

**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: OCTOBER 16, 2019
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.

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. [17-10608](#)-A-7 **IN RE: JOHN ANTONGIOVANNI**

TRUSTEE'S FINAL REPORT
8-2-2019 [[129](#)]

PATRICK KAVANAGH
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

2. [17-10608](#)-A-7 **IN RE: JOHN ANTONGIOVANNI**
[DMG-2](#)

OBJECTION TO CLAIM OF J. STANLEY AND KATHLEEN ANTONGIOVANNI
LIVING TRUST, CLAIM NUMBER 27
8-22-2019 [[135](#)]

KERN RIDGE GROWERS, LLC/MV
PATRICK KAVANAGH
D. GARDNER/ATTY. FOR MV.

No Ruling

3. [19-13210](#)-A-7 **IN RE: JOSE/EVELINA URENO**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2019 [[19](#)]

CARRINGTON MORTGAGE SERVICES,
LLC/MV
ROBERT WILLIAMS
DARLENE VIGIL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1604 Crestview Drive, Bakersfield, CA 93305

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).

The debtor has missed 14 pre-petition payment aggregating \$19,044.78, due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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.

Carrington Mortgage Services, 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 1604 Crestview Drive, Bakersfield, CA 93305, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

4. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[KAS-2](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
9-18-2019 [[54](#)]

PETER FEAR/MV
RILEY WALTER
KELSEY SEIB/ATTY. FOR MV.

Final Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

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"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

5. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[KAS-3](#)

MOTION TO SELL
9-18-2019 [[60](#)]

PETER FEAR/MV
RILEY WALTER
KELSEY SEIB/ATTY. FOR MV.

No Ruling

6. [19-13413](#)-A-7 **IN RE: SAMANTHA PHILLIPS**
[SRS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2019 [[13](#)]

JOHN BANASKY/MV
CATARINA BENITEZ
STEVEN STOKER/ATTY. FOR MV.

Final Ruling

Notice of Withdrawal filed November 11, 2019, ECF #24. The Motion will be dropped as moot.

7. [16-13315](#)-A-7 **IN RE: KASSANDRA HOELSCHER**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI AND WONG,
ACCOUNTANT(S)
9-16-2019 [[155](#)]

RATZLAFF, TAMBERI & WONG/MV
PETER BUNTING

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, Ratzlaff 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 \$2,541.00 and reimbursement of expenses in the amount of \$8.50.

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

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

CIVIL MINUTE ORDER

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

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

Ratzlaff 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 \$2,541.00 and reimbursement of expenses in the amount of \$8.50.

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

8. [19-13118](#)-A-7 **IN RE: MIKE KASPARIAN**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-3-2019 [\[15\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.
11 U.S.C. § 343. A continuing failure to attend this meeting may be
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.
2014) ("Some courts have ruled that the failure to attend the § 341
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting
of creditors required by 11 U.S.C. § 341. Because the debtor's
failure to attend this meeting has occurred once, the court will not
dismiss the case on condition that the debtor attend the next
creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

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.

IT IS ORDERED that the Motion to Dismiss is denied on the condition
that the debtor attend the next continued § 341(a) meeting of
creditors scheduled for October 31, 2019 at 10:00 a.m. But if the
debtor does not appear at this continued meeting, the case will be

dismissed on trustee's declaration without further notice or hearing.

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

9. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
GENERAL PARTNERSHIP
[BMJ-9](#)

MOTION TO SELL
9-13-2019 [[200](#)]

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/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: Debtor's Equity with Dairy Farmers of America cooperative

Buyer: Tillema Farms, LLC

Sale Price: \$330,621.62

Sale Type: Private sale subject to overbid opportunity

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

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

The court finds that the sale has been made in good faith 11 U.S.C. § 363(m).

10. [19-13922](#)-A-7 **IN RE: ROBERT BOGUE**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
9-17-2019 [\[6\]](#)

PETER BUNTING

No Ruling

11. [19-13922](#)-A-7 **IN RE: ROBERT BOGUE**
[PBB-1](#)

MOTION TO COMPEL ABANDONMENT
10-1-2019 [\[13\]](#)

ROBERT BOGUE/MV
PETER BUNTING

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: Bogue Chiropractic

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

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

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

12. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[FW-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
PC FOR PETER L. FEAR, SPECIAL COUNSEL(S)
9-11-2019 [[1095](#)]

CECILY DUMAS

Final Ruling

Application: Allowance of Interim 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, Fear Waddell, P.C., special counsel for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$45,327.00 and reimbursement of expenses in the amount of \$2,407.51.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Fear Waddell, P.C.'s application for allowance of interim 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. The court allows interim compensation in the amount of \$45,327.00 and reimbursement of expenses in the amount of \$2,407.51. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

13. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-58](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY,
HOFFELT, GOULD AND BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEES
ATTORNEY(S)
9-18-2019 [[1104](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Final Ruling

Application: Allowance of Interim 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, Wilke, Fleury, Hoffelt, Gould & Birney, LLP, attorneys for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application

requests that the court allow compensation in the amount of \$75,177.50 and reimbursement of expenses in the amount of \$2,686.48.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

COURT PREFERS USE OF THE CLERK'S MATRIX

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP's application for allowance of interim 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. The court allows interim compensation in the amount of \$75,177.50 and reimbursement of expenses in the amount of \$2,686.48. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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

14. [19-13628](#)-A-7 **IN RE: JUSTINA SIERRA**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-2019 [9]

YAMAHA MOTOR FINANCE CORP./MV
D. GARDNER
KAREL ROCHA/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Yamaha YZF-R1S

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

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 Circ. 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 Rules 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.

Yamaha Motor Finance Corp.'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 2016 Yamaha YZF-R1S, 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.

15. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[SFR-4](#)

OBJECTION TO CLAIM OF TONY XAVIER, CLAIM NUMBER 4
9-3-2019 [[141](#)]

PETER FEAR/MV
JUSTIN HARRIS
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Claimant having withdrawn the Claim in its entirety, the objection will be overruled as moot.

16. [18-14640](#)-A-7 **IN RE: ROBERTO PUGA**
[JES-1](#)

MOTION TO COMPEL
9-12-2019 [\[25\]](#)

JAMES SALVEN/MV

Final Ruling

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

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Chapter 7 trustee James E. Salven seeks an order compelling debtor Roberto Rios Puga to turnover her (1) 2018 federal and state income tax turns and any refunds received; or (2) if those returns have not been filed, "to provide [him] the data necessary to complete the returns." Motion p. 5, September 12, 2019, ECF # 25.

DEFAULT

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).

TAX REFUNDS

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

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

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

This case was filed on November 19, 2018. The debtor filed bankruptcy prior to conclusion of the tax year only that portion of the refund arising prior to the filing date is property of the estate.

Here, 322 days, or 88%, of the 2018 tax year had past prior to the date the debtor filed her chapter 7 petition. Consequently, the estate is only entitled to 88% of the 2018 tax refunds.

Accordingly, the trustee's motion for turnover will be granted as to 88% of the 2018 federal and state tax refunds. The court will order turnover of those tax refunds to the extent received by the debtor.

TAX RECORDS AND RETURNS

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (i) all 2018 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2018 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 to the extent provided herein and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 88% of the 2018 federal and state tax refunds that the debtor has received or that the debtor has, or at any time had, in his possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (i) all 2018 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all 2018 federal and state tax-related records or documents relevant to the debtor's tax returns, whether in electronic or paper form, that the debtor holds.

IT IS FURTHER ORDERED that except as provided herein the motion is denied.

17. [19-12042](#)-A-7 **IN RE: MARTA HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-17-2019 [\[23\]](#)

CATARINA BENITEZ
\$31.00 AMENDMENT FEE PAID 9/18/19

Final Ruling

The amendment fee having been paid, the order to show cause is discharged.

18. [19-11749](#)-A-7 **IN RE: SONIA CHAVEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2019 [\[23\]](#)

WELLS FARGO BANK, N.A./MV
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 8703 Broadstone Pl., Bakersfield, CA 93306

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

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 Circ. 1982).

Adequate protection may exist in the form of periodic payments or an equity cushion. 11 U.S.C. § 361. Neither exists here. Since the debtor has ceased making her monthly mortgage payment, and is now delinquent \$3,887.76, the creditor is not protected by periodic payments. Moreover, there is an insufficient equity cushion to protect the creditor's position. A 20% equity cushion adequate protects a creditor's position, *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984); a 10-20% equity cushion may be sufficient, *In re Pitts*, 2 B.R. 476, 478 (Bankr. C.D. Cal. 1979); an equity position of less than 10% is insufficient, *In re Kost*, 102 B.R. 829, 832 (D. Wy 1989). Here, the equity position is 6.82% (\$228,000 - \$212,444.33 = \$15,555.67 ÷ \$228,000). Consequently, there is an inadequate equity cushion to protect the creditor's position. The motion will be granted. Merch, Ahart and Shapiro, California Practice Guide: Bankruptcy-Relief from the Automatic Stay, Ch. 8(II)-B, *Grounds for Relief from Stay* ¶ 8:1050-1095 (The Rutter Group 2018).

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'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 8703 Broadstone Pl., Bakersfield, CA 93306, 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.

19. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[IER-1](#)

MOTION TO AVOID LIEN OF CHRYSLER FINANCIAL SERVICES
7-28-2019 [[81](#)]

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$19,732.17

All Other Liens: \$64,308.00

Exemption: \$23,663.00

Value of Property: \$87,971.00

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.

20. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[IER-2](#)

MOTION TO AVOID LIEN OF CHRIS FRANKIAN PROPERTY MANAGEMENT
7-28-2019 [[86](#)]

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$3,210.00

All Other Liens: \$64,308.00

Exemption: \$23,663.00

Value of Property: \$87,971.00

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.

21. [19-13951](#)-A-7 **IN RE: BHUPINDER MAVI**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-23-2019 [[10](#)]

TRANSPORT FUNDING, LLC./MV
NEIL SCHWARTZ
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Six 2012 Wabash Trailers

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

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 Circ. 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 Rules 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.

Transport Funding, 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 six 2012 Wabash Trailers, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

22. [19-12254](#)-A-7 **IN RE: DONNA REYNA**
[STH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2019 [\[17\]](#)

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
JAMES CANALEZ
STEPHEN HICKLIN/ATTY. FOR MV.
DISCHARGED 08/26/2019

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 10689 E. Morro St., Del Rey, CA 93616

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

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 Circ. 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 Rules 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 10689 E. Morro St., Del Rey, CA 93616, 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.

23. [18-15056](#)-A-7 **IN RE: DALE/MELISSA MADRIGAL**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2019 [\[25\]](#)

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
R. BELL
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 4/15/19

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Nissan Sentra

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

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 Circ. 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 Rules 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.

Nissan Motor Acceptance Corp.'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 2015 Nissan Sentra, 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.

24. [18-13757](#)-A-7 **IN RE: MARIA GUERRA**
[JES-1](#)

MOTION TO COMPEL
9-12-2019 [\[19\]](#)

JAMES SALVEN/MV

Final Ruling

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

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Chapter 7 trustee James E. Salven seeks an order compelling debtor Maria E. Guerra to turnover her (1) 2016, 2017 and 2018 federal and state income tax turns and any refunds received; or (2) if those returns have not been filed, "to provide [him] the data necessary to complete the returns." Motion p. 5, September 12, 2019, ECF # 19.

DEFAULT

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).

TAX REFUNDS

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

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

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

This case was filed on September 17, 2018. As a consequence, all of the federal and state income tax refunds arising from 2016 and 2017 are property of the estate; the debtor has not exempted those assets. But the debtor filed bankruptcy prior to conclusion of the tax year only that portion of the refund arising prior to the filing date is property of the estate. Here, 260 days, or 71%, of the 2018 tax year had past prior to the date the debtor filed her chapter 7 petition. Consequently, the estate is only entitled to 71% of the 2018 tax refunds.

Accordingly, the trustee's motion for turnover will be granted as to the 2016 and 2017 federal and state tax year refunds and 71% of the 2018 federal and state tax refunds. The court will order turnover of those tax refunds to the extent received by the debtor.

TAX RECORDS AND RETURNS

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded

information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (i) all 2016, 2017 and 2018 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2016, 2017 and 2018 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, 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 to the extent provided herein and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee all of the 2016 and 2017 federal and state tax refunds and 71% of the 2018 federal and state tax refunds that the debtor has received or that the debtor has, or at any time had, in her possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (i) all 2016, 2017, and 2018 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2016, 2017, and 2018 federal and state tax-related records or documents relevant to the debtor's tax returns, whether in electronic or paper form, that the debtor holds.

IT IS FURTHER ORDERED that except as provided herein the motion is denied.

25. [19-12260](#)-A-7 **IN RE: MANUEL/ELIZABETH BAJO**
[HDN-2](#)

MOTION TO AVOID LIEN OF STATE FARMS MUTUAL AUTOMOBILE
INSURANCE COMPANY
8-23-2019 [\[26\]](#)

MANUEL BAJO/MV
HENRY NUNEZ

Final Ruling

Motion: Avoid Lien Impairing Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

Debtors Manuel Bajo and Elizabeth Bajo ("Bajos") move to avoid a lien that impairs their homestead exemption. Finding service insufficient and also finding that the Bajos have not demonstrated entitlement to relief, the motion will be denied.

SERVICE

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

The motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. Proof of Service, August 23, 2019, ECF # 31. This attorney appears to have represented State Farm in the underlying action giving rise to this lien. "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.

As a result, the motion will be denied.

ENTITLEMENT TO RELIEF

Even if service were sufficient, there has been an insufficient showing of entitlement to relief. A debtor may establish the elements of relief in two ways. First, if service is proper and the respondent fails to appear, the court may accept well-pleaded facts in the motion as true and rule on the motion. 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).

Here, neither the motion, nor the memorandum of points and authorities, pleads facts. Consequently, the debtor has not demonstrated entitlement to relief in the manner authorized by Rule 55.

Second, the debtor may submit admissible evidence demonstrating entitlement to relief. LBR 9014-1(d)(3)(D). Here, the declaration discloses but one fact: State Farm Mutual Automobile Insurance has a judgment lien in the amount of \$21,999. Bajo decl. ¶ 3, August 23, 2019, ECF # 28. As the remaining facts, the debtor asks the court to take judicial notice of his schedules filed in support of the petition. The court declines to do so. Having not sustained their burden of proof the motion will be denied.

CIVIL MINUTE ORDER

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

Manuel Bajo and Elizabeth Bajo's motion has been presented to the court. Having considered the motion together with papers filed in

support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

26. [11-10664](#)-A-7 **IN RE: VALENTE MARTINEZ AND ROSA FARIAS**
[TOG-3](#)

MOTION TO AVOID LIEN OF THE CLAIMS CENTER, LLC
9-6-2019 [\[50\]](#)

VALENTE MARTINEZ/MV
THOMAS GILLIS

Final Ruling

Motion: Avoid Lien Impairing Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

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

The motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. Proof of Service, September 6, 2019, ECF # 55. This attorney represented The Claims Center, plaintiff and assignee, in the underlying action giving rise to this lien. "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.

As a result, the motion will be denied.

CIVIL MINUTE ORDER

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

Valente Martinez and Rosa Farias's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

27. [16-10469](#)-A-7 **IN RE: JEFFREY BOHN**
[JES-7](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
9-16-2019 [[286](#)]

JAMES SALVEN/MV
PETER FEAR
RUSSELL REYNOLDS/ATTY. FOR MV.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Civil minute order

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

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve

chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$36,288.41 and reimbursement of expenses in the amount of \$1,542.02.

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.

28. [18-13672](#)-A-7 **IN RE: ARTURO/EMILIA GONZALEZ**
[DMG-3](#)

MOTION FOR COMPENSATION FOR D MAX GARDNER, TRUSTEES
ATTORNEY(S)
9-25-2019 [[115](#)]

PATRICK KAVANAGH

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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, D. Max Gardner, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,119.50 and reimbursement of expenses in the amount of \$1,103.15.

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).

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.

IT IS ORDERED that the application is approved. The court allows interim compensation in the amount of \$2,119.50 and reimbursement of expenses in the amount of \$1,103.15. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

29. [19-13484](#)-A-7 **IN RE: CHAVOHN COGBURN**
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-2019 [[14](#)]

PENNYMAC LOAN SERVICES, LLC/MV
ROBERT WILLIAMS
CHRISTINA O/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 29650 Starland Drive, Tehachapi, CA 93561

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

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 Circ. 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 Rules 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.

PennyMac Loan Services, 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 29650 Starland Drive, Tehachapi, CA 93561, 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.

30. [19-13484](#)-A-7 **IN RE: CHAVOHN COGBURN**
[LSY-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-2019 [\[9\]](#)

SAN DIEGO COUNTY CREDIT
UNION/MV
ROBERT WILLIAMS
LISA YUN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Kawasaki Ninka 650 ABS

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

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 Circ. 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 Rules 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Kawasaki Ninka 650 ABS, 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.

31. [12-16787](#)-A-7 **IN RE: BRYAN/KIMBERLY HAUSER**
[SAH-1](#)

AMENDED MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) NA
9-25-2019 [\[34\]](#)

BRYAN HAUSER/MV
SUSAN HEMB
OST 9/25/19

Final Ruling

Motion: Avoid Lien

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

Disposition: Continued to November 12, 2019, at 9:00 a.m.

Order: Civil minute order

Bryan Hauser and Kimberly Hauser ("Hausers") to avoid the lien of Citibank South Dakota N.A. that impairs their homestead exemption. The motion will be continued to allow the Hausers to address procedural defects.

PROCEDURAL DEFECTS

Service

Hausers attempt service by serve via certified mail "Citibank South Dakota NA" and "Hunt and Henriques," whom this court believes represented Citibank in the underlying action giving rise to the judgment lien. Certificate of Service, September 25, 2019, ECF # 36.

Service on Citibank is insufficient. 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.

Service on Hunt and Henriques is also insufficient. 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.

Consequently, the movants have not served the motion as required by Rule 7004.

No Claim of Exemption

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Schedule C, August 2, 2012, ECF # 1. 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:

IT IS ORDERED that the motion is continued to November 12, 2019, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants may file an Amended Schedule C addressing the concerns raised by the court herein;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants shall serve in a manner compliant with Fed. R. Bankr. P. 7004(b)(3) (1) the motion and all ancillary documents; and (2) a notice of continued hearing (indicating that opposition to the motion must be filed in writing not later than November 5, 2019);

IT IS FURTHER ORDERED that not later than October 25, 2019, the movants shall file notice of continued hearing and the Certificate of Service demonstrating compliance with the previous paragraph of this order; and

IT IS FURTHER ORDERED that the respondent may file opposition not later than November 5, 2019.

32. [12-16787](#)-A-7 **IN RE: BRYAN/KIMBERLY HAUSER**
[SAH-2](#)

MOTION TO AVOID LIEN OF CHASE BANK
9-25-2019 [\[38\]](#)

BRYAN HAUSER/MV
SUSAN HEMB
OST 9/26/19

Final Ruling

Motion: Avoid Lien

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

Disposition: Continued to November 12, 2019, at 9:00 a.m.

Order: Civil minute order

Bryan Hauser and Kimberly Hauser ("Hausers") to avoid the lien of Chase Bank USA, N.A. that impairs their homestead exemption. The motion will be continued to allow the Hausers to address procedural defects.

PROCEDURAL DEFECTS

Service

Hausers attempt service by serve via certified mail "Chase Bank USA, N.A." and "Hunt and Henriques," whom this court believes represented Chase Bank in the underlying action giving rise to the judgment lien. Certificate of Service, September 25, 2019, ECF # 41.

Service on Citibank is insufficient. 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.

Service on Hunt and Henriques is also insufficient. 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.

Consequently, the movants have not served the motion as required by Rule 7004.

No Claim of Exemption

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). *See Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. *See Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Schedule C, August 2, 2012, ECF # 1. 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:

IT IS ORDERED that the motion is continued to November 12, 2019, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants may file an Amended Schedule C addressing the concerns raised by the court herein;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants shall serve in a manner compliant with Fed. R. Bankr. P. 7004(b)(3) (1) the motion and all ancillary documents; and (2) a notice of continued hearing (indicating that opposition to the motion must be filed in writing not later than November 5, 2019);

IT IS FURTHER ORDERED that not later than October 25, 2019, the movants shall file notice of continued hearing and the Certificate of Service demonstrating compliance with the previous paragraph of this order; and

IT IS FURTHER ORDERED that the respondent may file opposition not later than November 5, 2019.

33. [12-16787](#)-A-7 **IN RE: BRYAN/KIMBERLY HAUSER
SAH-3**

MOTION TO AVOID LIEN OF DISCOVER BANK
9-25-2019 [\[43\]](#)

BRYAN HAUSER/MV
SUSAN HEMB
OST 9/26/19

Final Ruling

Motion: Avoid Lien

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

Disposition: Continued to November 12, 2019, at 9:00 a.m.

Order: Civil minute order

Bryan Hauser and Kimberly Hauser ("Hausers") to avoid the lien of Discover Bank that impairs their homestead exemption. The motion will be continued to allow the Hausers to address procedural defects.

PROCEDURAL DEFECTS

Service

Hausers attempt service by serve via certified mail "Discover Bank" and "Bishop White Marshall & Weibel, P.S." whom this court believes represented Discover Bank in the underlying action giving rise to the judgment lien. Certificates of Service, September 25, 2019, ECF # 46, 55 & 56.

Service on Discover Bank is insufficient. 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.

Service on Bishop White Marshall & Weibel, P.S. is also insufficient. 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.

Consequently, the movants have not served the motion as required by Rule 7004.

No Claim of Exemption

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor

loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Schedule C, August 2, 2012, ECF # 1. 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:

IT IS ORDERED that the motion is continued to November 12, 2019, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants may file an Amended Schedule C addressing the concerns raised by the court herein;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants shall serve in a manner compliant with Fed. R. Bankr. P. 7004(b)(3) (1) the motion and all ancillary documents; and (2) a notice of continued hearing (indicating that opposition to the motion must be filed in writing not later than November 5, 2019);

IT IS FURTHER ORDERED that not later than October 25, 2019, the movants shall file notice of continued hearing and the Certificate of Service demonstrating compliance with the previous paragraph of this order; and

IT IS FURTHER ORDERED that the respondent may file opposition not later than November 5, 2019.

34. [12-16787](#)-A-7 **IN RE: BRYAN/KIMBERLY HAUSER**
[SAH-4](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
9-26-2019 [\[50\]](#)

BRYAN HAUSER/MV
SUSAN HEMB
OST 9/26/19

Final Ruling

Motion: Avoid Lien

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

Disposition: Continued to November 12, 2019, at 9:00 a.m.

Order: Civil minute order

Bryan Hauser and Kimberly Hauser ("Hausers") to avoid the lien of Unifund CCR Partners that impairs their homestead exemption. The motion will be continued to allow the Hausers to address procedural defects.

PROCEDURAL DEFECTS

Service

Hausers attempt service by serve via certified mail "Unifund CCR Partners" and "Kenosian & Miele, LLP" whom this court believes represented Unifund CCR Partners in the underlying action giving rise to the judgment lien. Certificates of Service, September 26, 2019, ECF # 53.

Service on Unifund CCR Partners is insufficient. 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.

Service on Kenosian & Miele, LLP is also insufficient. 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.

Consequently, the movants have not served the motion as required by Rule 7004.

No Claim of Exemption

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). *See Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. *See Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Schedule C, August 2, 2012, ECF # 1. 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:

IT IS ORDERED that the motion is continued to November 12, 2019, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants may file an Amended Schedule C addressing the concerns raised by the court herein;

IT IS FURTHER ORDERED that not later than October 22, 2019, the movants shall serve in a manner compliant with Fed. R. Bankr. P. 7004(b)(3) (1) the motion and all ancillary documents; and (2) a notice of continued hearing (indicating that opposition to the motion must be filed in writing not later than November 5, 2019);

IT IS FURTHER ORDERED that not later than October 25, 2109, the movants shall file notice of continued hearing and the Certificate of Service demonstrating compliance with the previous paragraph of this order; and

IT IS FURTHER ORDERED that the respondent may file opposition not later than November 5, 2019.

35. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WFH-13](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PACIFIC PRIDE SERVICES, LLC
9-17-2019 [\[983\]](#)

RANDELL PARKER/MV
RILEY WALTER
DANIEL EGAN/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. 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.

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 as exhibit and filed at docket no. 985.

36. [17-12389](#)-A-7 IN RE: DON ROSE OIL CO., INC.
[WFH-14](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WAWONA PACKING CO., LLC
9-17-2019 [\[988\]](#)

RANDELL PARKER/MV
RILEY WALTER
DANIEL EGAN/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. 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.

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 as exhibit and filed at docket no. 990.

37. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WFH-15](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RIVER CITY PETROLEUM, INC.
9-17-2019 [[993](#)]

RANDELL PARKER/MV
RILEY WALTER
DANIEL EGAN/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. 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.

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 as exhibit and filed at docket no. 995.

38. [19-13395](#)-A-7 **IN RE: CARL BRANTLEY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2019 [\[13\]](#)

FORD MOTOR CREDIT COMPANY/MV
LAYNE HAYDEN
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Ford Transit 350

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

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 Circ. 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 Rules of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion,

commonly known as 2015 Ford Transit 350, 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.

39. [19-13696](#)-A-7 **IN RE: MICHAEL BARNETT**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-17-2019 [[12](#)]

BANK OF THE WEST/MV
SCOTT LYONS
MARY TANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Hyundai Sonata

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

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 Circ. 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 Rules of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Bank of the West'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 2017 Hyundai Sonata, 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.

40. [19-13896](#)-A-7 **IN RE: GUADALUPE ROCHA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-2019 [8]

AMERICAN HONDA FINANCE
CORPORATION/MV
PETER BUNTING
VINCENT FROUNJIAN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Honda Civic

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

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 Circ. 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 Rules 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.

American Honda Finance Corp'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 2018 Honda Civic, 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.

41. [19-13097](#)-A-7 **IN RE: FELIPE RODRIGUEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-30-2019 [[16](#)]

JPMORGAN CHASE BANK, N.A./MV
R. BELL
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 GMC Yukon

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

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 Circ. 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 Rules 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.

JPMorgan Chase Bank'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 2015 GMC Yukon, 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.

42. [19-13597](#)-A-7 **IN RE: JAIME GOMEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2019 [\[11\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Toyota Highlander

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).

The debtor's Statement of Intention expresses the debtor's intent to surrender the property (ECF #1). Trustee has not opposed. Court will grant this motion.

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.

Toyota Motor Credit Corp.'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 2017 Toyota Highlander, 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. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[DRJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-2-2019 [\[65\]](#)

FIRST INSURANCE FUNDING/MV
RILEY WALTER
DAVID JENKINS/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Insurance policies return premiums

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

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.

First Insurance Funding'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 insurance policies return premiums, 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.

44. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WF-61](#)

MOTION TO ABANDON
10-2-2019 [[1114](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Property Description: Debtor's payroll and accounting records

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

45. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WF-62](#)

MOTION TO PAY
10-2-2019 [[1118](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Allowance and Payment of Administrative Expenses

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

Disposition: Granted

Order: Prepared by moving party

Description of Expenses: document storage over 3 months, document destruction

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). 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).

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

The trustee seeks approval for three months storage \$1,782.00 and for destruction \$2,000.00 of 75 boxes of patient records. This satisfies the criteria of § 503(b)(1)(A). These expenses will be allowed as an administrative expense under § 503(b)(1)(A) and may be distributed in accordance with the priorities set forth in § 726(a)(1) and § 507(a) of the Bankruptcy Code.

46. [19-13284](#)-A-7 **IN RE: TIMOTHY LAMBIRTH**
[JAD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-2-2019 [[16](#)]

LISA MILLER/MV
HAGOP BEDOYAN
JESSICA DORN/ATTY. FOR MV.

No Ruling

47. [19-13223](#)-A-7 **IN RE: JOSE DENIZ**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-3-2019 [[15](#)]

SCOTT LYONS

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.
11 U.S.C. § 343. A continuing failure to attend this meeting may be
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.
2014) ("Some courts have ruled that the failure to attend the § 341
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting
of creditors required by 11 U.S.C. § 341. Because the debtor's
failure to attend this meeting has occurred once, the court will not
dismiss the case on condition that the debtor attend the next
creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an
extension of deadlines. The court extends the following deadlines
to 60 days after the next continued date of the creditors' meeting:
(1) the trustee and all creditors' deadline to object to discharge
under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and
all creditors' deadline to bring a motion to dismiss under § 707(b)

or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

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.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for October 31, 2019. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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