

**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

**WEDNESDAY**

**JANUARY 8, 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. [13-10814](#)-A-7 FL.INVEST.USA INC. CONTINUED MOTION FOR RELIEF  
DMG-4 FROM AUTOMATIC STAY  
ALDO NEMNI/MV 10-9-13 [[191](#)]  
RYAN ERNST/Atty. for dbt.  
DONNA HARRIS/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [13-10814](#)-A-7 FL.INVEST.USA INC. CONTINUED MOTION TO COMPROMISE  
KDG-2 CONTROVERSY/APPROVE SETTLEMENT  
VINCENT GORSKI/MV AGREEMENT WITH MARIA ROSA  
NEMNI, ALDO NEMNI, AND MIRO'  
AMERICA LLC  
10-2-13 [[182](#)]  
RYAN ERNST/Atty. for dbt.  
LISA HOLDER/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [13-10814](#)-A-7 FL.INVEST.USA INC. MOTION TO SELL  
KDG-3 12-20-13 [[269](#)]  
VINCENT GORSKI/MV  
RYAN ERNST/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Real Property

**Notice:** LBR 9014-1(f)(3) and order shortening time; no written  
opposition required

**Disposition:** Pending

**Order:** Prepared by moving party

**Property:** 240 acres of real property referred to as Pine Meadows, Kern  
County, CA (APNs listed in the notice of hearing)

**Buyer:** Panorama Energy Holdings, LLC or Panorama Energy Holdings, Inc.  
depending on the progress of the merger described in the motion

**Sale Price:** \$4,950,000 cash plus payment of taxes on the sale up to  
\$1,888,000.00 [whether or income or sales tax is unclear: the notice  
states the taxes are income taxes, the motion states that the taxes  
are sales taxes]

**Sale Type:** Private sale subject to overbid opportunity

**Liens:** The sale is subject to all valid and enforceable liens and  
encumbrances on the property except that the liens Micro America LLC,  
Aldo Nemni and Maria Rosa Pizzorno-Nemni are to be paid out of escrow  
at closing

## **INADEQUATE NOTICE**

The proofs of service reveal that notice of the proposed sale may not have been adequate. The word "duplicate" has been stamped over many of the names and addresses on the copy of the court's matrix attached to the proof of service for the notice of hearing. These labels suggest that each name and address that has been marked as a duplicate was not served pursuant to the proof of service having docket number 274 but under a different proof of service for the motion and supporting papers having docket number 275.

However, at least one creditor, listed as either Robert D. Bedinger or Bedinger Law, at 401 West A Street, Suite 2550, San Diego, California, 92101, appears not to have received notice. This creditor appears on the court's matrix twice and has been labeled as a duplicate both times that he appears on the proof of service for the notice of hearing at docket no. 274. This creditor does not, however, appear on the proof of service for the motion and supporting papers found at docket no. 275.

Additionally, David M. Klauder has been marked as a duplicate on the proof of service for the notice of hearing at docket 274. His name also appears on the proof of service for the motion and supporting papers at docket 275 but with a different zip code.

Before the hearing, the court requests that counsel for the trustee review the proof of service for the notice of hearing and determine whether all creditors have received adequate notice of the hearing, including all creditors marked as "duplicates" and creditor Bedinger and creditor Klauder.

## **ESTATE'S LIEN SECURING PRICE**

The Chapter 7 trustee's motion states: "Buyer's obligation to pay the sales tax will be secured by a note and second-position deed of trust against Pine Meadows, and a security agreement and second-position UCC-1 Financing statement filed against Buyer's assets." Mot. at 2:14-16, Dec. 20, 2014, ECF No. 269. The court will inquire at the hearing as to who the first position lien holder on Pine Meadows will be given the payment out of escrow of the Nemnis and Miro America LLC's liens.

## **SALE OF PROPERTY UNDER SECTION 363(b)**

Assuming the court's concerns regarding notice are resolved in the movant's favor, the court will rule as follows:

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

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

4. [13-15831](#)-A-7 JAMES/BRENDA WATSON  
SAS-1  
SHERYL STRAIN/MV

MOTION TO EMPLOY BAIRD AUCTIONS  
AND APPRAISALS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT  
PUBLIC AUCTION AND AUTHORIZING  
PAYMENT OF AUCTIONEER FEES AND  
EXPENSES  
12-10-13 [[20](#)]

PETER BUNTING/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted in part, denied in part without prejudice (as to the expenses not listed in the notice)

**Order:** Prepared by moving party

**Property:** Various items of personal property described in the notice of hearing.

**Sale Type:** Public auction

### **PROCEDURAL MATTER**

The notice of hearing should contain all amounts of compensation or reimbursement of expenses requested. Here, the notice of hearing does not contain the storage fees or repair costs that are to be approved. Even though such amounts are not necessarily large, they should have been included in the notice of hearing. See Fed. R. Bankr. P. 2002(c)(2). The motion will be denied in part without prejudice as to all expenses requested that have not been included in the notice of hearing (storage fees and repair costs).

### **MERITS OF THE MOTION**

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

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's

employment.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

5. [11-60663](#)-A-7 HUMMER TRANSPORTATION, INC. OBJECTION TO CLAIM OF NATIONAL CONTINENTAL INSURANCE COMPANY, CLAIM NUMBER 3  
RHT-5  
ROBERT HAWKINS/MV 11-8-13 [[184](#)]  
KENNETH ALLEN/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 9014-1(f)(1) / Continued date of hearing; written opposition filed

**Disposition:** Continued for evidentiary hearing

**Order:** Civil minute order

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 or disputed, mixed legal and factual issues:

(1) Whether National Continental Insurance Company ("National") has a claim pursuant to an MCS-90 endorsement and a right of reimbursement:

(a) Whether National is the holder of the claim or whether Progressive Casualty Insurance Company ("Progressive") is the holder of the claim and whether an agency relationship between National and Progressive exists;

(b) Whether the insurance payment of \$841,840.41 on account of the Hartys' judgment and for which National seeks reimbursement was made under the Debtor's insurance policy with National or under the MCS-90 endorsement to such policy;

(c) Whether National is judicially estopped from denying that payments were made under its insurance policy with the Debtor based on statements made in other court proceedings and appeal bond proceedings;

(d) Whether an agency relationship existed between Hume Smith and National for purposes of statements made concerning coverage or statements about whether payments were made pursuant to the insurance policy or the MCS-90 endorsement;

(e) Whether the Debtor's fraud in the inducement or misrepresentations provide a right to rescind the insurance policy between the Debtor and

National;

(f) Whether Debtor failed to cooperate with National and whether such failure affects National's right to obtain reimbursement of National's insurance payment of \$841,840.41 on account of the Hartys' judgment; and

(g) Whether there were discovery failures by the Debtor in the state court litigation in Indiana that breached the insurance agreement and whether such failure affects National's right to obtain reimbursement of National's insurance payment of \$841,840.41 on account of the Hartys' judgment;

(2) Whether National has a claim for unrecovered attorney's fees and costs paid in defense of the Debtor in an underlying lawsuit against the debtor by Kimberly Spoa-Harty and Jesse Harty (collectively, the "Hartys") and whether the payment of such fees and costs described in National's claim were made under the Debtor's insurance policy with National or pursuant to the MCS-90 endorsement;

(3) Whether National has an enforceable claim for unpaid premiums for Debtor's insurance policy; and

(4) Whether the Debtor has a right of recoupment or setoff.

The court has also preliminarily identified several legal issues as well:

(1) Whether this contested matter is barred by the doctrine of exclusive appellate jurisdiction given the appeal of this court's order approving the employment of the trustee's special counsel?

(2) What law governs the interpretation and effect of the insurance policy, the potential basis for rescission of the policy, and the interpretation and effect of the MCS-90 endorsement?

(3) What is the applicable state law providing the statute of limitations for National's collecting an unpaid premium?

(4) What other applicable non-bankruptcy statutes apply to this contested matter?

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the legal, factual and mixed legal-factual 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.

6. [10-61970](#)-A-7 BRIAN ENNIS  
RH-7  
JAMES SALVEN/MV  
COMPENSATION

MOTION TO ALLOW INTERIM  
DISTRIBUTION AND/OR MOTION FOR

12-18-13 [[248](#)]

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

### **Tentative Ruling**

**Motion:** Allow Interim Distribution / Approval of Interim Trustee Compensation

**Notice:** LBR 9014-1(f)(2); written opposition required

**Disposition:** Continued in part to January 29, 2014, at 9:00 a.m. to allow a further supplemental declaration (as to approval of interim distributions), and denied in part without prejudice (as to approval of any compensation)

**Order:** Civil minute order

### **APPROVAL OF INTERIM DISTRIBUTION**

The trustee requests permission to make an interim distribution to creditors and administrative claimants pursuant to Rule 3009. Given the ongoing litigation in this case, and the uncertainty regarding when case closure will occur, the court is inclined to grant the motion but only if the trustee shows that the case is administratively solvent.

The court requests a supplemental declaration indicating that the case is administratively solvent. Specific well-pled facts that are non-conclusory indicating that the case is administratively solvent will suffice. No later than January 22, 2013, the trustee may file a supplemental declaration addressing this issue.

### **APPROVAL OF COMPENSATION**

Exhibit A filed in support of the motion indicates that no payment will be made to any creditor or administrative creditors, including such creditors as the trustee and the trustee's attorney, absent a docketed court order. The court reads the exhibit to mean a docketed court order on an application for approval of an award of compensation and expenses.

However, to the extent the motion requests approval of any award of compensation or reimbursement of expenses, the court will deny the motion without prejudice and allow an application for compensation to be filed separately.

7. [13-15972](#)-A-7 RAMON/MARIA RUVALCABA  
PFT-3  
PETER FEAR/MV

MOTION TO EMPLOY GOULD AUCTION  
AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
12-9-13 [[26](#)]

MARK ZIMMERMAN/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted in part, denied in part without prejudice  
(expenses not described in the notice of hearing)

**Order:** Prepared by moving party

**Property:** 2003 Pontiac Grand Prix

**Sale Type:** Public auction

### **PROCEDURAL MATTER**

The notice of hearing should contain all amounts of compensation or reimbursement of expenses requested. Here, the notice of hearing does not contain the amount of extraordinary expenses sought to be approved. Even though such amounts are not necessarily large, they should have been included in the notice of hearing. See Fed. R. Bankr. P. 2002(c)(2). The motion will be denied in part without prejudice as to all expenses requested that have not been included in the notice of hearing (the extraordinary expenses of up to \$500.00).

### **MERITS OF THE MOTION**

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

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses."

11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

8. [11-12673](#)-A-7 JAMES/MARY BRIXEY  
DRJ-2  
MARY BRIXEY/MV  
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF DENNIS  
M. WRIGHT  
12-15-13 [[31](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Liens Plus Exemption:** \$120,740.20

**Property Value:** \$118,159.00

**Judicial Lien Avoided:** \$2,581.20

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

9. [11-12673](#)-A-7 JAMES/MARY BRIXEY  
DRJ-3  
MARY BRIXEY/MV

MOTION TO AVOID LIEN OF JOHN  
DEERE CONSTRUCTION & FORESTRY  
COMPANY  
12-15-13 [[34](#)]

M. ENMARK/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Liens Plus Exemption:** \$214,613.32

**Property Value:** \$118,159.00

**Judicial Lien Avoided:** \$96,454.32

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

10. [11-12673](#)-A-7 JAMES/MARY BRIXEY  
DRJ-4  
MARY BRIXEY/MV  
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF MOTOR  
CREDIT COMPANY LLC  
12-15-13 [[37](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

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

**Order:** Prepared by moving party

**Liens Plus Exemption:** Unknown

**Property Value:** \$118,159.00

**Judicial Lien Avoided:** Unknown

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The motion and supporting papers do not state the amount of debt secured by the judicial lien of the respondent. The court notes that the consensual lien plus the exemption amount together equal the value of the real property leaving no equity for judicial liens to attach. However, under Rule 9013, the motion must state with particularity the grounds therefor. The amount of debt secured by the judicial lien is necessary to application of the statutory formula for determining whether a lien impairs an exemption, so it is an essential part of the grounds for the relief that must be in the motion.

The court will continue the hearing to the date indicated above and allow an amended motion to be filed no later than January 29, 2014. The continued notice of hearing may permit opposition, if any, at the hearing pursuant to LBR 9014-1(f)(2). The amended motion may be given the same docket control number that this motion has and be treated as part of the original motion.

11. [13-16877](#)-A-7 DENNIS/PHYLLIS BALL MOTION TO SELL  
TMT-2 12-18-13 [[32](#)]  
TRUDI MANFREDO/MV  
PETER BUNTING/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 100% of the shares of stock in the corporation Jonathan Sterling, Inc. (notice of hearing) or Jonathan Sterling Home Elegance, Inc. (motion)

**Buyer:** Old Dominion Capital

**Sale Price:** \$10,000.00

**Sale Type:** Private sale subject to overbid opportunity

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

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

12. [13-15791](#)-A-7 FERNANDO SANTOS MOTION TO AVOID LIEN OF  
WW-1 BRITZ-SIMPLOT GROWER SOLUTIONS  
FERNANDO SANTOS/MV AND CALARCO, INC.  
12-2-13 [[13](#)]  
RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to February 12, 2014, at 9:00 a.m. with a supplemental proof of service filed no later than January 29, 2014

**Order:** Prepared by moving party

**PROCEDURAL MATTERS**

The motion seeks to avoid liens held by two different respondents on real property. The proof of service shows that Calarco, Inc.'s agent, Stanley Archer, has been served. The other respondent has been identified as Britz-Simplot Grower Solutions, LLC or Britz-Simplot Grower Solutions (together, "Britz-Simplot").

The debtor has not served an agent of this Britz-Simplot. Because Britz-Simplot is the respondent, service is not sufficient based on the current motion.

But the proof of service explains that Britz-Simplot has been "merged out" after J.R. Simplot Company's acquisition of Britz-Simplot, and that J.R. Simplot Company ("J.R. Simplot") has been served. The proof of service does show service on an agent of J.R. Simplot.

However, J.R. Simplot Company is not the respondent named in the motion. If J.R. Simplot Company is the respondent holding the lien, the J.R. Simplot should be named as a respondent in an amended motion. The court will continue the hearing to the date indicated above. An amended motion may be filed no later than January 29, 2014. The amended motion may be given the same docket control number that this motion has and be treated as part of the original motion.

#### **MERITS OF THE MOTION**

At the continued hearing date, if service of the motion made on all respondents, and no opposition has been filed, the court will may adopt the following as the 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).

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, Calarco, Inc.'s judicial lien would be the last judicial

lien to be avoided because it has a higher priority than the other judicial liens, though it is still subject to any senior consensual lien. In determining whether Calarco, Inc.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Calarco, Inc.'s judicial lien, plus all other liens (excluding judicial liens lower in priority), plus the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by such judicial lien. As a result, Calarco, Inc.'s judicial lien may be avoided entirely.

The other judicial lien held by respondent Britz-Simplot Grower Solutions may be avoided as well because it is lower in priority than Calarco, Inc.'s avoidable judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtors' exemption amount equals or exceeds the fair market value of the real property, so all judicial liens subject to this motion are properly avoidable under § 522(f).

13. [13-15792](#)-A-7 PAUL SANTOS  
WW-1  
PAUL SANTOS/MV

MOTION TO AVOID LIEN OF  
BRITZ-SIMPLOT GROWER SOLUTIONS  
AND CALARCO, INC.  
12-2-13 [[13](#)]

RILEY WALTER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to February 12, 2014, at 9:00 a.m. with a supplemental proof of service filed no later than January 29, 2014

**Order:** Prepared by moving party

### **PROCEDURAL MATTERS**

The motion seeks to avoid liens held by two different respondents on real property. The proof of service shows that Calarco, Inc.'s agent, Stanley Archer, has been served. The other respondent has been identified as Britz-Simplot Grower Solutions, LLC or Britz-Simplot Grower Solutions (together, "Britz-Simplot").

The debtor has not served an agent of Britz-Simplot. Because Britz-Simplot is the named respondent, service is not sufficient based on the current motion.

But the proof of service explains that Britz-Simplot has been "merged out" after J.R. Simplot Company's acquisition of Britz-Simplot, and that J.R. Simplot Company ("J.R. Simplot") has been served. The proof of service does show service on an agent of J.R. Simplot.

However, J.R. Simplot Company is not the respondent named in the motion. If J.R. Simplot Company is the respondent holding the lien, the J.R. Simplot should be named as a respondent in an amended motion. The court will continue the hearing to the date indicated above. An amended motion may be filed no later than January 29, 2014. The amended motion may be given the same docket control number that this

motion has and be treated as part of the original motion.

Pursuant to Rule 9013, the court also requests that counsel for the debtor ensure that the motion states with particularity the grounds for the relief requested. The motion does not contain the amount of the debt secured by each judicial lien to be avoided. Such specific facts should be included in the motion itself, along with the other factual grounds necessary for determining whether statutory impairment exists under § 522(f)(2)(A).

#### **MERITS OF THE MOTION**

At the continued hearing date, if service of the motion made on all respondents, and no opposition has been filed, the court will may adopt the following as the 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).

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, Calarco, Inc.'s judicial lien would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens, though it is still subject to any senior consensual lien. In determining whether Calarco, Inc.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Calarco, Inc.'s judicial lien, plus all other liens (excluding judicial liens lower in priority), plus the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by such judicial lien. As a result, Calarco, Inc.'s judicial lien may be avoided entirely.

The other judicial lien held by respondent Britz-Simplot Grower Solutions may be avoided as well because it is lower in priority than Calarco, Inc.'s avoidable judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtors' exemption amount equals or exceeds the fair market value of the real property, so all judicial liens subject to this motion are properly avoidable under § 522(f).

14. [13-17597](#)-A-7 JUAN/ANGEL GALVAN CONTINUED MOTION TO COMPEL  
RN-1 ABANDONMENT  
JUAN GALVAN/MV 12-1-13 [6]  
ROSALINA NUNEZ/Atty. for dbt.

#### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2) / continued hearing date; 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 business assets of joint-debtor Angel Galvan's embroidery and silkscreen store

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).

15. [13-17944](#)-A-7 BRETT/MELISSA BULLOCK  
PBB-1  
BRETT BULLOCK/MV  
PETER BUNTING/Atty. for dbt.  
OST

MOTION TO COMPEL ABANDONMENT  
12-31-13 [[10](#)]

### **Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(3) and order shortening time; 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 construction business operating under the name Quality Roofing and Construction

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).

9:15 a.m.

1. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN MOTION TO COMPEL  
[13-1073](#) DLE-1 12-9-13 [[17](#)]  
KARRAKER ET AL V. MCCLARAN  
DAVID EMERZIAN/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

*[This matter will be called no earlier than 11:00 a.m.]*

2. [08-15141](#)-A-7 LINDA PINSON CONTINUED MOTION TO SURCHARGE  
TGM-4 DEBTOR'S EXEMPTION  
JAMES SALVEN/MV  
3-13-13 [[140](#)]  
THOMAS GILLIS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.  
NOTICE OF CASE SETTLEMENT  
FILED 10/29/13

**Final Ruling**

An Order Authorizing Compromise of Controversy entered, this matter is dropped as moot.

3. [08-15141](#)-A-7 LINDA PINSON CONTINUED STATUS CONFERENCE RE:  
[13-1077](#) COMPLAINT  
SALVEN V. PINSON 7-9-13 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.  
NOTICE OF CASE SETTLEMENT  
FILED 10/29/13

**Final Ruling**

An Order Authorizing Compromise of Controversy entered and this adversary proceeding dismissed, the status conference is concluded.

4. [08-15141](#)-A-7 LINDA PINSON CONTINUED STATUS CONFERENCE RE:  
[13-1078](#) COMPLAINT  
SALVEN V. PINSON 7-9-13 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.  
NOTICE OF CASE SETTLEMENT  
FILED 10/29/13

**Final Ruling**

An Order Authorizing Compromise of Controversy entered and judgment entered in this adversary proceeding, the status conference is concluded.

5. [12-10855](#)-A-7 MICHAEL WALKER MOTION TO COMPEL  
[12-1084](#) PK-1 12-10-13 [[88](#)]  
WESTAMERICA BANK V. WALKER  
PATRICK KAVANAGH/Atty. for mv.  
ORDER 12/13  
RESPONSIVE PLEADING

**No tentative ruling.**

6. [13-14682](#)-A-7 THERESA PIERRO CONTINUED STATUS CONFERENCE RE:  
[13-1095](#) COMPLAINT  
MANFREDO V. PIERRO 9-2-13 [[1](#)]  
DAVID JENKINS/Atty. for pl.

**No tentative ruling.**

7. [13-14196](#)-A-7 MICHAEL BRANDON CONTINUED STATUS CONFERENCE RE:  
[13-1101](#) COMPLAINT  
U.S. TRUSTEE V. BRANDON 9-17-13 [[1](#)]  
GREGORY POWELL/Atty. for pl.

**Final Ruling**

The status conference is continued to January 29, 2014, at 9:15 am.

10:00 a.m.

1. [13-15602](#)-A-7 ELISEO/PATRICIA ABUNDIZ MOTION FOR RELIEF FROM  
PD-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 11-26-13 [[23](#)]  
CYNTHIA ARROYO/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 860 W. Palm Avenue, Reedley, California

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.

2. [13-17820](#)-A-7 ANDRE EDMONDS MOTION FOR RELIEF FROM  
MDO-1 AUTOMATIC STAY  
D.B.O. DEVELOPMENT 29, LLC/MV 12-20-13 [[13](#)]  
STEPHEN LABIAK/Atty. for dbt.  
MATTHEW OWDOM/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** 4037 South Mooney Blvd., Suite D-4, Visalia, California

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

Section 362(d)(1) authorizes stay relief cause; section 362(d)(2) authorizes stay relief for lack of equity and the property not necessary for an effective reorganization. The motion will be denied. Movant concedes that the debtor neither has, nor had, any interest in 4037 South Mooney Blvd., Suite D-4, Visalia, California. Rather, his company, TLM, Inc., leased the premises and the debtor merely guaranteed the obligations of the lease. But the debtor never having had an interest in the property the lease was not property of the estate and the stay did not apply. 11 U.S.C. § 541(a). Moreover, the mere presence of a guarantee does not justify stay relief was the court would deny relief to the extent leave was sought to liquidate the debt (which can be handled through the claims process) or to collect the debt from the debtor individually.

3. [13-16738](#)-A-7 FERNANDO/PATRICIA ADAME MOTION FOR RELIEF FROM  
SCF-1 AUTOMATIC STAY  
VALLEY FIRST CREDIT UNION/MV 12-11-13 [[15](#)]  
STEPHEN FERLMANN/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 Mini Cooper

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. [13-16457](#)-A-7 DES BANGAR MOTION FOR RELIEF FROM  
RMD-1 AUTOMATIC STAY  
OCWEN LOAN SERVICING, LLC/MV 12-9-13 [[19](#)]  
GARY HUSS/Atty. for dbt.  
RYAN DAVIES/Atty. for mv.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** 1740 North Cecelia Avenue, Fresno

Ocwen Loan Servicing, holder of the first deed of trust prays stay relief under 11 U.S.C. § 362(d)(1),(2). It contends the value of the property is \$146,317.19 and that the amount of its debt is also \$146,317.19. It contends that the debtors are delinquent two four payments, two pre-petition and two post-petition. The motion is opposed by Chapter 7 trustee James Salven, who has hired a realtor and is attempting to sell the property. Salven has the better portion of the argument and the motion will be denied.

#### **11 U.S.C. § 362(d)(1): CAUSE**

Section 362(d)(1) authorizes stay relief for cause. The court does not find cause. While true the lack of adequate protection is a species of cause and the movant alleges that the value of the property and debts are the precise same amount, the court finds the Declaration of James Salven ¶ 4, December 18, 2013, ECF No. 30, wherein he informs the court that he has listed the property at \$189,000, has received two offers and is making counter-offers. From this the court finds equity that adequately protects the creditor.

#### **11 U.S.C. § 362(d)(2): NO EQUITY AND NOT NECESSARY FOR AN EFFECTIVE REORGANIZATION**

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). Like request for stay relief under § 362(d)(1), the court finds equity in the property

sufficient to justify denying stay relief at this time. James Salven ¶ 4, December 18, 2013, ECF No. 30.

For each of these reasons, the motion will be denied.

5. [13-14161](#)-A-7 LORI LUCAS MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
AMERICREDIT FINANCIAL 12-5-13 [[53](#)]  
SERVICES, INC./MV  
DAVID JENKINS/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:** 2004 Nissan Pathfinder Armada

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.

6. [13-11067](#)-A-7 SARAH HACKER  
RCO-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
HAGOP BEDOYAN/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-6-13 [[26](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 9825 Orchard Drive, Hanford, California

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.

7. [13-16880](#)-A-7 PHILLIP/SUSAN RANALLO MOTION FOR RELIEF FROM  
RLM-1 AUTOMATIC STAY  
STATE FARM MUTUAL AUTOMOBILE 12-9-13 [[11](#)]  
INSURANCE COMPANY/MV  
RICHARD MAHFOUZ/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:** *State Farm v. Ranallo*, No. 13CECL06417 (Fresno County Superior Court 2013)

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).

**ON THE MERITS**

Section 362(d)(1) authorizes stay relief cause. Cause may include the existence of litigation in another forum (e.g., state court). In this case the movant prays leave to pursue litigation in Fresno County Superior Court solely for the purpose of collecting applicable insurance proceeds. The motion will be granted on the condition that neither the creditor, nor anyone acting on its behalf or under its rights, may seek to enforce any judgment against the debtors, except by filing a Proof of Claim in this court. Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

**VIOLATION OF LOCAL RULES**

The court notes that the motion has been filed as but a single document. This is a violation of Local Rule 9014-1(d) and also of EDC 002-190 Revised Guidelines for Preparation of Documents. In the future, failure to comply with local rules or guidelines for preparation of documents may result in summary denial of the motion or sanctions against counsel.

8. [13-15795](#)-A-7 LUKE FISHER  
PD-1  
WELLS FARGO BANK, N.A./MV  
EDDIE RUIZ/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-2-13 [[12](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 186 W. Celeste Avenue, Fresno, California

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.

10:30 a.m.

1. [13-17002](#)-A-7 RAFAEL MENDOZA

PRO SE REAFFIRMATION AGREEMENT  
WITH BANK OF THE WEST  
12-19-13 [[15](#)]

THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

2. [13-17219](#)-A-7 ISABEL ROJAS

PRO SE REAFFIRMATION AGREEMENT  
WITH JPMORGAN CHASE BANK, N.A.  
12-12-13 [[18](#)]

**No tentative ruling.**

1:30 p.m.

1. [13-17444](#)-A-11 A & A TRANSPORT, CO.,  
INC. CHAPTER 11 STATUS CONFERENCE  
12-4-13 [[6](#)]  
HILTON RYDER/Atty. for dbt.

**No tentative ruling.**

2. [13-11766](#)-A-11 500 WHITE LANE LP CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
3-20-13 [[8](#)]  
D. GARDNER/Atty. for dbt.

**No tentative ruling.**

3. [13-11766](#)-A-11 500 WHITE LANE LP CONTINUED DISCLOSURE STATEMENT  
FILED BY DEBTOR 500 WHITE LANE  
LP  
9-16-13 [[103](#)]  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

*[This matter is a duplicate of matter no. 4.]*

4. [13-11766](#)-A-11 500 WHITE LANE LP DISCLOSURE STATEMENT FILED BY  
DMG-8 DEBTOR 500 WHITE LANE LP  
12-16-13 [[170](#)]  
D. GARDNER/Atty. for dbt.

**Tentative Ruling**

**Motion:** Motion to Approve Disclosure Statement Dated December 16, 2013

**Notice:** Continued date of hearing

**Disposition:** Continued to allow Debtor to file an amended disclosure statement and plan by January 29, 2014, with continued hearing on February 26, 2014

**Order:** Civil minute order

The debtor 500 White Lane LLP (the "Debtor") has filed a disclosure statement and plan dated December 16, 2013 (the "Disclosure Statement" and "Plan"), and now request court approval of the Disclosure Statement. For the reasons set forth below, the court will continue the matter to allow the Debtor to file another disclosure statement.

The Debtor is to file an amended disclosure state and plan, which must address the issues raised by the court in this ruling, by Wednesday, January 29, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, February 26, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

## DISCUSSION

Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a plan of reorganization must contain adequate information "that would enable [an investor typical of holders of claims or interest of the relevant class] to make an informed judgment about the plan." § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted). Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

The court now turns to its own issues with the Disclosure Statement and Plan.

Treatment of Class 4 Claims. The treatment of Class 4 claims is inconsistent between the Plan and the Disclosure Statement. The Plan provides that Class 4 is impaired, while the Disclosure Statement provides that Class 4 is unimpaired.

Treatment of Class 5B Claims. The treatment of Class 5B claims is unclear. First, the Plan provides that quarterly payments will be made on account of Class 5B. Then, the Plan discusses when will occur in the event of the sale of the Creekside Townhomes. However, it is unclear whether the quarterly payments will continue if there is a sale or whether they will be superseded by the new payment provisions.

Classes Entitled to Vote. In the Disclosure Statement, the Debtor should specify (1) the specific classes entitled to vote; (2) the specific classes entitled to vote twice (i.e., holders of bifurcated claims); and (3) the specific classes not entitled to vote at all.

Capital Contribution by Hernandez. It appears that at this time Robert Hernandez has a 55% interest in the Debtor while Edward Torino has a 45% interest in the Debtor. However, according to the Plan, it appears that only Hernandez is required to make a capital contribution to retain his equity interest in the reorganized Debtor. It is unclear whether Hernandez's capital contribution is intended for him to obtain 100% ownership of the Debtor or whether Torino will still maintain his interest but is not required to make a new value contribution.

Cram Down. There is some confusion regarding cram down provisions in the Plan and Disclosure Statement. The Plan states that the Debtor intends to request cram down of the Plan if § 1129(a)(8). However, the Disclosure Statement states, "If Debtor does not obtain the number and amounts of votes necessary to confirm the plan, Debtor believes that it *cannot*, in this case, ask the Court to 'cram down' the plan and confirm it despite the lack of requisite affirmative votes and/or over the specific objections of creditors."

Debtor's Declaration. The Disclosure Statement provides, "Seven days prior to any confirmation hearing on the Debtor's Plan, Debtor will submit a Declaration of Robert Hernandez providing an evidentiary basis for the requirements of 11 U.S.C. Section 1129 . . . ." However, this deadline will be controlled by the court's scheduling

order for confirmation.

Exhibit B. The font size for Exhibit B should be increased as it is currently too small to read.

"UST Quarterly Reports and Fees" Section. There is no plan provision that addresses the Debtor's duty to submit quarterly reports and quarterly fees required by the U.S. Trustee.

#### CONCLUSION

For the reasons set forth above, the court will continue the matter to allow the Debtor to file another disclosure statement.

The Debtor is to file an amended disclosure state and plan, which must address the issues raised by the court in this ruling, by Wednesday, January 29, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, February 26, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

5. [13-13284](#)-A-11 NICOLETTI OIL INC. CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
5-15-13 [[16](#)]  
DAVID GOLUBCHIK/Atty. for dbt.

**No tentative ruling.**

6. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION FOR COMPENSATION BY THE  
KDG-4 LAW OFFICE OF KLEIN, DENATALE,  
HAGOP BEDOYAN/MV GOLDNER, COOPER, ROSENLIEB &  
KIMBALL, LLP FOR HAGOP T.  
BEDOYAN, DEBTOR'S ATTORNEY(S),  
FEE: \$24,202.50, EXPENSES:  
\$619.42.  
12-11-13 [[103](#)]  
CHRISTIAN JINKERSON/Atty. for dbt.

#### Tentative Ruling

**Motion:** Application for Compensation and Expenses

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

**Disposition:** Continued to February 12, 2014, at 1:30 p.m.

**Order:** Civil minute order

#### CONTINUANCE TO ALLOW NOTICE

Federal Rule of Bankruptcy Procedure 2002(a)(6) provides: "Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of...(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000..." Klein DeNatale has noticed the motion on the United States Trustee, debtors, Chapter 11 professional Kathleen Klein and four

creditors who have requested special notice. Proof of Service, December 11, 2013, ECF No. 108. No other creditors were served. The court's master mailing matrix shows not less than 96 creditors and other entities entitled to notice. As a result, the applicant has not complied with Federal Rule of Bankruptcy Procedure 2002(a)(6). But for this problem and absent opposition, the court would have granted the motion as set forth in the "At the Continued Hearing" portion of this pre-hearing disposition.

The application will be continued to February 12, 2014, at 1:30 p.m. Not later than January 15, 2014, the applicant will serve all parties in interest entitled to notice under Rule 2002(a)(6) notice of the continued hearing. The notice shall inform creditors that written opposition to the application must be filed and served no later than January 29, 2014, and that the failure to do so may result in the motion be granted without hearing. The applicant shall file a Certificate of Service demonstrating compliance with this order.

#### **AT THE CONTINUED HEARING**

**Applicant:** Klein DeNatale

**Compensation approved:** \$24,202.50

**Costs approved:** \$619.42

**Aggregate fees and costs approved:** \$24,821.92

**Retainer held:** \$8,501.00

**Amount to be paid as administrative expense:** \$16,320.92

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 counsel for the debtor in possession in a Chapter 11 case and for "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. 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.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1033](#) PROPERTIES, LLC CONTINUED STATUS CONFERENCE RE:  
ENNIS COMMERCIAL PROPERTIES, AMENDED COMPLAINT  
LLC V. NICHOLSON ET AL 3-5-12 [[6](#)]  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1050](#) PROPERTIES, LLC CONTINUED STATUS CONFERENCE RE:  
ENNIS COMMERCIAL PROPERTIES, COMPLAINT  
LLC V. HA DEVCO, INC. ET AL 3-16-12 [[1](#)]  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [10-62315](#)-A-11 BEN ENNIS  
[13-1107](#) STAPLETON ET AL V. WATKINS ET CONTINUED STATUS CONFERENCE RE:  
AL AMENDED COMPLAINT  
MICHAEL GOMEZ/Atty. for pl. 10-22-13 [[6](#)]

**No tentative ruling.**

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#) STAPLETON ET AL V. NICHOLSON CONTINUED STATUS CONFERENCE RE:  
ET AL COMPLAINT  
MICHAEL GOMEZ/Atty. for pl. 10-10-13 [[1](#)]

**No tentative ruling.**