

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**THURSDAY**

**JANUARY 2, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [12-18816](#)-A-7 LORENZO/VALERIE MEJIA MOTION TO AVOID LIEN OF  
SDM-4 CITIBANK, N.A.  
LORENZO MEJIA/MV 12-5-13 [[31](#)]  
SCOTT MITCHELL/Atty. for dbt.

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

Additionally, Federal Rule of Bankruptcy Procedure 9013 requires every written motion to be served on the trustee or debtor in possession. Trudi Manfredo, the Chapter 7 trustee, was served improperly at an email address. Ms. Manfredo has opted out of electronic service and should have been served at her mailing address.

2. [13-12216](#)-A-7 DAVID HERNANDEZ-PADILLA MOTION TO SELL  
TMT-1 AND MARIA PADILLA 12-4-13 [[31](#)]  
TRUDI MANFREDO/MV  
J. IRIGOYEN/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:** 2000 GMC Sierra 3500 and 1999 Buick Park Avenue

**Buyer:** Debtors

**Sale Price:**

-2000 GMC Sierra 3500: \$3,772.00 (\$1,472.00 cash plus \$2,300 exemption credit)

-1999 Buick Park Avenue: \$3,260.00 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.

3. [13-17219](#)-A-7 ISABEL ROJAS

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER

ISABEL ROJAS/MV  
FEE

11-8-13 [5]

ISABEL ROJAS/Atty. for mv.  
RESPONSIVE PLEADING, \$306  
FILING FEE PAID 12/5

#### **Final Ruling**

Because the filing fee has been paid in full, the debtor's motion for waiver of the filing fee will be denied as moot.

4. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN

MOTION BY HAGOP T. BEDOYAN TO  
WITHDRAW AS ATTORNEY

KDG-2  
BOGHOS KRIKORIAN/MV  
HAGOP BEDOYAN/Atty. for dbt.

12-5-13 [81]

#### **Final Ruling**

**Motion:** Attorney's Withdrawal from Representation of a Client

**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).

Withdrawal of an attorney from representing a client is governed by Local Bankruptcy Rule 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. Pursuant to Local Bankruptcy Rule 2017-1(e), the attorney shall provide an affidavit stating the current

or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. California Rule of Professional Conduct 3-700(C)(1)(d) provides for permissive withdrawal if the client "by other conduct renders it unreasonably difficult for the member to carry out the employment effectively." Cal. R. Prof'l Conduct 3-700(C)(1)(d).

The declaration properly states the last known address of the client and mentions the attorney's efforts to notify the client of the motion to withdraw. Further, the facts asserted in the motion and supporting papers show that continued, effective representation of the client will be unreasonably difficult for the attorney to undertake. A breakdown in communication and cooperation between the attorneys and client has occurred. In addition, the Debtors have elected to terminate the attorneys' representation of them and informed the attorneys through their daughter as an interpreter they will take over their own representation. Cal. R. Prof'l Conduct 3-700(C)(5). The court finds that the attorneys' withdrawal from the representation is appropriate.

5. [13-14530](#)-A-7 KATHRYN JONES CONTINUED MOTION FOR RELIEF  
PD-1 FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 9-20-13 [[50](#)]  
RANDY RISNER/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
RESPONSIVE PLEADINGS

#### **Final Ruling**

The matter is continued to January 29, 2014, at 9:00 a.m. to coincide with the hearings on the motions to avoid liens, RJR-1 through RJR-7. The stay will remain in effect.

6. [12-17036](#)-A-7 RUBEN/ESTELLE GALVAN MOTION TO SELL  
TMT-2 11-27-13 [[31](#)]  
TRUDI MANFREDO/MV  
JOSEPH ARNOLD/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:** 25% co-ownership interest in real property located at 310 W. Fresno Street, Fowler, California

**Buyer:** Anna Marie Hammer, a co-owner of the property

**Sale Price:** \$18,059.26 (the sale is subject to the debtor's claim of exemption which will be paid from the sale proceeds)

**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.

7. [13-13063](#)-A-7 WILLIAM MANUSZAK CONTINUED AMENDED OBJECTION TO  
CJS-1 CLAIM OF ATLAS ACQUISITIONS  
WILLIAM MANUSZAK/MV LLC., CLAIM NUMBER 1  
11-25-13 [[43](#)]  
CHERYL JOLLEY-SMITH/Atty. for dbt.

#### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** Continued date of the hearing; opposition filed by trustee

**Disposition:** Continued for an evidentiary hearing

**Order:** Prepared by the objecting party

#### **TRUSTEE'S OPPOSITION**

##### Consideration of Late-Filed Opposition

Opposition was required at the first hearing on November 13, 2013, given that the court deemed the objection to have been noticed under LBR 3007-1(b)(2). Based on the terms of the debtor's notice of continued hearing, opposition was also permitted at the continued hearing on December 11, 2013.

The trustee nor any other party in interest appeared at the first November 13, 2013, hearing on the initial claim objection or at the second December 11, 2013, hearing on the debtor's amended claim objection. The court treated the amended claim objection as the same as the initial claim objection. See Civ. Mins. Hr'g on Am. Obj. to Claim, ECF No. 49. The court did, however, overrule the initial claim objection as moot given the amended objection. See Civ. Min. Order, Dec. 11, 2013, ECF No. 55).

The trustee submitted a late-filed opposition on December 18, 2013. However, the debtor had not requested, and the court had not entered, a default based on the lack of any appearance at either hearing. Thus, the court will consider the trustee's late-filed opposition.

## Evidentiary Hearing on Material Factual Issue

At the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following disputed, material factual issues: (i) whether Claim No. 1 is the same debt as the judgment debt pursued by Unifund CCR Partners ("Unifund") described in the trustee's opposition; (ii) if Claim No. 1 is the same debt as the judgment debt pursued by Unifund, whether the debt is a valid debt enforceable against the debtor by Atlas Acquisitions LLC, the creditor having filed a proof of claim.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) whether any party wishes to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iii) the deadlines for any dispositive motions or evidentiary motions; (iv) the dates for the evidentiary hearing and the trial time that will be required; (v) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vi) any other such matters as may be necessary or expedient to the resolution of these issues.

### **STANDING**

At the initial hearing, the court raised the issue of whether the debtor had standing to bring this claim objection. As discussed in the civil minutes from the continued hearing on December 11, 2013, the court found that the debtor did have standing to raise the objection given the debtor's cognizable prospect of receiving a distribution if the claim of the respondent is disallowed.

The trustee makes an argument that conditionally asserts that the debtor lacks standing. The opposition states that "[i]f the debt of Unifund is a completely different debt than Claim No. 1, the Debtor does not have standing, because this creditor can file a late claim, and there will then not be a surplus estate." Tr.'s Opp'n to Obj. to Claim ¶ 12, ECF No. 49.

This argument assumes that Unifund's ability or right to file a late claim results in the ability or right of Unifund to receive a distribution. Although § 726(a)(3) permits a lower-priority distribution to late-filed claims filed under § 501(a), it does not permit creditors who have the ability or right to file a late-filed claim to receive a distribution if they have not actually filed a claim.

Unless and until Unifund files a proof of claim, Unifund (assuming the judgment debt to Unifund is not the same as Claim No. 1) is not a creditor that has the right to receive a distribution. Thus, for the reasons stated in the court's civil minutes from the continued hearing on December 11, 2013, the debtor has standing given the debtor's cognizable prospect of receiving a distribution if the respondent creditor's claim is disallowed.

**COMPLIANCE WITH RULE 9037**

Previously, the court further continued the hearing on this claim objection to January 2, 2014, to allow issues concerning confidential information of the debtor to be resolved pursuant to Rule 9037. An ex parte motion under Rule 9037 has been filed, and an order issued on that motion. The court has not seen a supplemental declaration that describes compliance with Rule 9037, but the court has verified on the docket that the attorney for the debtor has taken measures to comply with Rule 9037.

8. [13-14769](#)-A-7 JARED/FELICITAS HOWE MOTION TO EMPLOY AARON N.  
JES-1 CASTLETON AS SPECIAL COUNSEL  
JAMES SALVEN/MV  
10-8-13 [[18](#)]  
CINDY MORSE/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Final Ruling**

**Motion:** Employ Special Counsel (Aaron N. Castleton)

**Notice:** No written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

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

Employment application are governed by 11 U.S.C. § 327(a),(e). Applicants must be disinterested and not hold or represent an interest adverse to the estate. Having considered the well-pleaded facts, the court finds that the applicant has sustained that burden, and the court will approve the employment.

9. [13-15471](#)-A-7 DONALD/SELENA HART MOTION FOR DENIAL OF DISCHARGE  
UST-1 OF JOINT DEBTOR UNDER 11 U.S.C.  
AUGUST LANDIS/MV SECTION 727(A)  
11-22-13 [[18](#)]  
GREGORY POWELL/Atty. for mv.

**Tentative Ruling**

**Motion:** Deny Joint Debtor Selena Hart's Discharge pursuant to 11 U.S.C. § 727(a)(8)

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

**Disposition:** Continued to February 12, 2014, at 9:00 a.m.

**Order:** Civil minute order

Continued to February 12, 2014, at 9:00 a.m. to allow (i) service of the motion on the debtors and on the trustee and the filing of a proof of service no later than January 15, 2014, and a notice of continued hearing on the same date, or (ii) if service of the motion has been already been made, the filing of an amended proof of service no later than January 15, 2014, and a notice of continued hearing by the same date.

The notice of continued hearing may require written opposition no later than 14 days before the continued hearing date.

At the continued hearing date, if no opposition has been timely, then the court will deny joint debtor's discharge pursuant to § 727(a)(8) pursuant to the following ruling:

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).

The U.S. Trustee has objected to joint debtor Selena Hart's discharge under § 727(a)(8). The objection was timely filed on November 22, 2013, which is 60 days after the first date set for the § 341 creditors' meeting on September 23, 2013. See Fed. R. Bankr. P. 4004(a).

Joint debtor Selena Hart filed her current case on August 14, 2013. She previously filed a voluntary case under Chapter 7 of the Bankruptcy Code on June 19, 2007, and received a Chapter 7 discharge in such case. Because Selena Hart received a discharge in a prior case that was commenced within 8 years of the petition date in the current case, § 727(a)(8) precludes her from receiving a discharge in the current case. 11 U.S.C. § 727(a)(8). The court will grant the motion and deny her discharge.

10. [13-15372](#)-A-7 ISAAC GUERRA MARTINEZ OPPOSITION RE: TRUSTEE'S MOTION  
SAS-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
11-15-13 [23]

J. IRIGOYEN/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** (1) Assuming the trustee waives the debtor's lack of service of the opposition, then the then the court will conditionally deny the motion to dismiss and grant the request to extend deadlines; alternatively, (2) if the trustee does not waive the debtor's lack of service of the opposition, then the court will grant the motion to dismiss and deny the request to extend deadlines as moot

**Order:** Prepared by chapter 7 trustee

The debtor has not filed a proof of service for his declaration in opposition to the motion. If the trustee does not appear at the hearing, or alternatively, if the trustee chooses not waive her lack of service or receipt of the opposition, then the court will grant the motion to dismiss and deny the request to extend certain deadlines as moot.

Assuming this service defect is waived by the trustee at the hearing, the court will rule as follows:

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion. But the debtor's opposition The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors.

Certain deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is January 10, 2014. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

The motion will be granted in part and conditionally denied in part. The motion will be granted to the extent it requests extension of certain deadlines so that they run from the continued date of the meeting of creditors. The motion will be conditionally denied in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor appear at the continued meeting of creditors, but if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

11. [13-15683](#)-A-7 NANCY DUCKHORN CONTINUED MOTION TO AVOID LIEN  
RDB-1 OF CAVALRY SPV I, LLC.  
NANCY DUCKHORN/MV 11-5-13 [[13](#)]  
RICK BANKS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1) / continued date of the hearing; written opposition required and no written opposition filed as of the initial or continued hearing dates

**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).

## LEGAL STANDARDS

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).

## ANALYSIS

### Background Information

The court continued the initial hearing for two reasons. First, an exemption had not actually been claimed in the real property subject to the responding party's lien. An amended Schedule C has been filed claiming an exemption of \$13,387.00.

Second, the court continued the hearing because the debtor had not applied the correct approach to determine whether lien avoidance was appropriate and whether statutory grounds for impairment existed. In the civil minutes from the initial hearing on this motion on December 3, 2013, the court described the applicable legal standard for a motion to avoid a judicial lien on property subject to co-ownership interests and cited *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

At the initial hearing, the court also found that the debtor co-owns the subject real property with a non-debtor party and holds a fractional one-half interest in the property based on the description of the property in Schedule A.

The amended Schedule A also states that the debtor is a joint tenant with a non-debtor party, and implies that the debtor's interest in the property is a one-half interest. The court draws this conclusion that the debtor's interest is a one-half interest based on the fact that the tenancy is described as a joint tenancy and that the value given for the debtor's interest is half of the value of the entire fee interest in the property.

### Meyer Approach Inapplicable

However, the court may have been incorrect in setting forth the approach under *Meyer* as the applicable approach. The motion clearly states that the subject real property is encumbered by a deed of trust "to which debtor is the only obligor. The modified approach in *Meyer* may only be applicable in co-ownership cases that involve a "joint encumbrance" or a "consensual lien against the entire fee." *Id.* at 89, 91. Thus, only consensual "joint encumbrances" must be deducted

from the joint value of the property under the *Meyer* approach. Here, the encumbrance does not appear to be a joint encumbrance given that the motion states that debtor is the only obligor. But application of either the standard, mechanical approach or the modified, *Meyer* approach is not material to the outcome as either approach would result in lien avoidance here.

#### Lien Avoidance Based on Revised, Scheduled Values

An amended Schedule A shows \$259,000 as the value of the property, a higher value for the real property than shown in the previously filed Schedule A. This value is not stated in the motion, but the court will nevertheless take judicial notice that the amended schedules contain such values and information. Fed. R. Evid. 201(b)(2), (c). In addition, the court will infer that the value of the property is the same as the scheduled value shown in the amended Schedule A. In the future, counsel should ensure that such material factual grounds for the motion are in the motion itself, or an amended motion. Fed. R. Bankr. P. 9013.

The jointly owned value of the entire fee interest in the property equals \$259,000 based on amended Schedule A. Thus, the value of the debtor's co-ownership interest is \$129,500.00.

The responding party's lien totals \$21,668.23. Thus, the total of all liens (\$21,668.23 + \$245,613.00 = \$267,281.23) plus the exemption amount (\$13,387) equals \$280,668.23. The value of the moving party's fractional interest in the property in the absence of liens equals \$129,500.00. The liens and the exemption exceed the property's value by \$151,168.23. The responding party's lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than the debt secured by the responding party's lien.

12. [13-11288](#)-A-7 ABEL/STACY LUNA MOTION FOR COMPENSATION BY THE  
PLF-7 LAW OFFICE OF LAW OFFICES OF  
PETER FEAR/MV PETER L. FEAR FOR PETER L.  
FEAR, DEBTOR'S ATTORNEY(S),  
FEE: \$9390.50, EXPENSES:  
\$405.96  
12-3-13 [[85](#)]

PETER FEAR/Atty. for dbt.

#### **Final Ruling**

**Motion:** First and Final Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Offices of Peter Fear

**Compensation approved:** \$9,390.50

**Costs approved:** \$405.96

**Aggregate fees and costs approved:** \$9,796.46

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$9,796.46

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 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

13. [13-17634](#)-A-7 MARTHA RENTERIA MOTION TO COMPEL ABANDONMENT  
JRL-1 12-17-13 [12]  
MARTHA RENTERIA/MV  
JERRY LOWE/Atty. for dbt.

#### **Tentative Ruling**

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

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

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

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

**Business Description:** Sole proprietorship consisting of an equestrian therapy business

The trustee has filed a non-opposition to the motion stating that the business and business assets are of inconsequential value of the bankruptcy estate.

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

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

The business described above is either burdensome to the estate or of

inconsequential value to the estate. An order compelling abandonment of such business is warranted.

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

14. [13-16378](#)-A-7 RICHARD JIMENEZ OPPOSITION RE: TRUSTEE'S MOTION  
TMT-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
11-14-13 [[11](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Granted in part (motion to dismiss), denied in part as moot (motion for extension of certain deadlines)

**Order:** Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion but has not stated any reasons why the case should not be dismissed. The debtor, who is unrepresented, was provided with a notice of the trustee's motion. The notice included a form document that allowed the debtor to file a notice of hearing and opposition to the trustee's motion to dismiss. The form provided a space in which the debtor was to state the reasons the case should not be dismissed. The debtor left this space blank.

Furthermore, the opposition was not timely filed. The notice of the trustee's motion provided that the opposition was to be filed no later than 14 days before the hearing. The opposition was filed on December 23, 2013, which is 10 days before the hearing.

9:15 a.m.

1. [13-16052](#)-A-7 SALVADOR/ROSA ALCANTAR STATUS CONFERENCE RE: COMPLAINT  
[13-1115](#) 10-23-13 [[1](#)]  
RODRIGUEZ V. ALCANTAR, III  
MARIA RODRIGUEZ/Atty. for pl.

**No tentative ruling.**

10:00 a.m.

1. [13-16805](#)-A-7 SUSAN ALL MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
HTD LEASING LLC/MV 11-22-13 [[16](#)]  
ALLAN WILLIAMS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted nunc pro tunc

**Order:** Prepared by moving party

**Subject:** 2013 Ford Flex

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

Section 362(d)(1) authorizes stay relief for cause. Here, case exists in that the debtor surrendered pre-petition and the creditor sold the vehicle three days after the petition was filed but before creditors received notice of the petition. The motion will be granted nunc pro tunc, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-15922](#)-A-7 ANDRES/OFELIA MARTINEZ MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE 12-5-13 [[17](#)]  
CORPORATION/MV  
GARY HUSS/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part and denied in part as moot

**Order:** Prepared by moving party

**Subject:** 2008 Honda Civic

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

**AS TO THE DEBTOR**

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

**AS TO THE ESTATE**

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

3. [13-17339](#)-A-7 SCOTT KNIGHT MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE 12-5-13 [[9](#)]  
CORPORATION/MV  
JEFFREY ROWE/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2010 Honda Four Trax

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

Section 362(d)(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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [12-19661](#)-A-7 JORGE/MARY LOU SANTOS MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
TD AUTO FINANCE LLC/MV 11-21-13 [[454](#)]  
RILEY WALTER/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2006 Dodge Ram 2500

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

Section 362(d)(1) authorizes stay relief for cause. In this case cause has been shown. The debtor has indicated an intention to surrender the vehicle and the Chapter 7 trustee has not opposed the motion. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [13-16081](#)-A-7 LUCINDA VASQUEZ MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK N.A./MV 12-16-13 [[13](#)]  
THOMAS GILLIS/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part and denied in part as moot

**Order:** Prepared by moving party

**Subject:** 2009 Dodge Journey SX

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).

### **AS TO THE DEBTOR**

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

### **AS TO THE ESTATE**

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

10:30 a.m.

1. [13-16707](#)-A-7 VENICE ALVAREZ REAFFIRMATION AGREEMENT WITH  
SANTANDER CONSUMER USA INC.  
12-3-13 [[11](#)]  
  
RANDY RISNER/Atty. for dbt.  
  
**No tentative ruling.**
2. [13-17207](#)-A-7 CAROL RYGH REAFFIRMATION AGREEMENT WITH VW  
CREDIT, INC.  
12-13-13 [[13](#)]  
  
GARY HUSS/Atty. for dbt.  
  
**No tentative ruling.**
3. [13-16837](#)-A-7 FERINA SOSAYA PRO SE REAFFIRMATION AGREEMENT  
WITH TUCOEMAS FEDERAL CREDIT  
UNION  
12-16-13 [[17](#)]  
  
**No tentative ruling.**
4. [13-16738](#)-A-7 FERNANDO/PATRICIA ADAME PRO SE REAFFIRMATION AGREEMENT  
WITH ALLY BANK  
12-11-13 [[13](#)]  
  
**No tentative ruling.**
5. [13-16439](#)-A-7 TINA ARTEAGA PRO SE REAFFIRMATION AGREEMENT  
WITH JPMORGAN CHASE BANK, N.A.  
12-11-13 [[27](#)]  
  
**No tentative ruling.**
6. [13-17151](#)-A-7 FERAS MUHYELDIN AND PRO SE REAFFIRMATION AGREEMENT  
SHEREEN SAADELDIN WITH FRESNO COUNTY FEDERAL  
CREDIT UNION  
11-26-13 [[22](#)]  
  
**No tentative ruling.**

7. [13-15962](#)-A-7 DUANE/BRIDGETT THOMPSON REAFFIRMATION AGREEMENT WITH  
WELLS FARGO DEALER SERVICES  
11-29-13 [[21](#)]  
  
DAVID JENKINS/Atty. for dbt.  
  
**No tentative ruling.**
8. [13-17476](#)-A-7 ARTHUR MORENO PRO SE REAFFIRMATION AGREEMENT  
WITH TOP FINANCE CO., INC.  
12-16-13 [[14](#)]  
  
**No tentative ruling.**
9. [13-16880](#)-A-7 PHILLIP/SUSAN RANALLO PRO SE REAFFIRMATION AGREEMENT  
WITH JPMORGAN CHASE BANK, N.A.  
12-11-13 [[12](#)]  
  
**No tentative ruling.**
10. [13-17194](#)-A-7 MARICELA MARTINEZ PRO SE REAFFIRMATION AGREEMENT  
WITH TULARE COUNTY FEDERAL  
CREDIT UNION  
12-17-13 [[17](#)]  
  
**No tentative ruling.**

1:30 p.m.

1. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION TO USE CASH COLLATERAL  
EVN-3 LLC 11-22-13 [[29](#)]  
BHAVIKA'S PROPERTIES, LLC/MV  
ELAINE NGUYEN/Atty. for dbt.

**Tentative Ruling**

**Motion:** Use Cash Collateral

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

**Disposition:** To be determined

**Order:** Prepared by moving party

**Creditor:** CNA Properties

**Expiration:** Earlier of plan confirmation, conversion, dismissal or stay relief

**Adeq. Protection:** \$4,333 per month and Replacement Liens

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2),(e), 361; Fed. R. Bankr. P. 4001(b).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(I)-(iv); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted creditor and any other party in interest so requesting approval.

2. [12-12998](#)-A-11 FARSHAD TAFTI CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
4-5-12 [[15](#)]  
PETER FEAR/Atty. for dbt.

No tentative ruling

3. [12-12998](#)-A-11 FARSHAD TAFTI  
PLF-7  
PETER FEAR/Atty. for dbt.

CONFIRMATION OF CHAPTER 11 PLAN  
9-4-13 [[194](#)]

**No tentative ruling.**

4. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,  
EVN-1 LLC  
BHAVIKA'S PROPERTIES, LLC/MV  
ELAINE NGUYEN/Atty. for dbt.

MOTION TO EMPLOY ELAINE V.  
NGUYEN AS ATTORNEY(S)  
11-20-13 [[16](#)]

**No tentative ruling.**

5. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,  
EVN-2 LLC  
BHAVIKA'S PROPERTIES, LLC/MV  
  
ELAINE NGUYEN/Atty. for dbt.

MOTION TO EMPLOY HIRAMATSU &  
ASSOCIATES, INC. AS FINANCIAL  
ADVISER(S)  
11-21-13 [[22](#)]

**No tentative ruling.**