

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: DECEMBER 7, 2016
CALENDAR: 10:00 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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

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. [16-10802](#)-A-7 WILLIAM AITCHISON
WDO-1
WILLIAM AITCHISON/MV

PRETRIAL CONFERENCE RE: MOTION
TO AVOID LIEN OF STATE FARM
GENERAL INSURANCE COMPANY
6-2-16 [[12](#)]

WILLIAM OLCOTT/Atty. for dbt.
OPPOSITION-WITHDRAWN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition filed and subsequently withdrawn

Disposition: Granted

Order: Prepared by moving party

State Farm General Insurance Company ("State Farm") filed an opposition to this motion. A scheduling order was issued. On November 7, 2016, State Farm filed a withdrawal of its opposition.

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).

As stated in the civil minutes for the hearing on September 7, 2016, the debtor has made a prima facie case for avoidance.

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. As a result, the responding party's judicial lien will be avoided entirely.

2. [15-13704](#)-A-7 IGNACIO BENITEZ
KAZ-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
PATRICK KAVANAGH/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-7-16 [[62](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 21341 King Street, Lost Hills, 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).

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.

Deutsche Bank National Trust Company, as Trustee, has filed a motion for relief from the automatic stay that 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 21341 King Street, Lost Hills, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

3. [16-14108](#)-A-7 ROGER FRAPPIED MOTION TO EXEMPT ROGER FRAPPIED
JLC-1 FROM THE CREDIT COUNSELING
ROGER FRAPPIED/MV AND/OR MOTION FOR EXEMPTION
FROM FINANCIAL MANAGEMENT
COURSE , MOTION TO EXEMPT ROGER
FRAPPIED FROM ATTENDING THE
MEETING OF CREDITORS
11-15-16 [[14](#)]

JAMES CONKEY/Atty. for dbt.

Final Ruling

Motion: Exempt Debtor from Requirements for Credit Counseling, Financial Education, and Attendance at § 341(a) Meeting

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

Disposition: Continued to December 14, 2016, at 2:00 p.m.

Order: Not applicable

The hearing is continued to December 14, 2016, at 2:00 p.m. to coincide with the motion to extend the automatic stay.

4. [16-14108](#)-A-7 ROGER FRAPPIED MOTION TO EXTEND AUTOMATIC STAY
JLC-2 11-15-16 [[6](#)]
ROGER FRAPPIED/MV
JAMES CONKEY/Atty. for dbt.

Final Ruling

Motion: Extend Automatic Stay

Disposition: Continued for a further hearing on December 14, 2016, at 2:00 p.m. with supplemental declarations filed no later than December 8, 2016

Order: Civil minute order

At the December 7, 2016, hearing, the court will hold a scheduling conference for the purpose of setting a further hearing. Material factual issues must be resolved before the court can rule on the relief requested.

FACTS

The court has reviewed the motion and opposition by creditor Edwin Niles. In his motion, the debtor requests an extension of the automatic stay under § 362(c)(3). The debtor's previous chapter 13 bankruptcy case was pending in 2015 and dismissed on December 21, 2015 for failure to file schedules.

The debtor represents that all schedules have been filed in the current chapter 7 case. A cursory review of the docket confirms that

the schedules have been filed as well as the Statement of Financial Affairs, and no missing schedules or statements are required.

The motion to extend the stay contends that the debtor's sole asset is "his residence located at 812 Louise Way, Lebec, CA 93243 . . . which his mother left him when she passed away." The stated purpose of this chapter 7 filing is to avoid the judgment lien in favor of Edwin K. Niles—the respondent creditor—and save the debtor's real property from a sheriff's sale scheduled for November 15, 2016.

Creditor Edwin Niles is an attorney who represented the debtor, Roger Frappied, in the probate of the estate of Agnes C. Frappied. Fees were charged over the time of this representation that totaled approximately \$53,000. Niles Decl. ¶ 1. Eventually, after mediation and the debtor's subsequent failure to pay this debt, a stipulated judgment was entered against the debtor both individually and as Administrator of the Estate of Agnes Frappied. Niles Decl. ¶ 2-3.

An abstract of this judgment was recorded, and the debtor's motion admits the existence of Niles's lien on his real property.

Niles moved to enforce his judgment by forcing an execution sale of the Louise Way property. The debtor then claimed a homestead exemption in the Louise Way property. On motion by Niles, the probate court denied the debtor's exemption claim based on its finding that the debtor did not reside at the property. On appeal, the order denying the homestead claim was affirmed.

The debtor filed the current bankruptcy case on November 14, 2016. An execution sale was scheduled for November 15, 2016. Mot. Extend Stay at 3, ECF No. 6.

The debtor states that his schedules in the current case show that (i) debtor owns the subject real property, (ii) the property is the debtor's primary residence, and (iii) there is a judgment lien that impairs the debtor's homestead exemption, and that debtor has met the standards of § 522(f) to avoid a judgment lien on his property.

The debtor's Schedule C claims a \$175,000 exemption in the Louise Way property. The petition indicates that the debtor lives at this address. The debtor represents on Schedule A that he owns the Louise Way property in fee simple.

STANDARDS FOR EXTENSION OF THE STAY UNDER § 362(c) (3)

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

To extend the stay, the court must find that the filing of the *later* case is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II). When the dismissal was caused by the debtor's failure to file or amend the petition or other documents, mere inadvertence or negligence is not a substantial excuse *unless* the dismissal was caused by the negligence of debtor's attorney. *Id.* § 362(c)(3)(C)(i)(II)(aa).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed" *Id.* § 362(c)(3)(C)(i)(III).

Procedurally, the debtor bears the burden of proof by the preponderance of the evidence.

TRIGGERING OF THE PRESUMPTIONS OF BAD FAITH

The presumptions under § 362(c)(3)(C) are not triggered. The reason for the failure to file schedules is attributed to the debtor's attorney, a fact undisputed by the creditor. Conkey Decl. ¶ 4, ECF No. 8. This would make inapplicable the presumption of bad faith in § 362(c)(3)(C)(i)(II)(aa). No other basis for a presumption of bad faith has been provided.

MATERIAL, FACTUAL ISSUES

The essential issue in deciding this motion is the debtor's good faith in filing the current case. Niles has suggested the case has not been filed in good faith based on the debtor's misrepresentation of his interest in the Louise Way property and on the debtor's misrepresentation of his entitlement to a homestead exemption in such property. These facts, combined with the filing of the bankruptcy on the eve of Niles's execution sale, constitute, in Niles's view, lack of good faith.

Given the applicable legal standards and the factual matter presented, the court identifies the following disputed, material factual issues that must be resolved before ruling on this matter.

Supplemental declarations filed by the parties may address only the following issues:

(i) whether the debtor has an equitable interest the Louise Way property, or whether he holds merely a legal interest in such property as an administrator of the estate of his mother; see 11 U.S.C. § 541(a), (d); *Torrez v. Torrez (In re Torrez)*, 827 F.2d 1299, 1303 (9th Cir. 1987) ("The Debtors possessed nothing beyond bare legal title.

BAP thus correctly decided that the estate has no interest in the property."); and the court seeks clarification as to the precise nature of the interest held by the debtor;

(ii) whether the debtor has possessory interest (based on residence alone) that is sufficient to warrant a property interest that is shielded by the stay.

(iii) whether the debtor has a good faith basis to claim a homestead exemption in the Louise Way property on Schedule C in this bankruptcy case considering facts arising after May 7, 2014 (the date of the order of the superior court denying the claim of homestead exemption that was affirmed by the appellate court).

COLLATERAL ESTOPPEL

Regarding material factual issue (ii) above, collateral estoppel does not apply to preclude the debtor from claiming a homestead exemption in this bankruptcy case.

Principles of collateral estoppel, also known as issue preclusion apply in bankruptcy proceedings. See *Grogan v. Garner*, 498 U.S. 279, 284 & n.11 (1991). "In addition, 28 U.S.C. § 1738 requires [federal courts], as a matter of full faith and credit, to apply the pertinent state's collateral estoppel principles." *Cal-Micro, Inc. v. Cantrell*, 329 F.3d 1119, 1123 (9th Cir. 2003) (citing *Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995)).

The five threshold requirements that must be met to apply the doctrine are well established under California law. See, e.g., *id.*; see also *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 n.3 (B.A.P. 9th Cir. 1995) (noting that federal and state law requirements for application of the doctrine are the same). "[1] First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. [2] Second, this issue must have been actually litigated in the former proceeding. [3] Third, it must have been necessarily decided in the former proceeding. [4] Fourth, the decision in the former proceeding must be final and on the merits. [5] Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." *Cantrell*, 329 F.3d at 1123.

"The party seeking to assert collateral estoppel has the burden of proving all the requisites for its application. To sustain this burden, a party must introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *Kelly*, 182 B.R. at 258. The court will not apply collateral estoppel if any reasonable doubt exists as to what the prior judgment decided. *Id.* (citing *Spilman v. Harley*, 656 F.2d 224, 227-28 (6th Cir. 1981)).

Here, collateral estoppel does not apply because the issue sought to be precluded from relitigation in this bankruptcy case is not identical to the issue decided by the probate court. The issue in the former proceeding was whether the debtor was entitled to claim a homestead exemption in state court proceedings in May 2014 involving a forced sale of the Louise Way property. The issue in this bankruptcy is whether the debtor is entitled to claim an exemption in the Louise Way property for purposes of this bankruptcy proceeding, considering the petition on November 14, 2016, as the "forced sale" as

distinguished from Niles's execution sale referenced in the superior court's order on May 7, 2014. See *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 17-21 (B.A.P. 9th Cir. 2003). These issues are not identical.

ROOKER-FELDMAN DOCTRINE

"The *Rooker-Feldman* doctrine is a well-established jurisdictional rule prohibiting federal courts from exercising appellate review over final state court judgments." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 858-59 (9th Cir. 2008) (citing *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007)).

The *Rooker-Feldman* doctrine does not apply to a determination of the debtor's exemption rights in this bankruptcy case for the same reasons that collateral estoppel does not apply. The issue this court is to determine in this proceeding is different from the issue decided by the superior court order on the exemption rights. Here, the court is to decide whether the debtor has a good faith basis to claim the homestead exemption based on facts relevant and near in time to the bankruptcy petition date. By contrast, the state court decided the issue of whether the debtor was entitled to an exemption in 2014 for purposes of Niles's proceedings to obtain a forced sale of the property.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this motion is continued to December 14, 2016, at 2:00 p.m. No later than December 8, 2016, by 5:00 p.m., the parties may file a supplemental declaration with documentary evidence addressing the two factual issues discussed by the court in the civil minutes for December 1, 2016.

5. 15-14109 -A-7 BRUCE/BRENDA GORDON JES-2 JAMES SALVEN/MV PATRICK KAVANAGH/Atty. for dbt.	MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S) 10-10-16 [68]
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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, James Salven, 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 \$1600.00 and reimbursement of expenses in the amount of \$396.63.

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.

James Salven'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 \$1600.00 and reimbursement of expenses in the amount of \$396.63.

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.

6. [15-14612](#)-A-7 DONALD INGRAM AND KAREN MOTION FOR COMPENSATION FOR
JES-2 WOOD JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 10-11-16 [\[64\]](#)
JOSEPH PEARL/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, James Salven, 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 \$1675.00 and reimbursement of expenses in the amount of \$328.80.

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.

James Salven'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 \$1675.00 and reimbursement of expenses in the amount of \$328.80.

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. [15-14612](#)-A-7 DONALD INGRAM AND KAREN MOTION FOR COMPENSATION FOR
RP-1 WOOD RANDELL PARKER, CHAPTER 7
RANDELL PARKER/MV TRUSTEE(S)
11-8-16 [[74](#)]

JOSEPH PEARL/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$11,368.66 and reimbursement of expenses in the amount of \$262.19.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$11,368.66 and reimbursement of expenses in the amount of \$262.19.

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

8. [16-11914](#)-A-7 JOSE/CASSANDRA MENDEZ MOTION TO SELL FREE AND CLEAR
RP-1 OF LIENS
RANDELL PARKER/MV 11-8-16 [[18](#)]
D. GARDNER/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: 2005 Chevrolet Silverado

Buyer: Debtors

Sale Price: \$12,500 (\$2800 cash plus \$9700 exemption credit)

Sale Type: Private sale subject to overbid opportunity

Free and Clear Relief: The court reads the motion as requesting only relief under § 363(b), and construes the reference to § 363(f) as an inadvertent error. Accordingly, the court will not make a ruling under § 363(f).

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.

9. [16-13729](#)-A-7 JARED BETTIS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-27-16 [[12](#)]

WILLIAM EDWARDS/Atty. for dbt.
\$335.00 FILING FEE PAID
11/14/16

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

10. [15-11835](#)-A-7 JAMES/JAMIE CANNON
RP-1
RANDELL PARKER/MV

MOTION FOR COMPENSATION FOR
RANDELL PARKER, CHAPTER 7
TRUSTEE(S)
11-2-16 [[617](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$44,720.19 and reimbursement of expenses in the amount of \$692.48.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$44,720.19 and reimbursement of expenses in the amount of \$692.48.

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. [16-12654](#)-A-7 ANGELO RAMIREZ
RSW-1
ANGELO RAMIREZ/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF
TIDALWAVE FINANCE CORPORATION
11-16-16 [[16](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$178,722.49

Property Value: \$150,355.00

Judicial Lien Avoided: \$12,221.49

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).

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. As a result, the responding party's judicial lien will be avoided entirely.

14. [16-13458](#)-A-7 BRANDON/KRISTINA
APN-1 FOLLOWILL
WELLS FARGO BANK, N.A./MV
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-24-16 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2004 Chevrolet Silverado

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.

Wells Fargo Bank, N.A.'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 2004 Chevrolet Silverado, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

15. [16-13059](#)-A-7 DARIN/BRITTANY MOTION TO DISMISS CASE PURSUANT
UST-1 BLANKENSHIP TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 11-4-16 [[21](#)]
NEIL SCHWARTZ/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

No tentative ruling.

16. [16-11761](#)-A-7 GINA CARDENAS MOTION FOR RELIEF FROM
WFM-1 AUTOMATIC STAY
CITIMORTGAGE, INC./MV 11-2-16 [[43](#)]
ROBERT WILLIAMS/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1126 Jefferson Street, Bakersfield, 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).

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.*

The debtor has missed 11 prepetition and 5 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1126 Jefferson Street, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

17. [16-12063](#)-A-7 TIMOTHY CLARK
RP-1
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SELL
11-8-16 [[44](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2011 GMC 1500 Crew Cab Denali and Utility Trailer

Buyer: Debtor

Sale Price: \$19,900 (\$12,000 cash plus \$7900 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. [15-11372](#)-A-7 ERIC/SUZANNE TUCKER MOTION TO EXTEND TIME
RSW-4 10-26-16 [[46](#)]
ERIC TUCKER/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Motion to Extend Time to File a Reaffirmation Agreement

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 court construes this motion as a Rule 60(b) request. The court believes that the agreement was made prior to the discharge assuming it was signed prior to the discharge. Debtor's counsel shall augment the record by filing a declaration attesting that the agreement was signed and entered before the discharge was entered.

19. [16-12472](#)-A-7 JEFFREY MCCOMAS MOTION TO DISMISS CASE
UST-1 10-31-16 [[15](#)]
TRACY DAVIS/MV
PATRICK KAVANAGH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

Tentative Ruling

Motion: Motion to Dismiss under § 707(b)(3)

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

The U.S. Trustee moves to dismiss this case under 11 U.S.C. § 707(b)(3)(B) based on the totality of the circumstances of the debtor's financial situation. The U.S. Trustee states that the presumption of abuse under § 707(b)(2) does not arise. The debtor opposes the motion.

The U.S. Trustee cites to the debtor's recent employment within days after filing the petition, and his post-petition payment advices showing gross wages of \$10,733 per month and net monthly income of approximately \$6764. The U.S. Trustee's analysis assumes no reduction in the debtor's claimed living expenses on Amended Schedule J. The U.S. Trustee reaches a conclusion of \$2949 of net monthly disposable income. (Debtor's total unsecured debt equals \$34,254.)

The debtor's opposition indicates that the debtor has suffered from a layoff. The date of this layoff is not provided. But the debtor signed the declaration on November 23, 2016. The debtor attests that there will be no more work this year. But there may be work in January 2017, though that is not guaranteed.

Preliminarily, the court identifies the following disputed, material factual issue: whether the debtor's financial circumstances would allow the debtor to repay creditors within reasonable time frame, such as a year or less.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

20. [16-10485](#)-A-7 EMB FARMS, LLC
RP-1
RANDELL PARKER/MV

MOTION FOR COMPENSATION FOR
RANDELL PARKER, CHAPTER 7
TRUSTEE(S)
11-8-16 [[53](#)]

LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Allowance of Trustee's 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, the chapter 7 trustee has applied for an allowance of final compensation and reimbursement of expenses. A trustee's compensation is considered in accordance with § 326(a) and § 330(a)(1), (7). Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

"[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *Id.* at 896 (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, Congress intended to establish trustee's compensation for the "vast majority of cases" at the commission rates set forth in § 326. *Id.* at 897.

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

CIVIL MINUTE ORDER

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

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

Randell Parker'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 \$1150 and reimbursement of expenses in the amount of \$151.

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.

21.	16-10485 -A-7 EMB FARMS, LLC RP-2 RANDELL PARKER/MV LEONARD WELSH/Atty. for dbt.	MOTION FOR ADMINISTRATIVE EXPENSES 11-8-16 [59]
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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, estate taxes in the amount specified in the motion shall be 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 \$800 (state taxes owed to Franchise Tax Board) as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

22. [16-13588](#)-A-7 TRACI ELRICH
KAZ-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
R. BELL/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-24-16 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 8217 Sheffield Lane, Bakersfield, 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).

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.

Deutsche Bank National Trust Company, as Trustee, has filed a motion for relief from the automatic stay that 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 8217 Sheffield Lane, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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