

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

TUESDAY

JANUARY 13, 2015

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.

3. [10-17007](#)-A-7 MAIYIA XIONG
TMT-1
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF HOUSTON
FUNDING, II, LTD, CLAIM NUMBER
6
11-26-14 [[89](#)]

PETER FEAR/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

The trustee objects to the allowance of Claim No. 6 filed by the claimant, Houston Funding, II, LTD ("Houston"). The court will overrule the objection for the reasons discussed. The objection asserts that Claim No. 6 and Claim No. 8 are duplicates. Claim No. 8 was filed by CR Evergreen, III, LLC ("CR Evergreen"). The trustee's reason that the two claims are asserted to be duplicates is that documentation attached to Claim No. 8 shows that the claim was purchased from Houston. The trustee has also determined that the claims are duplicates, but no other factual premises are given to support this determination.

The fact that Claim No. 8 was purchased from Houston does not exclude the possibility that Claim No. 8 was a separate claim against the debtor from the Claim No. 6. Houston could have had two or more separate claims against the debtor and now the estate, and in the absence of additional factual evidence, Claim No. 8 could be a claim other than the claim represented by Claim No. 6. Exhibit 2, documentation attached to Claim No. 8-1, does not provide any evidence that Claim No. 8 is the same claim as Claim No. 6 other than that it was a claim purchased from Houston Funding II, Ltd, and that Houston may have filed proofs of claim with respect to a large number of accounts sold by Houston to CR Evergreen.

Supporting a conclusion that the claims are not duplicates are two facts. First, the last four digits of any number by which creditor identifies debtor are different. Although this change in account number could have occurred as a result of the transfer of the account

to CR Evergreen, it could also be the result of Claim No. 8 being a different claim against the debtor than Claim No. 6. Second, the amounts of the two claims are different. Houston's Claim No. 6 is for \$9,077.98 and CR Evergreen's Claim No. 8 is for \$8880.07.

4. [14-15608](#)-A-7 PAUL ORTIZ
KH-1
WELLS FARGO FINANCIAL
CALIFORNIA, INC./MV
KEVIN HARRIS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-14 [[16](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 13070 Merlo Avenue, Cutler, CA

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

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The trustee's Deed upon Sale was recorded on December 10, 2013. This bankruptcy case was filed November 19, 2014.

The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [14-15409](#)-A-7 DANIEL MARTIN
APN-1
SANTANDER CONSUMER USA INC./MV
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2007 Chevrolet HHR

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. [14-10911](#)-A-7 LITCONN, INC.
HW-1
CADLES OF GRASSY MEADOWS II,
L.L.C./MV
JERRY LOWE/Atty. for dbt.
HOLLY WALKER/Atty. for mv.

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
12-3-14 [[28](#)]

Final Ruling

Motion: Approval Stay Relief

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

Disposition: Denied without prejudice

Order: Prepared by moving party pursuant to the instructions below

Subject: Personal property located at 5678 Shields Avenue, Fresno, CA

The notice of hearing does not comply with Local Bankruptcy Rule 9014-1(d)(2). This rule requires every motion to be accompanied by a separate notice of hearing complying with the local rules.

In addition, the notice is ambiguous about when opposition is due. The motion requires timely written opposition as a condition for presenting opposition at oral argument. But the notice refers to

"Part II(c)" of LBR 9014-1 as the basis for requiring written opposition. There is no Part II(c) of LBR 9014-1 in this district. Motions are most frequently noticed in this district under LBR 9014-1(f)(1) (requiring written opposition) or (f)(2) (not requiring opposition). Given the very frequent use in this district of either LBR 9014-1(f)(1) or (f)(2), the reference to Part II(c) could conceivably be understood to refer to LBR 9014-1(f)(2)(C), which does not require written opposition under that subdivision but permits opposition to be presented at the hearing.

The notice also fails to comply with LBR 9014-1(d)(3). The notice fails to state when written opposition must be filed.

Because the exhibits are not filed as a separate document from the document to which they relate, this motion further fails to comply with the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. These guidelines also require "[a]n index listing individual exhibit(s)" as the first page of the exhibits. LBR 9004-1 requires all pleadings and documents to comply with these guidelines.

Lastly, Federal Rule of Bankruptcy Procedure 4001(d)(1)(B) prescribes the content for motions to approve an agreement to modify or terminate the stay (and other similar motions). The motion filed by movant does not adequately list or summarize all material provisions of the agreement. While the material provisions might be succinct in any event, the movant should include them in the motion as required by Rule 4001(d)(1)(B). The motion indicates that the stipulation provides for termination of the stay as to the subject collateral to allow the movant to obtain possession of the subject collateral. But the material provisions of the agreement would allow the movant to also sell the subject collateral, obtain possession of the proceeds from the sale of the pledged inventory which proceeds were forwarded to former trustee, direct all further payments for the sale of the pledged inventory to movant, and waive the 14-day stay.

For the above reasons, the court will deny the motion without prejudice. The motion and supporting papers may be filed again in a manner that is compliant with the court's local rules.

7. [14-12714](#)-A-7 MARIANA BELTRAN MOTION TO SELL
TMT-2 12-2-14 [[33](#)]
TRUDI MANFREDO/MV
MARK ZIMMERMAN/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: 2001 Chevy Silverado

Buyer: Debtor

Sale Price: \$3875 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.

8. [14-13414](#)-A-7 DANA/CARRIE ANDERSON MOTION FOR WAIVER OF THE
DANA ANDERSON/MV CHAPTER 7 FILING FEE OR OTHER
DAVID JENKINS/Atty. for dbt. FEE
12-8-14 [[24](#)]

No tentative ruling.

9. [14-14316](#)-A-7 RUBEN/FLORITA CERVANTES MOTION TO SELL
TMT-1 12-11-14 [[20](#)]
TRUDI MANFREDO/MV
JEFFREY ROWE/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: 2 Vehicles described below

Buyer: Debtors

Sale Price:

-2002 Chevrolet Silverado: \$7800 (\$4900 cash plus exemption credit of \$2900)

-1998 BMW: \$1700 (\$1400 cash and sale made subject to a lien in favor of Manuel Bautista in the amount of \$300)

Sale Type: Private sale subject to overbid opportunity

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

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

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

10. [14-15025](#)-A-7 LAVELLE BANKS AND SADIE OPPOSITION RE: TRUSTEE'S MOTION
JES-1 FICKLE-BANKS TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-25-14 [[12](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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.

DISMISSAL

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

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

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days

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

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for January 15, 2015, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

11. [13-11829](#)-A-7 TRINIDAD CORTEZ
RH-4
PETER FEAR/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TRINIDAD CORTEZ
12-17-14 [[37](#)]

TIMOTHY SPRINGER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

This matter is continued to February 11, 2015, at 9:00 a.m. Not later than January 21, 2015, Peter Fear, Chapter 7 trustee or his attorney shall: (1) file and serve on all creditors a copy of the Settlement Agreement with Inderjit Singh and Farmers Insurance Company, which was referred to in the Declaration of Peter Fear ¶ 4, December 17, 2014, ECF #39 but which was not attached as represented; (2) file and serve on all creditors a Notice of Continued Hearing on this matter; and (3) a Certificate of Service demonstrating compliance herewith.

12. [13-11829](#)-A-7 TRINIDAD CORTEZ MOTION TO COMPROMISE
RH-5 CONTROVERSY/APPROVE SETTLEMENT
PETER FEAR/MV AGREEMENT WITH TRINIDAD CORTEZ
12-17-14 [[43](#)]

TIMOTHY SPRINGER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

This matter is continued to February 11, 2015, at 9:00 a.m. Not later than January 21, 2015, Peter Fear, Chapter 7 trustee or his attorney shall: (1) file and serve on all creditors a Notice of Continued Hearing on this matter; and (2) a Certificate of Service demonstrating compliance herewith.

13. [14-11336](#)-A-7 RAUL/REBECCA JARA MOTION FOR RELIEF FROM
JLG-1 AUTOMATIC STAY
SRP 2014-15, LLC/MV 12-16-14 [[55](#)]
STARR WARSON/Atty. for dbt.
JESSICA GIANNETTA/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 596 W. Fir St., Lindsay, 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.

14. [14-15244](#)-A-7 JEANNE TRAVIS
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
12-10-14 [[12](#)]

EDDIE RUIZ/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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.

DISMISSAL

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

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

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for January 20, 2015, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

15. [11-17945](#)-A-7 KRIKOR/LENA ATACHIAN MOTION FOR COMPENSATION FOR
SAS-2 SHERYL A. STRAIN,
SHERYL STRAIN/MV ACCOUNTANT(S).
12-15-14 [[44](#)]
PETER BUNTING/Atty. for dbt.

Final Ruling

The motion is denied without prejudice for insufficient service. This is an application for Compensation by Sheryl A. Strain, accountant for trustee James E. Salven. The applicant seeks compensation of \$1,117.50 and costs of \$283.25. Applications for compensation in excess of \$1,000 require service on all interested parties. "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...." In this case, the request exceeds \$1,000 and none of the enumerated exceptions apply. But the applicant has only served the debtors, the Office of the United States Trustee, debtor's counsel, the Chapter 7 trustee and one party in interest. This is fewer than all creditors and, as a result, the motion is denied.

16. [13-11747](#)-A-7 ONTIVEROS CONCRETE, INC. MOTION FOR COMPENSATION FOR
JES-6 JAMES E. SALVEN, CHAPTER 7
JAMES SALVEN/MV TRUSTEE(S)
11-24-14 [[57](#)]

HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

Chapter 7 trustee James E. Salven prays an order approving trustee compensation of \$8,073.68 and expenses of \$555.67. It also purports to notice a hearing on Janzen, Tamberi & Wong's Application for Compensation, filed August 28, 2014, ECF #52. The ruling on Janzen, Tamgeri & Wong's Application for Compensation is set forth in item #17. Salven's application for trustee compensation will be denied without prejudice.

DISCUSSION

Improper Joinder

Salven's application for compensation is grounded on procedural grounds. Independent or alternative claims may not be joined in but a single motion. See, Fed. R. Civ. Proc. 9014(c) (omitting Fed. R. Bankr. P. 7018 and by extension Fed. R. Civ. P. 18(a)(which authorizes joinder of independent or alternative claims). The failure to incorporate signals an intent for motion practice to include only but claim in a motion.

Scoggins Not Triggered

Nothing about this case implicates the need for hearing under *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014) and proposed Local Bankruptcy Rule 2016-2. Presumably, this Chapter 7 trustee compensation application was made under the mistake belief that the \$10,000 *Scoggins*, trigger is implicated when the fees sought by the Chapter 7 trustee and estate professionals aggregate \$10,000 or more. The court does not so read *Scoggins*. It is only in cases in which the Chapter 7 trustee's fees, exclusive of other professionals fees, exceed \$10,000 that is a hearing is necessary.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Application for Compensation filed by James E. Salven, Chapter 7 trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that application is denied without prejudice.

17. [13-11747](#)-A-7 ONTIVEROS CONCRETE, INC. MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI AND WONG,
ACCOUNTANCY CORPORATION/MV ACCOUNTANCY CORPORATION,
ACCOUNTANT(S)
8-28-14 [[52](#)]
HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

The application is denied without prejudice. The applicant has violated Local Bankruptcy Rule 9014-1(c)(1). Each application, motion or contested matter shall be assigned a unique docket control, as described in Local Bankruptcy Rule 9014-1(c)(1),(3), and once assigned, each document related to the motion shall use that docket control number. LBR 9014-1(c)(4). In this case, the application and all supporting document (except the notice) use docket control number "JTW-2." See application for Compensation, filed August 28, 2014, ECF #52-56. The Notice of Hearing on the Application, filed not by the applicant but by Chapter 7 trustee James Salven, uses docket control number "JES-6." Having failed to comply with local rules, the application is denied without prejudice.

18. [14-14056](#)-A-7 LARRY DORTCH CONTINUED MOTION FOR RELIEF
RFM-1 FROM AUTOMATIC STAY
U.S. BANK, N.A./MV 10-23-14 [[14](#)]
KARNEY MEKHITARIAN/Atty. for dbt.
RAYMOND MOATS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2007 Big Country 3075

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)(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.

19. [14-15669](#)-A-7 LINDA BABSHOFF ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-9-14 [[11](#)]

\$29.00 FILING FEE PAID

Final Ruling

The fee paid in full, the order to show cause is discharged.

20. [14-14370](#)-A-7 DAVID/DONNA SILER MOTION FOR RELIEF FROM
DJD-1 AUTOMATIC STAY
SETERUS, INC./MV 12-7-14 [[20](#)]
F. GIST/Atty. for dbt.
DARREN DEVLIN/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: 1290 W. Pinedale Ave., Fresno, CA

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

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 ESTATE

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart &

Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but “[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral’s] value after the bankruptcy filing.” See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass’n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor has missed 4 post-petition payments due on the debt secured by the moving party’s lien. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

21. [13-15972](#)-A-7 RAMON/MARIA RUVALCABA MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S).
JAMES SALVEN/MV 8-11-14 [[61](#)]
MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested.

CIVIL MINUTE ORDER

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

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

James E. Salven’s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having

entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1305.00 and reimbursement of expenses in the amount of \$301.82.

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

22. [14-12575](#)-A-7 ALICE RODRIGUEZ ORDER TO SHOW CAUSE FOR
DISGORGEMENT
12-10-14 [[123](#)]
RICHARD MENDEZ/Atty. for dbt.
ORDER 12/10/14

No tentative ruling.

23. [14-15075](#)-A-7 ROWENA/RANDY PETERS CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-4-14 [[23](#)]
APN-1
SANTANDER CONSUMER USA INC./MV
F. GIST/Atty. for dbt.
AUSTIN NAGEL/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: 2007 Dodge Truck Ram 1500

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.

24. [14-14977](#)-A-7 JOHN RIDGEWAY
APN-1
HTD LEASING LLC/MV
GEOFFREY ADALIAN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-24-14 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Leased property consisting of a 2013 Ford Fiesta

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The debtor has missed 2 post-petition payments due on account of a vehicle lease for the above described property. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

25. [14-12883](#)-A-7 F & J RECYCLING AND
RHT-1 ASSOCIATES, INC.
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH VALLEY PACIFIC
PETROLEUM SERVICES, INC.
12-18-14 [[16](#)]

DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Trustee Robert Hawkins and Creditor Valley Pacific Petroleum Services, Inc.

Dispute Compromised: Preference dispute arising from bank levy by Creditor of \$26,000 within one year of the filing of the petition on account of a \$41,000 debt owed to Creditor by the debtor.

Summary of Material Terms: Creditor will pay to the estate the sum of \$10,000 in full settlement of the controversy and in exchange for the release of the estate's preference claim. Creditor further agrees to waive any further claim against the 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).

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

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

26. [14-14384](#)-A-7 GENEVIEVE MORENO
JT-1
GENEVIEVE MORENO/MV
JASON TAYLOR/Atty. for dbt.

MOTION TO DISMISS CASE
11-23-14 [23]

Final Ruling

Motion: Dismissal of Chapter 7 Case

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

Disposition: Granted

Order: Civil minute order

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

DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal . . ." 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

For the reasons stated in the motion and supporting declaration, the motion will be dismissed for cause under § 707(a) and for the grounds given in § 305(a)(1). The debtor's income exceeds the limit (presumably under § 707(b)) for her household size based on amended Schedule 22A. The motion states that this case is a no-asset case. The declaration in support represents that the debtor does not wish to convert her case to one under chapter 13.

CIVIL MINUTE ORDER

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

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

Debtor Genevieve Torres Moreno's motion for dismiss of this case has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. This chapter 7 case will be dismissed.

27. [14-12994](#)-A-7 ABDELBASET AWAWDEH MOTION FOR AN ORDER DISPOSING
RR-1 OF CERTAIN PROPERTY
TRAVELERS EXPRESS COMPANY, 12-9-14 [[20](#)]
INC./MV
PETER FEAR/Atty. for dbt.
DAVID RENTTO/Atty. for mv.

Final Ruling

This matter is continued to February 18, 2015, at 9:00 a.m. Not later than January 21, 2015, the moving party shall serve the motion, and all supporting documents, as well as a notice of continued hearing, on all creditors. Fed. R. Bankr. P. 6007(b), 9013(b). The notice shall specify that opposition is required not later than February 4, 2015.

28. [13-16195](#)-A-7 AVELINO/MARIBEL ORMONDE TRUSTEE'S FINAL REPORT AND
COMPENSATION FOR JAMES E.
SALVEN, TRUSTEE
11-24-14 [[52](#)]
GEOFFREY ADALIAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

In this motion, Chapter 7 trustee James E. Salven prays compensation for his service in two different capacities, as Chapter 7 trustee and as an estate professional, i.e., accountant.

DISCUSSION

Improper Joinder

Salven's application for compensation is grounded on procedural grounds. Independent or alternative claims may not be joined in but a single motion. See, Fed. R. Civ. Proc. 9014(c) (omitting Fed. R. Bankr. P. 7018 and by extension Fed. R. Civ. P. 18(a)(which authorizes joinder of independent or alternative claims). The failure to incorporate signals an intent for motion practice to include only but claim in a motion.

Non-Compliance with General Order 14-05

On December 11, 2014, adopted General Order 14-05, which codified the holding in *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014). That rule, LBR 2016-1(2) provides, "It is hereby ordered that Chapter 7 trustees prepare, file, and notice for hearing, fee applications supported by time records and a narrative statement of services in the following circumstances: (1) All requesting seeking \$10,000 or more; (2) all cases in which the trustee seeks fees exceeding the amount remaining for unsecured priority and general claims; (3) All cases involving a "carve out" or "short sale"; (4) All cases where the trustee operates a business; and (5) any case in which the Court specifically orders such a fee application." In this case, Salven has provided time records for his work as an accountant, Final Application for Allowance of Fees and Expenses of Accountant Trustee, filed September 2, 2014, ECF #48, no time records have been submitted in support of the application for Chapter 7 trustee's fees. The motion

will be denied.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Applications for Compensation filed by James E. Salven as Chapter 7 trustee and as accountant for the estate, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that application is denied without prejudice.

29. [13-16195](#)-A-7 AVELINO/MARIBEL ORMONDE MOTION FOR COMPENSATION FOR
JES-5 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 9-2-14 [[48](#)]
GEOFFREY ADALIAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

In this motion, Chapter 7 trustee James E. Salven prays compensation for his service in two different capacities, as Chapter 7 trustee and as an estate professional, i.e., accountant.

DISCUSSION

Improper Joinder

Salven's application for compensation is grounded on procedural grounds. Independent or alternative claims may not be joined in but a single motion. See, Fed. R. Civ. Proc. 9014(c) (omitting Fed. R. Bankr. P. 7018 and by extension Fed. R. Civ. P. 18(a)(which authorizes joinder of independent or alternative claims). The failure to incorporate signals an intent for motion practice to include only but claim in a motion.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Applications for Compensation filed by James E. Salven as Chapter 7 trustee and as accountant for the estate, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that application is denied without prejudice.

30. [11-15299](#)-A-7 ERNEST ROQUE STATUS CONFERENCE RE: COMPLAINT
[11-1217](#) 8-23-11 [[1](#)]
YNIGUEZ V. ROQUE
CYRIL LAWRENCE/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

31. [14-15982](#)-A-7 WILLIAM STIMPEL AND MOTION TO COMPEL ABANDONMENT
SL-1 JENNIFER STIMPLE 12-31-14 [[9](#)]
WILLIAM STIMPEL/MV
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to February 11, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service for both the motion and supporting papers, as well as a notice of continued hearing using the notice procedure under LBR 9014-(f)(2)

Order: Civil minute order

NOTICE STANDARDS FOR ABANDONMENT MOTIONS

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b).

NOTICE INSUFFICIENCIES FOR THIS MOTION

In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court cannot grant the motion at this time due to insufficient notice of the motion.

The first proof of service served documents that incorrectly stated the hearing date as January 14, 2014. See Notice of Hr'g on Mot. for Order Compelling Abandonment, ECF No. 10. The amended notice of hearing contained the correct hearing date, January 13, 2015. But certificate of service for the amended notice is defective. Although the computer-generated copy of the court's matrix was attached to the proof of service, the computer-generated date and time information (and the case number and other information showing district and division) was redacted from the upper-left hand corner. It also appears that a creditor was also redacted from the top of the left-hand column directly underneath where the computer-generated date and time information would have been. This is seen by comparing the original proof of service (ECF No. 12) with the amended proof of service (ECF No. 15).

The court thus disregards the amended proof of service as incomplete (without the creditor) and ineffective without the computer-generated date and time information.

The original proof of service served documents with the incorrect hearing date. So the court concludes that the motion has not been noticed sufficiently on all creditors with the correct hearing date and time.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

10:00 a.m.

1. [13-17712](#)-A-7 RUBEN OLVERA AND GLORIA STATUS CONFERENCE RE: COMPLAINT
[14-1133](#) CHAVEZ 10-30-14 [[1](#)]
STRAIN V. VALENCIA
PETER FEAR/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to March 11, 2014, at 10:00 a.m. A separate order will issue.

2. [14-11316](#)-A-7 VINCENT/SARAH CARABBA CONTINUED STATUS CONFERENCE RE:
[14-1052](#) AMENDED COMPLAINT
MAS FINANCIAL SERVICES V. 9-18-14 [[22](#)]
CARABBA
PAUL REZA/Atty. for pl.

Final Ruling

The status conference is continued to March 11, 2014, at 10:00 a.m. A separate order will issue.

3. [14-13625](#)-A-7 CHARLES DAILEY STATUS CONFERENCE RE: COMPLAINT
[14-1127](#) 10-27-14 [[1](#)]
UNITED STATES V. DAILEY
JEFFREY LODGE/Atty. for pl.

Final Ruling

This matter is continued to March 11, 2015, at 10:00 a.m., to allow the plaintiff to seek the defendant's default judgment.

4. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR MOTION FOR PUBLICATION OF
[14-1113](#) TGM-1 SUMMONS AND/OR MOTION TO SET
SALVEN V. AUTEN ET AL ASIDE
12-10-14 [[33](#)]
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Service by Publication (American Mortgage Fund, Inc.)

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

Disposition: Granted

Order: Civil Minute Order

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

DISCUSSION

Set Aside Default

Federal Rule of Civil Procedure 60(b), *incorporated by* Fed. R. Bankr. P. 9024, authorizes the court to set aside orders entered by mistake, inadvertence, surprise or excusable neglect. The trustee has established cause under Rule 60(b). See, *See*, Declaration of Trudi G. Manfredo ¶ 4, filed December 10, 2014, ECF #35. That portion of the motion will be granted.

Service by Publication

Federal Rule of Bankruptcy Procedure 7004(c) authorizes service by publication. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct." Fed. R. Bankr. P. 7004(c). The Declaration of Trudi G. Manfredo, filed December 10, 2014, ECF #35 establishes a prima facie case for publication and the motion will be granted.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Order for Publication of Summons and Request to Set Aside Default of American Mortgage Fund, Inc. filed by Chapter 7 trustee Trudi G. Manfredo having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the default of American Mortgage Fund, Inc. is vacated; and (2) the trustee may serve the summons and complaint by publication by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in the Daily Transcript, a newspaper of general circulation in the San Diego area.

5. [14-10258](#)-A-7 HEATHER BRANDT STATUS CONFERENCE RE: COMPLAINT
[14-1136](#) MANFREDO V. BRANDT 11-5-14 [[1](#)]
GABRIEL WADDELL/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

6. [14-13661](#)-A-7 LAWRENCE GOWIN STATUS CONFERENCE RE: COMPLAINT
[14-1125](#) GOWIN V. GOWIN 10-23-14 [[1](#)]
HENRY GOWIN/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

7. [13-15067](#)-A-7 CARLOS BERBEREIA CONTINUED STATUS CONFERENCE RE:
[14-1041](#) AMENDED COMPLAINT
MANFREDO V. BERBEREIA 7-3-14 [[24](#)]
TRUDI MANFREDO/Atty. for pl.

No tentative ruling.

8. [13-15067](#)-A-7 CARLOS BERBEREIA CONTINUED MOTION FOR ENTRY OF
[14-1041](#) TGM-2 DEFAULT JUDGMENT
MANFREDO V. BERBEREIA 10-30-14 [[37](#)]
TRUDI MANFREDO/Atty. for mv.

No tentative ruling.

9. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER CONTINUED STATUS CONFERENCE RE:
[14-1111](#) COMPLAINT
SALVEN V. STRAIN ET AL 9-12-14 [[1](#)]
ROBERT HAWKINS/Atty. for pl.

Final Ruling

This matter is continued to March 11, 2015, at 10:00 a.m. A separate order will issue.

10:30 a.m.

1. [14-15507](#)-A-7 DANNY/JUDY FRANKS PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
12-16-14 [[10](#)]

No tentative ruling.

2. [14-14436](#)-A-7 DANIEL/MARISOL OCHOA REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
12-17-14 [[23](#)]
THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

3. [14-15577](#)-A-7 NICHOLAS/CHRISTIANA
BORISSOFF PRO SE REAFFIRMATION AGREEMENT
WITH ALLIANCE CREDIT UNION
12-11-14 [[9](#)]

No tentative ruling.

4. [14-15082](#)-A-7 ESMERALDA ABARCA PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
12-17-14 [[13](#)]

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED MOTION TO CLARIFY
LRP-27 PROPERTIES, LLC APPLICATION OF PLAN
DAVID STAPLETON/MV ADMINISTRATOR TO EMPLOY THE
STAPLETON GROUP AS PROPERTY
MANAGER
11-19-14 [[1436](#)]

PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

No tentative ruling.

2. [10-62315](#)-A-11 BEN ENNIS CONTINUED MOTION TO SELL FREE
LRP-36 AND CLEAR OF LIENS
DAVID STAPLETON/MV 11-20-14 [[1797](#)]
RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 303 W. Henderson Ave., Porterville, CA

Buyer: Junior Gill

Sale Price: \$128,000

Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: John S. Hale and Jason T. Alexander, Colliers
Tingey International, Inc. (Seller's broker)

Compensation Requested: 6% commission for both seller's and buyer's
real estate brokers

Sale Free and Clear of Nicholsons' Lien: Relief granted as stated below and the order prepared pursuant to the instructions below

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).

SALE OF PROPERTY UNDER § 363(b)

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). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). 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.

COMMISSION

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

SALE FREE AND CLEAR UNDER § 363(f)

The sale will be free and clear of the lien of the Nicholsons, individually and in their capacities as trustees, on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f)(2). The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or the plan administrator shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

3. [10-62315](#)-A-11 BEN ENNIS CONTINUED MOTION TO CLARIFY
LRP-40 APPLICATION OF PLAN
DAVID STAPLETON/MV ADMINISTRATOR TO EMPLOY THE
STAPLETON GROUP AS PROPERTY
MANAGER
11-19-14 [[1784](#)]

RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.

No tentative ruling.

4. [10-62315](#)-A-11 BEN ENNIS CONTINUED MOTION TO SELL
LRP-41 11-26-14 [[1804](#)]
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 409 N. Main Street, Porterville, CA

Buyer: Kevin L. Puett and Catherine Adams-Puett

Sale Price: \$225,000

Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: John S. Hale and Jason T. Alexander, Colliers
Tingey International, Inc. (Seller's broker)

Compensation Requested: 6% commission for both seller's and buyer's
real estate brokers

Sale Free and Clear of Lien: Relief granted as stated below and the
order prepared pursuant to the instructions below

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). Liquidation of estate
assets is an appropriate restructuring purpose in a Chapter 11
reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a
sale of all or part of property of the estate as a means for
implementing a Chapter 11 plan). 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.

Section 330(a) of Title 11 authorizes "reasonable compensation for
actual, necessary services" rendered by a professional person employed

under § 327 and "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.

SALE FREE AND CLEAR UNDER § 363(f)

The sale will be free and clear of the lien of the Nicholsons, both individually and as trustees, on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f)(2). The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or plan administrator shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

5. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED STATUS CONFERENCE RE:
LLC VOLUNTARY PETITION
11-1-13 [[1](#)]
ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

6. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, DISCLOSURE STATEMENT FILED BY
EVN-11 LLC DEBTOR BHAVIKA'S PROPERTIES,
LLC
11-14-14 [[224](#)]
ELAINE NGUYEN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR ORDER APPROVING
EVN-12 LLC STIPULATION BETWEEN DEBTOR AND
BHAVIKA'S PROPERTIES, LLC/MV CNA PROPERTIES, LLC
12-3-14 [[243](#)]
ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

8. [14-15550](#)-A-11 MERIT DIESEL SERVICES,
INC. STATUS CONFERENCE RE: VOLUNTARY
PETITION
11-17-14 [[1](#)]
WILEY RAMEY/Atty. for dbt.

No tentative ruling.

9. [14-15550](#)-A-11 MERIT DIESEL SERVICES,
UST-1 INC. MOTION TO DISMISS CASE AND/OR
TRACY DAVIS/MV MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
12-23-14 [[31](#)]
WILEY RAMEY/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

No tentative ruling.

10. [14-10851](#)-A-11 JOHN/BETTY VAN DYK CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-25-14 [[1](#)]
RILEY WALTER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the status conference is concluded.

11. [14-11991](#)-A-11 CENTRAL AIR CONDITIONING, INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-17-14 [[1](#)]
HAGOP BEDOYAN/Atty. for dbt.

Final Ruling

The status conference is continued to February 18, 2015, at 1:30 p.m.

12. [14-11991](#)-A-11 CENTRAL AIR
KDG-20 CONDITIONING, INC.
WARD STRINGHAM/MV

MOTION FOR COMPENSATION FOR
WARD R. STRINGHAM, SPECIAL
COUNSEL(S)
12-17-14 [[298](#)]

HAGOP BEDOYAN/Atty. for dbt.
WARD STRINGHAM/Atty. for mv.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$5040 and reimbursement of expenses in the amount of \$518.92. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed

prior to case closure.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2:00 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:
[14-1062](#) PROPERTIES, LLC COMPLAINT
ENNIS COMMERCIAL PROPERTIES, 6-16-14 [[1](#)]
LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for pl.

Final Ruling

The status conference is concluded. If a judgment is not entered within 60 days, the clerk's office may close the adversary proceeding.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED MOTION FOR ENTRY OF
[14-1062](#) PROPERTIES, LLC LRP-4 DEFAULT JUDGMENT
ENNIS COMMERCIAL PROPERTIES, 10-3-14 [[33](#)]
LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

The motion is granted, and the moving party may lodge a judgment.

3. [10-62315](#)-A-11 BEN ENNIS MOTION TO COMPEL AND FOR
[13-1108](#) LRP-6 ATTORNEYS' FEES AND COSTS
STAPLETON ET AL V. NICHOLSON 12-16-14 [[110](#)]
ET AL

MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

4. [10-61725](#)-A-7 PAMELA ENNIS CONTINUED STATUS CONFERENCE RE:
[12-1160](#) AMENDED COMPLAINT
STRAIN V. ENNIS ET AL 10-16-12 [7]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to March 11, 2015, at 10:00 a.m.

5. [10-61970](#)-A-7 BRIAN ENNIS CONTINUED STATUS CONFERENCE RE:
[12-1161](#) AMENDED COMPLAINT
SALVEN V. ENNIS
10-16-12 [7]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to March 11, 2015, at 10:00 a.m.