

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: NOVEMBER 10, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [15-12707](#)-A-7 JOSE RUBIO AND MARIA MOTION TO EMPLOY GOULD AUCTION
PFT-2 MARTINEZ AND APPRAISAL COMPANY AS
PETER FEAR/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
10-13-15 [[14](#)]

ROSALINA NUNEZ/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2003 Ford Expedition

Sale Type: Public auction

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

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

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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

2. [15-12707](#)-A-7 JOSE RUBIO AND MARIA MOTION TO SELL
PFT-3 MARTINEZ 10-13-15 [[20](#)]
PETER FEAR/MV
ROSALINA NUNEZ/Atty. for dbt.
PETER FEAR/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: 2010 Toyota Camry SE

Buyer: Debtors

Sale Price: \$8694.50 (\$1000 cash plus \$2105.50 exemption credit plus \$5589 lien to which the sale is made subject)

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.

3. [15-10810](#)-A-7 CATHY GRAHAM MOTION TO SELL
PFT-1 10-5-15 [[14](#)]
PETER FEAR/MV
PETER BUNTING/Atty. for dbt.
PETER FEAR/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:

—Real property located at 363 West Houston Avenue, Clovis, CA
—Personal property: checking account, savings account and vehicle

Buyer: Debtor

Sale Price:

—363 West Houston Avenue, Clovis, CA: \$323,176.49 (\$8176.00 cash plus \$175,000 exemption credit plus a \$140,000.49 lien to which the sale is made subject)

—Checking account at Fresno County Federal Credit Union: \$1.00 cash

—Savings account at CAHP Credit Union: \$50.00 cash

—2010 Nissan Maxima: \$15,962 (\$1773.00 cash plus \$2900 exemption credit plus a \$11,289.00 lien to which the sale is made subject)

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.

4. [15-12911](#)-A-7 RYAN MORAGA AND ANGELA MOTION FOR RELIEF FROM
 APN-1 MOYA AUTOMATIC STAY
 BMW FINANCIAL SERVICES NA, 10-13-15 [[24](#)]
 LLC/MV
 SCOTT LYONS/Atty. for dbt.
 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: 2012 Dodge Grand Caravan

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

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Dodge Grand Caravan, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) will be 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.

5. [15-11514](#)-A-7 BERTHA PABLO
RHT-1
ROBERT HAWKINS/MV
DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
10-7-15 [[24](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 GMC Sierra

Buyer: Debtor

Sale Price: \$4700 (\$1800 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

6. [15-12317](#)-A-7 MIRIAM INIGUEZ MOTION TO CONVERT CASE FROM
MAT-1 CHAPTER 7 TO CHAPTER 13
MIRIAM INIGUEZ/MV 10-15-15 [[26](#)]
MARCUS TORIGIAN/Atty. for dbt.

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Denied without prejudice

Order: Civil minute order

PROCEDURAL ISSUES

"Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers." Fed. R. Bankr. P. 9011(a). Here, the papers filed are unsigned, violating both Federal Rule of Bankruptcy Procedure 9011(a) and Local Rule 9004-1(c).

The declaration is unsigned as well. Because the declaration lacks a signature, the motion remains unsupported by competent evidence. LBR 9014-1(d)(7).

Because the proof of service is unsigned, the court concludes that the motion has not been served as required by Rule 1017(f)(2) and Rule 9013. Nor can the court conclude that Rule 2002(a)(4) notice has been provided.

SUBSTANTIVE ISSUES

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. *See* 11 U.S.C. § 706(a), (d). A debtor's right to

convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

In a motion for conversion from chapter 7 to chapter 13 under § 706(a), therefore, a movant state grounds showing that (1) the case was not previously converted under §§ 1112, 1208, or 1307 and (2) that the noncontingent, liquidated, secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e).

Here, the movant has not addressed any such facts that would permit the court to infer that the debtor is eligible for relief under chapter 13 of Title 11. Nor has the movant represented whether any previous conversions of the case have occurred.

CIVIL MINUTE ORDER

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

The debtor's motion for conversion under § 706(a) has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion,

IT IS ORDERED that the motion is denied without prejudice.

7. [15-13520](#)-A-7 VERNICE NELLON
DJP-1
VALLEY SMALL BUSINESS
DEVELOPMENT CORPORATION/MV
DON POOL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-22-15 [[14](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2 vehicles described as a 2007 Chevy Avalanche and a 2008 GMC Arcadia

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 loan amount (owed by a business called Unlimited Energy Solar Solutions, Inc. to the movant and also owed by the debtor pursuant to a guaranty of such business debt) is secured by liens against the property described above. The secured debt exceeds the value of such property. Thus, 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2007 Chevy Avalanche and a 2008 GMC Arcadia, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

8. [15-12731](#)-A-7 MARK WATERS
DJP-1
EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
DAVID JENKINS/Atty. for dbt.
DON POOL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-22-15 [[47](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Sanger V-237 XTZ (a boat) and 2010 Sport Boat Tandem Trailer

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).

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

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

In this case, the debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. Additionally, the movant has alleged that the property became uninsured so that the movant had to acquire forced-place insurance coverage for the property. These facts constitute cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Educational Employees 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 a 2010 Sanger V-237 XTZ (a boat) and 2010 Sport Boat Tandem Trailer, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) will be 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.

9. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-8
TRUDI MANFREDO/MV

MOTION FOR SALE OF REAL
PROPERTY SUBJECT TO OVERBID,
SALE OF PERSONAL PROPERTY
SUBJECT TO OVERBID, PAYMENT OF
REAL ESTATES BROKER'S
COMMISSIONS, TO CARVE-OUT WITH
MERCHANTS BONDING COMPANY, FOR
ASSUMPTION OR REJECTION OF
EXECUTORY LEASE
10-13-15 [[213](#)]

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

Tentative Ruling

Motion: Sell Real and Personal Property, Compensate Real Estate Broker, Assume or Reject Executory Lease, Approve Carve-Out Agreement with Merchants Bonding Co.

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

Disposition: Granted

Order: Prepared by moving party

Property:

Real Property-2985 Bayview Drive, Pismo Beach, CA ("Real Property")
Personal Property-furnishings of the Real Property
Executory Lease-Lease of Real Property with Paragon Diversified, Inc., as Lessee

Buyer: Timothy Alan Finagan, Trustee and Donna Lynn Finagan, Trustee ("Buyers")

Sale Price: \$1,705,000 (with seller paying a \$750 home warranty for Buyer's benefit)

Sale Type: Private sale subject to overbid opportunity

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

SECTION 363(b) SALE

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.

BROKER'S COMMISSION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). Here, the 6% commission is the industry standard, and the broker's efforts to market the property and handle offers and counteroffers has benefitted the estate. The court finds that the compensation sought is reasonable and will approve the application.

ASSUMPTION OR REJECTION OF LEASE

Statutory conditions precedent must be satisfied before a court may approve an assumption of an unexpired lease or executory contract. *See* 11 U.S.C. § 365(b). These conditions include curing defaults, compensating the other party to the lease or executory contract for actual pecuniary losses, or providing adequate assurance that these conditions will be met. *Id.* § 365(b)(1)(A)-(B). Another condition for assumption is providing adequate assurance of future performance under the lease or executory contract. *Id.* § 365(b)(3).

In evaluating motions to assume or reject, the court applies the business judgment rule. *See In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶¶ 16:1535-1536, 16:515 (rev. 2011). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the [DIP / trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670. The assumption or rejection of an unexpired lease or executory contract should be approved absent a finding that the decision is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

Here, the trustee has extended the time in which to assume or reject the lease to November 20, 2015. It appears that the assumption or rejection will occur before such date given that the hearing is on November 10, 2015 and the order will likely be submitted and entered before such date as well.

The trustee must assume and assign the lease if a different buyer

obtains the winning bid at the hearing and also desires to occupy the Real Property rather than lease it. If the winning bidder is the proposed Buyer, or a different bidder who does not want to lease the Real Property, then the lease will be rejected.

CARVE-OUT AGREEMENT

Legal Standards for Carve-Out Agreements

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

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

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

Discussion

The court has reviewed the trustee's arguments regarding its carve-out agreement with Merchants Bonding Company, the holder of the second trust deed on the Real Property.

The court finds that the trustee has fulfilled her basic duties by her analysis of the property's ownership, her employment of a broker, her investigation of liens on the property and their respective priority, her determination that an attachment lien was recorded postpetition and negotiation of its release, her tax analysis of the sale as to the estate, and her extension of the time to assume or reject the executory lease of the Real Property. The trustee has also disclosed the terms of the carve-out to the court.

Further, the trustee has reduced her commission (as to this sale only) to \$4,046 or less by calculating her commission based on the net proceeds of sale (including the sale of \$20,000 of personal property furnishings) after payment of all liens, broker commissions, sale costs. The trustee's commission (as to this sale only) would ordinarily exceed \$90,000 but her commission will be as stated above. This would yield approximately \$33,235.91 other priority unsecured and general unsecured creditors' claims (\$20,000 of personal property proceeds + \$17,281.91 from the carve-out agreement with Merchants = \$37,281.91. \$37,281.91 - \$4,046.00 trustee's commission = \$33,235.91).

In addition, this sale reduces Merchants' lien as against other assets to be liquidated by the trustee by a little less than \$70,000. This motion, and other sale motions already granted, together reduce Merchants' lien by a significant amount, which improves the prospects for equity for the estate in other assets that also secure Merchants' lien.

The estate also benefits by receiving rental income before closing of this sale. The net rents have been split pro-rata with Merchants, 30% for the estate and 70% for Merchants.

CONCLUSION

The court will approve the sale to the proposed buyer subject to any overbid at the hearing. At the hearing, the court will also approve the bidding procedures unless a party in interest objects thereto, in which case the court will rule accordingly. The terms of the carve-out agreement and the broker's commission are also approved. Further, the lease may be assumed or rejected depending on the buyer's intended use of the property and conditioned on the assumption or rejection terms being entered as part of an order approving the sale no later than the November 20, 2015, deadline.

10. [15-13036](#)-A-7 TERRY/SHIRLEY THOMPSON MOTION FOR ORDER AUTHORIZING
PFT-1 SALE OF PERSONAL PROPERTY OF
PETER FEAR/MV THE BANKRUPTCY ESTATE SUBJECT
TO BETTER AND HIGHER BID
10-13-15 [[21](#)]
- MARK ZIMMERMAN/Atty. for dbt.
PETER FEAR/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: Vehicles described below

Buyer: Debtor

Sale Price:

-1999 Ford F250 Super Duty: \$3354.54 (\$2463.00 cash plus \$891.00 exemption credit)

-1982 Honda Motorcycle GL1100 Gold Wing: \$1037.00 cash

Sale Type: Private sale subject to overbid opportunity

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

11. [10-16342](#)-A-7 MANUEL/ENEDINA PEREZ CONTINUED MOTION FOR SANCTIONS
DAC-5 FOR VIOLATION OF THE DISCHARGE
MANUEL PEREZ/MV INJUNCTION
4-21-15 [[29](#)]

ERIN SAKATA/Atty. for dbt.

Final Ruling

Based on the representations of settlement, the matter is continued to December 15, 2015, at 9:00 a.m. In the event the settlement has not been memorialized and the motion withdrawn, not later than December 8, 2015, defendant shall file opposition to the motion. Failing withdrawal of the motion or opposition by December 8, 2015, the court will enter the defendant's default, Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c), and will rule on the motion. No additional continuances of the hearing date or enlargements of time to file opposition will be granted. If the motion has not been withdrawn and is opposed, the court will issue a scheduling order on December 15, 2015. A civil minute order will issue.

12. [08-12145](#)-A-7 TOULU THAO MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI AND WONG,
JANZEN, TAMBERI AND WONG/MV ACCOUNTANT(S)
10-8-15 [[47](#)]

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Janzen, Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1596.00 and reimbursement of expenses in the amount of \$17.15.

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).

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1596.00 and reimbursement of expenses in the amount of \$17.15.

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.

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| 13. | 15-13658 -A-7 ARMANDO/IRINA QUINTERO
CJO-1
CENTRAL MORTGAGE COMPANY/MV
L. HURST/Atty. for dbt.
CHRISTINA O/Atty. for mv. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-15 [13] |
|-----|---|---|

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 5563 East Florence Avenue, Fresno, CA

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

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.

Central Mortgage Company, d/b/a Central Mortgage Loan Servicing Company, has filed a motion for relief from the automatic stay. 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 5563 East Florence Avenue, Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) will be 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.

14. [15-13370](#)-A-7 KARIE WRIGHT
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
9-30-15 [[10](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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

DISMISSAL

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

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued 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 requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil

Minutes of the hearing.

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for November 20, 2015, at 9:00 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's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

15. [11-19687](#)-A-7 ROBERT SCARPITTO
THA-5
JAMES SALVEN/MV
STEVEN SIEVERS/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO SELL AND/OR
MOTION TO PAY
9-10-15 [[61](#)]

No tentative ruling.

16. [15-11394](#)-A-7 CARLOS GONZALEZ AND KARLA
MAR-3 GOMEZ-DIAZ
CARLOS GONZALEZ/MV

MOTION TO REDEEM AND/OR MOTION
TO BORROW , MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF RIVERA LAW CORPORATION
DEBTORS ATTORNEY(S)
9-30-15 [[26](#)]

MICHAEL RIVERA/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

17. [15-13494](#)-A-7 CESAR LOPES
APN-1
BMW FINANCIAL SERVICES NA,
LLC/MV
MARK ZIMMERMAN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-13-15 [[17](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Chevrolet Silverado 1500

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Chevrolet Silverado 1500, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) will be 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.

18. [14-12498](#)-A-7 SEQUOIA PROSTHETICS AND MOTION TO COMPROMISE
JES-3 ORTHOTICS, INC. CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH CENTRAL VALLEY
COMMUNITY BANK
9-30-15 [[35](#)]
- PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles between the estate and Central Valley Community Bank with respect to estate funds held by the bank in the amount of \$35,783.00. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include (1) payment to the estate of \$18,000; and (2) retention of the remainder by the bank. 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.

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

IT IS ORDERED that the motion is granted. The court approves the parties' compromise, which settles a dispute about funds held in an account at Central Valley Community Bank. The terms and conditions of the compromise include (1) payment of \$18,000 to the estate by the bank; and (2) retention of the remainder of the funds by the bank.