

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: SEPTEMBER 23, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-13221](#)-A-7 JENNA WARNER
JDR-1
JENNA WARNER/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
9-3-15 [[9](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: J Darlings Pet Spa, a pet grooming business

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

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

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

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

2. [15-13422](#)-A-7 JUSTINA LIGGANS
DRJ-1
JUSTINA LIGGANS/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
9-9-15 [[14](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

3.	11-61533 -A-7 KIRK LE AND SOC THACH KLE-2 KIRK LE/MV EDDIE RUIZ/Atty. for dbt.	MOTION TO AVOID LIEN OF DISCOVER BANK 8-25-15 [25]
----	---	--

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Judgment Lien: \$13,519.93 plus interest from January 6, 2011

Consensual Lien: \$123,474.00

Exemption: \$95,006.07

Property Value: \$232,000

Judgment Lien plus Consensual Liens plus Exemption: \$232,000 plus an unspecified amount of judgment interest

LIEN AVOIDANCE STANDARDS

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389,

392 (Bankr. E.D. Cal. 1992)); *cf. In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

DISCUSSION

In this case, the responding party's judicial lien secures a judgment debt of \$13,519 plus an unspecified amount of interest. The judicial lien plus the consensual lien plus the exemption amount equals \$232,000. The value of the property is \$232,000. Therefore, the judicial lien does not impair the exemption because there is equity for the judicial lien based on the facts alleged. The judgment interest, however, impairs the exemption, but the judgment interest has been unspecified, and an order avoiding only the judgment interest does not seem to be the relief that the debtors request. The debtors specifically request "an order against judgment creditor Discover Bank avoiding and canceling the judicial lien in the above mentioned property." Mot. at p. 5. Accordingly, a *prima facie* case has not been made for relief under § 522(f).

CIVIL MINUTE ORDER

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

The debtors' motion to avoid a judicial lien held by respondent has been presented to the court. Having reviewed the papers and evidence filed in support of the motion,

IT IS ORDERED that the motion is denied without prejudice. The debtors may re-file a new motion seeking the same relief sought by this motion to the extent that there are factual grounds different from those presented in the present motion that support the relief sought.

4. 15-13034 -A-7 JAMES/LINDA COBERLY APN-1 WELLS FARGO BANK, N.A./MV MARK ZIMMERMAN/Atty. for dbt. AUSTIN NAGEL/Atty. for mv. NON-OPPOSITION	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-24-15 [16]
--	--

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Keystone Sydney 31FRL

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

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

5. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-5
TRUDI MANFREDO/MV

MOTION TO SELL AND/OR MOTION
FOR CARVE-OUT WITH MERCHANTS
BONDING COMPANY , MOTION TO PAY
9-2-15 [[165](#)]

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

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 19510 Road 244, Strathmore, CA 93267

Buyer: Rose E. Valencia

Sale Price:

-\$165,900 less amounts trustee has agreed to pay on behalf of buyer, including \$5600 in closing costs and a \$390.00 one-year home warranty
-\$162,710 = effective gross sales price for purposes of overbid comparison (\$165,900 - \$2800 in closing costs that the buyer would ordinarily pay - \$390 home warranty)

Sale Type: Private sale subject to overbid opportunity

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

SECTION 363(b)

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.

CARVE-OUT AGREEMENT

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

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

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

Trustee's Duties

In this case, the court can infer that the trustee has performed her duties. The trustee has analyzed the nature of the ownership of the property and its status as estate property (it is held in a revocable trust that makes it estate property). The trustee has collected rents from the tenant in June, July, August and will collect for September and pro-rated amounts for October of this year. Further, the trustee has analyzed the nature of Merchants Bonding Company's lien against and determined that it encumbers both this property and other of debtor's properties.

Full Disclosure

The trustee has fully disclosed the terms of the carve-out agreement in the motion. The trustee has indicated that the total debt owed to Merchants is approximately \$400,000. The trustee will pay Merchants \$120,000 from the sale proceeds for Merchants to release its trust deed against the property. The carve-out amount is \$29,056.00. Further, the trustee has disclosed that Merchants has allowed the trustee to retain for the estate a portion of the net rents paid for June, July, August, September and October of this year in the approximate amount of \$216.90 per month (will total more than \$867.60). Thus, the total amount paid under the carve-out arrangement is approximately \$29,923.60.

Meaningful Distribution

In addition, the sale will reduce Merchants' \$400,000 of secured debt, which is secured by other real properties in the estate. At first glance, this appears to be beneficial to the estate. The sale will reduce Merchants' secured debt against Debtor's other assets in the amount of \$120,000 as a result of this sale. But given the lack of information about whether such a reduction will create probable equity in other properties for the estate, the court cannot be certain whether this aspect of the sale increases the likelihood of a *meaningful* distribution to unsecured creditors after the payment of administrative costs.

The motion contains few facts regarding whether a meaningful distribution to unsecured creditors will be paid after subtracting administrative expenses in this case. But the court will infer that the multiple sale motions in this case that reduce Merchants' secured debt, in addition to the carve-outs for the estate in the aggregate (including the nearly \$30,000 from this sale) may likely result in a meaningful distribution to unsecured creditors after payment of all administrative costs. The court has briefly reviewed Schedule D and noted the several real properties to which Merchants' lien attaches, other scheduled liens against such properties and the scheduled values of the properties.

Given this number of properties that are collateral for Merchants' debt, the conclusion is reasonable that as Merchants' secured debt decreases, the equity available to the estate likely increases. This fact combined with an increase in the as the aggregate carve-out amounts implies that the odds of a meaningful distribution to unsecured creditors improve. (Approximately \$1,657,939.35 in unsecured claims are scheduled. Also, the unsecured portion of scheduled secured claims equals approximately \$3,694,476.82, but it is unclear whether all or some of such undersecured claims will be paid by the estate or not).

Thus, the court will allow the sale. In the future, the court will require a brief statement in similar motions as to why a carve-out agreement and sale of fully encumbered property, considered along with any other sales and carve-outs that are related, will result in a meaningful distribution to unsecured creditors.

COMMISSION

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

6. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-6
TRUDI MANFREDO/MV

MOTION TO SELL AND/OR MOTION
FOR CARVE-OUT WITH MERCHANTS
BONDING COMPANY , MOTION TO PAY
9-2-15 [[171](#)]

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

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 543 W. Henderson Ave., Porterville, Tulare County,
California 93257

Buyer: Pargat Singh Mahal and Varinder K. Mahal

Sale Price: \$229,000

Sale Type: Private sale subject to overbid opportunity

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

SECTION 363(b)

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.

CARVE-OUT AGREEMENT

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

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

"To rebut the presumption [of impropriety arising from a sale of a fully encumbered asset], the case law directs the following inquiry: Has the trustee fulfilled his or her basic duties? Is there a benefit

to the estate; i.e., prospects for a meaningful distribution to unsecured creditors? Have the terms of the carve-out agreement been fully disclosed to the bankruptcy court? If the answer to these questions is in the affirmative, then the presumption of impropriety can be overcome." *Id.* at 8.

Trustee's Duties

In this case, the court can infer that the trustee has performed her duties. The trustee has determined the nature of the ownership of the property (vested in John Halopoff and Nadya Halopoff, husband and wife as joint tenants). She has investigated liens against the property, identified current tenancies and the amount of notice required to terminate them, analyzed the rental prices and compared them to the market, and performed a tax analysis.

Full Disclosure

The trustee has fully disclosed the terms of the carve-out agreement in the motion. The trustee has indicated that the total debt owed to Merchants is approximately \$400,000, which is reduced by \$120,000 from the sale of 19510 Road 244, Strathmore, CA 93267, and further reduced by the sale of the subject real property. The carve-out agreement pays Merchants \$47,167.48 on its deed of trust and provides \$8,323.67 to the estate. The sale will also pay Wells Fargo's first lien in full.

Meaningful Distribution

The court incorporates by reference its analysis regarding a meaningful distribution to unsecured creditors from the trustee's motion to sell 19510 Road 244, Strathmore, CA 93267, having docket control number KDG-5. The court will add that this motion further reduces the secured debt owed to Merchants by a total of \$167,167.48 when combining the effect of motions at KDG-5 and KDG-6.

Thus, the court will allow the sale. In the future, the court will require a brief statement in similar motions as to why a carve-out agreement and sale of fully encumbered property, considered along with any other sales and carve-outs that are related, will result in a meaningful distribution to unsecured creditors.

COMMISSION

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

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

MOTION TO SELL AND/OR MOTION
FOR CARVE-OUT WITH MERCHANTS
BONDING COMPANY , MOTION TO PAY
9-2-15 [[177](#)]

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

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 423 N. 4th Street, Porterville, Tulare County, CA 93257
(residential duplex)

Buyer: Jose Raul Garcia and Veronica M. Gomez

Sale Price: \$210,000

Sale Type: Private sale subject to overbid opportunity

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

SECTION 363(b)

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.

CARVE-OUT AGREEMENT

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

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

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

Trustee's Duties

In this case, the court can infer that the trustee has performed her duties. The trustee has determined the nature of the ownership of the property (vested in John Halopoff and Nadya Halopoff, husband and wife as joint tenants). The property is a residential duplex. She has investigated liens and tenancies affecting the property. The first lien is held by Chase and secures debt totaling about \$132,804. Merchants' lien is also against the property. Trustee has researched whether a Beneficial lien still exists or can be cleared based on testimony that it was paid in full. She has performed a tax analysis through her CPA that shows little to no adverse tax effects.

Full Disclosure

The trustee has fully disclosed the terms of the carve-out agreement in the motion. The trustee has indicated that the total debt owed to Merchants on its second deed of trust is approximately \$400,000, which has also been reduced by \$120,000 from the sale of 19510 Road 244, Strathmore, CA, reduced by 47,167.48 from the sale of 543 W. Henderson Ave., Porterville, CA, and further reduced by the sale of the subject real property in the amount of \$49,330.61. The carve-out agreement pays Merchants approximately \$49,330.61 for a reconveyance of its deed of trust and provides \$10,000 to the estate. (The net proceeds to which Merchants is entitled is the amount after trustee pays Chase, costs of sale including commission of 6%, and the carve-out amount.) The sale will also pay Chase's first deed of trust in full in the amount of \$133,869.39.

Meaningful Distribution

The court incorporates by reference its analysis regarding a meaningful distribution to unsecured creditors from the trustee's motion to sell 19510 Road 244, Strathmore, CA 93267, having docket control number KDG-5. The court will add that this motion further reduces the secured debt owed to Merchants by an aggregate of approximately \$216,547.09 when combining the effect of motions at KDG-5, KDG-6 and KDG-7. This leaves approximately \$183,452.91 of the original \$400,000 balance of Merchants' debt.

Thus, the court will allow the sale. In the future, the court will require a brief statement in similar motions as to why a carve-out agreement and sale of fully encumbered property, considered along with any other sales and carve-outs that are related, will result in a meaningful distribution to unsecured creditors.

COMMISSION

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

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

8. [15-11835](#)-A-7 JAMES/JAMIE CANNON MOTION TO EMPLOY PORTFOLIO
KDG-2 PROPERTY MANAGEMENT AS PROPERTY
RANDELL PARKER/MV MANAGER
8-27-15 [[101](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.
NO OST REQUESTED

No tentative ruling.

9. [15-11835](#)-A-7 JAMES/JAMIE CANNON MOTION TO USE CASH COLLATERAL
KDG-5 AND/OR MOTION FOR ADEQUATE
RANDELL PARKER/MV PROTECTION
9-9-15 [[164](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.
OST 9/11

No tentative ruling.

10. [15-12248](#)-A-7 JOSHUA CUEVAS OPPOSITION RE: TRUSTEE'S MOTION
PFT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-31-15 [[20](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

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

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

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for September 25, 2015, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

11. [15-12551](#)-A-7 DEREK WRIGHT
JES-2

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
8-12-15 [[15](#)]

SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Denied

Order: Civil minute order

DISMISSAL MOTION

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion. The court will deny the motion for the reasons discussed.

The trustee's motion asserts that the debtor failed to appear at the § 341 meeting of creditors on July 30, 2015. However, the trustee has entered on the docket the following statement: "The Section 341 Meeting was concluded on July 30, 2015. Debtor Appeared" The trustee also stated that "there is no property available for distribution." The court will take the trustee's admissions on the docket, which conflict with the motion, as evidence that the trustee has erroneously filed this motion.

In addition, the evidence filed by the debtor and the debtor's attorney overwhelmingly supports the conclusion that they were both present at the meeting on July 30, 2015. The court concludes that the trustee has erred in filing this motion and will deny the motion.

CIVIL MINUTE ORDER

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

The chapter 7 trustee's motion to dismiss and motion to extend deadlines has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion, and having reviewed the trustee's statements on the docket in this case regarding the meeting of creditors, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

12. [15-12972](#)-A-7 JONATHAN CLAGUE
FLG-1
JONATHAN CLAGUE/MV
PETER FEAR/Atty. for dbt.

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

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: insurance sales business, a sole proprietorship

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

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

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

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