

**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: DECEMBER 14, 2016
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.

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. [16-13607](#)-A-7 LUPE/JULIA RENTERIA

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-3-16 [[11](#)]

JOEL WINTER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

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

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for December 19, 2016, at 9:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

2. [16-12908](#)-A-7 JUAN VILLA
APN-1
WELLS FARGO BANK, N.A./MV
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-10-16 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 14328 Taylor St., Kerman, 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:

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection;

(iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise that settles David Stapleton, plan administrator of Ennis Commercial Properties, James E. Salven, trustee of the Brian Ennis Estate, and Randell Parker, trustee of the Pamela Ennis Estate. A settlement agreement reflecting the parties' compromise has been attached to the motion as an Exhibit 7 in support of motion to approve compromise, November 15, 2016, ECF # 287 in *In re Pamela Rae Ennis*, No. 10-61725 (Bankr. E.D. Cal. 2010). Generally and as otherwise described in the motion, the terms and conditions of the compromise include (1) payment of \$550,629.24 to Ennis Commercial Properties estate; (2) payment of specified transactional and professional fees; (3) payment of \$162,285.47 to Manuel Ramirez (a non-party); (4) payment of \$324,570.94 to Brian Ennis estate; and (5) payment of \$324,570.94 to Pamela Ennis estate. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

4. [10-61970](#)-A-7 BRIAN ENNIS
THA-12

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JAMES E. SALVEN,
RANDELL PARKER, DAVID STAPLETON,
MANUEL RAMIREZ
11-15-16 [[398](#)]

RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Prepared by movant, approved by counsel for each of the parties and by Manuel Ramirez

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

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377,

1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise that settles David Stapleton, plan administrator of Ennis Commercial Properties, James E. Salven, trustee of the Brian Ennis Estate, and Randell Parker, trustee of the Pamela Ennis Estate. A settlement agreement reflecting the parties' compromise has been attached to the motion as an Exhibit 7 in support of motion to approve compromise, November 15, 2016, ECF # 287 in *In re Pamela Rae Ennis*, No. 10-61725 (Bankr. E.D. Cal. 2010). Generally and as otherwise described in the motion, the terms and conditions of the compromise include (1) payment of \$550,629.24 to Ennis Commercial Properties estate; (2) payment of specified transactional and professional fees; (3) payment of \$162,285.47 to Manuel Ramirez (a non-party); (4) payment of \$324,570.94 to Brian Ennis estate; and (5) payment of \$324,570.94 to Pamela Ennis estate. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

5. [10-61725](#)-A-7 PAMELA ENNIS
THA-19
RANDELL PARKER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ENNIS COMMERCIAL
PROPERTIES, LLC, DAVID
STAPLETON, ENNIS COMMERCIAL
PROPERTIES III, LLC, JAMES
SALVEN, RANDELL PARKER, MANNY
RAMIREZ
11-15-16 [[280](#)]

RILEY WALTER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Prepared by movant, approved by counsel for each of the parties and by Manuel Ramirez

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

Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles David Stapleton, plan administrator of Ennis Commercial Properties, James E. Salven, trustee of the Brian Ennis Estate, and Randell Parker, trustee of the Pamela Ennis Estate. A settlement agreement reflecting the parties' compromise has been attached to the motion as an Exhibit 7 in support of motion to approve compromise, November 15, 2016, ECF # 287 in *In re Pamela Rae Ennis*, No. 10-61725 (Bankr. E.D. Cal. 2010). Generally and as otherwise described in the motion, the terms and conditions of the compromise include (1) payment of \$550,629.24 to Ennis Commercial Properties estate; (2) payment of specified transactional and professional fees; (3) payment of \$162,285.47 to Manuel Ramirez (a non-party); (4) payment of \$324,570.94 to Brian Ennis estate; and (5) payment of \$324,570.94 to Pamela Ennis estate. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

6. [16-14026](#)-A-7 DAVID WOODRUFF
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-14-16 [[17](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2013 Honda Odyssey

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Honda Odyssey, 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.

7. [16-13832](#)-A-7 SOOKYUNG CHANG
DRJ-1
KAREN GREEN/MV
MARK ZIMMERMAN/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-16-16 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Verified Complaint for Unlawful Detainer (Tulare County Superior Court Case No. 175285) relating to real property located at 49170 Millwood Drive, Orosi, 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.

Further, a non-opposition by the debtor 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) (1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be 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.

Karen Green'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 49170 Millwood Drive, Orosi, CA, as to all parties in interest. It is also vacated with respect to the unlawful detainer

action described as a Verified Complaint for Unlawful Detainer (Tulare County Superior Court Case No. 175285). The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action to obtain possession of the subject property. The movant may further determine and liquidate any pre-petition and post-petition money damages, but may not enforce any judgment for pre-petition money damages except by filing a proof of claim in this court.

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

8. <u>16-13033</u> -A-7 JOHN/CHRISTINE GAMINO UST-1 TRACY DAVIS/MV	MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B) 11-14-16 [<u>28</u>]
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PETER BUNTING/Atty. for dbt.
TERRI DIDION/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge or File a Motion to Dismiss

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

Disposition: Granted

Order: Prepared by moving party

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

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through January 13, 2017.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through January 13, 2017.

9. [16-12936](#)-A-7 FERNANDO/NORA DELGADO MOTION TO SELL
TMT-1 11-9-16 [[16](#)]
TRUDI MANFREDO/MV
SCOTT LYONS/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: 2007 Ford Expedition and 2003 Mitsubishi Eclipse

Buyer: Debtors

Sale Price:

-2007 Ford Expedition: \$10,200 cash

-2003 Mitsubishi Eclipse: \$637.50 cash

Sale Type: Private sale subject to overbid opportunity

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

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

10. [12-60549](#)-A-7 MARIBEL TAMEZ
PFT-4
PETER FEAR/MV

MOTION FOR COMPENSATION FOR
DAVID KUTTLES, SPECIAL
COUNSEL(S)
11-14-16 [[99](#)]

STEPHEN LABIAK/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Motion: Compensation Special Counsel (The Lanier Law Firm)

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

Disposition: Continued to January 10, 2017, at 9:00 a.m.

Order: Civil minute order

Peter L. Fear, trustee, prays approval of compensation of \$6,091.25 and expenses of \$1,713.67 for special counsel The Lanier Law Firm ("Lanier").

DISCUSSION

Lanier's retention as special counsel was approved by order of this court for work performed on or after April 19, 2016. Order, July 27, 2016, ECF #88. The court declined the trustee's request for nunc pro tunc approval of Lanier. Employment coincided with the trustee's motion to compromise a dispute with a third party tortfeasor and to pay special counsel Lanier an \$8,000 contingency fee. Order, July 27, 2016, ECF # 89. The court approved the compromise but denied without prejudice the trustee's request to pay special counsel Lanier. *Id.* The minutes stated, ". . . As to the application for payment of special counsel, the court denied without prejudice and reserved that issue pending conclusion of special counsel's work and a more detailed showing. The court ordered that time records or **a very detailed explanation of work performed** be produced (the court requested that this include a suggested hourly rate) from April 19, 2016 forward." Civil Minutes, July 21, 2016, ECF # 87.

The instant application for compensation is supported by the Declaration of David Kuttles, November 14, 2016, ECF # 102. The declaration does not describe the work performed on or after April 19, 2016, but authenticates Exhibit A, which summarizes work performed. That work totals 22.15 hours. Compensation is requested at \$275 per hour. Of those hours, 7 entries aggregating 13.5 hours are for preparing "supplemental declarations, pursuant to court instructions." The particular declarations prepared are not identified. Of the 22.15 hours, 2 entries aggregating 4 hours are for "Drafting/preparing Petition." The declaration does not specify the petition prepared. Without additional information, the court is unable to pass on the reasonableness of fees requested.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the application is continued to January 10, 2017, at 9:00 a.m.

IT IS ALSO ORDERED that not later than December 27, 2016, for each of the declarations and petitions mentioned on Exhibit A to the Decl. of

Kuttles, November 14, 2016, ECF # 102, the trustee and/or special counsel shall file a supplemental declaration(s) further identifying such declarations and petitions with particularity, which means (1) identifying the declaration or petition by its full description, date filed, and docket control number (e.g., "Declaration of Julie Jones, filed November 6, 2016, ECF # 43"); or (2) appending the referenced document to the requested, further supplemental declaration.

11. [11-18268](#)-A-7 GREGORY/ELIZABETH PETRINI MOTION TO AVOID LIEN OF
PK-3 CITIZENS BUSINESS BANK
GREGORY PETRINI/MV 11-14-16 [[53](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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.

12. [11-18268](#)-A-7 GREGORY/ELIZABETH PETRINI MOTION TO AVOID LIEN OF MARY C.
PK-4 DAVIES
GREGORY PETRINI/MV 11-14-16 [[60](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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.

13. [12-16968](#)-A-7 GREGORY/YVONNE HARK CONTINUED MOTION TO EMPLOY JOSH
KDG-2 B. WAGES AS SPECIAL COUNSEL
RANDELL PARKER/MV 11-11-16 [[46](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No tentative ruling.

14. [12-16968](#)-A-7 GREGORY/YVONNE HARK
KDG-3
RANDELL PARKER/MV

CONTINUED MOTION TO APPROVE
COMPROMISE OF PRODUCT LIABILITY
CLAIMS AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF BLASINGAME, BURCH, GARRARD,
AND ASHLEY, P.C. FOR JOSH B.
WAGES, SPECIAL COUNSEL(S)
11-14-16 [[54](#)]

NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No tentative ruling.

15. [16-12468](#)-A-7 NAAZIM HAMED
NLG-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
PETER BUNTING/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-14-16 [[48](#)]

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

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). Here, service on the debtor is required. But the proof of service does not indicate service was made on the debtor's attorney, who substituted into this case on November 8, 2016, before this motion was filed.

16. [16-13070](#)-A-7 SCOTT HOLVICK
JES-1
JAMES SALVEN/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO SELL
10-24-16 [[13](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Honda Accord

Buyer: Debtor

Sale Price: \$4775 (\$1725 cash plus \$3050 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.

17. [10-62372](#)-A-7 MIGUEL DUARTE
ER-3
MIGUEL DUARTE/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF ALLEN
ELIA
11-16-16 [[58](#)]

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: \$302,710.50

Property Value: \$200,087.00

Judicial Lien Avoided: \$63,627.50

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.

18. [15-11079](#)-A-7 WEST COAST GROWERS, INC. MOTION TO COMPROMISE
KDG-20 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST LANDSBERG ORORA
11-16-16 [[811](#)]
- HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise (Landsberg Orora)

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

Disposition: Continued to January 10, 2017, at 9:00 a.m.

Order: Civil minute order

Robert Hawkins, Chapter 7 trustee, prays an order approving a compromise of claims. Three points are significant in understanding this motion: (1) Federal Rule of Bankruptcy Procedure 2002(a)(3) requires notice of such a motion to all creditors; (2) LBR 9014-1(d)(5) requires that when a party serves on creditors only the notice of motion that the notice contain "the essential facts necessary for a party to determine whether to oppose the motion; and (3) the Order Approving Global Settlement of Disputes, April 18, 2016, ECF # 730, requires the trustee to split any such settlement as follows: (A) 40% to W2LG Growers; (B) 20% to WCG raisin growers; (C) 20% to CVCB; and 20% to Robert Hawkins, trustee of the Western Growers Inc. estate.

DISCUSSION

Notice of a motion to approve compromise must be served on creditors. Fed. R. Bankr. P. 2002(a)(3). Where, as here, the movant serves only the notice of motion, and not all ancillary documents, the notice must

"Service of Notice Only. When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief." LBR 9014-1(d)(5).

Here, most creditors were served only the notice of motion. Certificate of Service, November 16, 2016, ECF # 817. The notice states, "By way of the Motion, the Trustee of Debtor's estate will request that the Court approve the settlement entered into between Landsberg Orora. . . and the Trustee. Under the settlement, Transferee has paid the Trustee \$29,000 in exchange for a release of any and all claims held by the estate against Transferee. . . ." Notice at 1:1-5, November 16, 2016, ECF # 812. The notice does not inform creditors that the bankruptcy estate will only retain 20% of that amount for distribution to creditors and, thus, does not sufficiently describe the relief sought and does not set forth essential facts for creditors to make an informed decision regarding opposing the settlement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to January 10, 2017, at 9:00 a.m.

IT IS ALSO ORDERED that not later than December 20, 2016, the movant shall give notice of the continued hearing, including that (A) opposition need not be in writing and may be offered orally at the hearing; and (B) the estate will retain not more than 20% of the settlement and shall specify that amount in dollars.

19.	15-11079 -A-7 WEST COAST GROWERS, INC. KDG-21 A CALIFORNIA CORPORATION ROBERT HAWKINS/MV	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE ESTATE AGAINST THE CITY OF MORRO BAY 11-16-16 [818]
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HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise (City of Morro Bay)

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

Disposition: Continued to January 10, 2017, at 9:00 a.m.

Order: Civil minute order

Robert Hawkins, Chapter 7 trustee, prays an order approving a compromise of claims. Three points are significant in understanding this motion: (1) Federal Rule of Bankruptcy Procedure 2002(a)(3) requires notice of such a motion to all creditors; (2) LBR 9014-1(d)(5) requires that when a party serves on creditors only the notice

of motion that the notice contain "the essential facts necessary for a party to determine whether to oppose the motion; and (3) the Order Approving Global Settlement of Disputes, April 18, 2016, ECF # 730, requires the trustee to split any such settlement as follows: (A) 40% to W2lG Growers; (B) 20% to WCG raisin growers; (C) 20% to CVCB; and 20% to Robert Hawkins, trustee of the Western Growers Inc. estate.

DISCUSSION

Notice of a motion to approve compromise must be served on creditors. Fed. R. Bankr. P. 2002(a)(3). Where, as here, the movant serves only the notice of motion, and not all ancillary documents, the notice must "Service of Notice Only. When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief." LBR 9014-1(d)(5).

Here, most creditors were served only the notice of motion. Certificate of Service, November 16, 2016, ECF # 824. The notice states, "By way of the Motion, the Trustee of Debtor's estate will request that the Court approve the settlement entered into between the City of Morro Bay . . . and the Trustee. Under the settlement, Transferee has paid the Trustee \$85,000 in exchange for a release of any and all claims held by the estate against Transferee. . . ." Notice at 1:1-5, November 16, 2016, ECF # 819. The notice does not inform creditors that the bankruptcy estate will only retain 20% of that amount for distribution to creditors and, thus, does not sufficiently describe the relief sought and does not set forth essential facts for creditors to make an informed decision regarding opposing the settlement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to January 10, 2017, at 9:00 a.m.

IT IS ALSO ORDERED that not later than December 20, 2016, the movant shall give notice of the continued hearing, including that (A) opposition need not be in writing and may be offered orally at the hearing; and (B) the estate will retain not more than 20% of the settlement and shall specify that amount in dollars.

20. [15-11079](#)-A-7 WEST COAST GROWERS, INC. MOTION TO COMPROMISE
KDG-22 A CALIFORNIA CORPORATION CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH THE ESTATE
AGAINST CHOOLJIAN BROS.
11-16-16 [[825](#)]

HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise (Chooljian Bros)

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

Disposition: Continued to January 10, 2017, at 9:00 a.m.

Order: Civil minute order

Robert Hawkins, Chapter 7 trustee, prays an order approving a compromise of claims. Three points are significant in understanding this motion: (1) Federal Rule of Bankruptcy Procedure 2002(a)(3) requires notice of such a motion to all creditors; (2) LBR 9014-1(d)(5) requires that when a party serves on creditors only the notice of motion that the notice contain "the essential facts necessary for a party to determine whether to oppose the motion; and (3) the Order Approving Global Settlement of Disputes, April 18, 2016, ECF # 730, requires the trustee to split any such settlement as follows: (A) 40% to W2LG Growers; (B) 20% to WCG raisin growers; (C) 20% to CVCB; and 20% to Robert Hawkins, trustee of the Western Growers Inc. estate.

DISCUSSION

Notice of a motion to approve compromise must be served on creditors. Fed. R. Bankr. P. 2002(a)(3). Where, as here, the movant serves only the notice of motion, and not all ancillary documents, the notice must "Service of Notice Only. **When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion.** However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief." LBR 9014-1(d)(5).

Here, most creditors were served only the notice of motion. Certificate of Service, November 16, 2016, ECF # 817. The notice states, "By way of the Motion, the Trustee of Debtor's estate will request that the Court approve the settlement entered into between Chooljian Bros. . . . and the Trustee. Under the settlement, Transferee has paid the Trustee \$30,804.28 in exchange for a release of any and all claims held by the estate against Transferee. . . ." Notice at 1:1-5, November 16, 2016, ECF # 826. The notice does not inform creditors that the bankruptcy estate will only retain 20% of that amount for distribution to creditors and, thus, does not sufficiently describe the relief sought and does not set forth essential facts for creditors to make an informed decision regarding opposing the settlement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to January 10, 2017, at 9:00 a.m.

IT IS ALSO ORDERED that not later than December 20, 2016, the movant shall give notice of the continued hearing, including that (A) opposition need not be in writing and may be offered orally at the hearing; and (B) the estate will retain not more than 20% of the settlement and shall specify that amount in dollars.

21.	15-11079 -A-7 WEST COAST GROWERS, INC. KDG-23 A CALIFORNIA CORPORATION ROBERT HAWKINS/MV	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE ESTATE AGAINST ROBERT V. JENSEN, INC. 11-16-16 [832]
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HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise (Robert V. Jensen, Inc.)

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

Disposition: Continued to January 10, 2017, at 9:00 a.m.

Order: Civil minute order

Robert Hawkins, Chapter 7 trustee, prays an order approving a compromise of claims. Three points are significant in understanding this motion: (1) Federal Rule of Bankruptcy Procedure 2002(a)(3) requires notice of such a motion to all creditors; (2) LBR 9014-1(d)(5) requires that when a party serves on creditors only the notice of motion that the notice contain "the essential facts necessary for a party to determine whether to oppose the motion; and (3) the Order Approving Global Settlement of Disputes, April 18, 2016, ECF # 730, requires the trustee to split any such settlement as follows: (A) 40% to W2lG Growers; (B) 20% to WCG raisin growers; (C) 20% to CVCB; and 20% to Robert Hawkins, trustee of the Western Growers Inc. estate.

DISCUSSION

Notice of a motion to approve compromise must be served on creditors. Fed. R. Bankr. P. 2002(a)(3). Where, as here, the movant serves only the notice of motion, and not all ancillary documents, the notice must "Service of Notice Only. **When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion.** However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief." LBR 9014-1(d)(5).

Here, most creditors were served only the notice of motion. Certificate of Service, November 16, 2016, ECF # 832. The notice states, "By way of the Motion, the Trustee of Debtor's estate will request that the Court approve the settlement entered into between Robert V. Jensen, Inc. . . . and the Trustee. Under the settlement, Transferee has paid the Trustee \$12,551.85 in exchange for a release of

any and all claims held by the estate against Transferee. . . ."

Notice at 1:1-5, November 16, 2016, ECF # 833. The notice does not inform creditors that the bankruptcy estate will only retain 20% of that amount for distribution to creditors and, thus, does not sufficiently describe the relief sought and does not set forth essential facts for creditors to make an informed decision regarding opposing the settlement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to January 10, 2017, at 9:00 a.m.

IT IS ALSO ORDERED that not later than December 20, 2016, the movant shall give notice of the continued hearing, including that (A) opposition need not be in writing and may be offered orally at the hearing; and (B) the estate will retain not more than 20% of the settlement and shall specify that amount in dollars.

22.	15-13379 -A-7 SERGIO/LISA PEREZ JES-1 EDDIE RUIZ/Atty. for dbt. RUSSELL REYNOLDS/Atty. for mv.	TRUSTEE'S FINAL REPORT 10-14-16 [51]
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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 \$10,489.33 and reimbursement of expenses in the amount of \$201.51.

CIVIL MINUTE ORDER

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

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

James E. Salven's 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 \$10,489.33 and reimbursement of expenses in the amount of \$201.51.

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.

23. [16-13079](#)-A-7 LIZA ZAVALZA
BN-2
THE GOLDEN 1 CREDIT UNION/MV
ROSALINA NUNEZ/Atty. for dbt.
VALERIE PEO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-29-16 [[24](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2577 N. Selland, Fresno, CA

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

STAY RELIEF

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 property is not property of the estate as it was awarded to the debtor's spouse in a pre-bankruptcy marital settlement agreement. No payment has been made on the secured debt since July 15, 2015. 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.

The Golden 1 Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2577 N. Selland, Fresno, 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.

24.	16-12881 -A-7 JAMES/SALLY KROB JES-1 JAMES SALVEN/MV JULIE MORADI-LOPES/Atty. for dbt.	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 11-7-16 [20]
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Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-

1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

FACTS

The debtors, James and Sally Krob, claim an exemption in a cat, a dog, two cows and a bull. The statutory basis listed is § 704.020. Am. Schedule C, ECF No. 12. The trustee objects to this claim of exemption. But the trustee has limited his objection to only the two cows and the bull.

The trustee argues (1) that these animals are not within the scope of this exemption because they are not ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family, and (2) that these animals are not "ordinarily found in a household."

DISCUSSION

Without evidence on the issue, the court cannot determine whether the cows and bull are in fact reasonably necessary to the debtors or whether they are personally used by the debtors. But the court need not resolve whether these animals are reasonably necessary to the debtors or personally used, or procured for use, by them.

The court construes this statute based on its plain language, however, and finds that the language is not ambiguous. See *Gladstone v. U.S. Bancorp*, 811 F.3d 1133, 1138 (9th Cir. 2016) ("If the statutory language is unambiguous, our inquiry is at an end."). Section 704.020 of the California Code of Civil Procedure provides in pertinent part:

(a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases: (1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence. (2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following: (1) *The extent to which the particular type of item is ordinarily found in a household.* (2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

Cal. Civ. Proc. Code § 704.020 (West) (emphasis added).

The court takes judicial notice of the generally known fact, *within the court's territorial jurisdiction*, that cows and bulls are not ordinarily found in a household. Therefore, the debtors are not entitled to the exemption in these animals under § 704.020.

Furthermore, the claimed exemption is also improper because livestock are not within the statute's intended scope. "Under the rule of *ejusdem generis*, where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 588, 100 S. Ct. 1889, 1895, 64 L. Ed. 2d 525 (1980). The general words "other personal effects" follow the statute's enumeration of specific items. The general words, therefore, are construed to apply only to items akin to those in the list, i.e., household furnishings, appliances, provisions, wearing apparel. Cows and bulls are not akin to the items in the list.

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 trustee's objection to the debtor's claim of exemption has been presented to the court. Having entered the default of respondent debtors for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the trustee's objection;

IT IS ORDERED that the objection is sustained. The debtors are not entitled to claim an exemption in livestock under section 704.020 of the California Code of Civil Procedure.

25. [15-13184](#)-A-7 DEBBY RENNA
JRL-2
DEBBY RENNA/MV
JERRY LOWE/Atty. for dbt.

MOTION BY JERRY R. LOWE TO
WITHDRAW AS ATTORNEY
11-28-16 [[115](#)]

Final Ruling

Motion: Withdraw as Attorney of Record

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

Disposition: Denied without prejudice

Order: Civil minute order

Counsel for the debtor Jerry Lowe moves to withdraw as counsel of record.

DISCUSSION

This motion was originally properly noticed for December 20, 2016. Notice, November 28, 2016, ECF # 116. Movant then filed an amended notice, purporting to advance the hearing to December 14, 2016. Amended Notice, November 29, 2016, ECF # 120. The certificate of service for the amended notice does not attach the list on which the amended notice was served. As a result, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

26. [15-13184](#)-A-7 DEBBY RENNA
JRL-2
DEBBY RENNA/MV
JERRY LOWE/Atty. for dbt.
NO SEPARATE NOTICE OF
HEARING

MOTION TO SELL
11-30-16 [[123](#)]

No tentative ruling.