

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

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

**ALL HEARINGS WILL BE HEARD BY JUDGE W. RICHARD LEE IN COURTROOM 12**

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** DECEMBER 20, 2017  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-10608](#)-A-7     **IN RE: JOHN ANTONGIOVANNI**  
[KDG-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,  
DENATALE, GOLDNER, COOPER, ROSENLIB AND KIMBALL, LLP  
TRUSTEES ATTORNEY(S)  
11-29-2017    [[84](#)]

PATRICK KAVANAGH

### **Tentative Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Klein, DeNatale, Goldner, Cooper, Rosenlieb, & Kimball, LLP, general counsel for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$29,669.00 and reimbursement of expenses in the amount of \$1048.11.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

### **CIVIL MINUTE ORDER**

The court shall issue a 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.

Klein, DeNatale, Goldner, Cooper, Rosenlieb, & Kimball, LLP's application for allowance of interim 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. The court allows interim compensation in the amount of \$29,669.00 and reimbursement of expenses in the amount of \$1048.11. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate, in accordance with the Bankruptcy Code and the distribution priorities of § 726, the amount of \$23,735.20 (80% of allowed fees) and the amount of \$1048.11 (100% of expense reimbursement allowed).

2. [17-14612](#)-A-7     **IN RE: FRED/EVA ARREOLA**  
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-6-2017    [\[7\]](#)

FRED ARREOLA/MV  
TIMOTHY SPRINGER

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(2); no 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). 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 THE STAY**

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.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

#### **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 present motion to extend the automatic stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

3. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-14](#)

MOTION FOR EXAMINATION  
12-6-2017    [[413](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

#### **Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

4. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-15](#)

MOTION FOR EXAMINATION  
12-6-2017    [[416](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

5. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-16](#)

MOTION FOR EXAMINATION  
12-6-2017    [[419](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

6. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-17](#)

MOTION FOR EXAMINATION  
12-6-2017    [[422](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

7. [17-11824](#)-A-7      **IN RE: HORISONS UNLIMITED**  
[WFH-18](#)

MOTION FOR EXAMINATION  
12-6-2017    [[425](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

8. [17-11824](#)-A-7      **IN RE: HORISONS UNLIMITED**  
[WFH-19](#)

MOTION FOR EXAMINATION  
12-6-2017    [[428](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

9. [17-11824](#)-A-7      **IN RE: HORISONS UNLIMITED**  
[WFH-20](#)

MOTION FOR EXAMINATION  
12-6-2017    [[431](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

10. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-21](#)

MOTION FOR EXAMINATION  
12-6-2017    [[434](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

#### **Tentative Ruling**

The court will grant the motion for an order authorizing a Rule 2004 examination. The proposed order shall be submitted by the movant on Form EDC 6-970B as revised February 1, 2017.

11. [17-13131](#)-A-7     **IN RE: X-TREME AG LABOR, INC.**  
[DOL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY (FILING FEE NOT  
APPLICABLE)  
11-21-2017    [[25](#)]

R. ALEXANDER ACOSTA/MV  
RILEY WALTER  
JESSICA FLORES/ATTY. FOR MV.  
NON-OPPOSITION

#### **Final Ruling**

The court previously issued an order denying relief from stay. The matter will be dropped from calendar as already adjudicated.

12. [17-13748](#)-A-7     **IN RE: XAVIER BOCANEGRA**  
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-16-2017    [[19](#)]

WELLS FARGO BANK, N.A./MV  
PATRICK KAVANAGH  
NANCY LEE/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 7713 Carabina Court, 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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. *See id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *See id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

"[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 2 prepetition and 1 post-petition payments due on the debt secured by the moving party's lien. In addition, the 6% equity cushion does provide sufficient adequate protection. 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.

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 7713 Carabina Court, 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.

13. [17-13654](#)-A-7     **IN RE: KINGS RIVER DOOR, INC.**  
[SL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-30-2017    [\[8\]](#)

CENTEX HOMES, /MV  
MICHAEL FLETCHER  
SANDRA SCHAEFFER/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Construction-defect litigation pending in Fresno County Superior Court (Case Nos. 16CECG02590, 17CEC600725, and 17CECG01444)

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

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

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

In this case, the non-bankruptcy actions are construction-defect lawsuits in which homeowners sued Centex Homes. Centex, the developer of the homes tendered this matter to its subcontractors and insurance carriers for defense and indemnity. Pursuant to its subcontract, the movants assert that debtor agreed to defend and indemnify Centex Homes for claims arising out of debtor's work as well as to name Centex Homes as an additional insured to its insurance policies.

Importantly, movants are seeking recovery only from applicable insurance against debtor's insurers identified in the motion.

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Centex Homes, Centex Real Estate Company, LLC, and Pulte Home Company, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as: Construction-defect litigation pending in Fresno County Superior Court (Case Nos. 16CECG02590, 17CEC600725, and 17CECG01444). The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

14. [17-13654](#)-A-7     **IN RE: KINGS RIVER DOOR, INC.**  
[SL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-30-2017    [14](#)

CENTEX HOMES, /MV  
MICHAEL FLETCHER  
SANDRA SCHAEFFER/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted only to the extent specified in this ruling  
**Order:** Civil minute order

**Subject:** Construction-defect litigation pending in Tulare County  
Superior Court (Case Nos. VCU268696 and VCU270372)

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

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms."

*Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

In this case, the state court litigation consists of construction defect lawsuits in which homeowners sued Centex alleging that their homes were defectively built. Centex, the developer of the homes, tendered the litigation to its subcontractors and insurance carriers for defense and indemnity. Under its subcontract with movants, debtor agreed to defend and indemnify Centex for claims arising out of debtor's work as well as to name Centex as an additional insured on its insurance policies.

Importantly, the movants seek relief from stay to pursue recovery only as against applicable insurance. Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

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

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as: Construction-defect litigation pending in Tulare County Superior Court (Case Nos. VCU268696 and VCU270372). The movant may also file post-judgment motions and appeals. But the movant shall not take

any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

15. [16-12560](#)-A-7     **IN RE: MIGUEL/ESMERALDA REYES**  
[PFT-2](#)

MOTION TO SELL  
11-22-2017    [[34](#)]

PETER FEAR/MV  
THOMAS ARMSTRONG  
ROBERT HAWKINS/ATTY. FOR MV.

**No Ruling**

16. [17-13762](#)-A-7     **IN RE: NANCY ORTIZ**  
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-15-2017    [[14](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
MARK ZIMMERMAN  
NANCY LEE/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 316 19th Ave., Delano, 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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. *See id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *See id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

In this case, the equity cushion is only 9.4%, which is less than the 20% required for adequate protection. And the debtor has missed one post-petition payment 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 316 19th Ave., Delano, 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. [17-13666](#)-A-7     **IN RE: JENNIFER LAH**

MOTION TO COMPEL ABANDONMENT  
11-22-2017    [[11](#)]

JENNIFER LAH/MV  
WILLIAM SMYTH

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

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

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Casa Burger, a sole proprietorship

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.



18. [17-13776](#)-A-7     **IN RE: JESSICA GREER**  
[WJH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-13-2017    [\[21\]](#)

SUNCREST BANK/MV  
PETER FEAR  
SCOTT LAIRD/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Relief from Stay  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, service on an individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). A debtor in bankruptcy may be served before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

Here, service of the motion was insufficient. The motion and supporting papers were not served on the debtor. Service on the debtor's attorney is insufficient. See Fed. R. Bankr. P. 7004(g) (requiring service on *both* a represented debtor and that debtor's attorney whenever service is made upon the debtor.

19. [15-11079](#)-A-7     **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA**  
CORPORATION  
[KDG-32](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH CURTIS HELMUTH AND LANETTE HELMUTH  
11-29-2017    [[986](#)]

ROBERT HAWKINS/MV  
HAGOP BEDOYAN

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Parties to Compromise:** Chapter 7 trustee Robert A. Hawkins, Curtis Helmuth, and Lanette Helmuth

**Dispute Compromised:** Dispute relating avoidable transfers made by debtor to the Helmuths on behalf of Salwasser, Inc.

**Summary of Material Terms:** the Helmuths pay \$5,000 to the trustee in exchange for the trustee's release of the claims asserted against the Helmuths in the adversary proceeding

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).

### **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 movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the

compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 989.

20. [15-11079](#)-A-7     **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**  
[KDG-33](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,  
DENATALE, GOLDNER, COOPER, ROSENLIB & KIMBALL, LLP FOR  
HAGOP T. BEDOYAN, SPECIAL COUNSEL(S)  
11-29-2017    [\[993\]](#)

HAGOP BEDOYAN

#### **Tentative Ruling**

**Application:** Allowance of Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

#### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, KLEIN DENATALE GOLDNER, special counsel for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$42,390.00 and reimbursement of expenses in the amount of \$1,000.51.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

#### **CIVIL MINUTE ORDER**

The court shall issue a 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.

KLEIN DENATALE GOLDNER's application for allowance of interim 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. The court allows interim compensation in the amount of \$42,390.00 and reimbursement of expenses in the amount of \$1,000.51. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate, in accordance with the Bankruptcy Code and the distribution priorities of § 726, 80% of the requested fees in the amount of \$33,912.00 and 100% of costs in the amount of \$1,000.51.

21. [15-11079](#)-A-7     **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA**  
CORPORATION  
[KDG-34](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH EIGHT GREEN GRAPE GROWERS  
11-29-2017    [[1000](#)]

ROBERT HAWKINS/MV  
HAGOP BEDOYAN

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Parties to Compromise:** Chapter 7 trustee Robert Hawkins and the Green Grape Growers (8 parties identified in the motion)

**Dispute Compromised:** Adversary proceedings to avoid transfers of funds paid by debtor to the Green Grape Growers on behalf of Salwasser, Inc.

**Summary of Material Terms:** The Green Grape Growers will pay \$180,000 to the trustee, and the trustee will release the estate's claims against the Green Grape Growers and dismiss the adversary proceedings

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).

### **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 movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the

settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the form of the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 1003.

22. [17-13680](#)-A-7     **IN RE: JAMES/CARLA COMPOS**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
11-8-2017    [\[21\]](#)

JERRY LOWE

#### **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 debtor has failed to appear at a scheduled meeting of creditors required by 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 on condition that the debtor attend

the next 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.

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 January 8, 2018, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

23. [15-13184](#)-A-7     **IN RE: DEBBY RENNA**

AMENDED MOTION TO DISMISS CASE  
11-27-2017    [[211](#)]

DEBBY RENNA/MV  
DEBBY RENNA/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismissal or Conversion of Case

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(a)(4). Unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal for failure to pay the filing fee, the hearing on the dismissal or conversion of a case in Chapter 7, Chapter 11 or Chapter 12 must be noticed to all creditors and parties in interest. Fed. R. Bankr. P. 2002(a)(4).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.