

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

APRIL 8, 2015

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [13-10601](#)-A-13 REGINA MAYFIELD MOTION TO DISMISS CASE
MHM-1 2-20-15 [[34](#)]
REGINA MAYFIELD/MV
SUSAN SALEHI/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [11-61903](#)-A-13 ROBERT/CHRISTIAN OSORIO MOTION TO MODIFY PLAN
RSW-2 3-4-15 [[34](#)]
ROBERT OSORIO/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

3. [15-10003](#)-A-13 ALLISON SMITH ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-11-15 [[24](#)]
SUSAN SALEHI/Atty. for dbt.
INSTALLMENT PAID \$77.00

Tentative Ruling

Although the installment due March 6, 2015, has been paid, the April 6, 2015 installment has not yet been paid. In the event that the \$77 installment due April 6, 2015, has not been paid by the time of the hearing, the case will be dismissed.

4. [15-10003](#)-A-13 ALLISON SMITH
MHM-1
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-4-15 [[20](#)]

Final Ruling

Objection: Objection to Debtor's Claim of Exemptions

Notice: LBR 9014-1(f)(1) / 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 bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konhoff (In re Konhoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d). "California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); *accord* 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); *accord In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); *see also Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). *See* Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. *See* Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

The debtor has relied on the regular non-bankruptcy exemptions excluding the exemptions under section 703.140(b). The debtor has

improperly exempted a tax refund under exemption statutes designed for personal injury claims and settlements and wrongful death claims and settlements. The plain language of these provisions, cited by the trustee in the objections, does not include tax refunds within their scope. Accordingly, the court will sustain the objection.

5. [14-14809](#)-A-13 RICKY/SHANNON SARGENT MOTION TO CONFIRM PLAN
PLG-2 1-28-15 [[45](#)]
RICKY SARGENT/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

6. [15-10014](#)-A-13 LORNA MANGIDUYOS OBJECTION TO CONFIRMATION OF
EAT-1 PLAN BY U.S. BANK TRUST, N.A.
U.S. BANK TRUST, N.A./MV 3-11-15 [[29](#)]
DARLENE VIGIL/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained; 75 day order imposed

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

CONFIRMATION

Improper Classification of Secured Claim

Secured creditor U.S. Bank Trust, N.A., as trustee, objects to confirmation of the debtor's plan. It holds the first deed of trust against the debtor's real property located at 24061 Oleander Ave., Tehachapi, CA.

The secured creditor argues that the plan is ambiguous as to the treatment of its claim. It contends that its claim is classified in both Class 1 and Class 4.

Facially, the plan does appear to classify a secured claim twice. Both Class 1 and Class 4 contain a creditor called "Caliber Home Loan"—the court will presume, in the absence of a dispute by the debtor on this point, that the claim classified in Classes 1 and 4 is held by the presently objecting secured creditor and that the multiple classification problem does not arise from both a first and second mortgage held by the same creditor.

Unless the debtor can show that the Class 1 and Class 4 claims are different claims, the court will sustain the objection on this ground.

Feasibility

The secured creditor also raises an objection based on feasibility. It argues that the proposed monthly plan payments will not amortize the secured claim over the term proposed by the debtor's chapter 13 plan. Facially, this appears to be the case. The arrears shown are \$101,000. The arrearage dividend is \$372.00. The plan's term is 36 months. Class 1 shows 2% interest on the arrearage dividend, but even at 0% interest, the arrearage dividend would not pay the arrears in full over such term.

The secured creditor also notes that Schedule J shows negative income of -\$1108.00. The court takes judicial notice of Schedule J and its contents on its docket, and the declaration concerning debtor's schedules. In the absence of an objection based on authenticity by the debtor, the court will presume they are authentic.

Schedule J does show negative income. However, Schedule J may have been improperly completed. If the Class 1 claim is in default as it appears based on a large arrearage claim shown in the plan, then it must be classified in Class 1, and included in the plan payment. As a result, it should not be deducted as an expense on Schedule J. Currently, the mortgage payment owed to the secured creditor in the amount of \$3163 appears to be included as an expense on Schedule J.

But even if the mortgage expense of \$3163 is excluded from the calculation on Schedule J, the net income would only be \$2055 (-\$1108 plus \$3163). This is insufficient to fund an arrearage payment, whatever that might be, along with making a plan payment that includes maintaining a monthly mortgage payment in the amount of \$3163. The court will sustain the objection on the ground of infeasibility.

75-DAY ORDER

The court also will order that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

U.S. Bank Trust, N.A.'s objection to confirmation has been presented to the court. Having considered the objection, and oppositions, responses and replies, if any, raised at the hearing, and having heard oral argument, if any, presented at the hearing,

IT IS ORDERED that the objection is sustained. Confirmation is denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of the hearing on this objection, April 8, 2015. If a Chapter 13 plan has not been confirmed by such date, the

court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

7. [14-15516](#)-A-13 FERNANDO/GABRIELA RUIZ CONTINUED OBJECTION TO
MDE-1 CONFIRMATION OF PLAN BY THE
THE BANK OF NEW YORK/MV BANK OF NEW YORK
12-19-14 [[15](#)]
- ROBERT WILLIAMS/Atty. for dbt.
MARK ESTLE/Atty. for mv.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

8. [14-15516](#)-A-13 FERNANDO/GABRIELA RUIZ CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-5-15 [[40](#)]
- ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

9. [14-15516](#)-A-13 FERNANDO/GABRIELA RUIZ CONTINUED MOTION TO VALUE
RSW-1 COLLATERAL OF THE BANK OF NEW
YORK MELLON
FERNANDO RUIZ/MV 1-20-15 [[29](#)]
- ROBERT WILLIAMS/Atty. for dbt.
ORDER, DATED 2/26/15 ECF NO.
66

Final Ruling

Resolved by Order entered February 26, 2015, ECF #66, the matter is dropped as moot.

10. [14-12326](#)-A-13 GARY WRIGHT AND KIM MOTION TO MODIFY PLAN
RSW-2 GRIFFIN-WRIGHT 2-19-15 [[53](#)]
GARY WRIGHT/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [10-63827](#)-A-13 TIMOTHY/BECKY SHELDON MOTION FOR COMPENSATION FOR
PK-4 PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
3-18-15 [[86](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Application: First and Final Allowance Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

Patrick Kavanagh, attorney for the debtors, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,015.00 and reimbursement of expenses in the amount of \$74.02.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "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 a final basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,015.00 and reimbursement of expenses in the amount of \$74.02. The aggregate allowed amount equals \$5,089.02. As of the date of the application, the applicant held a retainer in the amount of \$1,726.00. The amount of \$3,274.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

12. [12-13727](#)-A-7 GREGORY SCHULTZ MOTION TO DISMISS CASE
MHM-5 2-20-15 [[162](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
CONVERTED 3/26/15

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

13. [11-16328](#)-A-13 CHARLES THOMEY AND MOTION TO DISMISS CASE
MHM-2 TIFFANY RILEY-THOMEY 2-19-15 [[81](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [15-10130](#)-A-13 KAMMI SARGENT MOTION TO VALUE COLLATERAL OF
PK-2 BANK OF AMERICA N.A.
KAMMI SARGENT/MV 3-10-15 [[15](#)]
PATRICK KAVANAGH/Atty. for dbt.
ORDER, 3/25/15, ECF NO. 23

Final Ruling

Resolved by order approving stipulation, ECF #23, the matter is dropped as moot.

15. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS MOTION TO DISMISS CASE
MHM-1 2-20-15 [[29](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [15-10348](#)-A-7 JIMMIE SCHONMANN MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
1-31-15 [[5](#)]
JIMMIE SCHONMANN/MV
PHILLIP GILLET/Atty. for dbt.
ORDER 2/10/15

Tentative Ruling

Application: Waiver of Filing Fee

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

Disposition: Denied, Clerk will issue an installment order

Order: Civil minute order

Debtor Jimmie Schonmann applied for a waiver of the filing fee under 27 U.S.C. § 1930(f)(1). Unable to reconcile the debtor's representations as to income, expenses and payment of the filing fee, this court issued a Scheduling Order, filed February 10, 2015, ECF #11, and set the matter for hearing. Schonmann has augmented the record in support of his application. Chapter 7 trustee Randell Parker opposes the application.

DISCUSSION

Title 28 U.S.C. § 1930(f)(1) authorizes the court to waive fees for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line...applicable to a family of the size involved"; and (2) who is otherwise unable to pay the filing fee in installments. The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. In re Ross, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

Here, the Application to Have the Chapter 7 Filing Fee Waived contains representations that cannot be reconciled. The Application ¶¶ 17, 19 states that the debtor, and not someone on her behalf, paid an attorney \$1,200.00 for representation in this Chapter 7 case. But the Application ¶¶ 2, 6 states that the applicant's income is from Social Security in the amount of \$1,210.00 per month and expenses are \$1,208.08 per month. Both income and expenses are stable. The debtor has not received income other than Social Security after 2013. See, Statement of Financial Affairs No. 1 & 2, filed January 31, 2015, ECF #1. Disposable monthly income of \$1.92 per month and payment of an attorney \$1,200 cannot be reconciled.

The debtor argues that paid his attorney in installments between August 22, 2014, and September 8, 2014, See Statement of Financial Affairs No. 9, filed January 31, 2015, ECF #1, and that he was able

to do so by ceasing payments to creditors for "several months" and using the money to pay his attorney. Declaration of Schonmann ¶¶ 4-5, filed February 23, 2015, ECF # 25. Given monthly disposable income of \$1.92 per month and a retainer of \$1,200, this is not logically possible. The debtor has failed to sustain his burden of proof and the application will be denied.

CIVIL MINUTE ORDER

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

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

Jimmie Schonmann's Application for Waiver of Filing Fee has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that: (1) the Application for Waiver of Filing Fee is denied; (2) Schonmann may pay the filing fee in installments; and (3) the Clerk of the Court will issue an order for payment of the filing fee in installments.

17. [10-60451](#)-A-13 JAVIER HEREDIA
RSW-3
JAVIER HEREDIA/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
2-24-15 [[49](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

18. [14-12360](#)-A-13 SERGIO BUENO
RSW-3
SERGIO BUENO/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TECHNICAL WORKS
CALIFORNIA, LLC
1-30-15 [[71](#)]

ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied
Order: Civil minute order

Debtor Sergio Bueno seeks approval of a compromise with Technical Works California, LLC. Under a prejudgment writ of attachment, the Kern County Sheriff is holding \$19,958.32. The debtor seeks approval of a Settlement Stipulation, filed January 30, 2015, ECF # 73, which provides that Technical Works California, LLC will retain 75% of the funds held by the Sheriff and debtor Bueno will retain 25% of those funds. Debtor Bueno admits that the funds held belong to his estate but (1) denies owing creditor Technical Works California, LLC any monies; and (2) argues that he has no money to litigate the matter with Technical Works California, LLC.

This matter was continued from March 4, 2015, to allow Technical Works California, LLC to file supplemental declarations. Technical Works has done so, offering (1) a brief; (2) declaration of Scott Perlman, Technical Works' attorney; (3) declaration of Yvonne Turner, a branch manager for Technical Works; and (4) supporting exhibits. Having consider the supplemental record, the motion will be denied.

DISCUSSION

Legal Standards

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.*

To show that a compromise is fair and equitable, the movant must provide specific factual information about the claims being compromised. Analysis of a compromise under the fair and equitable standard and its concomitant factors under *In re A & C Properties* "is inherently fact-intensive, relative, and contextual." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 290 (B.A.P. 9th

Cir. 2005). The court need only find that the settlement is in the range of reasonable to grant the motion.

Analysis

Bueno has not sustained his burden. The likelihood of success is neutral. Bueno contends that the money in dispute belonged to him, individually, and he earned the money from his sole proprietorship, Land Coast Mechanical Engineering. Declaration of Bueno ¶ 1, filed January 30, 2015, ECF # 74. Technical Works disputes this, arguing that Land Coast is a partnership or corporation. A fictitious business statement filed by Technical Works supports the debtor's representation. Exh. A to Declaration of Arciniaga, filed January 30, 2015, ECF # 75. Contrary evidence also exists. See Exh. A to Declaration of Turner, filed March 25, 2015, ECF # 85 (contract describing Land Coast as a corporation). But the evidence is equivocal. The benefit to the estate is small, only 25% of the total amount in dispute. Since the funds are in the hands of the Kern County Sheriff, there are no difficulties in collection. The litigation is not complex, and the expense and delay are minimal. Bueno's argument that he cannot afford counsel is undercut by the fact that his attorney, whether Robert Williams or special counsel, can be paid as an administrative expense through the plan. 11 U.S.C. § 330(a)(4)(B). Finally, the Chapter 13 trustee, who speaks on behalf of holders of unsecured claims, opposes the motion. 11 U.S.C. 103(b)(4). Viewed in toto, the court does not find that the movant has sustained its burden under the *A & C Properties*, factors.

VIOLATIONS OF LOCAL RULES AND GUIDELINES

Motions filed in the Eastern District of California must comply with applicable local rules and guidelines. LBR 9004-1(a). Revised Guidelines for the Preparation of Documents, Form EDC 2-901 require that pleadings, supporting documents and exhibits be filed as separate documents. Revised Guidelines for the Preparation of Documents (Revised January 17, 2014) ¶ 9, Form EDC 2-901. Technical Works California LLC has not done so. See Technical Works California, LLC Supplemental Brief, filed March 25, 2015, ECF # 85. Future violations of local rules, general orders or guidelines may result in summary denial of the motion, overruling the objection, striking the opposition or an order to show cause for sanctions against counsel.

CIVIL MINUTE ORDER

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

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

Debtor Sergio Bueno's motion to approve compromise with Technical Works California, LLC is denied.

19. [11-63273](#)-A-13 DARRIN/ERIN WEDEKING
SJS-3
DARRIN WEDEKING/MV
SUSAN SALEHI/Atty. for dbt.
RESPONSIVE PLEADING,

MOTION FOR PROTECTIVE ORDER
3-3-15 [[74](#)]

Tentative Ruling

Motion: Protective Order Re Barring Discovery
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Erin Wedeking moves under Fed. R. Civ. P. 26(c) for a protective order barring discovery. The request for a protective order arises from the debtor's objection to Claim No. 7-1, filed by Sallie Mae/Navient Solutions, Inc. The motion will be denied without prejudice.

DISCUSSION

Legal Standards

Rule 26(c) provides, "A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending--or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense..." Fed. R. Civ. P. 26, incorporated by Fed. R. Bankr. P. 7026.

The burden of proof is on the party seeking to limit the discovery. *Blankenship v. Heart Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The moving party must show a particular and specific need for the order. *Id.* The analysis requires at least two showings. First, the movant must show good cause. *Id.* Upon a proper showing by a qualified medical professional, that the proceeding will be a threat to the health of the deponent is cause. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). Second, even if cause is shown, the court must balance the interests of the parties to determine if a protective order should issue and, if so, the scope of that order. *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 669 F.2d 620, 623 (10th Cir. 1982); *Wood v. McEwen*, 644 F.2d 797, 801-802 (9th Cir. 1982).

Discussion

Two types of protective orders are possible in these cases: (1) orders that preclude the deposition altogether; and (2) orders that limit the scope, duration or timing. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012).

Orders That Prohibit

Protective orders that preclude depositions are disfavored. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). Ravi

Goklaney, declares that Erin Wedeking is "unfit to deal with any court proceeding." Decl. of Goklaney ¶ 3, filed March 27, 2015, ECF #84. The force of his declaration is undercut by Erin Wedeking's appearance at the meeting of creditors on January 23, 2012, and by its breadth (she is unfit to "deal with any court proceeding"). Dr. Boklaney does not explain why the debtor is unable to participate in non-stressful forms of discovery, e.g. answer interrogatories.

Moreover, a request to bar all discovery is a drastic remedy. The court must balance the need of the movant to be protected from process which she is unable to handle with the needs of the opposing party to prepare for an evidentiary hearing. Among the arguments offered in objection is that Erin Wedeking is that Erin Wedeking (1) forged Darrin Wedeking's name to the loan documents that form the basis of this claim; and (2) lacked the capacity to enter into a contract. As such her testimony is central to this case. Navient's need for discovery from her is clear. In contrast, Erin Wedeking's showing of inability to participate in any discovery is of less force and effect.

Orders That Limit Scope, Duration or Timing

Moreover, an order limiting scope, duration and timing is unnecessary at this time. A deposition is presumptively only 1 day, seven hours long. Fed. R. Civ. P. 30(d)(1), *incorporated by* Fed. R. Bankr. P. 7030 ("Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination."). A protective order at this time would be premature. If Ms. Wedeking or her counsel believes the scope, duration, timing or manner of the deposition presents cause under Rule 26(c) she may renew the motion.

More importantly, a less intrusive remedy exists. If during the course of the deposition, Erin Wedeking or her counsel are of the mind that the scope, duration, or manner of the deposition is inappropriate they may suspend the deposition and move to terminate or limit it. Rule 30 contemplates that precise problem. "At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order." Fed. R. Civ. P. 30(d)(3), *incorporated by* Fed. R. Bankr. P. 7030. *See also, Ralston Purina Co. v. McFarland*, 550 F.2d 967, 973-974 n. 11 (4thCir. 1977).

For each of these reasons, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

Ben Ennis's motion for protective order has been presented to the court. Having considered the motion, oppositions, responses and

replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that: (1) the motion for a protective order barring discovery is denied without prejudice; and (2) any prior to protective order, including that order included in the Civil Minute Order, filed February 10, 2015, ECF #68, is lifted.

20. [15-10373](#)-A-13 GREGORIO/CYNTHIA SALAZAR MOTION TO CONFIRM PLAN
SJS-1 2-17-15 [[18](#)]
GREGORIO SALAZAR/MV
SUSAN SALEHI/Atty. for dbt.
ORDER, 3/27/15, ECF NO. 31
CONTINUING TO 5/6/15

Final Ruling

The hearing continued to May 6, 2015, at 9:00 a.m., the matter is dropped as moot.

21. [15-10373](#)-A-13 GREGORIO/CYNTHIA SALAZAR MOTION FOR TURNOVER OF PROPERTY
SJS-2 OF THE ESTATE
GREGORIO SALAZAR/MV 3-2-15 [[21](#)]
SUSAN SALEHI/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Turnover Property of the Estate

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

Disposition: Denied without prejudice

Order: Civil minute order

By this motion, the debtors request relief against non-debtor respondents outside the procedural protections of an adversary proceeding. The respondents include First Financial of California, Consumer Advocates and Associates, and Jon Fu. A sum of money is sought from all three respondents. But Rule 7001(1) only excepts turnover proceedings against debtors from the strictures of an adversary proceeding. The court will therefore deny the motion on procedural grounds.

22. [13-17176](#)-A-13 CURTIS DUNMORE AND MOTION TO DISMISS CASE
MHM-2 DEMETRIA JOHNSON 2-20-15 [[68](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by the trustee

The trustee has moved to dismiss this case on grounds that cause exists under § 1307(c)(1) and (6) for dismissal. Payments under the proposed plan are delinquent according to the trustee in the amount of \$1215. The debtors respond that they have made an \$800 payment on March 4, 2015, and that they will pay another payment on March 26, 2015, that they believe will bring them current. The debtors' response concedes the existence of a delinquency by not disputing the grounds for the trustee's motion and by stating that what payments have been made and are being made to "bring them current." Accordingly, the court finds that a delinquency exists and must dismiss the case for unreasonable delay that is prejudicial to creditors and for material default under the terms of a confirmed plan.

23. [14-15883](#)-A-13 MARCHELETTA MADISON MOTION FOR SANCTIONS
MARCHELETTA MADISON/MV 2-17-15 [[36](#)]
RESPONSIVE PLEADING

Final Ruling

Motion: Rule 9011 Sanctions

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

Disposition: Denied

Order: Civil minute order

Debtor Marcheletta Denise Madison prays sanctions against Aztec Foreclosure Corporation for continuing, as opposed to cancelling, a foreclosure directed to her residence, 2515 Parkgate Street, Bakersfield, California, after she filed a Chapter 13 bankruptcy. Madison argues that the act of continuing, not cancelling, the foreclosure, violates the stay described in 11 U.S.C. § 362(a). Motion for Rule 9011 Sanctions ¶ 6, filed February 17, 2015, ECF # 36.

DISCUSSION

The motion is styled as a motion under Rule 9011. But the motion would be procedurally defective under Rule 9011 since (1) Rule 9011 is limited to pleadings and papers presented to the court, as opposed to conduct, Fed. R. Bankr. 9011(b); *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1131 (9th Cir. 2002)(Rule 11); *Lamboy-Oritz v. Ortiz-Velez*, 630 F.3d 228, 245 (1st Cir. 2010)(Rule 11 does not trial conduct); and (2) Madison has not fully complied with the safe harbor provision of

untimely.

25. [14-15883](#)-A-13 MARCHELETTA MADISON
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
2-9-15 [[26](#)]

RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the trustee's motion to dismiss this case having docket control no. MHM-2.]

No tentative ruling.

26. [14-15883](#)-A-13 MARCHELETTA MADISON
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-9-15 [[32](#)]

RESPONSIVE PLEADING,

[The hearing on this matter will be concurrent with the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1.]

No tentative ruling.

27. [12-13093](#)-A-13 LONNIE/BROOK HAYES
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
2-20-15 [[24](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

DISMISSAL MOTION

The trustee moves to dismiss the debtor's case under § 1307(c)(1) and (6) as debtors have failed to make all payments due under the plan. The delinquency as of the motion's filing date was \$8292. The debtors' oppose the motion by stating that they have filed a modified plan. The modified plan was filed March 25, 2015. Unless the trustee at the hearing contends that this modified plan does not resolve the delinquency, the court will adopt this tentative ruling and deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice to the filing of another motion to dismiss that involves the same defaults alleged in the motion for the purpose of allowing the trustee to address such defaults if the modified plan is not confirmed or does not fully resolve the delinquency.

10:00 a.m.

1. [15-10014](#)-A-13LORNA MANGIDUYOS
[15-1007](#)
U.S. TRUSTEE V. MANGIDUYOS
GREGORY POWELL/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
1-20-15 [[1](#)]

Final Ruling

This matter is continued to June 3, 2015, at 10:00 a.m. to allow the plaintiff to accomplish service.

2. [11-63273](#)-A-13 DARRIN/ERIN WEDEKING MOTION FOR PROTECTIVE ORDER
[14-1144](#) SJS-1 3-3-15 [20]
WEDEKING ET AL V. SALLIE MAE,
INC. ET AL
SUSAN SALEHI/Atty. for mv.

Tentative Ruling

Motion: Protective Order Re Barring Discovery
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Erin Wedeking moves under Fed. R. Civ. P. 26(c) for a protective order barring discovery. The request for a protective order arises from the debtor's adversary proceeding under 11 U.S.C. § 523(a)(8). The motion will be denied without prejudice.

DISCUSSION

Legal Standards

Rule 26(c) provides, "A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending--or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense..." Fed. R. Civ. P. 26, incorporated by Fed. R. Bankr. P. 7026.

The burden of proof is on the party seeking to limit the discovery. *Blankenship v. Heart Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The moving party must show a particular and specific need for the order. *Id.* The analysis requires at least two showings. First, the movant must show good cause. *Id.* Upon a proper showing by a qualified medical professional, that the proceeding will be a threat to the health of the deponent is cause. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). Second, even if cause is shown, the court must balance the interests of the parties to determine if a protective order should issue and, if so, the scope of that order. *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 669 F.2d 620, 623 (10th Cir. 1982); *Wood v. McEwen*, 644 F.2d 797, 801-802 (9th Cir. 1982).

Discussion

Two types of protective orders are possible in these cases: (1) orders that preclude the deposition altogether; and (2) orders that limit the scope, duration or timing. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012).

Orders That Prohibit

Protective orders that preclude depositions are disfavored. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). Ravi

Goklaney, declares that Erin Wedking is "unfit to deal with any court proceeding." Decl. of Goklaney ¶ 3, filed March 27, 2015, ECF #25. The force of his declaration is undercut by Erin Wedeking's appearance at the meeting of creditors on January 23, 2012, in the main case and by its breadth (she is unfit to "deal with any court proceeding"). Dr. Boklaney does not explain why the debtor is unable to participate in non-stressful forms of discovery, e.g. answer interrogatories.

Moreover, a request to bar all discovery is a drastic remedy. The court must balance the need of the movant to be protected from process which she is unable to handle with the needs of the opposing party to prepare for an evidentiary hearing. She argues that repayment of her student loan would be an undue hardship, as described in 11 U.S.C. § 523(a)(8). Since Erin Wedeking is likely one of the best judges of her ability to repay this loan her testimony is central to this case. Navient's need for discovery from her is clear. In contrast, Erin Wedeking's showing of inability to participate in any discovery is of less force and effect.

Orders That Limit Scope, Duration or Timing

Moreover, an order limiting scope, duration and timing is unnecessary at this time. A deposition is presumptively only 1 day, seven hours long. Fed. R. Civ. P. 30(d)(1), *incorporated by* Fed. R. Bankr. P. 7030 ("Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination."). A protective order at this time would be premature. If Ms. Wedeking or her counsel believes the scope, duration, timing or manner of the deposition presents cause under Rule 26© she may renew the motion.

More importantly, a less intrusive remedy exists. If during the course of the deposition, Erin Wedeking or her counsel are of the mind that the scope, duration, or manner of the deposition is inappropriate they may suspend the deposition and move to terminate or limit it. Rule 30 contemplates that precise problem. "At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order." Fed. R. Civ. P. 30(d)(3), *incorporated by* Fed. R. Bankr. P. 7030. *See also, Ralston Purina Co. v. McFarland*, 550 F.2d 967, 973-974 n. 11 (4thCir. 1977).

For each of these reasons, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

Ben Ennis's motion for protective order has been presented to the court. Having considered the motion, oppositions, responses and

replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that: (1) the motion for a protective order barring discovery is denied without prejudice; and (2) any prior to protective order, including that order included in the Civil Minute Order, filed February 10, 2015, ECF #14, is lifted.

3. [14-15099](#)-A-13 ADRIENNE COLBERT CONTINUED STATUS CONFERENCE RE:
[14-1134](#) COMPLAINT
COLBERT V. OCWEN LOAN 10-31-14 [[1](#)]
SERVICING ET AL
ADRIENNE COLBERT/Atty. for pl.

Tentative Ruling

STATUS CONFERENCE

Absent a showing of good cause, the court intends to dismiss the complaint. Adversary proceedings must be served within 120 days of filing. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a)(1). This case was filed October 31, 2014, and the 120 day was February 2015. Service was attempted and quashed. Civil Minute Order, filed January 12, 2015, ECF # 17. The plaintiff was ordered to accomplish service not later than 60 days after that hearing. *Id.* That date is March 9, 2015. The plaintiff has not done so. As a result, the adversary proceeding will be dismissed without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the adversary proceeding is dismissed without prejudice.

10:30 a.m.

1. [13-16807](#)-A-7 NATHANIEL RICHARDSON MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 3-7-15 [[36](#)]
STEVEN ALPERT/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

PROCEDURAL DEFICIENCIES

There are two proofs of service for this matter. Only the notice of hearing was transmitted for notice purposes. The application itself was not served on the proper parties in interest, including the U.S. Trustee. The address for the U.S. Trustee, moreover, is incorrect on ECF No. 40.

However, the notice was sent to the court's matrix which includes the U.S. Trustee. The court will waive these notice and service deficiencies this time but in the future may not so waive.

COMPENSATION AND EXPENSES

James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1125.00 and reimbursement of expenses in the amount of \$216.28.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1125.00 and reimbursement of expenses in the amount of \$216.28.

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

2. [12-11008](#)-A-7 RAFAEL ALONSO PRETRIAL CONFERENCE RE: MOTION
VG-5 TO COMPEL
VINCENT GORSKI/MV 6-13-14 [[34](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
NOTICE OF SETTLEMENT, ECF
NO. 358

Final Ruling

Pursuant to Order, ECF #362, the pretrial conference is continued to May 6, 2015, at 10:30 a.m.

3. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR ORDER SETTING
VG-6 PREEMPTIVE BAR DATE FOR THE
VINCENT GORSKI/MV AMENDMENT OF EXEMPTIONS
2-20-15 [[325](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
ORDER 2/20/15, ECF NO. 329

Final Ruling

The matter resolved by order entered February 20, 2015, ECF #329, the matter is dropped as moot.

4. [12-11008](#)-A-7 RAFAEL ALONSO
VG-7

MOTION TO SELL
2-25-15 [[338](#)]

VINCENT GORSKI/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PHILLIP GILLET/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Sell Property

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

Disposition: Denied without prejudice

Order: Civil minute order

Property: Malpractice action against John Dulcich, Kern County Case No. S-1500-CV-282651

Buyer: Arch Insurance Company

Sale Price: \$5,000.00

Sale Type: Private sale subject to overbid opportunity

Chapter 7 trustee Vincent A. Gorski moves to sell the estate's interest in a legal malpractice action, Kern County Case No. S-1500-CV-282651, to Arch Insurance Company for \$5,000.00. Debtor Rafael Alonso opposes the motion arguing: (1) that the cause of action arose post-petition and, therefore, is not property of the estate; (2) the sale price of \$5,000.00 is insufficient; and (3) the trustee would be unjustly enriched by the efforts of the debtor. Alonso has the better side of the argument.

LEGAL STANDARDS

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

The *A & C Properties* factors apply to the sale of a lawsuit under § 363(b)(1) to a party to such lawsuit. See *In re Lahijani*, 325 B.R. at 290. 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.*

DISCUSSION

Estate Ownership of the Cause of Action

At least where ownership of the asset is disputed, the Bankruptcy Court must determine ownership of the asset prior to conducting a sale under § 363(b). *In re Silver Beach, LLC*, 2009 WL 7809002 (9th Cir. B.A.P. February 3, 2009); *Contra, see Stokes v. Glover (In re Stokes)*, 2013 WL 5313412 (9th Cir. BAP September 23, 2013)(trustee's sale of the estate's interest, if any, of malpractice claims). Courts and bankruptcy professionals debate whether a trustee must proceed by adversary proceeding or by noticed motion. *Compare, Warnick v. Yassian (In re Rodeo Canon Dev. Corp.)*, 362 F.3d 603 (9th Cir. 2004) (adversary proceeding); *Fed. R. Bankr. P. 7001(2) with Goldstein v. Stahl (In re Goldstein)*, 526 B.R. 13 (9th Cir. BAP 2015)(suggesting approval by motion).

Regardless of the procedure employed the trustee has not made any showing that the estate owns this asset. The action was unscheduled, which suggests that it may have arisen post-petition. State court pleadings referenced in the motion do not clearly demonstrate that the action arose post-petition. Exhibits in Support of Motion, filed February 2, 2015, ECF # 276. Nor do declarations by someone with personal knowledge filed in support of the motion so state. This is fatal to the motion.

A & C Properties Factors

Gorski has not made a sufficient showing under the factor's described in *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). There is an insufficient analysis probabilities of success in the litigation. The stalking horse bidder's offer is only nuisance value, \$5,000.00. The court presumes that the bidder is Dulcich's errors and omission's carrier, which suggest no difficulties in collection. Complexity, delay and expense are unknown. For these reasons there has been an sufficient showing.

LOCAL RULES AND GOOD PRACTICE

First, Gorski has violated LBR 9014-1(d)(3)(contents of notice). That rule provides, "Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If no written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." Here, the notice states, "Pursuant to Local Rule 9014-1(f)(2), When fewer than twenty-eight (28) day's notice of a hearing is given, no party-in-interest shall be required to file written opposition to the motion. Opposition, if any, shall (sic) be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs." The problem here is that 41 days notice was given, suggesting written opposition was due. But no due date is specified. Had the court not denied the motion for other grounds, it would have done so for lack of notice compliant with LBR 9014-1(d)(3).

Second, Gorski has not followed best practices associated with Requests for Judicial Notice. See Declaration of Gorski ¶16 (referring to docket 276). A mere request for judicial notice is an insufficient basis for the court to do so. Judicially noticed documents must be authenticated. *Madeja v. Olympic Packers, LLC*, 310 F.3d 628, 639 (9th Cir. 2002). Beyond that, movant has not appended to the Request for Judicial Notice copies of the documents of which request is taken. Schwarzer, Tashima & Wagstaffe, *Federal Civil Procedure Before Trial: California and Ninth Circuit Edition*, Preparing and Filing Motions § 12:56 (Rutter Group).

CIVIL MINUTE ORDER

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

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

Vincent A. Gorski's motion to sell the estate's interest, if any, Kern County Case No. S-1500-CV-282651, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

5. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR ORDER SETTING
VG-8 PREEMPTIVE BAR DATE FOR THE
VINCENT GORSKI/MV AMENDMENT OF EXEMPTIONS
2-25-15 [[342](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PHILLIP GILLET/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: For Order Setting Preemptive Bar Date
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Vincent A. Gorski, Chapter 7 trustee, moves for an order setting a preemptive bar date for amendments to the debtor's exemptions. Debtor Rafael Alonso opposes the motion. The motion will be denied.

DISCUSSION

A debtor may amend his exemptions as a matter of course at any time before the case is closed. Fed. R. Bankr. P. 1009(a); *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998). Gorski cites *In re Gutierrez*, 2014 LEXIS 2637, * 30 n. 14 (Bankr. E.D. Cal. June 12, 2014) for the proposition that court may set a bar date for amendment of Schedule C. This court has not decided whether it will follow *Gutierrez*. Were it to do so, Gorski has no factual showing to support imposition of a preemptive bar date. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

Vincent A. Gorski's motion to set preemptive bar date has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

6. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED OBJECTION TO CLAIM OF
HDN-4 DEVELOPMENT INC. SIERRA PINES AT SHAVER LAKE
GORDON LOO/MV HOMEOWNERS ASSOCIATION, CLAIM
NUMBER 10
8-25-14 [[164](#)]
- HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [15-10224](#)-A-7 LORI STREIFF MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC/MV 3-4-15 [[10](#)]
ROBERT WILLIAMS/Atty. for dbt.
DARLENE VIGIL/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: 3501 Bernard Street, No. 12-B, Bakersfield, 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).

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.

8. [14-16035](#)-A-7 DEBBIE PACKARD
KAZ-1
U.S. BANK NATIONAL
ASSOCIATION/MV
JULIE MORADI-LOPES/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-24-15 [[21](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 10740 McIntosh Way, California City, 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).

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.

9. [13-11736](#)-A-7 FRANKIE/LUCY VALENZUELA MOTION TO AVOID LIEN OF RICHARD
NES-4 A. MILLER, ESQ.
FRANKIE VALENZUELA/MV 3-11-15 [[52](#)]
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

DISPUTED ISSUES

Valuation

The motion seeks to avoid the responding party's lien on the moving party's real property located at 1713 Verde St., Bakersfield, CA. At the hearing on this matter, the court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the real property's value (on the petition date) must be resolved before the court can rule on the relief requested.

Other Grounds

The court does not believe that the other factual grounds raised by the opposition are relevant to lien avoidance. These include the lack of notice given to the respondent creditor of the debtors' bankruptcy, the 2-year delay in bringing the motion to avoid the lien (laches), and alleged misrepresentations by the debtor under oath in the debtor's schedules and statement of financial affairs. While these grounds, if proven, may provide the basis for other relief, such as dismissal or denial of discharge, the court does not find that they preclude the relief requested in the absence of separate proceedings seeking relief on such grounds. If the respondent creditor seeks relief based on such grounds, then the creditor should file separate proceedings. See Fed. R. Bankr. P. 9014(c), 7018 (not incorporated by Rule 9014).

In any event, the court also notes that the attorney appears to be incorrect in his assertions that his claim was not scheduled or that he did not receive notice of the bankruptcy. On March 14, 2013, Schedule D shows a secured claim for Richard Miller for approximately \$23,000 secured by property at 1713 Verde Street, Bakersfield, CA, and the address shown for Richard Miller is 7956 Painter Ave., Whittier, CA.

Similarly, Schedule D filed on February 3, 2015 shows a claim held by Richard Miller secured by property at 1713 Verde Street, Bakersfield, CA, and the address shown is 7956 Painter Ave., Whittier, CA. This name and address is the same as the name and address appearing on the respondent creditor's opposition (upper left corner). Further, the court's mailing list and the master address list show this name and address.

STATUS CONFERENCE AT THE HEARING

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report 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.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

10. [13-11736](#)-A-7 FRANKIE/LUCY VALENZUELA MOTION TO AVOID LIEN OF AQUA
NES-5 FINANCE, INC.
FRANKIE VALENZUELA/MV 3-11-15 [[58](#)]
NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued to the same date to which the hearing on the motion to avoid the lien having docket control number NES-4 is continued

Order: Civil minute order

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

The motion appears to warrant relief based on the facts asserted and accepted by the court by default. However, one fact is in dispute in a separate contested matter in this case –the valuation of the property located at 1713 Verde Street, Bakersfield, CA. The court must avoid issuing inconsistent orders, and if the court grants the motion at this time, the order on the present motion will be based in part on a valuation of the property that may directly conflict with the

valuation of the same property in the order resulting from the hearing on the contested lien avoidance motion at docket control number NES-4. The court will wait to resolve this matter until the motion to avoid Richard Miller's lien at NES-4 is finally resolved.

11. [14-15738](#)-A-7 TUAN NGUYEN MOTION TO AVOID LIEN OF UNIFUND
RNR-3 CCR, LLC
TUAN NGUYEN/MV 3-4-15 [[22](#)]
ROSETTA REED/Att. 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 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.

12. [14-15738](#)-A-7 TUAN NGUYEN
RNR-4
TUAN NGUYEN/MV
ROSETTA REED/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND
CCR, LLC
3-4-15 [[25](#)]

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 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.

13. [14-10241](#)-A-7 KHAULA KASSAS
RSW-1
KHAULA KASSAS/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO RECONSIDER
3-2-15 [[22](#)]

Tentative Ruling

Motion: Reconsider Denial of Reopening
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

DISCUSSION

Rule 60(b) allows the court to reconsider previous orders. Debtor Khaula Kassas asks the court to reconsider its denial of her request to reopen her case to file a reaffirmation agreement, received but not filed or perhaps neither executed or filed, prior to discharge. The court will grant the motion and, upon payment of the fee, the Clerk will reopen the case.

CIVIL MINUTE ORDER

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

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

Khaula Kassas's motion to reconsider has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that: (1) the motion is granted, provided Khaula Kassas pays the fee to reopen the case; (2) not later than 30 days after the service of this order the debtor may present such reaffirmations or motions to enlarge time under Federal Rule of Bankruptcy Procedure 4008(a) as she desires; and(3) if she does not do so or if she does so and the court declines relief, after the 30th day, the Clerk of the Court may close the case.

14. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION FOR CONTEMPT
KDG-9 INC. 3-11-15 [[132](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.
ORDER, 3/24/15, ECF NO. 139
CONTINUING TO 5/6/15

Final Ruling

The matter continued to May 6, 2015, at 10:30 a.m., by order ECF #139, the matter is dropped as moot.

15. [15-10348](#)-A-7 JIMMIE SCHONMANN
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC./MV
PHILLIP GILLET/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-27-15 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Mitsubishi Galant

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). Debtor filed a notice of non-opposition. 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.

16. [13-10752](#)-A-7 MARK/BARBARA SHIRES
TSB-3
RANDELL PARKER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH STEVEN SCHOPLER,
SOUTHERN CALIFORNIA ORTHOPEDIC
INSTITUTE, AND BAKERSFIELD
MEMORIAL HOSPITAL
3-11-15 [[49](#)]

VINCENT GORSKI/Atty. for dbt.
T. BELDEN/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Disposition: Denied without prejudice

Order: Prepared by moving party

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.*

To show that a compromise is fair and equitable, the movant must provide specific factual information about the claims being compromised. Analysis of a compromise under the fair and equitable standard and its concomitant factors under *In re A & C Properties* "is inherently fact-intensive, relative, and contextual." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 290 (B.A.P. 9th Cir. 2005).

Paragraph 4 of the motion informs the court that "other non-monetary terms of the settlement agreement were to remain confidential." Mot. for Order Authorizing Trustee to Enter into Compromise at 2. Paragraph 3 similarly says that details about the case are confidential due to the pending settlement. The court will not approve a compromise where material terms are not disclosed. If confidentiality is a concern, the "confidential" settlement terms can be disclosed to the court through a restricted and/or sealed support document. The exhibit which is a hand-written settlement memorandum does not provide the confidential terms and appears to be only some of the settlement terms contemplated. Rule 9013 requires that the grounds for a motion be stated with particularity, and the court cannot perform its duty and properly determine whether the relief requested is warranted based on such grounds when some of the grounds are omitted.

17. [13-13952](#)-A-7 BRENT/KISH SCHWEBEL MOTION FOR COMPENSATION FOR
JMV-1 JEFFREY M. VETTER, CHAPTER 7
JEFFREY VETTER/MV TRUSTEE(S)
3-9-15 [[86](#)]

LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

The chapter 7 trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$15,820.18 and reimbursement of expenses in the amount of \$219.22.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$15,820.18 and reimbursement of expenses in the amount of \$219.22.

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

18. [12-17363](#)-A-7 LARRY/BECKY KINOSHITA MOTION FOR COMPENSATION FOR
TGF-3 VINCENT A. GORSKI, TRUSTEES
ATTORNEY(S)
3-18-15 [[48](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

PROCEDURAL ISSUE

The court prefers that the notice of hearing contain the exact name of the applicant being compensated. The applicant named in the application is The Gorski Firm, APC. The applicant named in the notice is Vincent A. Gorski. The court will waive this on this occasion, but may not so waive in the future.

COMPENSATION AND EXPENSES

The Gorski Firm, APC, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2269 and reimbursement of expenses in the amount of \$78.89.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2269.00 and reimbursement of expenses in the amount of \$78.89.

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

19. [12-18366](#)-A-7 VICTOR/STACY ANN VALADEZ MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 2-24-15 [[86](#)]
VINCENT GORSKI/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Jeep Patriot

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.

20. [12-18366](#)-A-7 VICTOR/STACY ANN VALADEZ MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 3-6-15 [[92](#)]
ASSOCIATION/MV
VINCENT GORSKI/Atty. for dbt.
BRIAN TRAN/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: 10807 Lewelling Street, Bakersfield, 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).

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.

21. [13-13967](#)-A-7 MOTEL IOSHPE MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 3-9-15 [[99](#)]
BARRY BOROWITZ/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 3779 North Sierra Highway, Rosamond, California

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

22. [14-15170](#)-A-7 JASON/TRISHA SILLMAN
FPS-1
JASON SILLMAN/MV
FRANK SAMPLES/Atty. for dbt.

MOTION TO AVOID LIEN OF L.A.
COMMERCIAL GROUP, INC.
2-17-15 [[16](#)]

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 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.

23. [15-10174](#)-A-7 KATHERINE STAMPER
TGF-1
VINCENT GORSKI/MV
FRANK SAMPLES/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO EMPLOY VINCENT A.
GORSKI AS ATTORNEY(S)
3-17-15 [[9](#)]

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. The court will also approve the employment retroactively to the date of the filing of the application, March 17, 2015.

24. [15-10174](#)-A-7 KATHERINE STAMPER
TGF-2
VINCENT GORSKI/MV
FRANK SAMPLES/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-17-15 [[13](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions in Motor Vehicle

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

Disposition: Overruled without prejudice

Order: Prepared by objecting party

The trustee objects to the debtor's claim of exemption in a 2007 GMC Acadia on several grounds and to the debtor's exemption in certain unpaid earnings. The trustee's objection was filed on March 17, 2015. On March 20, 2015, the debtor filed amended Schedules B and C that affect the exemptions to which the trustee objects.

The change in the manner in which the exemption in the vehicle is claimed is not insubstantial. The debtor no longer claims an exemption in the vehicle under § 704.010. Thus, one of the grounds for objection to the exemption is no longer applicable because of the amendment. In addition, the debtor claims the amount provided under § 704.060(a)(1) rather than the limited amount for commercial vehicles under § 704.060(d).

It is unclear to the court whether the debtor claims the exemption in

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).

INCONSISTENCIES IN THE APPLICATION

The prayer for relief shows that expenses requested are \$390.42. Similarly, the trustee's consent statement shows \$390.42. But Schedule B shows \$329.42 as does paragraph 7 of the application. The court will infer that the accountant's expenses were \$329.42 unless the accountant appears at the hearing and clarifies which number was intended.

COMPENSATION AND EXPENSES

James E. Salven, the trustee's accountant in this case, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1552.50 and reimbursement of expenses in the amount of \$329.42.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1552.50 and reimbursement of expenses in the amount of \$329.42.

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

26. [14-15093](#)-A-7 MARVIN JERNIGAN
VG-1
VINCENT GORSKI/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PATRICIA ANNETTE
JERNIGAN
3-18-15 [[24](#)]

NEIL SCHWARTZ/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Vincent A. Gorski, Chapter 7 trustee, and Patricia Annette Jernigan

Dispute Compromised: Trustee's claim against Patricia Jernigan related to \$25,040 of alleged preference payments made within the applicable preference period for insiders and defenses to such claim

Summary of Material Terms: (1) Patricia Jernigan's payment of \$16,500 to the trustee, which currently has been deposited in the bankruptcy estate's account; (2) the trustee's release and discharge of Patricia Jernigan from any and all causes of action and liabilities arising out of or relating to the alleged preference payments, (3) the trustee's dismissal of pending litigation, if any, with each party bearing its own costs and attorney's fees

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

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

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

27. [15-10794](#)-A-7 JAMECA CROMPTON

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-16-15 [[13](#)]

WILLIAM EDWARDS/Atty. for dbt.
\$335.00 FILING FEE PAID
3/24/15

Final Ruling

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

11:00 a.m.

1. [14-13325](#)-A-7 JESUS BARAJAS
[14-1121](#) PK-1
BARAJAS V. SEQUOIA CONCEPTS,
INC. ET AL

MOTION FOR ENTRY OF DEFAULT
JUDGMENT AGAINST SEQUOIA
CONCEPTS, INC., DBA SEQUOIA
FINANCIAL SERVICES
3-11-15 [[27](#)]

PATRICK KAVANAGH/Atty. for mv.

Tentative Ruling

Motion: Entry of Default Judgment

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

Disposition: Granted in part; denied in part

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

The amounts shown in the complaint are somewhat inconsistent, but the inconsistency is immaterial. The amount of money at issue is \$637.30 in paragraphs 9 and 16, for example, but \$677.30 in paragraphs 34 and the prayer for relief. The Exhibits contain copies of Schedule C and the Statement of Financial Affairs No. 4, which show \$677.30. Based on the Schedules, and the declaration of Patrick Kavanagh, the court finds that the amount at issue is \$677.30.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant on all claims other than the accounting claim. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055. The court does not believe the accounting claim is necessary to achieve the relief sought by

1:30 p.m.

1. [14-12637](#)-A-11 TOURE/ROLANDA TYLER CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-21-14 [[1](#)]

LEONARD WELSH/Atty. for dbt.

[This matter will be called subsequent to the U.S. Trustee's motion to dismiss, item #3 on this calendar.]

No tentative ruling.

2. [14-12637](#)-A-11 TOURE/ROLANDA TYLER DISCLOSURE STATEMENT FILED BY
LKW-8 JOINT DEBTOR ROLANDA CHERIE
TYLER, DEBTOR TOURE RAMONE
TYLER
1-30-15 [[159](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

[This matter will be called subsequent to the U.S. Trustee's motion to dismiss, item #3 on this calendar.]

No tentative ruling

3. [14-12637](#)-A-11 TOURE/ROLANDA TYLER MOTION TO DISMISS CASE
UST-1 3-18-15 [[176](#)]
TRACY DAVIS/MV
LEONARD WELSH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

Tentative Ruling

Motion: Dismiss Chapter 11 Case

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

Disposition: Denied

Order: Civil minute order

The U.S. Trustee moves to dismiss under 11 U.S.C. § 1112(b) arguing (1) the absence of a reasonable likelihood of rehabilitation under § 1112(b)(4); and (2) unreasonable delay. Debtors Toure and Rolanda Tyler (1) seek a continuance of the hearing under LBR 9014-1(f)(2)(c); and (2) cause does not exist under § 1112(b). The motion will be denied.

DISCUSSION

This motion is decided by 11 U.S.C. § 1112(b). That section provides, "Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that

the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1).

Cause is not a defined term. But by its motion the U.S. Trustee has limited itself to two specifics of cause: lack of likelihood of rehabilitation and unreasonable delay.

Lack of Likelihood of Rehabilitation

The code includes illustrative examples of cause. "For purposes of this subsection, the term 'cause' includes--(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation..." 11 U.S.C. § 1112(b)(4)(A). Both elements must be demonstrated. The U.S. Trustee's motion does not address the first prong, except to note a very small net cash flow. As a result, the U.S. Trustee has not established a prima facie case under § 1112(b)(4)(A).

Unreasonable Delay

Unreasonable delay is, unquestionably, cause under Sec. 1112(b). In re Consol. Pioneer Mortgage Entities, 264 F.3d 803, 808-809 (9th Cir. 2001). The pivotal fact in this case is that the debtor is a small business debtor. Vol. Petition, filed May 21, 2014, ECF #1. And in the case of a small business debtor unreasonable delay is defined by statute. The debtor must file a plan and disclosure statement not later than 300 days after the order for relief. 11 U.S.C. § 1121(e)(2). Since the petition was filed May 21, 2014, the 300th day is March 17, 2015. Here the debtor filed a plan and disclosure statement on January 30, 2015. Plan and Disclosure Statement, filed January 30, 2015, ECF #s 159, 163.

The debtor must also rapidly confirm the plan filed. The deadline to do so is 45 days after the plan is filed. 11 U.S.C. § 1129(e). Since the plan was filed January 30, 2015, confirmation the 45th day was March 16, 2015. The code does provide a procedure to extend that deadline. 11 U.S.C. § 1129(e). But the extension must be sought, approved and the order signed before the expiration of the 45th day after the plan was filed. 11 U.S.C. § 1121(e)(3). No such extension was sought or obtained.

But this court's own order appears to have created confusion. The Civil Minute Order, filed December 3, 2015, ECF # 143, provides, "It is ordered that the debtors shall: 1) file a plan and disclosure statement, not later than February 2, 2015; 2) provide at least forty-two (42) days' notice pursuant to Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1); and 3) set the plan and disclosure statement for hearing not later than April 8, 2015, at 1:30 p.m. at the Bakersfield Federal Courthouse, 510 19th Street, Second Floor, Bakersfield, California..." The debtors have complied with the court's order and, having done so, the court deems its own order to have extended the deadlines of 11 U.S.C. § 1129(e). As a result, the motion will be denied.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

U.S. Trustee' motion to dismiss has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.

4. [14-14241](#)-A-11 ARTHUR FONTAINE CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-25-14 [[1](#)]

D. GARDNER/Atty. for dbt.

[This matter will be called subsequent to matters 5 and 6 on this calendar.]

No tentative ruling.

5. [14-14241](#)-A-11 ARTHUR FONTAINE MOTION FOR COMPENSATION FOR
DMG-11 HALLE PORTER NEWLAND AND
HALLE PORTER NEWLAND & RICKETT RICKETT LLP, ACCOUNTANT(S)
LLP/MV 3-18-15 [[141](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.

6. [14-14241](#)-A-11 ARTHUR FONTAINE MOTION FOR COMPENSATION BY THE
DMG-12 LAW OFFICE OF YOUNG WOOLDRIDGE,
LLP FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
3-18-15 [[145](#)]

D. GARDNER/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

Young Wooldridge, LLP has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$17,626.25 and reimbursement of expenses in the amount of \$643.48.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$17,626.25 and reimbursement of expenses in the amount of \$643.48. The applicant is authorized to draw on any retainer held.

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

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

7. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-30 PROPERTIES, LLC
DAVID STAPLETON/MV

RESCHEDULED HEARING RE: MOTION
TO AMEND ORDER ON
MOTION/APPLICATION TO
COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT FILED BY
ADMINISTRATOR DAVID STAPLETON
3-18-15 [[1502](#)]

PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.
OST 3/31/15

No tentative ruling.

8. [10-62315](#)-A-11 BEN ENNIS
LRP-38
DAVID STAPLETON/MV

RESCHEDULED HEARING RE: MOTION
FOR AN ORDER AMENDING
COMPROMISE OF CLAIMS
3-18-15 [[1872](#)]

RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.
OST 3/31/15

No tentative ruling.

9. [10-61970](#)-A-7 BRIAN ENNIS
THA-8
JAMES SALVEN/MV

RESCHEDULED HEARING RE: MOTION
TO AMEND ORDER ON
MOTION/APPLICATION TO
COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT FILED BY
TRUSTEE JAMES EDWARD SALVEN
3-17-15 [[325](#)]

RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
OST 3/31/15

No tentative ruling.

10. [10-61725](#)-A-7 PAMELA ENNIS
THA-12
SHERYL STRAIN/MV

RESCHEDULED HEARING RE: MOTION
TO AMEND ORDER ON
MOTION/APPLICATION TO
COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT FILED BY
TRUSTEE SHERYL ANN STRAIN
3-17-15 [[214](#)]

RILEY WALTER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

No tentative ruling.