

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 18, 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. [15-13103](#)-A-7 PAUL/ESPERANSA GARCIA
RWR-1
TULARE COUNTY TAX COLLECTOR/MV
SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-24-15 [[27](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2317 W. Monte Vista, Visalia, California

The Tulare County Tax Collector moves for stay relief under 11 U.S.C. § 362(d)(1)(cause). The particular species of cause is a tax lien dating back to 2003, in the amount of \$34,350.82. The debtors oppose relief, admitting the delinquency but promising to sell the property, and pay the tax debt "immediately upon the closing of their Chapter 7 Bankruptcy or with the permission of the Chapter 7 Trustee or the Court." Response 4, filed October 28, 2015, ECF # 40. The debtors are a household of two. Mr. Garcia is retired; Ms. Garcia is disabled. They have income of \$2,661; their expenses (even without a consensual encumbrance on the property or budgeting for property taxes) exceed their income. The debtors and the creditors agree that the property has a value between \$144,000 and \$162,000. There are no other liens against it. Chapter 7 trustee Trudi Manfredo has not opposed the motion but has found (apparently other) assets for distribution. The record does not indicate how long it will take trustee Manfredo to complete her work.

STAY RELIEF

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

"[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.

Here, cause exists. Taxes have not been paid in 12 years. A large amount is due. Debtors do not have the means to pay the taxes outside the bankruptcy court or to fund a Chapter 13 plan. The court will grant the motion.

CIVIL MINUTE ORDER

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

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

Tulare County Tax Collector'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 2317 W. Monte Vista, Visalia, California, as to all parties in interest. 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.

2. [14-16009](#)-A-7 CINDY MILLER
JRL-4
CINDY MILLER/MV
JERRY LOWE/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF PMGI, LLC
9-2-15 [[47](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1) / continued hearing date; no written opposition has been filed previously

Disposition: Granted

Order: Not applicable

DEFAULT ENTERED

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

PRIOR HEARING AND PRIORITY ISSUE

The court incorporates the civil minutes from the October 21, 2015, hearing by reference and by way of background. Civ. Mins, ECF No. 59.

At the prior hearing, the court could not determine the extent to which it may avoid the respondent's lien because the motion failed did not address the respective priorities of the two judgment liens, i.e., the lien of Unifund and the lien of PMGI, LLC.

The supplemental declaration filed at ECF No. 63 addresses the respective priorities of the two liens. The lien of PMGI, LLC, the respondent here, in the amount of \$7147.45 is senior and has priority over the lien of Unifund in the amount of \$2172.13.

AMENDED SCHEDULE C

The court takes judicial notice of Amended Schedule C. Amended Schedule C claims an increased exemption in the subject real property on which the lien sought to be avoided has attached. The increased exemption amount is \$75,000. Am. Schedule C, ECF No. 64.

LIEN AVOIDANCE

Because the lien of PMGI, LLC is senior to the judicial lien of Unifund, the judicial lien of Unifund must be excluded in the exemption-impairment analysis, as the debtor concedes. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007) (liens must be avoided in the reverse order of their priority). The reason is that the court must exclude liens already avoided, or that would already be avoided because lower in priority than the lien under consideration, from the exemption-impairment calculation. See *id.*; 11 U.S.C. § 522(f)(2)(B).

The relief sought by the debtor—complete avoidance of PMGI, LLC's lien—is now warranted. Taking into account the new information regarding the priority of PMGI, LLC's judicial lien vis-à-vis Unifund's judicial lien, and factoring in the new exemption amount claimed in the real property, the exemption-impairment calculation permits the respondent's lien to be avoided.

Adding together the judicial lien to be avoided (\$7147.45) plus all other liens (\$0.00) (excluding the consensual liens of \$0.00 already deducted from the jointly owned property's value), plus the exemption amount actually claimed (\$75,000) equals a sum of \$82,147.45. This sum of 82,147.45 exceeds the movant's fractional interest in the property of \$65,381.50 by the amount of \$16,765.95, which amount is greater than the debt secured by the respondent's lien. Full relief is justified and the respondent's lien will be avoided in its entirety.

3. [14-10911](#)-A-7 LITCONN, INC.
SAS-2
SHERYL STRAIN/MV

MOTION FOR COMPENSATION FOR
SHERYL A. STRAIN, FORMER
CHAPTER 7 TRUSTEE(S)
10-20-15 [[49](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Motion: Motion for Compensation (Strain, former Chapter 7 trustee)

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

Disposition: Denied without prejudice

Order: Civil minute order

Sheryl A. Strain, the former Chapter 7 trustee, moves for compensation based on time spent of \$3,825.50 and expenses of \$40.78. Strain served as the Chapter 7 trustee in this case from its filing, February 27, 2014, through her resignation of September 23, 2014. James E. Salven as appointed successor trustee. The case is not ready to close and the Trustees Final Report has not issued.

COMPENSATION

Chapter 7 trustees are paid a portion, not to exceed a statutory cap, of the monies distributed to creditors. 11 U.S.C. § 326(a). Where more than one trustee serves in a case, the aggregate of the trustees's aggregate compensation cannot exceed the cap described in 11 U.S.C. § 326(a). 11 U.S.C. § 326(c).

"The ripeness doctrine prevents premature adjudication. It is aimed at cases that do not yet have a concrete impact upon the parties arising from a dispute, in an analysis similar to the injury-in-fact inquiry under the standing doctrine. [Thomas v. Union Carbide Agricultural Products Co. (1985) 473 US 568, 580, 105 S.Ct. 3325, 3332; see National Organization for Marriage, Inc. v. Walsh (2nd Cir. 2013) 714 F3d 682, 687-"doctrine's major purpose is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements" (internal quotes omitted)]..." Tashima and Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial: California and Ninth Circuit Editions, Subject Matter Jurisdiction, Ripeness § 2: 4335-2:4336 (Rutter Group 2015).

"The ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction," Reno v. Catholic Social Services, Inc., 509 U.S. 43, 57, n. 18, 113 S.Ct. 2485, 125 L.Ed.2d 38 (1993) (citations omitted), but, even in a case raising only prudential concerns, the question of ripeness may be considered on a court's own motion. Ibid. (citing Regional Rail Reorganization Act Cases, 419 U.S. 102, 138, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974))." Nat'l Park Hospitality Ass'n v. Dept. of Interior, 538 U.S. 803, 808 (2003).

"While Article III ripeness is jurisdictional, "(p)rudential considerations of ripeness are discretionary ..." [Thomas v. Anchorage Equal Rights Comm'n (9th Cir. 2000) 220 F3d 1134, 1142 (en banc); McClung v. City of Sumner (9th Cir. 2008) 548 F3d 1219, 1224-court may assume ripeness when case raises only prudential concerns] "Prudential ripeness" requires evaluating "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." [Abbott Laboratories v. Gardner (1967) 387 US 136, 149, 87 S.Ct. 1507, 1515 (abrogated on other grounds in Califano v. Sanders (1977) 430 US 99, 105, 97 S.Ct. 980, 984); Ohio Forestry Ass'n, Inc. v. Sierra Club (1998) 523 US 726, 736-737, 118 S.Ct. 1665, 1672-"further factual development would significantly advance our ability to deal with the legal issues presented and would aid us in their resolution" (internal quotes omitted)] Tashima and Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial: California and Ninth Circuit Editions, Subject Matter Jurisdiction, Ripeness § 2: 4335-2:4336 (Rutter Group 2015).

Until such time as the Chapter 7 trustee issues the Trustee's Final Report, the court has not principled way to calculate the § 326(a) cap in the aggregate amount or to allocate the trustee's between the serving trustees. As a consequence, the issue lacks prudential ripeness and will be denied without prejudice.

As an alternative to denial, if the applicant is of the mind that the Trustee's Final Report is forthcoming, the court would entertain continuing the matter for a period of time of time to allow filing of

that report.

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.

Sheryl A. Strain's application for compensation has been presented to the court. Having having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is denied without prejudice as not ripe.

4. 15-13221 -A-7 JENNA WARNER APN-1 FORD MOTOR CREDIT COMPANY/MV JEFFREY ROWE/Atty. for dbt. AUSTIN NAGEL/Atty. for mv.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-24-15 [24]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Ford Escape

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Ford Escape, 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. [12-15129](#)-A-7 KRISTAL/ROBERT WILLIAMS MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI & WONG,
CHRISTOPHER RATZLAFF/MV ACCOUNTANT(S)
10-14-15 [[151](#)]
SUSAN HEMB/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Janzen, Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1216.00 and reimbursement of expenses in the amount of \$0.00.

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 \$1216.00 and reimbursement of expenses in the amount of \$0.00.

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.

6. [12-15129](#)-A-7 KRISTAL/ROBERT WILLIAMS MOTION FOR COMPENSATION BY THE
PLF-3 LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR GABRIEL J. WADDELL,
TRUSTEES ATTORNEY(S)
12-19-14 [[128](#)]

SUSAN HEMB/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Fear Law Group, attorney 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 \$6,613.50 and reimbursement of expenses in the amount of \$468.45.

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.

Fear Law Group'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 \$6,613.50 and reimbursement of expenses in the amount of \$468.45.

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.

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

JUSTIN HARRIS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

MOTION FOR SECOND ORDER
AUTHORIZING TRUSTEE TO OPERATE
BUSINESS ON INTERIM BASIS
(UNTIL JUNE 30, 2016)
10-28-15 [[230](#)]

No tentative ruling.

8. [08-12145](#)-A-7 TOULU THAO
RWR-3
JAMES SALVEN/MV
DAVID JENKINS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

MOTION FOR ADMINISTRATIVE
EXPENSES
10-20-15 [[54](#)]

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, state and federal taxes in the amounts specified in the motion are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion for allowance of administrative expense 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 allows \$132,607

(federal taxes) and \$40,388 (state taxes) as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

9. [15-13445](#)-A-7 RAFAEL MURADYAN MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
WILMINGTON TRUST, NATIONAL 10-21-15 [[15](#)]
ASSOCIATION/MV
HAGOP BEDOYAN/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 9403 NE 21st Street, Vancouver, WA 98664

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.

Wilmington Trust, National Association, as trustee of ARLP Securitization Trust, Series 2014-2, has filed a motion for relief from the automatic stay, which 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 9403 NE 21st Street, Vancouver, WA 98664, 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.

10.	<u>15-13349</u> -A-7	ALEJANDRO/CONCEPCION	CONTINUED MOTION TO COMPEL
		LLONTOP	ABANDONMENT
	ALEJANDRO LLONTOP/MV		10-9-15 [<u>19</u>]
	VINCENT QUIGG/Atty. for dbt.		

Tentative Ruling

Motion: Motion to Compel Abandonment of Property of the Estate

Notice: Continued hearing date

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT NOTICE

The court incorporates the civil minutes from the prior hearing by reference into this ruling. Civ. Mins. Hr'g on Oct. 27, 2015, ECF No. 24. In the prior hearing, the court continued the hearing because notice to all creditors and parties in interest was insufficient. The court's civil minute order continuing the hearing required that a supplemental proof of service be filed. The supplemental proof of service does not provide notice to all creditors and parties in interest.

First, the court recommended in the civil minutes that the movant use the court's matrix for noticing all creditors and parties in interest. This was not done. For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address 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 address 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.

Second, based on a facial review of the proof of service filed, no creditor or party in interest has been properly served. The United States Trustee is the only party appearing on the proof of service beneath the sentence stating that the motion to compel and continued hearing notice were served by mail "addressed as follows." But even the U.S. Trustee has not been noticed at the correct address.

Further, the list of creditors given is not referenced or incorporated on the first page of the proof of service as the list of parties to whom the movant transmitted the motion and notice. Additionally, the chapter 7 trustee has not been served pursuant to Rule 9014 and at least one creditor was not served at the correct address as of the date of service (11/4/15).

NONCOMPLIANCE WITH OTHER LOCAL RULES

The court also required in the order continuing the hearing (docket no. 26) the following: "the movant will file all supplemental documents in compliance with the court's local rules and guidelines for document preparation." Civ. Min. Order, Oct. 27, 2015, ECF No. 26.

The movant did not comply with the court's order despite having been given a second chance to do so at the continued hearing.

The proof of service was not filed with a docket control number. LBR 9014-1(c)(1), (e)(3).

The proof of service failed to comply with LBR 9014-1(e)(3) by attaching what appears to be a notice of continued hearing to the proof of service. Proofs of service must be filed as separate documents. LBR 9014-1(e)(3).

The first page of the proof of service does not comply with LBR 9004-1(a), which requires all documents to conform to the Court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. The first page of the proof of service does not have numbered lines, does not contain an appropriate caption that complies with Section II of such guidelines: the caption fails to name the court, the title of the proceeding (though the title of the proceeding is discoverable by reviewing the sentence stating which documents were served, which is insufficient to comply with this guideline), and does not contain the date, time and location of the hearing *on the first page* of the proof. Section III.A. also requires all documents filed in relation to a matter to be filed separately. Section III.C requires page numbering to be consecutive at the bottom center of the page—this was not complied with.

NONCOMPLIANCE WITH ORDER

The court also required in its order continuing the hearing that the movant file a notice of continued hearing using the notice procedure under LBR 9014-1(f)(2). The movant did not do so. Instead, the movant's notice of continued hearing relied on the notice procedure under LBR 9014-1(f)(1) and attempted to require written opposition to be filed at least 14 calendar days before the date of the hearing even though such notice itself was filed only 14 days before the date of the continued hearing.

FAILURE TO PAY FEE FOR FILING MOTION

The court's docket indicates that the movant has also failed to pay the filing fee for the motion. At docket 21, a Notice of Payment Due was filed indicating that "[t]he fee for a document [motion to compel abandonment at docket no. 19] . . . was not paid in full at the time of filing." It further indicated that the required fee is "now due and payable" as of the filing of the notice on October 13, 2015. As

of November 12, 2015, the court still does not see evidence on the docket that this fee has been paid in the amount of \$176.

CIVIL MINUTE ORDER

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

The debtors' motion to compel abandonment of property of the estate has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling, and the debtors' failure to pay the filing fee for the motion,

IT IS ORDERED that the motion is denied without prejudice.

11.	15-13357 -A-7 SANDRA RAMOS KAZ-1 WELLS FARGO BANK, N.A./MV MARIO LANGONE/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-14-15 [15]
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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 8, 2015, at 9:00 a.m., and require that any supplemental proof of service (along with a notice of continued hearing under LBR 9014-1(f)(2)) 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.

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 in the proper manner. The proof shows that the debtor's attorney was served pursuant to LBR 7005-1(d)(1) electronically at k-1@pacbell.net.

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). 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 does not appear on the roster described in LBR 7005-1(c). Thus the attorney has not consented to electronic service, which makes electronic service improper.

12. 14-14461 -A-7 DONALD/DAWN MCGOWEN JTW-2 JANZEN, TAMBERI AND WONG/MV GEOFFREY ADALIAN/Atty. for dbt.	MOTION FOR COMPENSATION FOR JANZEN, TAMBERI AND WONG, ACCOUNTANT(S) 10-14-15 [43]
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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 \$1273 and reimbursement of expenses in the amount of \$0.

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 \$1273 and reimbursement of expenses in the amount of \$0.

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

13. [11-17165](#)-A-7 OAKHURST LODGE, INC., A ORDER TO SHOW CAUSE RE:
FEC-1 CALIFORNIA CORPORATION REVOCATION OF ORDER TO RE-OPEN
CASE
9-28-15 [[227](#)]

PETER FEAR/Atty. for dbt.
DISMISSED
RESPONSIVE PLEADING

No tentative ruling.

14. [15-14069](#)-A-7 DAVE HOUX ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-30-15 [[12](#)]

CATARINA BENITEZ/Atty. for dbt.
\$335 FILING FEE PAID 11/2/15

Final Ruling

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

15. [09-11871](#)-A-7 COVENANT SERVICES, INC. MOTION FOR COMPENSATION FOR
RHT-4 ROBERT HAWKINS, CHAPTER 7
ROBERT HAWKINS/MV TRUSTEE(S)
10-23-15 [[116](#)]

DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Pending resolution of the appeal now pending before the Bankruptcy Appellate Panel in *In re Ruiz*, No. 14-10282 (Bankr. E.D. Cal. 2014), the matter is continued to January 27, 2016, at 9:00 a.m.

16. [10-12576](#)-A-7 SHERMAN FUJIOKA MOTION FOR ADMINISTRATIVE
RH-4 EXPENSES
PETER FEAR/MV 10-27-15 [[116](#)]
RICHARD HARRIS/Atty. for dbt.
PETER FEAR/Atty. for mv.

No tentative ruling.

17. [15-12877](#)-A-7 DARSHAN SINGH AND MOTION TO SELL
TMT-1 HARBHAJAN KAUR 10-15-15 [[13](#)]
TRUDI MANFREDO/MV
JANINE ESQUIVEL/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2010 Mazda 3

Buyer: Debtors

Sale Price: \$7845 (\$4945 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.

18. [15-11283](#)-A-7 GLORIA ESTILLORE CONTINUED STATUS CONFERENCE RE:
[15-1076](#) NOTICE OF REMOVAL
ESTILLORE V. U.S. BANK 6-8-15 [[1](#)]
NATIONAL ASSOCIATION ET AL
GLORIA ESTILLORE/Atty. for pl.

Final Ruling

The matter is continued to December 15, 2015, at 9:00 a.m.

19. [15-11283](#)-A-7 GLORIA ESTILLORE MOTION TO COMPROMISE
DRJ-2 CONTROVERSY/APPROVE SETTLEMENT
TRUDI MANFREDO/MV AGREEMENT WITH NATIONSTAR
MORTGAGE LLC, BANK OF AMERICA,
N.A., CORELOGIC REAL ESTATE
SERVICES, INC., AND SAGE POINT
LENDER SERVICES, LLC
10-28-15 [[97](#)]

DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The matter is continued to December 15, 2015, at 9:00 a.m.

20. [15-13583](#)-A-7 GAIL DOBBS MOTION TO SELL
RHT-1 10-22-15 [[14](#)]
ROBERT HAWKINS/MV
PETER BUNTING/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: 2011 Chevrolet Traverse LT

Buyer: Debtor

Sale Price: \$16,364 (\$10,000 cash plus \$1900 exemption credit plus \$4464 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). 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.

21. [15-11287](#)-A-7 JOSE/GLORIA RAMIREZ
TMT-3
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
10-27-15 [[57](#)]

NOEL KNIGHT/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2003 Ford Explorer

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). 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.

22. [15-12590](#)-A-7 CORA/ALFONSO ROA
BHT-1
DITECH FINANCIAL LLC/MV
DOUGLAS MILLER/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-15-15 [[37](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Prepared by moving party

Subject: 348 West Fir Street, 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).

AS TO DEBTOR

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

AS TO ESTATE

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

23. [15-12892](#)-A-7 DAVID DECK
MAZ-1
DAVID DECK/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO RECONSIDER
10-28-15 [[31](#)]

No tentative ruling.