

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

Wednesday

November 12, 2014

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [10-17007](#)-A-7 MAIYIA XIONG
DRJ-3
TRUDI MANFREDO/MV

MOTION FOR COMPENSATION FOR
DAVID R. JENKINS, TRUSTEE'S
ATTORNEY(S) .
10-6-14 [[81](#)]

PETER FEAR/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

Tentative Ruling

Application: Final 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

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.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2950.00 and reimbursement of expenses in the amount of \$146.63.

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.

2. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER MOTION TO SELL
SAS-3 10-3-14 [[78](#)]
SHERYL STRAIN/MV
JERRY LOWE/Atty. for dbt.
HAGOP BEDOYAN/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: 1999 Ford F250

Buyer: Debtors

Sale Price: \$5525.00 (\$2625 cash plus \$2900 exemption)

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. [14-12114](#)-A-7 CRYSTAL GARLICK MOTION TO SELL
JES-3 10-10-14 [[74](#)]
JAMES SALVEN/MV

THOMAS ARMSTRONG/Atty. for dbt.

ROBERT HAWKINS/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: 2006 Toyota Corolla

Buyer: Debtor

Sale Price: \$3900 (\$1000 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). 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. [14-13415](#)-A-7 RON/KARRIE HATLEY MOTION TO EXTEND DEADLINE TO
TMT-1 FILE A COMPLAINT OBJECTING TO
TRUDI MANFREDO/MV DISCHARGE OF THE DEBTOR
10-9-14 [[20](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

5. [14-13415](#)-A-7 RON/KARRIE HATLEY MOTION FOR TURNOVER OF PROPERTY
TMT-2 10-10-14 [[25](#)]
TRUDI MANFREDO/MV
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

6. [11-60828](#)-A-7 DEBRA BRABANT MOTION FOR COMPENSATION FOR
JES-4 JAMES SALVEN, ACCOUNTANT(S).
JAMES SALVEN/MV
6-23-14 [[50](#)]
DAVID ADALIAN/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

Final Ruling

Application: Compensation and Expenses

Disposition: Denied without prejudice

Order: Prepared by moving party

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or

reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

7. [13-17444](#)-A-7 A & A TRANSPORT, CO., MOTION FOR ADMINISTRATIVE
HAR-1 INC. EXPENSES
10-8-14 [[282](#)]
HILTON RYDER/Atty. for dbt.

Final Ruling

Application: Third and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: McCormick, Barstow, et. al.

Additional Compensation approved: \$6,775.00

Additional Costs approved: \$138.86

Aggregate Fees and Costs Approved in this application: \$6,913.86

Retainer held: \$1,018.35

Amount to be paid as administrative expense: \$5,895.51

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

DISCUSSION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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 by this application and in all prior fee applications are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Third and Final Application for Compensation filed by McCormick, Barstow, et. al. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) all interim awards of fees and costs are finalized; (3) additional compensation of \$6,775.00 is approved on a final basis; (4) additional costs of \$138.86 are approved on a final basis; (5) aggregate fees and costs approved by this application are \$6,913.86; (6) McCormick Barstow is authorized to apply the remaining retainer to the fees and costs approved herein; and (7) after applying the remaining retainer, \$5,895.51, shall be paid as an administrative expense by the Chapter 7 trustee.

8.	13-17444 -A-7	A & A TRANSPORT, CO.,	MOTION FOR COMPENSATION FOR
	WW-4	INC.	MICHAEL L. WILHELM, CREDITOR
			COMM. ATY(S).
			10-15-14 [293]

HILTON RYDER/Atty. for dbt.

Final Ruling

Application: Second and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: Walter & Wilhelm

Additional Compensation approved: \$7,222.50

Additional Costs approved: \$533.36

Aggregate Fees and Costs Approved in this application: \$7,755.86

Retainer held: \$0.00

Amount to be paid as administrative expense: \$7,755.86

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

DISCUSSION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for

the debtor in possession in a Chapter 11 case 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 by this application and in all prior fee applications are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Second and Final Application for Compensation filed by Walter & Wilhelm having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) the first interim award of fees and costs are finalized; (3) additional compensation of \$7,222.50.,00 is approved on a final basis; (4) additional costs of \$533.36 are approved on a final basis; (5) aggregate fees and costs approved by this application are \$7,755.86; (6) Walter & Wilhelm is holding no retainer; and (7) \$7,755.86 shall be paid as an administrative expense by the Chapter 7 trustee.

9. [14-14053](#)-A-7 SHERRY GONZALEZ
SDM-1
SHERRY GONZALEZ/MV
SCOTT MITCHELL/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
10-6-14 [[16](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice to the filing of an adversary proceeding to seek this relief

Order: Prepared by moving party

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

In effect, what the debtors request is an order declaring that the judicial lien of the respondent is void and unenforceable. Such relief must be requested by an adversary proceeding given that the respondent is entitled to the broader procedural rights of an adversary proceeding when the relief is directed at the validity of the respondent's lien. Fed. R. Bankr. P. 7001(2).

Further, whether the motion was properly served under Rule 7004(h) is uncertain. Under Rule 7004(h), service on the respondent must be made by (i) certified mail, (ii) addressed to an officer. In this case, the label *certified mail* is placed immediately above an address to Citibank, N.A. at a post office box in Sioux Falls, SD, but no officer is listed at this address. So this address does not constitute sufficient service. The next address beneath the one just discussed does list an officer at another Sioux Falls, SD, address, but no certified mail label appears directly above this address. The certified mail label above the previous Sioux Falls, SD, address which does not name an officer might be read to apply to all addresses beneath it or only to the first address immediately below the label. Thus, the certified mail label that does appear is ambiguous about whether it applies to the mailing to the officer at the Sioux Falls address. Because of this ambiguity, the address at which an officer is served does not constitute sufficient service.

Lastly, a discharge has not been entered in this case. So the relief requested is not ripe for a decision given that it is premised on a declaration that "post-discharge" a lien does not survive when it never attached to real property pre-petition.

10. [14-15067](#)-A-7 JOSE VALLADARES
PLG-2
JOSE VALLADARES/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-28-14 [\[9\]](#)

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Quit Bugging Mee Pest Control, a sole proprietorship

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

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

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

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

11. [14-11270](#)-A-7 MARCOS/DOLORES GONZALEZ MOTION TO SELL
JES-4 10-4-14 [[41](#)]
JAMES SALVEN/MV
OVIDIO OVIEDO/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 GMC Yukon

Buyer: Debtors

Sale Price: \$7900 (\$5000 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). 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.

12. [14-14472](#)-A-7 JASON/STACY PYZER MOTION TO SELL
RHT-1 10-17-14 [[13](#)]
ROBERT HAWKINS/MV
MARIO LANGONE/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2010 Jeep Wrangler Unlimited

Buyer: Debtors

Sale Price: \$19,138.81 (\$5000 cash plus \$2900 exemption credit and accounting for a lien on the vehicle securing a debt of \$11,238.81)

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.

13. [12-14975](#)-A-7 AMANDA BARRAZA
ER-2
AMANDA BARRAZA/MV
EDDIE RUIZ/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF WELLS FARGO BANK, N.A.
9-15-14 [[30](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the civil minutes for the hearing on October 29, 2014, the court will grant the motion on the merits. It appears that a proof of service has been filed giving notice of the amendment to Schedule C on the entities affected thereby.

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 debt secured by the responding party's lien.

14. [12-14975](#)-A-7 AMANDA BARRAZA
ER-3
AMANDA BARRAZA/MV
EDDIE RUIZ/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF SAVE MART SUPERMARKETS
9-15-14 [[36](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the civil minutes for the hearing on October 29, 2014, the court will grant the motion on the merits. It appears that a proof of service has been filed giving notice of the amendment to Schedule C on the entities affected thereby.

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 debt secured by the responding party's lien.

15. [12-17478](#)-A-7 BERTHA SALAZAR MOTION FOR COMPENSATION FOR
JES-2 JAMES SALVEN, ACCOUNTANT(S).
JAMES SALVEN/MV 6-23-14 [[44](#)]
BRET ADAMS/Atty. for dbt.

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

16. [14-15084](#)-A-7 KILE/SHEREEN MCCARTY MOTION TO COMPEL ABANDONMENT
PBB-1 10-24-14 [[11](#)]
KILE MCCARTY/MV
PETER BUNTING/Atty. for dbt.

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: debtor's business as a self-employed attorney, a sole proprietorship

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

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

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

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

17. [14-14293](#)-A-7 ANTONIO/THERESA JEBIAN MOTION TO AVOID LIEN OF ROBERT
KDG-1 H. SCRIBNER
ANTONIO JEBIAN/MV 10-10-14 [[18](#)]
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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(b)(1), it appears that service of the motion may be not have been served by mailing a copy of the motion to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession. However, it may be that the defendant has been properly served by mailing the motion to an agent of such defendant authorized to receive service, *see* Rule 7004(b)(8), but such conclusion is not evident from the proof of service.

18. [14-14794](#)-A-7 DELANO/SANDRA SHROUT ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
STEPHEN LABIAK/Atty. for dbt. 10-14-14 [[12](#)]
\$335.00 FILING FEE PAID
10/14/14

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

19. [14-12595](#)-A-7 JOSE MOLINA MOTION TO SELL
RHT-4 10-8-14 [[30](#)]
ROBERT HAWKINS/MV
SCOTT LYONS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2002 Ford XLT Truck

Sale Type: Public auction

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.

20.	13-16998 -A-7 FERNANDO LOPEZ JES-1 JAMES SALVEN/MV	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FERNANDO LOPEZ 10-4-14 [23]
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Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The compromise will be approved.

9:15 a.m.

1. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND STATUS CONFERENCE RE: AMENDED
 [14-1082](#) ROBYN SOUZA COMPLAINT
 MILLER HAY AND TRUCKING, INC. 10-5-14 [[26](#)]
 V. SOUZA, JR. ET AL
 KEVIN LITTLE/Atty. for pl.
 RESPONSIVE PLEADING

Tentative Ruling

The court intends to issue a scheduling order for discovery and set the matter for a final pretrial conference. The court presumes that: (1) all causes of action and affirmative defenses are core and, if later determined to be non-core, the parties consent to entry of final orders and judgment by this court; (2) all parties have been joined; (3) the pleadings are in final form; (4) the discovery deadlines described in *Western Milling, LLC v. Souza*, No. 14-1077 (Bankr. E.D. Cal. 2014), Scheduling Order, October 2, 2014, ECF #10, are sufficient; and (5) a final pretrial conference be conducted on April 1, 2015, at 9:15 a.m. If each party agrees that such an order is acceptable, no appearance at the status conference is required and the court will issue a scheduling order consistent with this pre-hearing disposition. If not, each party through counsel should appear at the status conference.

2. [12-18810](#)-A-7 JAMES MERCER CONTINUED STATUS CONFERENCE
 [13-1082](#) COMPLAINT
 MANFREDO V. ESTATE OF SUSAN E. 7-23-13 [[1](#)]
 MERCER ET AL
 JAMES MILLER/Atty. for pl.
 DISMISSED

Final Ruling

The adversary proceeding dismissed, the status conference is concluded and no appearance is necessary.

3. [13-18043](#)-A-7 TARSEM PABLA CONTINUED STATUS CONFERENCE RE:
[14-1075](#) COMPLAINT
 MANFREDO V. PABLA ET AL 7-28-14 [[1](#)]
 TRUDI MANFREDO/Atty. for pl.
 RESPONSIVE PLEADING

Final Ruling

At the suggestion of the parties, the matter is continued to December 9, 2014, at 9:15 a.m. Not later than December 2, 2014, the parties shall file a further joint status report.

4. [12-17166](#)-A-7 BILLY JOHNSON CONTINUED STATUS CONFERENCE RE:
[12-1150](#) COMPLAINT
 U.S. TRUSTEE V. JOHNSON 9-7-12 [[1](#)]
 GREGORY POWELL/Atty. for pl.
 RESPONSIVE PLEADING

No tentative ruling

5. [12-17166](#)-A-7 BILLY JOHNSON CONTINUED MOTION FOR SUMMARY
[12-1150](#) UST-1 JUDGMENT
 U.S. TRUSTEE V. JOHNSON 1-23-13 [[17](#)]
 GREGORY POWELL/Atty. for mv.
 RESPONSIVE PLEADING

No tentative ruling

6. [13-15067](#)-A-7 CARLOS BERBEREIA CONTINUED STATUS CONFERENCE RE:
[14-1041](#) AMENDED COMPLAINT
 MANFREDO V. BERBEREIA 7-3-14 [[24](#)]
 TRUDI MANFREDO/Atty. for pl.

Final Ruling

The matter is continued to December 9, 2014, at 9:15 a.m. No appearance is necessary.

7. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER STATUS CONFERENCE RE: COMPLAINT
[14-1111](#) 9-12-14 [[1](#)]
SALVEN V. STRAIN ET AL
ROBERT HAWKINS/Atty. for pl.

Final Ruling

The matter is continued to January 13, 2015, at 10:00 a.m. If a judgment has not been entered, not later than January 6, 2015, the plaintiff shall file a status report.

10:00 a.m.

1. [14-14906](#)-A-7 PATRICIA LOPEZ MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
U.S. BANK NATIONAL 10-8-14 [7]
ASSOCIATION/MV
NICHOLE GLOWIN/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party

Subject: 3439 North Purdue 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale.

The motion will be granted in part to give the movant relief from stay to permit the movant to continue to enforce its right to possession of the property in the unlawful detainer proceeding in state court. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

The motion will be denied in part to the extent it seeks binding relief in any and all chapters following any later conversion of this case. No factual or legal grounds have been provided to support the granting of this relief or the necessity of this relief (i.e., the relief is unnecessary in the event that the stay is not reinstated upon conversion).

The motion will be granted in part, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [14-14009](#)-A-7 GLORIA MARTINEZ ROCHA
KAZ-1
U.S. BANK TRUST, N.A./MV
PETER BUNTING/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

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

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to December 10, 2014, and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, service of the motion was insufficient and did not comply with Rules 7004 and 9014 as service was insufficient. If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney at the correct email address.

Under Rule 7004(g), service must be made upon the debtor's attorney by any means authorized under Rule 5(b) of the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 5(b) includes service by electronic means if the person has consented in writing. Fed. R. Civ. P. 5(b)(2)(E). Local Bankruptcy Rule 7005-1 permits a registered user of the court's electronic filing system to consent to receive service by electronic means under Federal Rule of Civil Procedure 5(b)(2)(E). This local rule describes how consent is accomplished. The Clerk maintains a roster of names and email addresses of registered users of the court's electronic filing system who have consented to service by electronic means. LBR 7005-1(c). It further specifies the method of service by electronic means upon those who have consented to such service. LBR 7005-1(d).

In this case, service was not properly made because the attorney was not served at the correct email address shown appearing on the roster described in LBR 7005-1(c).

3. [14-12972](#)-A-7 MARK/DARLENE JONES
JFL-1
SETERUS, INC./MV
PETER FEAR/Atty. for dbt.
JAMES LEWIN/Atty. for mv.
DISCHARGED, RESPONSIVE
PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-25-14 [[18](#)]

Tentative Ruling

Motion: Relief from the Automatic Stay

Notice: Continued hearing date / LBR 9014-1(f)(1); written opposition filed by Bank of the Sierra

Disposition: Granted in part, denied in part

Order: Prepared by the movant

Subject: 250 North Oakmore Street, Tulare, CA

The court continued the hearing and requested that Mr. Salven, the trustee, file a status report 7 days prior to the continued hearing. No report has been filed. The court therefore assumes that the matter is ripe for a decision.

The court will adopt the ruling set forth in the "Tentative Ruling" found in the civil minutes dated September 24, 2014. [*The pertinent portion of such ruling is set forth below:*]

OPPOSITION

Bank of the Sierra opposes the motion on two grounds. First, it contends that it did not receive a copy of the motion even though it has filed a request for special notice. But Bank of the Sierra has had actual notice of the motion in time to oppose the motion, so any lack of notice is considered harmless and will be waived. Rule 7004 service of the motion, moreover, is not required by Rule 4001(a) regardless of whether a party's special notice request contains.

Further, Bank of the Sierra argues that the movant's lien position is protected by an adequate equity cushion of approximately \$263,305.62, which ignores Bank of the Sierra's lien on the property as well as other junior liens. But this argument must be rejected because it fails to recognize that under § 362(d)(2), all liens encumbering the collateral are taken into account in determining whether the debtor has equity. See *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984). Section 362(d)(2), moreover, refers to the *debtor's* equity, which requires determining whether the debtor has value in the property that is unencumbered by liens. 11 U.S.C. § 362(d)(2).

Essentially, Bank of the Sierra's argument improperly conflates the distinct concepts of adequate protection under § 362(d)(1) with debtor's equity under § 362(d)(2).

Bank of the Sierra does not dispute the value of the property or the amount of the lienholders' debt. In fact, Bank of the Sierra admits that there may be no "overall equity" in the property. See Opp'n at 3:12, ECF No. 34. Accordingly, the movant is entitled to stay relief if the total liens on the property exceed the value of the property.

RELIEF AS TO DEBTOR

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

RELIEF AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens equals \$673,104.08. This amount exceeds the value of the collateral, which is \$545,000, so 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.

4. [14-13891](#)-A-7 DORIS ROMERO
CJO-1
GREEN TREE SERVICING LLC/MV
TRUDI MANFREDO/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-22-14 [[28](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to December 10, 2014, and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor's address has changed as of August 13, 2014 (ECF No. 17). The proof of service shows that the motion was not mailed to the debtor's current address indicated on the

change of address form filed on the court's docket. Fed. R. Bankr. P. 7004(b) (9).

10:30 a.m.

1. [14-14507](#)-A-7 ROBBIN CASTELLO PRO SE REAFFIRMATION AGREEMENT WITH FINANCE AND THRIFT COMPANY 10-16-14 [[16](#)]

No tentative ruling

2. [14-13415](#)-A-7 RON/KARRIE HATLEY CONTINUED REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK, N.A. 10-7-14 [[19](#)]

DAVID JENKINS/Atty. for dbt.

No tentative ruling

3. [14-14617](#)-A-7 LIONEL SUAREZ REAFFIRMATION AGREEMENT WITH BANK OF THE SIERRA 10-17-14 [[9](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling

4. [14-13123](#)-A-7 EVANGELINA ORTIZ CONTINUED REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES 9-5-14 [[14](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling

5. [14-14725](#)-A-7 MARTHA DE LOS REYES PRO SE REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE 10-15-14 [[15](#)]

No tentative ruling

6. [14-14326](#)-A-7 OCTAVIANO/RITA CALDERON PRO SE REAFFIRMATION AGREEMENT
WITH ALLY FINANCIAL
10-14-14 [[20](#)]

No tentative ruling

7. [14-14326](#)-A-7 OCTAVIANO/RITA CALDERON PRO SE REAFFIRMATION AGREEMENT
WITH AMERICAN HONDA FINANCE
CORP.
10-21-14 [[23](#)]

No tentative ruling

8. [14-13228](#)-A-7 EDWARD/LISA RIVERA CONTINUED REAFFIRMATION
AGREEMENT WITH ONEMAIN
FINANCIAL
10-10-14 [[25](#)]

No tentative ruling

9. [14-14434](#)-A-7 ILIACIS MENDOZA AND REAFFIRMATION AGREEMENT WITH
VERONICA DESANTOS SANTANDER CONSUMER USA INC.
10-23-14 [[15](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling

10. [14-14436](#)-A-7 DANIEL/MARISOL OCHOA PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
10-20-14 [[14](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling

1:30 p.m.

1. [10-62315](#)-A-11 BEN ENNIS
LRP-39
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.

MOTION TO AMEND ORDER
10-29-14 [[1777](#)]

Tentative Ruling

Motion: Amend Order

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

Disposition: Denied

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).

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. The rule directs that the relief or order sought must be included in a motion. The motion to amend under Rule 59(e) asks the court to amend an order to add relief that was not requested in the underlying application to employ. See *Appl. to Employ Edwards, Lien & Toso, Inc. as Appraiser* at 3, ECF No. 1758. In fact, the prayer for relief implies relief that is contrary (that the compensation be later allowed by the court)—it requests that the administrator be authorized to employ the appraiser "with compensation for its services in the form of a flat fee . . . plus costs . . . or as the Court may hereafter allow in accordance with the law."

2. [06-10324](#)-A-11 PROPERTY DEVELOPMENT
DAI-2 GROUP, LLC
JENSEN RANCH HOLDING COMPANY,
LLC/MV

MOTION APPROVING AND
AUTHORIZING MOVANT AS PLAN
AGENT TO MAKE DISTRIBUTIONS OF
UNSECURED CREDITORS CARVE-OUT
FUNDS, TO DETERMINE THAT MOVANT
AS PLAN AGENT IS SUBJECT TO
EXCULPATION, TO AUTHORIZE
MOVANT TO DISSOLVE UNDER STATE
LAW, AND TO CLOSE CHAPTER 11
CASE
10-8-14 [[1347](#)]

RILEY WALTER/Atty. for dbt.
REID EVERETT/Atty. for mv.

No tentative ruling

3. [14-10851](#)-A-11 JOHN/BETTY VAN DYK

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
2-25-14 [[1](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

The status conference is continued to January 13, 2015, at 1:30 p.m. The debtor in possession shall file a status report 7 days prior to the continued hearing, if a plan and disclosure statement have not been filed.

4. [14-11991](#)-A-11 CENTRAL AIR
JVC-1 CONDITIONING, INC.
FREEDOM HOMES, INC./MV

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
10-10-14 [[247](#)]

HAGOP BEDOYAN/Atty. for dbt.
SHEILA FIX/Atty. for mv.

Tentative Ruling

Motion: Approval of Stipulation for Relief from Automatic Stay

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

Disposition: Approved

Order: Prepared by moving party pursuant to instructions below

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

NOTICE PROCEDURE

The notice procedure does not comply with LBR 9014-1(d)(3), (f)(1)-(2). The court's local rules do not authorize notices to state that opposition may be filed within a period of time triggered by the mailing of the notice of hearing. In addition, the notice incorrectly informs potential respondents that if no objection is timely filed, the court may enter an order approving the stipulation without conducting a hearing. LBR 9014-1(k) provides for a hearing whenever an order is necessary or desired.

Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2). No party in interest will be required to file written opposition to the motion. Opposition, if any, may be raised orally at the hearing.

APPROVAL OF STIPULATION

For the reasons stated in the motion, the court will approve the stipulation. The order shall attach a copy of the stipulation approved as an exhibit.

5. [14-11991](#)-A-11 CENTRAL AIR JVC-2 CONDITIONING, INC. FREEDOM HOMES REAL ESTATE IV/MV
HAGOP BEDOYAN/Atty. for dbt.
FRANK LEE/Atty. for mv. MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
10-10-14 [[251](#)]

Tentative Ruling

Motion: Approval of Stipulation for Relief from Automatic Stay

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

Disposition: Approved

Order: Prepared by moving party pursuant to instructions below

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

NOTICE PROCEDURE

The notice procedure does not comply with LBR 9014-1(d)(3), (f)(1)-(2). The court's local rules do not authorize notices to state that opposition may be filed within a period of time triggered by the mailing of the notice of hearing. In addition, the notice incorrectly informs potential respondents that if no objection is timely filed, the court may enter an order approving the stipulation without conducting a hearing. LBR 9014-1(k) provides for a hearing whenever an order is necessary or desired.

Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2). No party in interest will be required to file written opposition to the motion. Opposition, if any, may be raised orally at the hearing.

APPROVAL OF STIPULATION

For the reasons stated in the motion, the court will approve the stipulation. The order shall attach a copy of the stipulation approved as an exhibit.

6. [14-11991](#)-A-11 CENTRAL AIR KDG-17 CONDITIONING, INC. MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIB & KIMBALL, LLP FOR HAGOP T. BEDOYAN, DEBTOR'S ATTORNEY(S).
10-15-14 [[255](#)]
HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Application: Third Interim Application for Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: Klein, DeNatale et. al.

Compensation approved: \$20,110.00

Costs approved: \$1,080.74

Aggregate fees and costs approved in this application: \$21,190.74

Retainer held: \$0.00

Amount to be paid as administrative expense: \$21,290.74

DISCUSSION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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. 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 minute order substantially in the following form holding that:

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

The Third Interim Application for Compensation filed by Klein DeNatale et. al. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) compensation of \$20,110.00 is approved on an interim basis; (2) costs of \$1,080.74 are approved on an interim basis; (3) said amounts aggregate to \$21,190.74; (4) the debtor in possession may pay the applicant \$21,190.74 as an administrative expense without further order, provided the estate is administratively solvent; and (5) the applicant shall perfect those amounts by final application prior to the closure of the case.

7. [14-11991](#)-A-11 CENTRAL AIR MOTION FOR COMPENSATION FOR
KDG-18 CONDITIONING, INC. GILMAN, HARRIS & TRAVIOLI,
GILMAN, HARRIS AND TRAVIOLI/MV ACCOUNTANT(S).
10-15-14 [[262](#)]
HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Application: Second Interim Application for Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: Gilman, Harris & Travioli

Compensation approved: \$11,194.20

Costs approved: \$150.00

Aggregate fees and costs approved in this application: \$11,344.20

Retainer held: \$164.75

Amount to be paid as administrative expense: \$11,179.45

DISCUSSION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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. 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 minute order substantially in the following form holding that:

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

The Second Interim Application for Compensation filed by Gilman, Harris & Travioli having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) compensation of \$11,194.20 is approved on an interim basis; (2) costs of \$150.00 are approved on an interim basis; (3) said amounts aggregate to \$11,344.20; (4) the applicant has \$164.75 in trust, which it may apply to the interim fees and costs described herein; (5) the debtor in possession may pay the applicant \$11,179.45 as an administrative expense without further order, provided the estate is administratively solvent; and (6) the applicant shall perfect those amounts by final application prior to the closure of the case.

8. [14-11991](#)-A-11 CENTRAL AIR KDG-19 CONDITIONING, INC. CENTRAL AIR CONDITIONING, INC./MV
MOTION TO EXTEND TIME TO ASSUME OR REJECT UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASE
10-22-14 [[276](#)]
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: For Order to Further Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease

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

Disposition: Granted

Order: Prepared by the movant

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).

The lessor has consented to the 90-day extension as required by § 365(d) (4) (B) (ii) given that a prior order has been entered in this case extending the time to assume or reject the lease for 90 days. The extension will not prejudice the lessor based on the declaration of the trustee of the lessor. The extension allows the debtor in possession flexibility in proposing a plan given that the lease is necessary for the operation of the debtor's business. The court will grant the motion and further extend the time to assume or reject the lease.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL [14-1062](#) PROPERTIES, LLC LRP-4
ENNIS COMMERCIAL PROPERTIES, LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for mv.
MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-3-14 [[33](#)]

Tentative Ruling

Service of the complaint appears insufficient because the summons has not been attached to the proofs filed. Both proofs of service certify that the person signing the proof served the "attached Summons and Notice of Status Conference in an Adversary Proceeding." But as to both proofs filed (ECF Nos. 16 and 17), no summons is attached to the proof that was served. Otherwise, service appears sufficient.

The court will continue the hearing on this matter to December 17, 2014, at 1:45 p.m., to allow an amended proof of service to be filed pursuant to Rule 4(1) (3) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(1) (3), *incorporated by* Fed. R. Bankr. P. 7004(a).

At the continued hearing, the court will enter default judgment in favor of plaintiffs and against the defendant if the proof of service of the original complaint is amended consistent with this ruling. The court will issue a civil minute order.