

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

FEBRUARY 12, 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. [13-15912](#)-A-7 EUGENE/MARGARET AFONSO MOTION TO SELL
JES-3 1-13-14 [[33](#)]
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 Harley Davidson and 2003 Ford F-150 truck

Buyer: Debtors

Sale Price:

-\$3,980.00 (\$3,000.00 cash and the sale is subject to a \$980 lien in favor of Eaglemark Bank)

-\$8,155.00 (\$3,000.00 cash plus \$2,900 exemption credit and the sale is subject to a \$2,255 lien in favor of Tucoemas Credit Union)

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.

2. [13-15215](#)-A-7 NARAYANAN/DEVI MOTION TO COMPEL ABANDONMENT
PLF-1 PONDICHERRY 1-9-14 [[36](#)]
NARAYANAN PONDICHERRY/MV
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Pending

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 5558 E. Copper Ave., Clovis, 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).

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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

It is unclear to the court whether the motion is requesting to abandon assets other than the real property. The motion states, "Debtor believes that many of the remainder of Debtor's assets are of inconsequential value to the bankruptcy estate and can properly be abandoned." See Mot. to Abandon at ¶ 6. The previous paragraph mentions a Mercedes which the trustee is sold, leaving the court to ask whether there are other assets (in addition to the real property) that the motion seeks to abandon.

3. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN MOTION TO AVOID LIEN OF BETTY
KDG-3 EGAN
BOGHOS KRIKORIAN/MV 1-9-14 [[92](#)]
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien on Real and Personal Property

Disposition: Granted in part, continued in part for evidentiary hearing: continued to April 16, 2014, to be consolidated with Betty Egan's objection to exemptions and set for an evidentiary hearing

Order: Civil minute order

On April 16, 2014, the court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). The court will consolidate the hearing on this matter with the hearing on Creditor Betty Egan's Objection to Exemptions. Fed. R. Civ. P. 42(a)(2), *incorporated by* Fed. R. Bankr. P. 7042.

LIEN AVOIDANCE ON REAL PROPERTY

An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues relating to the motion to avoid

Creditor Betty Egan's lien: (i) the value of the real property claimed exempt (the debtors' residence located at 9648 N. 10th Street, Fresno, California; (ii) whether the debtors are entitled to claim a \$175,000 homestead exemption (as alleged in the pending objection to exemptions filed by Egan); and (iii) the amount of judgment debt secured by Egan's judgment lien.

LIEN AVOIDANCE ON PERSONAL PROPERTY

Household Goods, Life Insurance Policies, and Funds in Checking Account

The relief sought as to most of the debtors' personal property does not appear to be disputed. Creditor Egan states that she does not object to the debtor's motion as to the household goods, life insurance policies, and "Band Account" [sic] which the court construes to mean the exemption in the debtors' checking account. The court will grant the motion as to this personal property and avoid the respondent's lien as follows.

The life insurance policy with American General Life Insurance ("American General") has an approximate value of \$5,000.00. The exemption in this policy is \$4,400.00. A loan against this policy exists in the amount of \$8,478.34. Thus, the lien is avoided in its entirety as to the American General policy.

The life insurance policy with Jackson Life Insurance ("Jackson") has an approximate value of \$20,000.00. There is a loan against this policy in the approximate amount of \$5,015.35. The exemption claimed in this policy is \$20,000.00. The lien is avoided in its entirety as to the Jackson policy.

The household goods and furnishings are valued at approximately \$4,000.00 and have been exempted in the amount of \$4,000.00. Thus, the lien is avoided entirely as to the household goods.

The funds in the checking account total \$500.00. These funds have been claimed exempt in the amount of \$375. The lien is avoided partially in the amount of \$375.00 and remains attached to the amount on deposit in the amount of \$125.00.

Motor Vehicles

Egan appears to dispute the exemption in the motor vehicles based on her opposition and based on her pending objection to exemptions. But the basis for her dispute appears to be misplaced. She appears to assert that the debtors should be limited in their exemption to \$2,900.00. But the debtors are not claiming an exemption in the vehicles for the full value of the vehicles. They are only claiming an exemption in \$2,900.00 of the vehicles' value. The motion seeks only partial avoidance of Egan's lien as to the vehicles (and the checking account) as to the amount of the exemption in each vehicle and not as to the amount of equity over and above the exempt amounts. Thus, the court does not believe there is a factual dispute as to the vehicles.

But the court does not decide this issue at the present time. Egan may clarify her dispute as to the vehicles in the joint status report filed in advance of the hearing on the objection, and the parties may list the issue as a disputed issue in the joint status report.

The motor vehicles are valued at approximately \$2,974 (1998 BMW Z3) and \$2,814 (2004 Honda Accord). These vehicles have each been claimed exempt in the amount of \$1,450 each. The respondent's lien is avoided partially in the amount of \$1,450 in the 1998 BMW Z3 and \$1,450 in the 2004 Honda Accord. The respondent's lien remains attached to the 1998 BMW Z3 in the amount of \$1,524 and remains attached to the 2004 Honda Accord in the amount of \$1,364.

CONTINUANCE AND JOINT STATUS REPORT

The court will continue the matter to April 16, 2014, to allow the matter to be heard concurrently with Egan's objection to exemptions and to allow the parties to file a joint status report (relating to both this motion and Egan's objection to exemptions) that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

The joint status report will be filed 14 days in advance of the continued hearing date.

4.	13-16827 -A-7 MICHELLE LEFLER UST-1 TRACY DAVIS/MV DAVID JENKINS/Atty. for dbt. GREGORY POWELL/Atty. for mv. NON-OPPOSITION	MOTION TO DISMISS CASE 1-2-14 [20]
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Final Ruling

Motion: Dismiss Case

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

Disposition: Converted to Chapter 13

Order: Prepared by the debtor

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).

GROUND'S FOR THE MOTION TO DISMISS

The U.S. Trustee's motion asserts that the presumption of abuse arises under § 707(b)(2). The debtor has filed a non-opposition to the U.S. Trustee's motion. As a result, the debtor has conceded that grounds exist for dismissing the case under § 707(b).

The debtor, however, has requested conversion of the case to a case under Chapter 13. Section 707(b)(1) permits the court to convert a case to a case under Chapter 13 if the granting of relief under Chapter 7 would constitute abuse.

CONVERSION TO CHAPTER 13

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e) (secured debt totals \$16,300 and unsecured debt totals \$26,365). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

5. [13-14530](#)-A-7 KATHRYN JONES
RJR-5
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
12-9-13 [[107](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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 movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not show their priority.

Furthermore, Rule 9013 provides in pertinent part: "The *motion* shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013 (emphasis added). Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. Here, the motion does not state with particularity the grounds for the relief requested.

As noted in a previous ruling in this case denying the debtor's lien avoidance motion brought against Kroger Equipment & Supply Co., Inc., having been designated with docket control number RJR-2, the two consensual deeds of trust, plus the exemption amount, do not exceed the asserted value of the real property. Thus, there is some equity to which at least one or more judicial liens may attach. Determining the priorities of the various judicial liens is necessary for proper application of the statutory-impairment formula and the standards in *In re Meyer*.

6. [13-14530](#)-A-7 KATHRYN JONES
RJR-6
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF E.M.
THARP, INC.
12-9-13 [[112](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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 movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not show their priority.

Furthermore, Rule 9013 provides in pertinent part: "The *motion* shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013 (emphasis added). Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. Here, the motion does not state with particularity the grounds for the relief requested.

As noted in a previous ruling in this case denying the debtor's lien avoidance motion brought against Kroger Equipment & Supply Co., Inc., having been designated with docket control number RJR-2, the two consensual deeds of trust, plus the exemption amount, do not exceed the asserted value of the real property. Thus, there is some equity to which at least one or more judicial liens may attach. Determining the priorities of the various judicial liens is necessary for proper application of the statutory-impairment formula and the standards in *In re Meyer*.

7. [13-14530](#)-A-7 KATHRYN JONES
RJR-7
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF DON
ROSE OIL COMPANY
12-9-13 [[117](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2) (notice contains incorrect deadline for opposition); written opposition filed by Don Rose Oil, Co.

Disposition: Denied without prejudice

Order: Civil minute order

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 movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not show their priority.

Furthermore, Rule 9013 provides in pertinent part: "The *motion* shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013 (emphasis added). Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. Here, the motion does not state with particularity the grounds for the relief requested.

As noted in a previous ruling in this case denying the debtor's lien avoidance motion brought against Kroger Equipment & Supply Co., Inc., having been designated with docket control number RJR-2, the two consensual deeds of trust, plus the exemption amount, do not exceed the asserted value of the real property. Thus, there is some equity to which at least one or more judicial liens may attach. Determining the priorities of the various judicial liens is necessary for proper application of the statutory-impairment formula and the standards in *In re Meyer*.

8. [13-14530](#)-A-7 KATHRYN JONES
RJR-8
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
1-6-14 [[161](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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 movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not show their priority.

Furthermore, Rule 9013 provides in pertinent part: "The *motion* shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013 (emphasis added). Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds. Here, the motion does not state with particularity the grounds for the relief requested.

As noted in a previous ruling in this case denying the debtor's lien avoidance motion brought against Kroger Equipment & Supply Co., Inc., having been designated with docket control number RJR-2, the two consensual deeds of trust, plus the exemption amount, do not exceed the asserted value of the real property. Thus, there is some equity to which at least one or more judicial liens may attach. Determining the priorities of the various judicial liens is necessary for proper application of the statutory-impairment formula and the standards in *In re Meyer*.

9. [13-16542](#)-A-7 JONATHAN HODSON
TMT-1
TRUDI MANFREDO/MV
SCOTT LYONS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
WITHDRAWN

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-14-14 [[19](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

10. [13-13145](#)-A-7 MARIA ZAVALA DE GUZMAN MOTION TO SELL
JES-1 1-15-14 [[27](#)]
JAMES SALVEN/MV
ALBERT GARCIA/Atty. for dbt.
JAMES SALVEN/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: 2008 Dodge Caliber

Buyer: Debtor

Sale Price: \$5,100 (\$2,200 cash plus \$2,900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

11. [13-16358](#)-A-7 JOANJOY KING MOTION TO AVOID LIEN OF ASSET
JMA-1 ACCEPTANCE, LLC.
JOANJOY KING/MV 12-20-13 [[17](#)]
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

LEGAL STANDARDS

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

ANALYSIS

The motion seeks to avoid a lien on a number of personal property items listed on pages 2 and 3 of the motion. The motion asserts that exemptions have been claimed in each item of personal property. The exemption claimed in each item appears to be equal to the full extent of its value with the exception of the Lexus, in which an exemption is claimed only in part of the vehicle's value.

The Lexus listed in the motion is shown as having a value of \$7860.00. The exemption claimed is \$881.00. The Lexus is encumbered by a lien in favor of Navy Federal Credit Union in the amount of \$6,979.00. The exemption totals \$881.00. Accordingly, no equity is available in the vehicle to which a judicial lien could attach. In the future, counsel should include the amount of the judicial lien sought to be avoided. Exhibit C, which appears to be a docket printout from a state court's website, does not clearly provide the amount of the judicial lien of the respondent. The court could not tell from the motion the exact amount of the judicial lien of the respondent. This information should be included in the motion along with a statutory-impairment analysis. However, assuming the judicial lien of the respondent were \$1.00, the lien would be avoidable under the statutory-impairment formula.

Accordingly, the court will grant the motion and avoid the lien of the respondent Asset Acceptance, LLC on grounds that the lien impairs the exemptions in the personal property items listed.

12. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION TO DISMISS CASE
KDG-1 INC. 1-15-14 [[216](#)]
HUME, SMITH, GEDDES, GREEN &
SIMMONS, LLP/MV
HAGOP BEDOYAN/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

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

Final Ruling

Objection: Objection to Claim

Notice: continued date of the hearing; stipulation filed

Disposition: The order approving the stipulation between the parties also sustains this objection

Order: Unnecessary as the order approving the stipulation already provides the relief sought by the objection

The order approving the stipulation between the debtor and the trustee also sustains this objection and disallows the claim, thus resolving this matter. This order will be served by the trustee on the respondent, Atlas Acquisitions LLC.

14. [11-12264](#)-A-7 GENEAL CHIMA CONTINUED PRE-TRIAL CONFERENCE
WW-1 RE: MOTION FOR SANCTIONS FOR
GENEAL CHIMA/MV VIOLATION OF THE AUTOMATIC STAY
AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE
INJUNCTION
7-11-13 [[122](#)]
JEFF REICH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling

15. [13-13866](#)-A-7 SCOTT MONROE
TGF-2
JEFFREY VETTER/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
ORDER 1/27

MOTION TO SELL
11-26-13 [[18](#)]

Tentative Ruling

Motion: Sell Property Free and Clear of Liens

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

Disposition: Pending the court's determination at the hearing of whether Megahertz received notice of the hearing

Order: Prepared by moving party

Property: 2008 Vans RV-7A airplane and 2002 GMC pickup truck

Buyer: Debtor

Sale Price: \$58,525 (\$28,000 cash plus \$30,525 exemption credit)

–2008 Vans RV-7A Airplane: \$24,075 cash plus \$25,925 exemption credit

–2002 GMC pickup truck: \$3,925 cash plus \$4,600 exemption credit

Sale Type: Private sale subject to overbid opportunity

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

Rule 2002(a) (2) requires that all creditors and parties in interest receive notice of a proposed sale. Here, the motion indicates the existence of a creditor holding a lien against the property, Megahertz Avionics. This creditor does not appear on the court's matrix attached to the proof of service. The court will inquire at the hearing whether Megahertz is represented by another party appearing on the court's matrix attached to the proof.

If Megahertz Avionics has not received sufficient notice of the proposed sale, the court will continue the hearing to March 12, 2014, and the trustee will file a notice of continued hearing pursuant to LBR 9014-1(f) (2) and Rule 2002(a) (2) no later than February 19, 2014.

SALE FREE AND CLEAR UNDER § 363(f)

The movant requests a sale free and clear of two liens: the lien of the IRS and the lien of Megahertz Avionics ("Megahertz"). The court will grant free and clear relief only as to the IRS's lien but not as to Megahertz's lien.

IRS's Lien

The lien of the IRS is a statutory lien securing an obligation of approximately \$79,189.66. The IRS's lien attaches to all personal property of the debtor as of the commencement of the case. The IRS has consented to the sale of the above-described property free and clear of its lien. The declaration of the IRS's authorized agent has been filed in support of the motion. The court will grant free and clear relief under § 363(f) as to the IRS's lien. In exchange for the IRS's consent, the IRS will receive a "carve out" of \$2,000 from the proceeds of the sale.

Megahertz's Lien

The lien of Megahertz is a mechanic's lien. It encumbers only the airplane and securing a debt for \$2,971.19 plus interests and other costs from October 12, 2008 until the present.

The court will not grant free and clear relief as to Megahertz's lien. The grounds given in the motion are that § 363(f)(3) permits the sale because, excluding the IRS's lien, the sale price is greater than the value of Megahertz's lien. The trustee contends that the IRS's lien can be excluded from the "aggregate value of all liens on such property" under § 363(f)(3) because the IRS has consented to the sale.

The court disagrees with the trustee's argument. The plain language of the statute does not permit a comparison between the sale price and only the liens that do not fall within another subsection of § 363(f) in order to determine if a sale may be free and clear of a lien. Thus, excluding liens based on consent to relief under § 363(f)(2) from the "aggregate value of all liens on such property" is inconsistent with the statutory language of § 363(f)(3). Section 363(f)(3) permits a sale free and clear only if the sale price is greater than the "aggregate value of *all liens* on such property." 11 U.S.C. § 363(f)(3) (emphasis added).

Even if the trustee had offered a legitimate basis for selling the airplane free and clear of Megahertz's lien, the court would deny the relief requested. Service of the motion was not made on Megahertz. A motion to sell property free and clear of liens or interests is a contested matter. Fed. R. Bankr. P. 6004(c). As a contested matter, the motion must be served according to Rule 7004. Fed. R. Bankr. P. 9014(b); see also *Citicorp Mortgage, Inc. v. Brooks (In re Ex-Cel Concrete Company, Inc.)*, 178 B.R. 198, 202 (B.A.P. 9th Cir. 1995) (vacating order authorizing sale free and clear as void because of insufficient service under Rule 7004).

Accordingly, the court will not grant free and clear relief as to Megahertz's lien. If the sale is to be accomplished, Megahertz's lien will have to be paid from escrow.

16. [12-14388](#)-A-7 JOHNNY/KATHLEEN NAJERA MOTION TO RECONVERT CASE FROM
GH-2 CHAPTER 7 TO CHAPTER 13
JOHNNY NAJERA/MV 12-19-13 [[43](#)]
GARY HUSS/Atty. for dbt.

Tentative Ruling

Motion: Re-convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Prepared by moving party

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

The case has been previously converted to Chapter 7 from Chapter 13. But no party in interest has opposed the debtor's eligibility for relief under Chapter 13. The debtor's secured and unsecured debt amounts are below the debt limits provided in § 109(e), the court will re-convert the case. See 11 U.S.C. § 109(e).

17. [13-15791](#)-A-7 FERNANDO SANTOS CONTINUED MOTION TO AVOID LIEN
WW-1 OF BRITZ-SIMPLOT GROWER
FERNANDO SANTOS/MV SOLUTIONS AND CALARCO, INC.
RILEY WALTER/Atty. for dbt. 12-2-13 [[13](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1) / continued hearing date; written opposition required

Disposition: Granted

Order: The proposed order that is an exhibit to the status report and approved as to form and content by the attorney for Britz-Simplot Grower Solutions will be submitted

The status report shows that Britz-Simplot Grower Solutions, LLC has approved the order avoiding their lien as to form and content. Based on the court's civil minutes dated January 8, 2014 addressing the merits of the motion, which the court adopts and incorporates by reference into this pre-hearing disposition, the court will grant the motion.

18. [13-15792](#)-A-7 PAUL SANTOS CONTINUED MOTION TO AVOID LIEN
WW-1 OF BRITZ-SIMPLOT GROWER
PAUL SANTOS/MV SOLUTIONS AND CALARCO, INC.
12-2-13 [[13](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1) / continued hearing date; written opposition required

Disposition: An order has been entered granting the motion

Order: Unnecessary given the order entered on the docket on this matter

The status report shows that Britz-Simplot Grower Solutions, LLC has approved the order avoiding their lien as to form and content. An order has been entered granting the motion. This order resolves this matter.

19. [13-16195](#)-A-7 AVELINO/MARIBEL ORMONDE MOTION TO SELL
JES-1 1-7-14 [[22](#)]
JAMES SALVEN/MV
GEOFFREY ADALIAN/Atty. for dbt.
JAMES SALVEN/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: 2004 uncovered utility trailer

Buyer: Avelino and Maribel Ormonde (debtors)

Sale Price: \$800 (\$300 cash plus \$500 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

20. [13-15096](#)-A-7 RAUL SANCHEZ AND CARMEN MOTION TO SELL
TMT-1 ESTRADA DE SANCHEZ 1-14-14 [[19](#)]
TRUDI MANFREDO/MV
GREG BLEVINS/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: 2008 Ford Escape

Buyer: Debtors

Sale Price: \$7,200 (\$4,300 cash plus \$2,900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

21. [13-15596](#)-A-7 SAMUEL SAPIEN AND CAROL MOTION TO ABANDON
PBB-1 HANNAGAN 12-18-13 [[15](#)]
SAMUEL SAPIEN/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 5104 W. Mission, 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).

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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

22. [13-17675](#)-A-7 BARBARA WALDRON MOTION FOR STAY OF ORDER
BPW-81 GRANTING RELIEF FROM AUTOMATIC
BARBARA WALDRON/MV STAY
2-3-14 [[50](#)]

BARBARA WALDRON/Atty. for mv.

No tentative ruling

23. [14-10394](#)-A-7 ERIC/DEBRA MONTGOMERY MOTION TO COMPEL ABANDONMENT
THA-1 2-6-14 [[11](#)]
ERIC MONTGOMERY/MV
THOMAS ARMSTRONG/Atty. for dbt.
OST 2/6/14

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: Several sole proprietorship businesses described on pages 2 and 3 of the motion

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.

Debtors have exempted the entirety of the value of the sole proprietorship assets described in the motion. The businesses described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such businesses is warranted.

The order will compel abandonment of the businesses and the assets of such businesses only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned businesses or the assets of such businesses 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. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC CONTINUED STATUS CONFERENCE RE:
[13-1087](#) COMPLAINT
MANFREDO V. NUT TREE RETAIL,
LLC 8-9-13 [[1](#)]
PETER FEAR/Atty. for pl.
DEFAULT JUDGMENT 12/16/13,
CLOSED 1/8/14

Final Ruling

With the adversary proceeding now closed, the status conference is concluded.

2. [13-16044](#)-A-7 MICHAEL/MARINA BRADY STATUS CONFERENCE RE: COMPLAINT
[13-1136](#) 12-13-13 [[1](#)]
FIRST NATIONAL BANK OF OMAHA
V. BRADY
DONALD DUNNING/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling

3. [13-16052](#)-A-7 SALVADOR/ROSA ALCANTAR CONTINUED STATUS CONFERENCE RE:
[13-1115](#) COMPLAINT
RODRIGUEZ V. ALCANTAR, III 10-23-13 [[1](#)]
MARIA RODRIGUEZ/Atty. for pl.

No tentative ruling

10:00 a.m.

1. [13-17906](#)-A-7 SHARON BUTLER MOTION FOR RELIEF FROM
RMD-1 AUTOMATIC STAY
CALIFORNIA HOUSING FINANCE 1-15-14 [[12](#)]
AGENCY/MV
SCOTT LYONS/Atty. for dbt.
RYAN DAVIES/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: 1433 Stanford Court, Hanford, 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)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-17218](#)-A-7 ROBERTO/MARIA OLVERA MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY
HONDA LEASE TRUST/MV 1-15-14 [[32](#)]
VINCENT FROUNJIAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Lease interest in 2013 Honda Pilot

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 movant seeks stay relief to exercise its remedies as to the leased vehicle described above. The vehicle is leased, so it is not owned by the debtor.

In addition, 2 post-petition payments are past due, and the motion asserts that the value of the vehicle is declining and payments are not being made to protect against such decline. The court finds cause to grant stay relief as well. 11 U.S.C. § 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.

3. [13-17121](#)-A-7 SHERRIL ROBERTSON
NATIONSTAR MORTGAGE, LLC/MV
SCOTT SAGARIA/Atty. for dbt.
GAIL RINALDI/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-7-14 [[19](#)]

Tentative Ruling

Motion: Stay Relief

Notice: Deemed as noticed under LBR 9014-1(f)(2); no written opposition required

Disposition: Denied without prejudice

Order: Prepared by moving party

Subject: 147 W. National Ave., Clovis, 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).

The stay relief summary sheet has not been properly completed. The valuation of the property has not been included at item number 3 on the sheet. This summary sheet is required to be *completed* by the court's local rules. LBR 4001-1(a)(3).

An improper docket control number was used for the motion as well. LBR 9014-1(c)(3). Lastly, the exhibits were not filed in compliance with the Revised Guidelines for the Preparation of Documents required by Local Bankruptcy Rule 9004-1(a).

4. [13-16550](#)-A-7 ANGELA ABRIL-GUTHMILLER MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
PENNYMAC LOAN SERVICES, LLC/MV 1-6-14 [[22](#)]
TIMOTHY SILVERMAN/Atty. for mv.
DISCHARGED

No Tentative Ruling

5. [13-17461](#)-A-7 JESUS ROMERO AND ESTRELLA MOTION FOR RELIEF FROM
PD-1 NAVARRO AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 1-14-14 [[28](#)]
JONATHAN CAHILL/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: 3310 W. Whitendale Ave., Visalia, 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)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [12-14792](#)-A-7 GWENDOLYN FORTE
KAZ-1
U.S. BANK NA/MV
DEAN WOERNER/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-8-14 [[40](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Prepared by moving party

Subject: 5950 Julian Avenue, St. Louis, MO 63112

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 will be denied in part as moot as to the debtor.

AS TO 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [13-17794](#)-A-7 LORETTA/FREDERICK SMITH MOTION FOR RELIEF FROM
MAH-1 AUTOMATIC STAY
PHILLIP SANCHEZ/MV 1-21-14 [[27](#)]
MARLENE HUBBELL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part to allow stay relief to the creditor to pursue a judgment for possession; denied in part as to any action to collect a money judgment from the debtor

Order: Prepared by moving party

Subject: Unlawful detainer action-residential real property lease of premises described in the motion

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).

The moving party asserts the debtors have defaulted on payment of residential rent under a lease agreement for real property located at 1621 Oxford Ave., Clovis, California. An unlawful detainer action is pending in the Fresno County Superior Court. The moving party asserts that the debtors filed their petition in bankruptcy to avoid a trial for possession of the leased premises.

The stay relief summary sheet shows that \$11,225.00 in pre-petition rent has not been paid and that \$1,075.00 in post-petition rent has not been paid. The court will grant stay relief for cause pursuant to § 362(d) (1) to allow the state court unlawful detainer action to proceed, but stay relief is granted only to allow a judgment for possession against the debtors. The moving party may not seek a money judgment for past-due rent or damages, attorney's fees, or costs.

The moving party may file post-judgment motions, appeals; provided there shall be no collection or enforcement of a money judgment, except by filing a proof of claim in this court. The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

10:30 a.m.

1. [13-17605](#)-A-7 VELMA ARVIZU REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
1-13-14 [[14](#)]
ADRIAN WILLIAMS/Atty. for dbt.

No tentative ruling

2. [13-17711](#)-A-7 RICHARD/SHARON BUCKLES PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
1-14-14 [[14](#)]

No tentative ruling

3. [13-17020](#)-A-7 ANGELA ROBERSON REAFFIRMATION AGREEMENT WITH
SANTANDER CONSUMER USA
1-14-14 [[16](#)]
JAMES MILLER/Atty. for dbt.

No tentative ruling

4. [13-17020](#)-A-7 ANGELA ROBERSON REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC.
1-17-14 [[18](#)]
JAMES MILLER/Atty. for dbt.

No tentative ruling

5. [13-16738](#)-A-7 FERNANDO/PATRICIA ADAME CONTINUED PRO SE REAFFIRMATION
AGREEMENT WITH ALLY BANK
12-11-13 [[13](#)]

No tentative ruling

6. [13-16758](#)-A-7 DONNA BURKETT REAFFIRMATION AGREEMENT WITH
SANTANDER CONSUMER USA
1-14-14 [[15](#)]
GEORGE LOGAN/Atty. for dbt.

No tentative ruling

7. [13-16763](#)-A-7 DAVID/AMY POLZIEN

PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION
1-24-14 [[21](#)]

No tentative ruling

8. [13-17081](#)-A-7 JUAN/LETICIA DELGADO

REAFFIRMATION AGREEMENT WITH
ALLY BANK
1-14-14 [[33](#)]

RALPH AVILA/Atty. for dbt.

No tentative ruling

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OMNIBUS OBJECTION TO
FRB-7 PROPERTIES, LLC CLAIMS
CITIZENS BUSINESS BANK/MV 4-12-13 [[888](#)]
PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

The status report indicates that the parties have stipulated to take the objection off calendar subject to being reset on or before December 31, 2014, following 30 days' notice of the hearing on the same. The matter will be dropped from calendar as moot.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OBJECTION TO CLAIM OF
FRB-8 PROPERTIES, LLC EHA-MODESTO II, LLC, CLAIM
CITIZENS BUSINESS BANK/MV NUMBER 18
4-12-13 [[887](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

The status report indicates that the parties have stipulated to take the objection off calendar subject to being reset on or before December 31, 2014, following 30 days' notice of the hearing on the same. The matter will be dropped from calendar as moot.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OBJECTION TO CLAIM OF
FRB-9 PROPERTIES, LLC HA COMMERCIAL, LLC, CLAIM
CITIZENS BUSINESS BANK/MV NUMBER 20
4-12-13 [[895](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

The status report indicates that the parties have stipulated to take the objection off calendar subject to being reset on or before December 31, 2014, following 30 days' notice of the hearing on the same. The matter will be dropped from calendar as moot.

4. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-5 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO EMPLOY COLLIERS
TINGEY INTERNATIONAL, INC. AS
REALTOR(S)
1-29-14 [[1121](#)]

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

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a). Based on the motion and supporting papers, the court will approve the employment.

5. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-6 PROPERTIES, LLC
DAVID STAPLETON/MV
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

MOTION TO EMPLOY JANZEN,
TAMBERI & WONG AS ACCOUNTANT(S)
1-29-14 [[1126](#)]

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a). Based on the motion and supporting papers, the court will approve the employment.

6. [10-62315](#)-A-11 BEN ENNIS
LRP-6
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY PRUDENTIAL
CALIFORNIA AS REALTOR(S)
1-29-14 [[1361](#)]

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a). Based on the motion and supporting papers, the court will approve the employment.

7. [10-62315](#)-A-11 BEN ENNIS
LRP-7
DAVID STAPLETON/MV

MOTION TO EMPLOY COLLIERS
TINGEY INTERNATIONAL, INC. AS
BROKER(S)
1-29-14 [[1350](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a). Based on the motion and supporting papers, the court will approve the employment.

8. [10-62315](#)-A-11 BEN ENNIS MOTION TO EMPLOY JANZEN,
LRP-8 TAMBERI & WONG AS ACCOUNTANT(S)
DAVID STAPLETON/MV 1-29-14 [[1355](#)]
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a). Based on the motion and supporting papers, the court will approve the employment.

9. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION TO VALUE COLLATERAL OF
EVN-7 LLC CNA PROPERTIES LLC AND/OR
BHAVIKA'S PROPERTIES, LLC/MV MOTION FOR ADEQUATE PROTECTION
1-15-14 [[79](#)]
ELAINE NGUYEN/Atty. for dbt.
ORDER CONTINUING 1/30/14

Final Ruling

The matter is continued to March 12, 2014, at 1:30 p.m.

10. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION FOR RELIEF FROM
HRH-1 INC. AUTOMATIC STAY
GENERAL ELECTRIC CAPITAL 1-16-14 [[25](#)]
CORPORATION/MV
HILTON RYDER/Atty. for dbt.
RAFFI KHATCHADOURIAN/Atty. for mv.
NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Freightliner and 2006 Freightliner

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). The debtor has filed a non-opposition to the motion stating that both vehicles are in possession of the creditor and that the debtor believes there is no equity in the vehicles. The debtor has surrendered the trucks described above. Accordingly, the property is not necessary for an effective reorganization.

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.

11. [14-10268](#)-A-11 RODRIGO ROMERO
AOE-1
RODRIGO ROMERO/MV
ANTHONY EGBASE/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
1-29-14 [[15](#)]

Tentative Ruling

Motion: Extend Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party

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

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

12. [13-13284](#)-A-11 NICOLETTI OIL INC.
DB-1
IDEMITSU APOLLO CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
JAMIE DREHER/Atty. for mv.
ORDER 1/27/14, RESPONSIVE
PLEADING

CONTINUED MOTION FOR
ADMINISTRATIVE EXPENSES
12-16-13 [[226](#)]

Tentative Ruling

Motion: Motion for Allowance and Payment of Administrative Expenses

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

Disposition: Granted in part as to amount; denied in part as to payment

Order: Prepared by moving party

Moving Party: Idemitsu Apollo Corporation

Basis for Allowance: § 503(b)(9)

Requested Amount: \$77,169.39

Requested Timing of Payment: Immediately

Requested Source of Payment: Not Provided

Idemitsu Apollo Corporation ("Idemitsu") has moved for allowance and payment of a \$77,169.39 administrative expense claim under § 503(b)(9). The debtor Nicoletti Oil (the "Debtor") and secured creditor Wells Fargo Bank ("Wells Fargo") have filed oppositions.

For the reasons set forth below, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. Idemitsu will be allowed an administrative expense claim of \$77,169.39 under § 503(b)(9).

DISCUSSION

The Bankruptcy Code provides an administrative expense claim, entitled to priority status, to creditors who have supplied goods to the debtor within the twenty-day period prior to the filing of the petition. See 11 U.S.C. §§ 503(b)(9), 507(a)(2). A motion for allowance and payment of a § 503(b)(9) claim requests two forms of relief.

Amount of Administrative Expense Claim

First, Idemitsu seeks the allowance of the amount of its administrative expense claim. Because Idemitsu has submitted competent evidence of its claim and no party has objected to the allowance of the claim, Idemitsu's administrative expense claim is allowed in the amount of \$77,169.39.

Timing and Source of Payment

Second, Idemitsu seeks payment of its allowed administrative expense claim from the Debtor in the near future. This request gives rise to two issues. The first is timing. At what point during the bankruptcy case must such claims be paid? The outer limitation in chapter 11 cases is the effective date of the plan. See 11 U.S.C. § 1129(a)(9)(A). But the court has discretion to allow earlier payment of the administrative claim. See *In re Arts Dairy, LLC*, 414 B.R. 219, 221 (Bankr. N.D. Ohio 2009) (citing *In re Plastech Engineered Prods.*,

Inc., 394 B.R. 147, 152 (Bankr. E.D. Mich. 2008)). In exercising this discretion, the court should consider weighing three factors: (1) prejudice to the debtor; (2) hardship to the claimant; and (3) potential detriment to the other creditors. *Id.* (citing *In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005)). Idemitsu's motion is supported by a declaration, but the declaration fails to address any of the Arts factors. As a result, Idemitsu has not carried its burden of proof.

The second issue relates to the source of the requested payment. Applicable law provides that the rights of secured creditors, including those who have an interest in cash collateral, trump the rights of priority creditors, including § 503(b)(9) creditors. See *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 5 (2000) ("Administrative expenses, however, do not have priority over secured claims."); see also 11 U.S.C. § 363(c)(2), (e) (restricting use of cash collateral). It is unclear from Idemitsu's motion, but it appears that Idemitsu seeks payment of its administrative expense claim from cash collateral (as the Debtor has no source of unencumbered cash). However, as stated in Wells Fargo's opposition, Wells Fargo has not consented to its cash collateral being used to pay § 503(b)(9) administrative expense claims.

Therefore, the court cannot authorize payment of Idemitsu's administrative expense claim.

CONCLUSION

For the reasons set forth above, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. Idemitsu will be allowed an administrative expense claim of \$77,169.39 under § 503(b)(9).

13. [13-13284](#)-A-11 NICOLETTI OIL INC.
DRJ-1
ROBERT V. JENSEN, INC./MV
DAVID GOLUBCHIK/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
ORDER 1/27/14, RESPONSIVE
PLEADING

CONTINUED MOTION FOR
ADMINISTRATIVE EXPENSES
12-30-13 [[243](#)]

Tentative Ruling

Motion: Motion for Allowance and Payment of Administrative Expenses

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

Disposition: Granted in part as to amount; denied in part as to payment

Order: Prepared by moving party

Moving Party: Robert V. Jensen Inc.

Basis for Allowance: § 503(b)(9)

Requested Amount: \$53,996.98

Requested Timing of Payment: Immediately (within 20 days)

Requested Source of Payment: Not Provided

Robert V. Jensen Inc. ("Jensen") has moved for allowance and payment of a \$53,996.98 administrative expense claim under § 503(b)(9). The debtor Nicoletti Oil (the "Debtor") and secured creditor Wells Fargo Bank ("Wells Fargo") have filed oppositions.

For the reasons set forth below, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. Jensen will be allowed an administrative expense claim of \$53,996.98 under § 503(b)(9).

DISCUSSION

The Bankruptcy Code provides an administrative expense claim, entitled to priority status, to creditors who have supplied goods to the debtor within the twenty-day period prior to the filing of the petition. See 11 U.S.C. §§ 503(b)(9), 507(a)(2). A motion for allowance and payment of a § 503(b)(9) claim requests two forms of relief.

Amount of Administrative Expense Claim

First, Jensen seeks the allowance of the amount of its administrative expense claim. Because Jensen has submitted competent evidence of its claim and no party has objected to the allowance of the claim, Jensen's administrative expense claim is allowed in the amount of \$53,996.98.

Timing and Source of Payment

Second, Jensen seeks payment of its allowed administrative expense claim from the Debtor in the near future. This request gives rise to two issues. The first is timing. At what point during the bankruptcy case must such claims be paid? The outer limitation in chapter 11 cases is the effective date of the plan. See 11 U.S.C. § 1129(a)(9)(A). But the court has discretion to allow earlier payment of the administrative claim. See *In re Arts Dairy, LLC*, 414 B.R. 219, 221 (Bankr. N.D. Ohio 2009) (citing *In re Plastech Engineered Prods., Inc.*, 394 B.R. 147, 152 (Bankr. E.D. Mich. 2008)). In exercising this discretion, the court should consider weighing three factors: (1) prejudice to the debtor; (2) hardship to the claimant; and (3) potential detriment to the other creditors. *Id.* (citing *In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005)). Jensen's motion is supported by a declaration, but the declaration fails to address any of the Arts factors. As a result, Jensen has not carried its burden of proof.

The second issue relates to the source of the requested payment. Applicable law provides that the rights of secured creditors, including those who have an interest in cash collateral, trump the rights of priority creditors, including § 503(b)(9) creditors. See *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 5 (2000) ("Administrative expenses, however, do not have priority over secured claims."); see also 11 U.S.C. § 363(c)(2), (e) (restricting use of cash collateral). It is unclear from Jensen's motion, but it appears that Jensen seeks payment of its administrative expense claim from cash collateral (as the Debtor has no source of unencumbered cash). However, as stated in Wells Fargo's opposition, Wells Fargo has not consented to its cash collateral being used to pay § 503(b)(9) administrative expense claims.

Therefore, the court cannot authorize payment of Jensen's administrative expense claim.

CONCLUSION

For the reasons set forth above, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. Jensen will be allowed an administrative expense claim of \$53,996.98 under § 503(b)(9).

14. [13-13284](#)-A-11 NICOLETTI OIL INC. MOTION FOR COMPENSATION FOR
LC-2 LARRY CLEVELAND, ACCOUNTANT(S),
LARRY CLEVELAND/MV FEE: \$16585.00, EXPENSES: \$0.00
1-15-14 [[261](#)]
DAVID GOLUBCHIK/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses by Larry Cleveland

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

Disposition: Denied without prejudice

Order: Prepared by applicant

ON THE MERITS

The motion will be denied without prejudice. First, the movant has not submitted itemized invoices in support of the motion. The applicant has lumped time entries. United States Trustee Program Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Guideline (b)(4)(v); *see also*, *In re Muir Training Technologies, Inc.*, 120 BR 154, 163, fn. 3 (Bankr. S.D. Cal. 1990); *In re Chicago Lutheran Hosp. Ass'n*, 89 BR 719, 736 (Bankr. N.D. Ill. 1988). In this case, the invoices is not itemized by date, task performed, professional involved, time spent, rate and a subtotal.

Second, the application is not supported by a statement of client's consent. United States Trustee Program Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Guideline (b)(1)(v). No such consent accompanies the application.

CERTIFICATE OF SERVICE

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.

15. [13-14894](#)-A-11 JORENE MIZE
RAF-9
ROSEANN FRAZEE/MV

MOTION FOR COMPENSATION FOR
SPECIALTY APPRAISALS, INC.,
APPRAISER(S), FEE: \$2,820.00,
EXPENSES: \$0.00
1-14-14 [[199](#)]

ROSEANN FRAZEE/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expenses, 11 U.S.C. § 331

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Richard E. Grey of Specialty Appraisals, Inc.

Compensation Approved: \$2,820.00 (47 hours at \$60/hour)

Costs Approved: \$0.00

Aggregate fees and costs approved: \$2,820.00

Retainer held: \$0.00

Amount to be paid as administrative expense: \$2,820.00

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

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held or from available funds of the estate, provided that the funds are not subject to the lien of a third party who has not consented to the use of those funds to pay professionals or provided that there are funds available to pay in full all anticipated administrative expenses.

16. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA CONTINUED MOTION FOR
KDG-4 COMPENSATION BY THE LAW OFFICE
HAGOP BEDOYAN/MV OF KLEIN, DENATALE, 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.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Klein DeNatale et. al.

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

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

17. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION TO EMPLOY CHRISTIAN D
MLT-1 JINKERSON AS ATTORNEY(S)
ANTHONY DA COSTA/MV 1-24-14 [[129](#)]
CHRISTIAN JINKERSON/Atty. for dbt.

No tentative ruling

18. [13-13284](#)-A-11 NICOLETTI OIL INC.
AIC-1
SOUTHERN COUNTIES OIL CO./MV
DAVID GOLUBCHIK/Atty. for dbt.
ROBERT BOLLAR/Atty. for mv.

CONTINUED MOTION FOR
ADMINISTRATIVE EXPENSES
12-19-13 [[237](#)]

Tentative Ruling

Motion: Motion for Allowance and Payment of Administrative Expenses

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

Disposition: Granted in part as to amount; denied in part as to payment

Order: Prepared by moving party

Moving Party: Southern Counties Oil d/b/a SC Fuels

Basis for Allowance: § 503(b) (9)

Requested Amount: \$125,086.25 (as agreed to by SC Fuels and the Debtor)

Requested Timing of Payment: Immediately

Requested Source of Payment: Not Provided

Southern Counties Oil d/b/a SC Fuels ("SC Fuels") has moved for allowance and payment of a \$125,086.25 administrative expense claim under § 503(b) (9). The debtor Nicoletti Oil (the "Debtor") and secured creditor Wells Fargo Bank ("Wells Fargo") have filed oppositions.

For the reasons set forth below, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. SC Fuels will be allowed an administrative expense claim of \$125,086.25 under § 503(b) (9).

DISCUSSION

The Bankruptcy Code provides an administrative expense claim, entitled to priority status, to creditors who have supplied goods to the debtor within the twenty-day period prior to the filing of the petition. See 11 U.S.C. §§ 503(b) (9), 507(a) (2). A motion for allowance and payment of a § 503(b) (9) claim requests two forms of relief.

Amount of Administrative Expense Claim

First, SC Fuels seeks the allowance of the amount of its administrative expense claim. Because SC Fuels has submitted competent evidence of its claim and no party has objected to the allowance of the claim, SC Fuels's administrative expense claim is allowed in the amount of \$125,086.25.

Timing and Source of Payment

Second, SC Fuels seeks payment of its allowed administrative expense claim from the Debtor in the near future. This request gives rise to two issues. The first is timing. At what point during the bankruptcy case must such claims be paid? The outer limitation in chapter 11 cases is the effective date of the plan. See 11 U.S.C. § 1129(a) (9) (A). But the court has discretion to allow earlier payment of the administrative claim. See *In re Arts Dairy, LLC*, 414 B.R. 219,

221 (Bankr. N.D. Ohio 2009) (citing *In re Plastech Engineeered Prods., Inc.*, 394 B.R. 147, 152 (Bankr. E.D. Mich. 2008)). In exercising this discretion, the court should consider weighing three factors: (1) prejudice to the debtor; (2) hardship to the claimant; and (3) potential detriment to the other creditors. *Id.* (citing *In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005)). SC Fuels's motion is supported by a declaration, but the declaration fails to address any of the *Arts* factors. As a result, SC Fuels has not carried its burden of proof.

The second issue relates to the source of the requested payment. Applicable law provides that the rights of secured creditors, including those who have an interest in cash collateral, trump the rights of priority creditors, including § 503(b)(9) creditors. See *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 5 (2000) ("Administrative expenses, however, do not have priority over secured claims."); see also 11 U.S.C. § 363(c)(2), (e) (restricting use of cash collateral). It is unclear from SC Fuels's motion, but it appears that SC Fuels seeks payment of its administrative expense claim from cash collateral (as the Debtor has no source of unencumbered cash). However, as stated in Wells Fargo's opposition, Wells Fargo has not consented to its cash collateral being used to pay § 503(b)(9) administrative expense claims.

Therefore, the court cannot authorize payment of SC Fuels's administrative expense claim.

CONCLUSION

For the reasons set forth above, the court will (1) grant the motion in part as to the allowance of the administrative expense claim, and (2) deny the motion in part as to the payment of the allowed administrative expense claim. SC Fuels will be allowed an administrative expense claim of \$125,086.25 under § 503(b)(9).

2:00 p.m.

1. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA SCHEDULING CONFERENCE RE:
TJD-1 MOTION FOR RELIEF FROM
WELLS FARGO BANK, NATIONAL AUTOMATIC STAY
ASSOCIATION/MV 10-16-13 [[35](#)]
CHRISTIAN JINKERSON/Atty. for dbt.
TODD DRESSEL/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling

3:00 p.m.

1. [10-16183](#)-A-7 SALMA AGHA
[13-1086](#)
AGHA V. CITIMORTGAGE, INC. ET
AL

CONTINUED MOTION VACATE LOCKOUT
AND RESTORE SALMA AGHA TO
POSSESSION OF 11622 HARRINGTON
STREET, BAKERSFIELD, CA 93311,
APN NUMBER 523-121-03-00-3
12-9-13 [[42](#)]

SALMA AGHA/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling