

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

MARCH 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. [13-16509](#)-A-7 LUCIO GARCIA MOTION TO SELL
JES-2 2-12-14 [[25](#)]
JAMES SALVEN/MV

LAYNE HAYDEN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1993 Jeep

Sale Type: Public auction

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. [13-17820](#)-A-7 ANDRE EDMONDS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-24-14 [[43](#)]

STEPHEN LABIAK/Atty. for dbt.
\$176 FILING FEE PAID 2/24

Tentative Ruling

Although the fee has been paid in full, the Order to Show Cause requires appearances and a hearing. The matter will be called.

5. [13-13866](#)-A-7 SCOTT MONROE
TGF-2
JEFFREY VETTER/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

CONTINUED 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: Granted in part, denied in part
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 a \$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). 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.

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 secures a debt for \$2,971.19 plus interests and other costs.

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 the scope of another subsection of § 363(f) in order to determine if a sale may be free and clear of a lien. Thus, interpreting § 363(f)(3) to exclude liens described in § 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" including liens held by parties that consent to a sale free and clear. 11 U.S.C. § 363(f)(3) (emphasis added).

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.

6. [13-13673](#)-A-7 JESUS/ROSA ALVARADO MOTION TO AVOID LIEN OF GE
GMA-1 CAPITAL RETAIL BANK
JESUS ALVARADO/MV 2-11-14 [[19](#)]
GEOFFREY ADALIAN/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).

The motion states that property has been claimed exempt. This statement is vague and implies incorrectly that the property has been claimed entirely exempt. The declaration states expressly that the real property is entirely exempt. Having reviewed the debtors' Schedule C, the court notes that the exemption amount is \$1000.

In the future, counsel for the debtor should include the specific amount the exemption in the motion, consistent with Schedule C, as well as the amount of the respondent's judicial lien, the total of all other liens on the property, and the property's fair market value.

Nevertheless, the court finds that a prima facie case has been made for the relief requested. The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

7. [13-17179](#)-A-7 ABADAEL PEREZ HERNANDEZ AND ROSA PEREZ DIAZ ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-21-14 [[35](#)]
REYNALDO PULIDO/Atty. for dbt.
\$30 PAID 2/21/14

Tentative Ruling

Although the fee has been paid in full, the Order to Show Cause requires appearances and a hearing. The matter will be called.

8. [14-10085](#)-A-7 JONG PARK MOTION TO CONVERT FROM CHAPTER 7 TO CHAPTER 11 CASE
2-5-14 [[19](#)]
JONG PARK/MV
STEVE BARKIN/Atty. for dbt.
DISMISSED 2/10/14

Final Ruling

The case dismissed, the matter is dropped as moot.

9. [12-11696](#)-A-7 LONG YANG AND NANCY MOUA MOTION TO EMPLOY BLOCKSOM AND
TMT-2 BLOCKSOM, LLC AS ASSET RECOVERY
TRUDI MANFREDO/MV SPECIALIST
2-14-14 [[36](#)]

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

Final Ruling

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

9:15 a.m.

1. [12-18810](#)-A-7 JAMES MERCER CONTINUED STATUS CONFERENCE RE:
[13-1082](#) COMPLAINT
MANFREDO V. ESTATE OF SUSAN E. 7-23-13 [[1](#)]
MERCER ET AL
JAMES MILLER/Atty. for pl.
NOTICE OF SETTLEMENT 10/7/13

Final Ruling

The status conference is continued to June 11, 2014, at 9:15 a.m. to allow plaintiff time to obtain approval of a motion to compromise controversy.

10:00 a.m.

1. [13-17820](#)-A-7 ANDRE EDMONDS MOTION FOR RELIEF FROM
MLE-1 AUTOMATIC STAY
HOLLY CARTER/MV
2-10-14 [[36](#)]
STEPHEN LABIAK/Atty. for dbt.
MONRAE ENGLISH/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: State court action described as *Holly Carter v. Andre Edmonds, M.D. d/b/a Tiffany's Luxury Medispa, Inc., et al.*

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

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) 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.

2. [13-17866](#)-A-7 PHILLIP CHAVEZ
EAT-1
NATIONSTAR MORTGAGE LLC/MV
JEFFREY ROWE/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-6-14 [[20](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 5167 East Braly Avenue, 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).

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

3. [13-17191](#)-A-7 ISABELL JEGEN
PPR-1
BANK OF AMERICA, N.A./MV
PETER FEAR/Atty. for dbt.
CASSANDRA RICHEY/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-7-14 [[17](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 5834 West Ashcroft Avenue, Fresno, CA

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

AS TO 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. [13-17020](#)-A-7 ANGELA ROBERSON CONTINUED REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
1-17-14 [[18](#)]

JAMES MILLER/Atty. for dbt.

No tentative ruling.

2. [13-17029](#)-A-7 JAVIER/LISA TORREZ REAFFIRMATION AGREEMENT WITH CONSUMER PORTFOLIO SERVICE
2-10-14 [[15](#)]

DAVID GALE/Atty. for dbt.

No tentative ruling.

3. [13-17765](#)-A-7 JOHNNY/YVONNE YOUNG CONTINUED REAFFIRMATION AGREEMENT
1-27-14 [[18](#)]

MARK ZIMMERMAN/Atty. for dbt.

No tentative ruling.

4. [13-17281](#)-A-7 JASON/MAYRA LOPEZ PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
2-21-14 [[24](#)]

No tentative ruling.

5. [14-10087](#)-A-7 JOHN WEISNER PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
2-10-14 [[11](#)]

No tentative ruling.

6. [13-17290](#)-A-7 LARRY/DESIREE BLAIR PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
2-11-14 [[19](#)]

No tentative ruling.

1:30 p.m.

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

No tentative ruling.

2. [10-62315](#)-A-11 BEN ENNIS OBJECTION TO CLAIM OF INTERNAL
LRP-5 REVENUE SERVICE, CLAIM NUMBER 4
DAVID STAPLETON/MV 1-9-14 [[1339](#)]
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim
Notice: LBR 3007-1(b)(1); written opposition required
Disposition: Sustained
Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 court will sustain the objection. The United States, on behalf of the IRS, has filed a non-opposition to the sustaining of the objection. The debtor, who filed the claim on behalf of the claimant, has not substantiated the claim or provided documentation to prove that the claim exists. The debtor also disputed the claim before filing it.

3. [10-62315](#)-A-11 BEN ENNIS CONTINUED MOTION TO EMPLOY
LRP-9 CHRISTOPHER W. CAMPBELL AS TAX
DAVID STAPLETON/MV COUNSEL
2-12-14 [[1389](#)]
- RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,
EVN-7 LLC
BHAVIKA'S PROPERTIES, LLC/MV
CONTINUED MOTION TO VALUE
COLLATERAL OF CNA PROPERTIES
LLC AND/OR MOTION FOR ADEQUATE
PROTECTION
1-15-14 [[79](#)]

ELAINE NGUYEN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion has been continued by stipulation and order to April 16,
2014, at 1:30 p.m.
5. [13-11766](#)-A-11 500 WHITE LANE LP
CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-15-13 [[1](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.
6. [13-11766](#)-A-11 500 WHITE LANE LP
DMG-11
500 WHITE LANE LP/MV
MOTION TO EMPLOY N12
INVESTMENTS INC. AS BROKER(S)
AND/OR MOTION FOR COMPENSATION
FOR N12 INVESTMENTS INC.,
BROKER(S), FEE: \$51,000.00,
EXPENSES: \$0.00
2-13-14 [[226](#)]

D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.
7. [14-10268](#)-A-11 RODRIGO ROMERO
AOE-2
RODRIGO ROMERO/MV
ANTHONY EGBASE/Atty. for dbt.
CONTINUED MOTION TO USE CASH
COLLATERAL
1-29-14 [[20](#)]

No tentative ruling.

8. [14-10268](#)-A-11 RODRIGO ROMERO
KMR-1
U.S. BANK NATIONAL
ASSOCIATION/MV

MOTION FOR ADEQUATE PROTECTION
AND/OR MOTION TO APPROVE
STIPULATION ON USE OF CASH
COLLATERAL , MOTION TO VALUE
COLLATERAL AND PLAN TREATMENT
WITH REGARD TO FIRST LIEN ON
REAL PROPERTY
2-24-14 [[41](#)]

ANTHONY EGBASE/Atty. for dbt.
KELLY RAFTERY/Atty. for mv.

No tentative ruling.

9. [13-14894](#)-A-11 JORENE MIZE
RAF-10

DISCLOSURE STATEMENT FILED BY
DEBTOR JORENE E. MIZE
1-29-14 [[205](#)]

ROSEANN FRAZEE/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Approve Disclosure Statement

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

Disposition: Continued to allow Debtor to file amended disclosure statement and plan by April 2, 2014, with continued hearing on April 30, 2014

Order: Civil minute order

The debtor Jorene Mize (the "Debtor") has filed a disclosure statement (the "Disclosure Statement") and plan (the "Plan") and now requests court approval of the Disclosure Statement. The creditor Lester Fry ("Fry") has filed an objection raising a number of issues. For the reasons set forth below, the court will continue the matter to allow the Debtor to file an amended disclosure statement and plan.

The Debtor is to file an amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, April 2, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, April 30, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

DISCUSSION

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

omitted).

The court now turns to its own issues with the Disclosure Statement and Plan, incorporating the objecting creditor's pertinent objections. The court determines that all other issues raised by the objecting creditor and not addressed in this ruling are better left for the confirmation hearing (e.g., applicability of the absolute priority rule, feasibility of the Plan, the Plan not being proposed in good faith).

Class of Interest Holders. Although the Disclosure Statement mentions the class of interest holders, the Plan itself does not provide for a class of interest holders (i.e., the Debtor). The Plan must therefore show how the Debtor will be treated under the Plan and whether she will be impaired.

Class of General Unsecured Claims. The language in the Plan and the Disclosure Statement regarding how the Class 5 general unsecured claims will be treated under the Plan must be redrafted in a clearer manner. The present language suggests that each unsecured creditor will be paid \$1,600 each month, but the Debtor likely intended to provide that she will pay into the Plan \$1,600 each month with each unsecured creditor receiving its pro rata share of \$1,600 each month.

Injunction. The Disclosure Statement discusses that an injunction against creditors provided by the Plan. However, no language regarding an injunction is provided in the Plan. Further, the form of the injunction language does not comply with Bankruptcy Rule 3016(c), which provides that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction."

Retention of Jurisdiction. The section in the Disclosure Statement discussing the court's retention of jurisdiction does not match the section in the Plan discussing the same subject.

List of Assets. The Disclosure Statement does not include an itemized list of the Debtor's available assets. The Debtor may either list these assets separately as an exhibit or incorporate the assets as part of the liquidation analysis, but the Debtor must include a list of available assets.

Liquidation Analysis. The liquidation analysis is too general and must be made more detailed. Instead of simply aggregating the value of properties together, the amount of the liens together, and the amount of the exemptions together, the Debtor must include the specific real and personal properties, the applicable lien for each property, and the applicable exemption claimed for each property. This is to show how much nonexempt equity there is in each property, and then the Debtor can aggregate how much total nonexempt equity is available in a chapter 7 case.

Feasibility Analysis. The feasibility analysis is deficient and must be supplemented. In addition to the projected income and expense figures currently included in the analysis, the Debtor must include historical income and expense figures (i.e., from the monthly operating reports) displayed in a similar, detailed manner as Exhibit C. These figures should go back at least 12 months since the Debtor mentions some seasonal variation. If the historical figures differ from the projected figures (i.e., the projected monthly income is

higher than historical monthly income), the Debtor must include an explanation for the difference in the Disclosure Statement.

Risk Factors Analysis. The Disclosure Statement does not discuss any specific, potential risk factors that may potentially affect the Debtor's ability to perform under the Plan.

Plan Modification. Although it is mentioned in the Disclosure Statement, plan modification is not provided for in the Plan.

Post-Confirmation Dismissal or Conversion. Although it is mentioned in the Disclosure Statement, post-confirmation dismissal or conversion is not provided for in the Plan.

UST Quarterly Fees and Status Reports. The Plan does not address the Debtor's continuing obligations to pay quarterly fees to the U.S. Trustee and to file and serve post-confirmation status reports.

CONCLUSION

For the reasons set forth above, the court will continue the matter to allow the Debtor to file an amended disclosure statement and plan.

The Debtor is to file an amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, April 2, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, April 30, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

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

No tentative ruling.

11. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION TO DISMISS CASE
MTL-4 2-19-14 [[187](#)]
ANTHONY DA COSTA/MV
CHRISTIAN JINKERSON/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 in possession have requested dismissal of their bankruptcy case under § 1112(b). The court may grant such relief if cause supports the dismissal. The grounds for dismissal are that the debtors are negotiating a forbearance agreement with Wells Fargo Bank, N.A., the debtors' major secured creditor, who is also an unsecured creditor, and that this agreement will stay receivership and non-judicial foreclosure proceedings to allow debtors to refinance their secured business debt.

At the hearing, the court will determine whether any creditor opposes the motion or contends at the hearing that conversion to chapter 7 would be in the best interests of creditors. Unless such an opposition or contention is raised, the court will dismiss the case.

12. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION FOR COMPENSATION FOR
MTL-5 CHRISTIAN D JINKERSON, DEBTOR'S
CHRISTIAN JINKERSON/MV ATTORNEY(S), FEE: \$24,259.00,
EXPENSES: \$1,715.38
2-19-14 [[192](#)]

CHRISTIAN JINKERSON/Atty. for dbt.

No tentative ruling.

3:00 p.m.

1. [12-10802](#)-A-7 TERENCE MOORE TRIAL RE: COMPLAINT
[12-1135](#) 8-1-12 [[1](#)]
MOORE V. MOORE
RANDOLF KRBECHER/Atty. for pl.
RESCHEDULED FOR 4/16/14

Final Ruling

The trial has been continued to April 16, 2014, at 3:00 p.m. pursuant to an order entered March 3, 2014, ECF No. 67.