

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 26, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [12-19109](#)-A-7 DEANNA GRANT
DRJ-1
MONRAE ENGLISH/MV
- CONTINUED MOTION TO EMPLOY
MONRAE L. ENGLISH AS SPECIAL
COUNSEL AND MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF MONRAE L. ENGLISH, AND WILD,
CARTER & TIPTON, PC FOR MONRAE
L. ENGLISH, SPECIAL COUNSEL(S),
FEE: \$79724.26, EXPENSES:
\$587.80
1-6-14 [[47](#)]

DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

*[The hearing on this matter will follow all other matters on the 9:00
a.m. chapter 7 calendar for this date.]*

No Tentative Ruling

2. [12-19109](#)-A-7 DEANNA GRANT
RH-3
SHERYL STRAIN/MV
- CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CATHLEEN GRANT
11-1-13 [[40](#)]
- ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted in part (gross settlement amount) denied in part
without prejudice (approval of attorneys' fees and costs)

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).

APPROVAL OF COMPROMISE

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

creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

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.

APPROVAL OF ATTORNEYS' FEES AND COSTS

The court denies the motion in part without prejudice to the extent it requests approval of attorneys' fees and costs. Approval of compensation under § 330 is conditioned on employment under § 327(a). The attorneys seeking payment of their contingency fee and their costs from the estate have not yet been employed by this court.

However, a motion for retroactive employment of these attorneys and approval of their fees and expenses is before the court at docket control number DRJ-1. Because the motion to employ also seeks approval of compensation and costs, the court will decide the issue of whether to approve the attorneys' compensation and costs simultaneously with its decision on approval of the attorneys' retroactive employment.

3. [13-16714](#)-A-7 AGUSTIN NEGRETE CANCHOLA MOTION TO AVOID LIEN OF
FJG-1 CALIFORNIA BUSINESS BUREAU,
AGUSTIN NEGRETE CANCHOLA/MV INC.
1-14-14 [[14](#)]
- F. GIST/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).

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).

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The motion states that the value of the real property is \$145,000 and that the moving party holds a joint tenancy interest of \$72,500 in such property, which means that the moving party co-owns the real property in with a non-debtor party and holds a fractional $\frac{1}{2}$ interest in the property. The court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$145,000. To determine the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$147,946.68 from the jointly owned value of the entire fee interest in the property, which yields a net equity in the property of \$0.00. The court concludes that the value of the moving party's $\frac{1}{2}$ interest in the property in the absence of liens equals is also zero.

Thus, the total of all liens, excluding the consensual liens already deducted from the property's value, plus the exemption amount equals approximately \$18,000.00. The value of the moving party's fractional interest in the property in the absence of liens equals \$0.00.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

4. [13-15831](#)-A-7 JAMES/BRENDA WATSON MOTION FOR COMPENSATION FOR
SAS-1 BAIRD AUCTIONS AND APPRAISALS,
SHERYL STRAIN/MV AUCTIONEER(S), FEE: \$0.00,
EXPENSES: \$342.24
1-29-14 [[35](#)]
- PETER BUNTING/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.

Final Ruling

Motion: Compensate Auctioneer as to Storage and Repair Costs

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

Disposition: Granted

Order: Prepared by moving party

Sale Type: Public auction

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

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

5. [13-15831](#)-A-7 JAMES/BRENDA WATSON MOTION TO SELL
SAS-2 1-22-14 [[31](#)]
SHERYL STRAIN/MV
PETER BUNTING/Atty. for dbt.
SHERYL STRAIN/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: Various antiques described in the notice of hearing

Buyer: Debtors

Sale Price: The non-exempt equity is selling for \$2,285.00

Sale Type: Private sale subject to overbid opportunity

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

6. [12-19661](#)-A-7 JORGE/MARY LOU SANTOS MOTION TO EMPLOY GOULD AUCTION
PFT-1 AND APPRAISAL COMPANY AS
PETER FEAR/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
1-29-14 [[480](#)]
- RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

7. [13-15067](#)-A-7 CARLOS BERBEREIA MOTION TO EMPLOY TRUDI G.
TGM-1 MANFREDO AS ATTORNEY(S)
TRUDI MANFREDO/MV 1-21-14 [[19](#)]
MARK ZIMMERMAN/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

8. [13-13069](#)-A-7 DAVID/BEATRIZ HERRERA MOTION TO SELL
TMT-2 1-24-14 [[50](#)]
TRUDI MANFREDO/MV
ALBERT GARCIA/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: 1995 Nissan Hardbody pickup and 2007 Honda Accord

Buyer: Debtors

Sale Price:

-1995 Nissan Hardbody pickup: \$600 cash

-2007 Honda Accord: \$7,150 (\$4,250 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.

9. [13-17574](#)-A-7 MARIA BUSTOS OBJECTION TO DEBTOR'S CLAIM OF
JES-1 EXEMPTIONS
JAMES SALVEN/MV
1-22-14 [[16](#)]
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

10. [14-10077](#)-A-7 BRIAN DECANter ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-7-14 [[26](#)]
\$30 PAID

Final Ruling

The fee having been paid, the order to show cause is discharged.

11. [13-11288](#)-A-7 ABEL/STACY LUNA
SAS-1
SHERYL STRAIN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROSEMARIE LUNA
1-22-14 [[100](#)]

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

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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).

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.

12. [13-14394](#)-A-7 ADRIAN/ANA ORTEGA
JES-1
JAMES SALVEN/MV
JANINE ESQUIVEL/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

MOTION TO SELL
1-27-14 [[27](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Chevy Silverado Truck

Buyer: Debtors

Sale Price: \$7,400 (\$2,400 cash plus \$2,800 exemption credit and the sale will be subject to a lien held by Check-n-go securing a debt of \$2,200)

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.

13. [12-11696](#)-A-7 LONG YANG AND NANCY MOUA MOTION TO EMPLOY BLOCKSOM AND
TMT-1 BLOCKSOM, LLC AS ASSET RECOVERY
TRUDI MANFREDO/MV SPECIALIST
2-6-14 [[25](#)]

JAMES MILLER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

14. [14-10602](#)-A-7 LILLY CRAIGEN MOTION TO COMPEL ABANDONMENT
JRL-1 2-18-14 [[15](#)]
LILLY CRAIGEN/MV
JERRY LOWE/Atty. for dbt.
OST 2/20/14

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: Sole proprietorship in which the debtor provides newspaper and circular distributing services as well as collection services

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

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

9:15 a.m.

1. [13-14423](#)-A-7 DAVID/JENIFER JUSTICE CONTINUED STATUS CONFERENCE RE:
[13-1105](#) COMPLAINT
GEORGE V. JUSTICE 10-3-13 [[1](#)]
RUSSELL REYNOLDS/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

Based on the representation of settlement, the matter is continued to April 30, 2014, at 9:15 a.m.

2. [11-14426](#)-A-7 MARZPETUNI POGOSYAN APPLICATION FOR EXAMINATION
12-20-13 [[19](#)]
DAVID JENKINS/Atty. for dbt.

No tentative ruling.

3. [13-14682](#)-A-7 THERESA PIERRO CONTINUED STATUS CONFERENCE RE:
[13-1095](#) COMPLAINT
MANFREDO V. PIERRO 9-2-13 [[1](#)]
DAVID JENKINS/Atty. for pl.

No tentative ruling.

4. [13-16199](#)-A-7 JON/DONNA HAAS CONTINUED STATUS CONFERENCE RE:
[13-1113](#) COMPLAINT
HAAS V. MIDLAND FUNDING, LLC 10-14-13 [[1](#)]
TIMOTHY SPRINGER/Atty. for pl.
ADV. PROC. CLOSED 2/3/14

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

10:00 a.m.

1. [13-17567](#)-A-7 ASTRID HERRERA MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 1-27-14 [[13](#)]
THOMAS ARMSTRONG/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-17969](#)-A-7 VONG/AMY MOUA MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY
AMERICAN HONDA FINANCE 1-29-14 [[10](#)]
CORPORATION/MV
JERRY LOWE/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2013 Honda Odyssey

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.

3. [14-10079](#)-A-7 SALVADOR VALDIVIA MOTION FOR RELIEF FROM
PKB-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 1-17-14 [[16](#)]
PATRICK BRUSO/Atty. for mv.

Final Ruling

The case dismissed, the matter is dropped as moot.

4. [13-15483](#)-A-7 WILLIE/GARYALYNN WILHELM MOTION FOR RELIEF FROM
RFM-1 AUTOMATIC STAY
CITIZENS AUTOMOBILE FINANCE, 1-13-14 [[26](#)]
INC./MV
SCOTT LYONS/Atty. for dbt.
RAYMOND MOATS/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 2005 Astoria

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

10:30 a.m.

1. [13-17412](#)-A-7 ERIC/LETICIA ALDAZ PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
1-30-14 [[19](#)]
BENNY BARCO/Atty. for dbt.

Final Ruling

An amended reaffirmation agreement signed by Benny D. Barco, attorney for debtors, having been filed, this matter is dropped as moot.

2. [13-17765](#)-A-7 JOHNNY/YVONNE YOUNG REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY
1-27-14 [[18](#)]
MARK ZIMMERMAN/Atty. for dbt.

No tentative ruling.

3. [13-17484](#)-A-7 STEVEN/CONCEPCION MCPHETRIDGE REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
1-29-14 [[30](#)]
JERRY LOWE/Atty. for dbt.

No tentative ruling.

4. [13-17889](#)-A-7 NOEL/ROSALBA CORONEL PRO SE REAFFIRMATION AGREEMENT
WITH GOLDEN 1 CREDIT UNION
1-30-14 [[17](#)]

No tentative ruling.

5. [13-17989](#)-A-7 BLANCA ORTEGA PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE
1-31-14 [[14](#)]

No tentative ruling.

11:00 a.m.

1. [11-60663](#)-A-7 HUMMER TRANSPORTATION, CONTINUED OBJECTION TO CLAIM OF
RHT-5 INC. NATIONAL CONTINENTAL INSURANCE
ROBERT HAWKINS/MV COMPANY, CLAIM NUMBER 3
11-8-13 [[184](#)]
KENNETH ALLEN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

2. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION TO EMPLOY JAMES P.
RHT-6 INC. WAGONER AS SPECIAL COUNSEL
ROBERT HAWKINS/MV 2-11-14 [[241](#)]
KENNETH ALLEN/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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY CHRISTOPHER W.
LRP-7 PROPERTIES, LLC CAMPBELL AS TAX COUNSEL
DAVID STAPLETON/MV 2-12-14 [[1147](#)]
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

No tentative ruling.

2. [10-62315](#)-A-11 BEN ENNIS MOTION TO SELL FREE AND CLEAR
LRP-10 OF LIENS
DAVID STAPLETON/MV 1-29-14 [[1366](#)]
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [10-62315](#)-A-11 BEN ENNIS MOTION FOR AN ORDER
LRP-11 ESTABLISHING AN OMNIBUS CLAIMS
DAVID STAPLETON/MV OBJECTION PROCEDURE FOR CLAIMS
VALUED AT ZERO
2-12-14 [[1394](#)]
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Motion: Motion for Order Establishing Omnibus Claims Objection Procedure

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 plan administrator David Stapleton ("Stapleton") has moved for an order establishing a procedure for filing an omnibus objection to claims listed as having a \$0 value. Rule 3007(c) allows the court to authorize an omnibus claim objection, where an objection can be made to more than one claim. Here, there is cause to establish such a procedure. There are over 50 claims that have been scheduled as having a \$0 value. Requiring Stapleton to file 50 individual objections would be inefficient and cumbersome, especially when holders of such claims are unlikely to participate in these proceedings in a meaningful way.

The procedure set forth in the motion is appropriate. For the sake of clarification, the court wishes to confirm that Stapleton does not intend to deviate from the notice procedures for claim objections

under LBR 3007-1(b) and that any omnibus objection give sufficient notice to claimants under that local rule. Additionally, the court requests that Stapleton send to chambers a courtesy copy of the omnibus objection when it is filed.

4. [10-62315](#)-A-11 BEN ENNIS MOTION TO EMPLOY CHRISTOPHER W. CAMPBELL AS TAX COUNSEL
LRP-9 2-12-14 [[1389](#)]
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

5. [13-14037](#)-A-11 GIL/MARIA GILBUENA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-7-13 [[1](#)]
PETER FEAR/Atty. for dbt.

No tentative ruling.

6. [13-14037](#)-A-11 GIL/MARIA GILBUENA MOTION TO DISMISS CASE
PLF-4 2-4-14 [[219](#)]
GIL GILBUENA/MV

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Chapter 11 Case

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 debtors business involves the rental of real property residences as well as the maintenance of mail routes. The debtors have concluded that they are unable to propose a feasible and confirmable plan of reorganization.

On request of a party in interest, the court may convert or dismiss a Chapter 11 case for cause. 11 U.S.C. § 1112(b). The court finds that the debtors' inability to propose a confirmable plan constitutes cause to convert or dismiss the case under this subsection.

The debtors have proposed a liquidation analysis showing the absence of non-exempt equity available to pay unsecured creditors. Based on

the liquidation analysis proposed, it appears that the estate is administratively insolvent. The court will dismiss rather than convert the case.

7. [14-10268](#)-A-11 RODRIGO ROMERO
AOE-2
RODRIGO ROMERO/MV
ANTHONY EGBASE/Atty. for dbt.

MOTION TO USE CASH COLLATERAL
1-29-14 [[20](#)]

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: Select Portfolio Servicing

Expiration: April 30, 2014

Adeq. Protection: Replacement line and adequate protection payments
(\$654.92/month)

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

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

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

8. [13-13284](#)-A-11 NICOLETTI OIL INC.
KR-6
NICOLETTI OIL INC./MV

MOTION TO EXTEND EXCLUSIVITY
PERIOD FOR FILING A CHAPTER 11
PLAN AND MOTION/APPLICATION TO
EXTEND EXCLUSIVITY PERIOD FOR
FILING A CHAPTER 11 PLAN FILED
BY DEBTOR NICOLETTI OIL INC.
AND/OR MOTION TO CORRECT
DESIGNATION OF DEBTOR AS OTHER
THAN SMALL BUSINESS DEBTOR
2-12-14 [[287](#)]

DAVID GOLUBCHIK/Atty. for dbt.
STIPULATION

Tentative Ruling

Motion: Motion to Extend Exclusivity

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

Disposition: Court will approve stipulation

Order: Prepared by the moving party

The debtor Nicoletti Oil has filed a motion to extend the exclusivity period to file a disclosure statement and plan. However, Nicoletti Oil has now filed a stipulation with creditor ExxonMobil Oil that addresses both Nicoletti Oil's motion to extend exclusivity and ExxonMobil Oil's motion to extend time to file proofs of claim. Unless another party in interest has grounds to object to the motion or the stipulation at the hearing, the court will enter an order approving the parties' stipulation.

9. [13-13284](#)-A-11 NICOLETTI OIL INC.
LRP-4
EXXONMOBIL OIL CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EXTEND TIME TO FILE
PROOFS OF CLAIM
2-12-14 [[282](#)]

Tentative Ruling

Motion: Motion to Extend Time to File Proofs of Claim

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

Disposition: Court will approve stipulation

Order: Prepared by the moving party

The creditor ExxonMobil Oil has filed a motion to extend the time to file proofs of claim. However, the debtor Nicoletti Oil has now filed a stipulation with ExxonMobil Oil that addresses both Nicoletti Oil's motion to extend exclusivity and ExxonMobil Oil's motion to extend time to file proofs of claim. Unless another party in interest has grounds to object to the motion or the stipulation at the hearing, the court will enter an order approving the parties' stipulation.

10. [3-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-8-13 [[1](#)]

CHRISTIAN JINKERSON/Atty. for dbt.

Final Ruling

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

11. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 2-11-14 [[167](#)]
CHRISTIAN JINKERSON/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.
STIPULATION

Final Ruling

The matter resolved by stipulation and order, the matter is dropped as moot.

1:45 p.m.

1. [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 matter is continued to April 2, 2014, at 1:45 p.m.

2. [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 matter is continued to April 2, 2014, at 1:45 p.m.