00

Exemption: \$175,000.00

Value of Property: \$68,873 (Debtor's 50% interest)

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).

LIEN AVOIDANCE

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property.

The jointly owned value of the entire fee interest in the property equals \$137,746. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$52,836 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$84,910. Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is \$42,455.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$204,113.76. This sum minus the value of the moving party's fractional interest in the property equals \$161,658.76.

CONCLUSION

The responding party's judicial lien may be avoided in its entirety because the respondent's judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by such judicial lien.

34. [15-10966](#)-A-7 RODNEY HARON
FW-11
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RODNEY C. HARON
AND BETTY HARON
8-18-17 [[264](#)]

TIMOTHY SPRINGER/Atty. for dbt.
PETER FEAR/Atty. for mv.

FINAL RULING

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles a dispute with the debtor's spouse. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Chapter 7 trustee Robert Hawkins's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 267.

35. [10-61970](#)-A-7 BRIAN ENNIS MOTION FOR COMPENSATION FOR
JTW-6 JANZEN, TAMBERI & WONG,
JANZEN, TAMBERI AND WONG/MV ACCOUNTANT(S)
8-18-17 [[426](#)]
RILEY WALTER/Att. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, 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 \$6961.50 and reimbursement of expenses in the amount of \$83.72.

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.

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 \$6961.50 and reimbursement of expenses in the amount of \$83.72. 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.

36. [17-12470](#)-A-7 XOCHITL GONZALEZ
NLL-1
WELLS FARGO BANK, N.A./MV
NANCY LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-9-17 [[24](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 5054 East Belgravia Ave., 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).

"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).

The movant's equity cushion is approximately 4.00%, which significantly below the 20% cushion required for adequate protection. This equity cushion, moreover, has been declining as the debtor has missed at least 1 post-petition payment on the secured debt. 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.

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 5054 East Belgravia Ave., 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.

37. [17-12971](#)-A-7 JOAN PENA
JHW-1
TD AUTO FINANCE LLC/MV
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-17-17 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Ford Focus

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.

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 a 2015 Ford Focus, 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.

38. [17-12181](#)-A-7 MARGARITA HERNANDEZ
TGM-2
PETER FEAR/MV
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO APPROVE STIPULATION
8-21-17 [[33](#)]

Final Ruling

Motion: Motion to Approve Stipulation

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 Peter Fear and a co-owner of real property described as 2050 Pepperdine Drive, Los Banos, California, have stipulated to the sale of that property and the division of proceeds as more particularly set forth in Exhibit 1 to the motion. Motion, August 21, 2017, ECF # 33. The stipulation is consistent with the rights of co-owner Ramiro Cardenas. 11 U.S.C. § 363(e), (f), (h). The debtor consent has consented. No creditor has objected. And the liquidation of the debtor's interest in the estate is consistent with the trustee's duties. 11 U.S.C. § 704(a)(1).

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.

Chapter 7 trustee's motion 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.

IT IS FURTHER ORDERED that the terms of the stipulation attached as Exhibit 1 to the motion to approve stipulation, August 21, 2017, ECF # 33, are approved.

39. [17-12781](#)-A-7 DALIP NIJJAR
FW-3
JAMES SALVEN/MV
JEFFREY ROWE/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO EMPLOY TRUDI G.
MANFREDO AS SPECIAL COUNSEL
8-16-17 [[143](#)]

Final 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). 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 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").

Here, the estate needs counsel in an adversary proceeding against the debtor's former spouse. The trustee need counsel familiar with the intersection of bankruptcy and family law. The applicant is experience in both fields and does not hold or represent a disqualifying interest. 11 U.S.C. § 327(a).

40. [17-12781](#)-A-7 DALIP NIJJAR
KB-1

MOTION BY KENNETH J. BUECHLER,
JONATHAN DICKEY TO WITHDRAW AS
ATTORNEY
9-1-17 [[170](#)]

JEFFREY ROWE/Atty. for dbt.

No Ruling

41. [17-12390](#)-A-7 MARIANA GUTIERREZ
EAT-1
THE BANK OF NEW YORK MELLON/MV
DARLENE VIGIL/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-4-17 [[35](#)]

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Request for § 362(d) (1) relief denied as moot; request for § 362(d) (4) relief denied

Order: Civil minute order

Subject: 14631 Christine Drive #21, Whittier, CA

The moving party requests relief from stay under § 362(d) (1), for cause, and under § 362(d) (4) on grounds that the subject real property securing its loan was transferred by a third party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party.

SECTION 362(d) (4) RELIEF

Subsection (d) (4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d) (4). Such a scheme to delay, hinder, or defraud must involve either: (1) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d) (4) (A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit (unauthenticated) is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

SECTION 362(d) (1) RELIEF

Given that the real property has not been scheduled on Schedule A and no probative evidence shows the debtor held an interest in the real property on the petition date, the court believes that cause exists to grant stay relief.

However, this case was dismissed on August 16, 2017. Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C). Accordingly, no automatic stay exists in this case, and the request for relief under § 362(d)(1) will be denied as moot.

CIVIL MINUTE ORDER

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

The Bank of New York Mellon's motion for stay relief 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 as to relief under § 362(d)(4). The motion is denied as moot as to relief under § 362(d)(1) given the dismissal of the case.

42. [17-12895](#)-A-7 MARY DOMINGUEZ
DWE-1
NATIONSTAR MORTGAGE LLC/MV
JOHN BIANCO/Atty. for dbt.
DANE EXNOWSKI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-9-17 [[10](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 354 N. Acacia St., Woodlake, 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.

Nationstar Mortgage 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 354 N. Acacia St., Woodlake, 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.

43. [17-12296](#)-A-7 CARLOS AMAYA
NLL-1
WELLS FARGO BANK, N.A./MV
NANCY LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-4-17 [[25](#)]

Tentative Ruling

Motion: Relief from Stay

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

Disposition: § 362(d)(4) relief denied; § 362(d)(1) relief denied as moot

Order: Civil minute order

Subject: 922 Dayton Ave., Pomona, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party.

SECTION 362(d) (4) RELIEF

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (i) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit (unauthenticated) is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

SECTION 362(d) (1) RELIEF

Given that the real property has not been scheduled on Schedule A and no probative evidence shows the debtor held an interest in the real property on the petition date, the court believes that cause exists to grant stay relief.

However, this case has been dismissed. Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C). Accordingly, no automatic stay exists in this case, and the request for relief under § 362(d)(1) will be denied as moot.

CIVIL MINUTE ORDER

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

Wells Fargo Bank, N.A.'s motion for stay relief 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 as to relief under § 362(d)(4). The motion is denied as moot as to relief under § 362(d)(1) given the dismissal of the case.

44. [17-11824](#)-A-7 HORISONS UNLIMITED
FW-2
JAMES SALVEN/MV

CECILY DUMAS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
OST 9/11/17

MOTION TO EMPLOY SEELIG &
CUSSIGH HCO, LLC AS PATIENT
RECORDS SERVICES
9-11-17 [[226](#)]

No Ruling