

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**WEDNESDAY**

**APRIL 15, 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. [14-14706](#)-A-7 STEVE GEISENHEIMER CONTINUED OBJECTION TO DEBTOR'S  
JES-1 CLAIM OF EXEMPTIONS  
JAMES SALVEN/MV 12-18-14 [[21](#)]  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [14-14706](#)-A-7 STEVE GEISENHEIMER MOTION TO COMPEL ABANDONMENT  
PBB-1 3-19-15 [[48](#)]  
STEVE GEISENHEIMER/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

This matter is continued to May 27, 2015, at 9:00 a.m.

3. [15-10107](#)-A-7 STEPHANEY/REGINALD BELYEU MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
HYUNDAI MOTOR FINANCE/MV 2-26-15 [[22](#)]  
AUSTIN NAGEL/Atty. for mv.

**Tentative Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to May 20, 2015, and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

**Order:** Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. Each of the debtors in this case was served at the wrong address. The movant transposed each of the two debtor's separate addresses for the other debtor's address.

4. [15-10208](#)-A-7 JUAN CASTRO AND MANDY MOTION TO CONVERT CASE FROM  
TOG-1 PEREZ CHAPTER 7 TO CHAPTER 13  
JUAN CASTRO/MV 3-30-15 [[14](#)]  
THOMAS GILLIS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e), and the debtors have regular income of \$3437 per month. See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

The court notes that the motion appears to inaccurately state that a chapter 13 plan proposed will pay \$104,621 equaling 3% to unsecured creditors. The total unsecured debt is stated to be \$104,121, and Schedule F at sheet 7 shows \$104,121 (Schedule E shows no unsecured priority claims). Mathematically, 3% of the unsecured debt cannot equal the amount proposed to be paid to unsecured creditors. The court will interpret the motion as asserting that the plan will propose to pay 3% of the unsecured debt.

5. [14-16110](#)-A-7 JOSEPH/SUZAN O'BRIEN MOTION TO EMPLOY GOULD AUCTION  
TMT-1 & APPAISAL COMPANY AS  
TRUDI MANFREDO/MV AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
3-23-15 [[31](#)]

JEFF REICH/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2006 Yamaha Road Star motorcycle

**Sale Type:** Public auction

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

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

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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

6. [15-10310](#)-A-7 CHARLES/MARY EWING  
TMT-1  
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION  
& APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
3-23-15 [[29](#)]

GLEN GATES/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1972 Ford Mustang

**Sale Type:** Public auction

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

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

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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

7. [13-15111](#)-A-7 MUEY SAECHAO  
JES-1  
JAMES SALVEN/MV  
MARK ZIMMERMAN/Atty. for dbt.

CONTINUED MOTION TO COMPEL  
2-4-15 [[35](#)]

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

**Notice:** LBR 9014-1(f)(1) / continued from prior hearing; 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).

### **VEHICLE AND TAX REFUNDS**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by* *Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every

situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The court will order turnover of the 2006 Toyota Corolla and the prorated portion of the tax refunds (56.7%) identified in the motion to the extent received by the debtor.

#### **TAX RECORDS AND RETURNS**

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

#### **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 chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee (I) the debtor's 2006 Toyota Corolla and (ii) 56.7% of any 2013 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

8. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC MOTION FOR COMPENSATION FOR  
TMT-1 GOULD AUCTION AND APPRAISAL  
TRUDI MANFREDO/MV COMPANY, APPRAISER(S)  
3-11-15 [[87](#)]  
  
PATRICK COSTELLO/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

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

### **COMPENSATION AND EXPENSES**

Trudi G. Manfredo, the chapter 7 trustee, has applied for an allowance of final compensation and reimbursement of expenses on behalf of Gould Auction and Appraisal Company. The applicant requests that the court allow compensation in the amount of \$900.00 and reimbursement of expenses in the amount of \$0.00.

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).

Here, the services performed by the appraiser were not within 30 days preceding the filing of the application to employ. The services were done on January 30, 2013 and February 4, 2013. The application to employ was filed May 17, 2013. The 30-day period preceding the application started April 17, 2013. The court ordinarily finds that services performed within 30 days prior to the filing of an application to employ that is later approved are within the scope of the approved employment. Here, the services were performed more than 2 months before the start of the 30-day period before the application. The court will not approve compensation because the services performed by the appraiser were unauthorized as the appraiser was not employed at the time the services were performed, and the services were performed well outside the 30-day window preceding the application to employ.

### **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.

Trudi G. Manfredo's application for allowance of final compensation and reimbursement of expenses, filed on behalf of appraiser Gould Auction and Appraisal Company and for services rendered by such entity, has been presented to the court. Having considered the application,

IT IS ORDERED that the application is disapproved without prejudice to the filing of a nunc pro tunc application to approve the appraiser's

unauthorized services.

9. [15-10013](#)-A-7 WILLIAM/NETA VALENTINE MOTION TO SELL  
JES-2 3-12-15 [[32](#)]  
JAMES SALVEN/MV

### **Final Ruling**

**Motion:** Sell Property and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party consistent with the instructions below

**Property:** A vehicle and firearms described in the notice of hearing and motion

**Sale Type:** Public auction

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

Section 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.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application. The expenses shown in the notice amounting to \$350 are also reasonable and the court will approve expenses in that amount.

The order shall state that the commission and expenses shall be paid to "Baird Auctions & Appraisals," the entity employed by the order and shown in the notice. The order shall not use the name "Baird's Auctions," the term used in the motion, as the name of the entity to be compensated.

10. [14-13625](#)-A-7 CHARLES DAILEY  
BHT-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
MARIO LANGONE/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-11-15 [[17](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 734 West Sample Avenue, Fresno, CA

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

### **NOTICE INSUFFICIENT**

The notice of hearing does not comply with LBR 9014-1(d)(3) in that it does not state the names and addresses of the persons who must be served with any opposition. Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2), and opposition, if any, may be presented at the hearing.

### **STAY RELIEF AS TO DEBTOR**

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

### **STAY RELIEF AS TO ESTATE**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

11. [14-15026](#)-A-7 RALPH/DELCIE RATLIFF MOTION TO COMPEL ABANDONMENT  
JRL-1 3-3-15 [[30](#)]  
RALPH RATLIFF/MV  
JERRY LOWE/Atty. for dbt.

**Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below

**Real Property Description:** 31983 Lockwood Lane, Prather, CA

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

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

Two appraisals were performed on the subject property. The scheduled value was based on one of the appraisals and was the higher value of the two appraisals at \$275,000. Assuming that this higher value is the accurate value, very little equity remains after accounting for a mortgage against the property with a principal balance of approximately \$255,115.80 and after subtracting the exemption claimed by the debtors of \$19,016.00. The equity remaining is only \$868.20. This calculation does not factor in costs of sale of approximately 6%, which would total \$16,500 and leave negative equity.

The other appraisal was only \$239,500.00, which means that no equity remains in the subject property for the estate. Under either value for the property, \$275,000 or \$239,500, the real property described above is either burdensome to the estate or of inconsequential value to the estate.

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

12. [13-11829](#)-A-7 TRINIDAD CORTEZ  
RH-6

MOTION FOR COMPENSATION FOR  
ROBERT HAWKINS, TRUSTEES  
ATTORNEY(S)  
3-4-15 [[73](#)]

TIMOTHY SPRINGER/Atty. for dbt.

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Approved in part, disapproved in part

**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**

Robert Hawkins, attorney for the chapter 7 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 \$8040.00 and reimbursement of expenses in the amount of \$299.99.

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 applicant requests approval of fees for a motion that was denied without prejudice, the motion to approve a settlement agreement having docket control no. RH-3. The compromise was eventually approved after two amended motions were filed, having docket control numbers RH-4 and RH-5, that requested approval of the two different disputes separately, the dispute regarding the debtor's exemption and the personal injury settlement. The original motion at RH-3 was denied, to the best of the court's memory, because the motion improperly joined requests for separate relief and because the motion was vague regarding the reasons for compromising the personal injury dispute and unclear regarding the calculations of the different components of the settlement proceeds discussed in light of the total gross settlement amount.

In addition, the application suggests that an attorney different from the applicant performed the services. See Appl. Final Fees and Expenses at ¶ 7.a., ECF No. 73. The court believes this to have resulted from an inadvertent error in the use of the application form. If the attorney shown in paragraph 7.a. of the application was involved, the trustee should inform the court of that fact at the hearing.

Some of the applicant's time entries, moreover, are also fairly summary and general in nature and make it difficult for the court to

evaluate the work involved. In the future, the court requests more detailed and precise time entries for bills submitted in connection with fee applications by the applicant.

The court intends to reduce the applicant's fees of \$1350.00 (representing time spent of 3.5 hours on October 20, 2014, for preparing the compromise motion (RH-3) that was denied and its supporting documentation as well as time spent of 1.0 hour on the court hearing on that compromise motion), but the court will approve the remainder of the fees and costs requested.

Other than the compensation discussed in the preceding paragraph, 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.

Robert Hawkins'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 in part on a final basis, and disapproved in part. The court allows final compensation in the amount of \$6,690.00 and reimbursement of expenses in the amount of \$299.99. The court disallows compensation requested in the amount of \$1350.00.

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.

13. [13-14939](#)-A-7 MONICA HERNANDEZ  
JES-1  
JAMES SALVEN/MV  
GARY SAUNDERS/Atty. for dbt.

CONTINUED MOTION TO COMPEL  
1-30-15 [[39](#)]

#### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

**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).

## **TAX REFUNDS**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 54.8% of the 2013 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

## **TAX RECORDS AND RETURNS**

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

## **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 chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 54.8% of any 2013 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

14. [15-10840](#)-A-7 HILARIO/MARIA CANO  
ALG-1  
HILARIO CANO/MV  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
3-10-15 [[11](#)]

**Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted only as to the business and such business assets described in the motion

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** (1) a 50% interest in partnership named Processing Flooring Partnership and (2) a sole proprietorship business in which joint debtor is an independent contractor for AMWAY products

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

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

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

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

15. [15-11140](#)-A-7 CHRISTINE RIPLEY

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-30-15 [[19](#)]

**Tentative Ruling**

If the entire filing fee of \$335 has not been paid by the time of the hearing, the case will be dismissed without further notice or hearing.

16. [14-13153](#)-A-7      ALFREDO GONZALEZ AND      MOTION TO SELL  
JES-3      LETICIA VAZQUEZ      2-28-15 [[55](#)]  
JAMES SALVEN/MV  
STEPHEN LABIAK/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2005 Chevy Suburban

**Buyer:** Debtors

**Sale Price:** \$8025 (\$1800 cash plus \$6225 exemption credit)

**Sale Type:** Private sale subject to overbid opportunity

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

### **PROCEDURE**

The notice of hearing does not provide the floor number or courtroom number when giving the address for the hearing. In the future, such information should be included in the notice to provide sufficient information to allow respondents or bidders to appear at the hearing on time.

### **SALE**

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.

17. [14-14461](#)-A-7 DONALD/DAWN MCGOWEN  
RHT-1  
ROBERT HAWKINS/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LIZ ROGERS  
3-25-15 [[17](#)]

GEOFFREY ADALIAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Pending

**Order:** Pending

**Parties to Compromise:** Trustee Robert Hawkins, joint debtor and Liz Rogers, joint debtor's sister

**Dispute Compromised:** The trustee's claim that the revocable trust of which joint debtor and Liz Rogers are beneficiaries is terminated by law and that as a result, the estate is entitled to the joint debtor's interest in the trust's sole asset, real property located at 3112 East Birch, Visalia, CA. The joint debtor's interest in the real property of the trust is valued at approximately \$28,000.

**Summary of Material Terms:** Liz Rogers will pay to the estate the sum of \$18,858.00, net of any claim of exemption by the debtors, in full settlement of the trustee's claim and in exchange for the release of any further interest in the trust / real property by the bankruptcy estate

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

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

The trustee asserts that the value of the joint debtor's interest in the trust assets is \$28,000. Based on the court's math, a 50% interest in the trust assets, even accounting for costs of sale of 6% and the secured debt, would yield a higher and different value. It may be that the joint debtor's interest is not equal to 50% of the trust assets. Based on the motion and supporting papers, the court cannot determine the method by which the trustee has derived the value of the joint debtor's interest in the trust assets.

18. [13-17574](#)-A-7 MARIA BUSTOS  
JES-4  
JAMES SALVEN/MV

CONTINUED MOTION TO COMPEL  
1-30-15 [[40](#)]

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

**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).

### **TAX REFUNDS**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by* *Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391

B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 90.4% of the 2013 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

#### **TAX RECORDS AND RETURNS**

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

#### **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 chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 90.4% of any 2013 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or

(ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

19. [14-12575](#)-A-7 ALICE RODRIGUEZ

CONTINUED ORDER TO SHOW CAUSE  
FOR DISGORGEMENT  
12-10-14 [[123](#)]

RICHARD MENDEZ/Atty. for dbt.

**No tentative ruling.**

20. [13-17477](#)-A-7 SERGIO QUIROZ  
JES-1  
JAMES SALVEN/MV

CONTINUED MOTION TO COMPEL  
1-30-15 [[14](#)]

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

**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).

### **TAX REFUNDS**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

In this case, the trustee has made the requisite showing of the estate's interest in the portion of the tax refunds sought by turnover, which portion is attributable to prepetition income based on the percentage of days preceding the petition date in the applicable tax year. The trustee has represented that such amounts have not been claimed exempt by the debtor.

Accordingly, the trustee's motion for turnover of 89.3% of the 2013 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

#### **TAX RECORDS AND RETURNS**

Section 542(e) provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e). Further, the debtor has a statutory duty to surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." *Id.* § 521(a)(4).

As a result, the debtor must comply with this statutory duty as the tax records and tax returns sought by the trustee relate to property of the estate. The court will order the debtor's turnover to the trustee of (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

#### **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 chapter 7 trustee's motion to compel turnover of the tax refunds,

tax records, and tax returns, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 89.3% of any 2013 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

IT IS FURTHER ORDERED that no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee: (I) all 2013 federal and state tax returns that the debtor holds, whether they are complete or incomplete or in paper or electronic form; or (ii) in the alternative case in which no such tax returns exist, then all the 2013 federal and state tax-related records or documents relevant to such tax returns, whether in electronic or paper form, that the debtor holds.

21.	<a href="#">14-12386</a> -A-7     ROBERT/DINA DEL CAMPO BSH-2 ROBERT DEL CAMPO/MV BRIAN HADDIX/Atty. for dbt.	MOTION TO AVOID LIEN OF TARGET NATIONAL BANK 4-1-15 [ <a href="#">23</a> ]
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#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Liens Plus Exemption:** \$213,674.83

**Property Value:** \$120,000.00

**Judicial Lien Avoided:** 4,000.00

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

Section 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.

22. [13-16195](#)-A-7      AVELINO/MARIBEL ORMONDE      CONTINUED TRUSTEE'S FINAL  
REPORT  
11-24-14 [[52](#)]

GEOFFREY ADALIAN/Atty. for dbt.

### **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 \$8,552.57 and reimbursement of expenses in the amount of \$606.23.

### **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 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 \$8,552.57 and reimbursement of expenses in the amount of \$606.23.

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.

23. <a href="#">15-10295</a> -A-7    HERIBERTO SANCHEZ GGL-1 HERIBERTO SANCHEZ/MV GEORGE LOGAN/Atty. for dbt.	MOTION TO AVOID LIEN OF CACH, LLC 3-16-15 [ <a href="#">18</a> ]
--	--

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

The movant filed a "Notice of Change of Address of Plaintiff's Attorney, Mandarich Law Group, LLP," which is Cach, LLC's notice of change of address in its state court action against Heriberto Sanchez. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served (Mandarich Law Group, LLP) has been authorized to accept service of process on the responding party in this bankruptcy case.

The court notes that the respondent entity has been canceled in the California Secretary of State's business entity records available to the public. It may be that the respondent entity's cancellation means that the entity was not validly formed under applicable law in this state. *See, e.g., Cal. Corp. Code § 17701.02(k)* (defining an LLC to be an entity validly formed). It may be that its formation is valid in a different state, though the court cannot determine this from the record. In any event, the identification of the proper respondent and the selection of the appropriate agent are decisions committed to the movant's counsel's judgment.

24. [14-13796](#)-A-7 EDGAR SALAZAR  
JES-2  
JAMES SALVEN/MV  
ROSALINA NUNEZ/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO DEBTOR'S  
CLAIM OF EXEMPTIONS  
12-18-14 [[31](#)]

**No tentative ruling.**

**10:00 a.m.**

1. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND  
[14-1077](#) ROBYN SOUZA  
WESTERN MILLING, LLC V. SOUZA,  
JR.  
HILTON RYDER/Atty. for pl.  
RESPONSIVE PLEADING

RESCHEDULED PRE-TRIAL  
CONFERENCE RE: COMPLAINT  
7-30-14 [[1](#)]

**Final Ruling**

The case ordered dismissed, the status conference is concluded. The parties are directed to submit the order described in the civil minutes, filed April 1, 2015, ECF # 20.

2. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND  
[14-1082](#) ROBYN SOUZA  
MILLER HAY AND TRUCKING, INC.  
V. SOUZA, JR. ET AL  
KEVIN LITTLE/Atty. for pl.  
RESPONSIVE PLEADING

PRETRIAL CONFERENCE RE: AMENDED  
COMPLAINT  
10-5-14 [[26](#)]

**No tentative ruling.**

3. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND MOTION IN LIMINE #1 AND/OR  
[14-1082](#) ROBYN SOUZA MLF-2 MOTION FOR SANCTIONS  
MILLER HAY AND TRUCKING, INC. 3-13-15 [[34](#)]  
V. SOUZA, JR. ET AL  
MICHAEL FARLEY/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn by the moving party, the matter is dropped as moot.

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

*[This matter will be called with Salven v. Ennis # 12-1161 (Bankr. E.D. Cal. 2012, item # 14.)]*

**No tentative ruling**

5. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR CONTINUED STATUS CONFERENCE RE:  
[14-1113](#) SALVEN V. AMERICAN MORTGAGE COMPLAINT  
FUND, INC. 9-18-14 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.

**Final Ruling**

Summary judgment granted, the status conference is concluded.

6. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR MOTION FOR ENTRY OF DEFAULT  
[14-1113](#) TGM-2 JUDGMENT  
SALVEN V. AMERICAN MORTGAGE 3-12-15 [[64](#)]  
FUND, INC.  
TRUDI MANFREDO/Atty. for mv.

**Final Ruling**

**Motion:** Entry of Default Judgment

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

**Disposition:** Granted but the judgment shall not award plaintiff costs of suit

**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

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. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

- ## Final Ruling

## Final Ruling

No tentative ruling.

10. [08-10861](#)-A-7 JAMES/DAISY CORBETT PRETRIAL CONFERENCE RE:  
JES-3 OBJECTION TO DEBTOR'S CLAIM OF  
JAMES SALVEN/MV EXEMPTIONS  
12-20-12 [[104](#)]  
  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

11. [08-10861](#)-A-7 JAMES/DAISY CORBETT PRETRIAL CONFERENCE RE:  
[14-1089](#) COMPLAINT  
CALIFORNIA CORRECTIONAL PEACE 8-25-14 [[1](#)]  
OFFICERS ASSOCIATION V.  
ED HAYS/Atty. for pl.

**No tentative ruling.**

12. [08-10861](#)-A-7 JAMES/DAISY CORBETT MOTION TO COMPEL  
[14-1089](#) MAS-2 3-20-15 [[36](#)]  
CALIFORNIA CORRECTIONAL PEACE  
OFFICERS ASSOCIATION V.  
ED HAYS/Atty. for mv.

**Final Ruling**

The motion withdrawn by the moving party, the matter is dropped as moot.

13. [11-17165](#)-A-7 OAKHURST LODGE, INC., A STATUS CONFERENCE RE: COMPLAINT  
[15-1017](#) CALIFORNIA CORPORATION 2-11-15 [[1](#)]  
OAKHURST LODGE, INC. V.  
FIRST-CITIZENS BANK & TRUST  
DONNA STANDARD/Atty. for pl.

**Final Ruling**

The status conference is continued to June 17, 2015, at 10:00 a.m. Plaintiff shall seek and serve a re-issued summons and a copy of the complaint prior to the date specified in Fed. R. C. P. 4(m), incorporated by Fed. R. Bankr. P. 7004(a)(1). The plaintiff shall also file a Certificate of Service by that date demonstrating service. Failing service and a filed Certificate of Service, the court will dismiss the case without further hearing.

14. [10-61970](#)-A-7 BRIAN ENNIS CONTINUED STATUS CONFERENCE RE:  
[12-1161](#) AMENDED COMPLAINT  
SALVEN V. ENNIS 10-16-12 [[7](#)]  
THOMAS ARMSTRONG/Atty. for pl.  
RESPONSIVE PLEADING

*[This matter will be called with Strain v. Ennis # 12-1160 (Bankr. E.D. Cal. 2012, item # 4.)]*

**No tentative ruling.**

15. [14-14479](#)-A-7 FABIO GALVEZ CONTINUED STATUS CONFERENCE RE:  
[14-1153](#) COMPLAINT  
GALVEZ ET AL V. THE UNITED 12-19-14 [[1](#)]  
STATES OF AMERICA, THE

**No tentative ruling.**

10:30 a.m.

- |    |                               |   |   |
|----|-------------------------------|---|---|
| 1. | <a href="#">14-16016</a> -A-7 | ANTONIO LOPEZ-VALENCIA<br>AND VERONICA DE LOPEZ | REAFFIRMATION AGREEMENT WITH<br>WELLS FARGO DEALER SERVICES<br>3-16-15 [ <a href="#">19</a> ]                   |
|    |                               | ALFRED GALLEGOS/Atty. for dbt.                  |   |
|    |                               | <b>No tentative ruling.</b>                     |   |
| 2. | <a href="#">15-10442</a> -A-7 | DEWAYNE/LISA BARBER                             | AMENDED PRO SE REAFFIRMATION<br>AGREEMENT WITH SANTANDER<br>CONSUMER USA INC.<br>3-17-15 [ <a href="#">20</a> ] |
|    |                               | <b>No tentative ruling.</b>                     |   |
| 3. | <a href="#">15-10363</a> -A-7 | MIGUEL VASQUEZ AND MARIA<br>EUCEDA              | PRO SE REAFFIRMATION AGREEMENT<br>WITH SANTANDER CONSUMER USA<br>INC.<br>3-17-15 [ <a href="#">14</a> ]         |
|    |                               | THOMAS GILLIS/Atty. for dbt.                    |   |
|    |                               | <b>No tentative ruling.</b>                     |   |
| 4. | <a href="#">15-10499</a> -A-7 | GINA MEYERS                                     | PRO SE REAFFIRMATION AGREEMENT<br>WITH TOYOTA MOTOR CREDIT<br>CORPORATION<br>3-18-15 [ <a href="#">33</a> ]     |
|    |                               | <b>No tentative ruling.</b>                     |   |

1:30 p.m.

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

**No tentative ruling.**

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, FIRST AMENDED PLAN  
EVN-11 LLC 1-9-15 [[252](#)]  
ELAINE NGUYEN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is a duplicate of Item No. 3, and is dropped as moot.

3. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION TO CONFIRM CHAPTER 11  
EVN-11 LLC PLAN  
BHAVIKA'S PROPERTIES, LLC/MV 3-4-15 [[274](#)]  
ELAINE NGUYEN/Atty. for dbt.

**No tentative ruling.**

4. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR COMPENSATION BY THE  
EVN-13 LLC LAW OFFICE OF WEINTRAUB &  
SELTH, APC FOR ELAINE V.  
NGUYEN, DEBTORS ATTORNEY(S)  
3-25-15 [[282](#)]

ELAINE NGUYEN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Second and Final Application for Compensation

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

**Disposition:** Continued to May 27, 2015, at 1:30 p.m.

**Order:** Civil minute order

Weintraub and Selth, APC makes its second and final application for compensation.

**DISCUSSION**

Weintraub and Selth, APC's application for compensation will be denied without prejudice. First, a motion must specify the relief sought and the grounds therefore. Fed. R. Bankr. P. 9013. In the case of an application for compensation that means that the applicant must

specifically state the amount of compensation sought. In this case, Weintraub's application seeks "(I) approval of fees and costs covering the period of March 1, 2014, through March 25, 2015 in the amount of \$161,388.00 in fees and \$8,158.43 in costs; (ii) approval of the Supplemental Fees Applicant will incur between March 26, 2015 through April 15, 2015 (the date of the Confirmation Hearing and the Final Fee Application hearing)..." Motion, Part IB, p. 4, filed March 25, 2015, ECF # 282. Weintraub also states that it "will file a Supplemental Declaration two days prior to the hearing on April 15th Final Fee Application hearing to include fees incurred through confirmation of the Debtor's Plan..." *Id* at p. 2, lines 21-24. (emphasis added). The increase of the amount of compensation two days prior to hearing is particularly problematic. It does comply with Rule 9013, which requires the motion to specify the amount sought. See, Fed. R. Bankr. P. 9013 (requiring the motion to specify the relief, i.e., amount, sought). Similarly, it does not comply with local rules, which requires that all supporting evidence must be filed and served with the motion. Compare, LBR 9014-1(d)(6) (evidence served with the motion), with LBR 9014-1(f)(2) (service of the motion on less than 28 days notice). Moreover, doing so on two days notice does not allow the debtor in possession, creditors or the court adequate opportunity to review the supplemental fee request.

Moreover, the combined Certificate of Service, ECF # 292, offered in support of Weintraub and Selth, APC's and Hiramatsu & Associate's applications for compensation does not comply with local rules. LBR 9014-1(e)(3) (the certificate of service for each motion must be filed as a separate document).

#### **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.

Weintraub and Selth, APC's Second and Final Fee Application for Compensation has been presented to the court. Having considered the matter,

IT IS ORDERED that: (1) the motion is continued to May 27, 2015, at 1:30 p.m.; (2) not later than 28 days before the continued hearing, the applicant may augment the record, including the amount of fees prayed; (3) not later than 28 days before the continued hearing, the applicant shall give notice to all parties in interest so entitled under Fed. R. Bankr. P. 2002(a)(6) of (A) the continued hearing date; (B) the total amount of fees and costs requested; and (C) that opposition must be filed and served at least 14 days prior thereto; and (4) not later than three days after serving the documents described in part (3) hereof shall file a Certificate of Service in compliance with Local Bankruptcy Rules and this ruling.

5. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR COMPENSATION FOR  
EVN-14 LLC HIRAMATSU & ASSOCIATES, INC.,  
HIRAMATSU & ASSOCIATES, CONSULTANT(S)  
INC./MV 3-25-15 [[287](#)]  
ELAINE NGUYEN/Atty. for dbt.

### **Final Ruling**

**Motion:** Second and Final Application for Compensation

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

**Disposition:** Continued to May 27, 2015, at 1:30 p.m.

**Order:** Civil minute order

Hiramatsu and Associates makes its second and final application for compensation.

### **DISCUSSION**

Hiramatsu's application for compensation will be denied without prejudice. First, a motion must specify the relief sought and the grounds therefore. Fed. R. Bankr. P. 9013. In the case of an application for compensation that means that the applicant must specifically state the amount of compensation sought. In this case, Hiramatsu's application seeks "(I) approval of fees and costs covering the period of March 1, 2014, through March 25, 2015 in the amount of \$10,840.00 in fees; (ii) approval of the Supplemental Fees Applicant will incur between March 26, 2015 through April 15, 2015 (the date of the Confirmation Hearing and the Final Fee Application hearing)..." Motion, Part I, p. 3, filed March 25, 2015, ECF # 287. Hiramatsu also states that it "will file a Supplemental Declaration two days prior to the hearing on April 15th Final Fee Application hearing to include fees incurred through confirmation of the Debtor's Plan..." *Id* at p. 2, lines 24-27. (emphasis added). The increase of the amount of compensation two days prior to hearing is particularly problematic. It does comply with Rule 9013, which requires the motion to specify the amount sought. See, Fed. R. Bankr. P. 9013 (requiring the motion to specify the relief, i.e., amount, sought). Similarly, it does not comply with local rules, which requires that all supporting evidence must be filed and served with the motion. *Compare*, LBR 9014-1(d)(6) (evidence served with the motion), with LBR 9014-1(f)(2) (service of the motion on less than 28 days notice). Moreover, doing so on two days notice does not allow the debtor in possession, creditors or the court adequate opportunity to review the supplemental fee request.

Moreover, the combined Certificate of Service, dkt #292, offered in support of Weintraub and Selth, APC's and Hiramatsu & Associate's applications for compensation does not comply with local rules. LBR 9014-1(e)(3) (the certificate of service for each motion must be filed as a separate document).

### **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.

Hiramatsu's Second and Final Fee Application for Compensation has been presented to the court. Having considered the matter,

IT IS ORDERED that: (1) the motion is continued to May 27, 2015, at 1:30 p.m.; (2) not later than 28 days before the continued hearing, the applicant may augment the record, including the amount of fees prayed; (3) not later than 28 days before the continued hearing, the applicant shall give notice to all parties in interest so entitled under Fed. R. Bankr. P. 2002(a)(6) of (A) the continued hearing date; (B) the total amount of fees and costs requested; and (C) that opposition must be filed and served at least 14 days prior thereto; and (4) not later than three days after serving the documents described in part (3) hereof shall file a Certificate of Service in compliance with Local Bankruptcy Rules and this ruling.

6.     [13-17136](#)-A-11   BHAVIKA'S PROPERTIES,                   MOTION TO DISQUALIFY BALLOTS ON  
          USA-1                   LLC   FIRST AMENDED CHAPTER 11 PLAN  
          SMALL BUSINESS   3-25-15 [[279](#)]  
          ADMINISTRATION/MV  
          ELAINE NGUYEN/Atty. for dbt.  
          JEFFREY LODGE/Atty. for mv.  
          RESPONSIVE PLEADING

**No tentative ruling.**

7.     [14-14241](#)-A-11   ARTHUR FONTAINE                   AMENDED DISCLOSURE STATEMENT  
          DMG-10   3-4-15 [[137](#)]  
          D. GARDNER/Atty. for dbt.  
          RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to May 20, 2015, at 1:30 p.m.

8.     [14-11991](#)-A-11   CENTRAL AIR                   CONTINUED OBJECTION TO CLAIM OF  
          KDG-23                   CONDITIONING, INC.                   CAPITAL INSURANCE GROUP, CLAIM  
          CENTRAL AIR CONDITIONING,                   NUMBER 12  
          INC./MV   1-15-15 [[320](#)]  
          HAGOP BEDOYAN/Atty. for dbt.

**No tentative ruling.**

9. [14-11991](#)-A-11 CENTRAL AIR  
KDG-27 CONDITIONING, INC.

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER, COOPER, ROSENLIEB AND  
KIMBALL, LLP FOR HAGOP T.  
BEDOYAN, DEBTORS ATTORNEY(S).  
3-25-15 [[412](#)]

HAGOP BEDOYAN/Atty. for dbt.

### **Tentative Ruling**

**Application:** Fifth Interim 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**

Klein DeNatale has applied for an allowance of interim compensation  
and reimbursement of expenses. The application requests that the  
court allow compensation in the amount of \$25,000.00 and reimbursement  
of expenses in the amount of \$1,389.16.

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.

Klein DeNatale'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 \$25,000.00 and  
reimbursement of expenses in the amount of \$1,389.16. 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.

10. [14-11595](#)-A-11 RAY FISHER PHARMACY, CONTINUED STATUS CONFERENCE RE:  
INC. VOLUNTARY PETITION  
3-31-14 [[1](#)]  
ALAN KINDRED/Atty. for dbt.

**No tentative ruling.**

11. [14-11595](#)-A-11 RAY FISHER PHARMACY, CONTINUED MOTION TO CONVERT  
UST-1 INC. CASE FROM CHAPTER 11 TO CHAPTER  
TRACY DAVIS/MV 7, MOTION TO DISMISS CASE  
10-27-14 [[114](#)]  
ALAN KINDRED/Atty. for dbt.  
GREGORY POWELL/Atty. for mv.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2:00 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO AMEND/MODIFY PRETRIAL  
[12-1033](#) PROPERTIES, LLC LRP-4 ORDER  
ENNIS COMMERCIAL PROPERTIES, 3-18-15 [[144](#)]  
LLC V. NICHOLSON ET AL  
SYDNEY SMITH/Atty. for mv.

**Final Ruling**

**Motion:** Modify Pretrial Order

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

**Disposition:** Granted

**Order:** Prepared by moving party, approved as to form by Kurt F. Vote; pertinent terms of the stipulation shall be included in the order or a copy of the stipulation shall be appended to the 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).

Scheduling orders may be modified for good cause. Fed. R. Civ. P. 16(b)(4), *incorporated by* Fed. R. Bankr. 7016; Pretrial Order § 9.0, filed June 6, 2014, ECF # 115. Good cause exists here. The motion will be granted.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO AMEND/MODIFY PRETRIAL  
[12-1050](#) PROPERTIES, LLC LRP-4 ORDER  
ENNIS COMMERCIAL PROPERTIES, 3-18-15 [[129](#)]  
LLC ET AL V. HA DEVCO, INC. ET  
SYDNEY SMITH/Atty. for mv.

**Final Ruling**

**Motion:** Modify Pretrial Order

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

**Disposition:** Granted

**Order:** Prepared by moving party, approved as to form by Kurt F. Vote; pertinent terms of the stipulation shall be included in the order or a copy of the stipulation shall be appended to the 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).

Scheduling orders may be modified for good cause. Fed. R. Civ. P. 16(b)(4), *incorporated by* Fed. R. Bankr. 7016; Pretrial Order § 9.0,

filed June 6, 2014, ECF # 95. Good cause exists here. The motion will be granted.

3. [10-62315](#)-A-11 BEN ENNIS MOTION TO AMEND/MODIFY PRETRIAL  
[13-1107](#) LRP-5 ORDER  
STAPLETON ET AL V. WATKINS ET  
AL 3-18-15 [[106](#)]  
SYDNEY SMITH/Atty. for mv.

**Final Ruling**

**Motion:** Modify Pretrial Order

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

**Disposition:** Granted

**Order:** Prepared by moving party, approved as to form by Kurt F. Vote; pertinent terms of the stipulation shall be included in the order or a copy of the stipulation shall be appended to the 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).

Scheduling orders may be modified for good cause. Fed. R. Civ. P. 16(b)(4), *incorporated by* Fed. R. Bankr. 7016; Pretrial Order § 9.0, filed June 6, 2014, ECF # 68. Good cause exists here. The motion will be granted.

4. [10-62315](#)-A-11 BEN ENNIS MOTION TO AMEND/MODIFY PRETRIAL  
[13-1108](#) LRP-11 ORDER  
STAPLETON ET AL V. NICHOLSON 3-18-15 [[238](#)]  
ET AL  
SYDNEY SMITH/Atty. for mv.

**Final Ruling**

**Motion:** Modify Pretrial Order

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

**Disposition:** Granted

**Order:** Prepared by moving party, approved as to form by Kurt F. Vote; pertinent terms of the stipulation shall be included in the order or a copy of the stipulation shall be appended to the 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).

Scheduling orders may be modified for good cause. Fed. R. Civ. P. 16(b)(4), *incorporated by* Fed. R. Bankr. 7016; Pretrial Order § 9.0, filed June 6, 2014, ECF # 61. Good cause exists here. The motion will be granted.

5.     [10-62315](#)-A-11   BEN ENNIS                                 MOTION TO COMPEL  
          [13-1108](#)                 LRP-12                                 3-18-15 [[244](#)]  
          STAPLETON ET AL V. NICHOLSON  
          ET AL  
          SYDNEY SMITH/Atty. for mv.  
          RESPONSIVE PLEADING

**No tentative ruling**

6.     [10-62315](#)-A-11   BEN ENNIS                                 MOTION TO COMPEL  
          [13-1108](#)                 LRP-13                                 3-18-15 [[256](#)]  
          STAPLETON ET AL V. NICHOLSON  
          ET AL  
          SYDNEY SMITH/Atty. for mv.  
          RESPONSIVE PLEADING

**No tentative ruling**

7.     [10-62315](#)-A-11   BEN ENNIS                                 MOTION TO COMPEL  
          [13-1108](#)                 LRP-15                                 3-18-15 [[231](#)]  
          STAPLETON ET AL V. NICHOLSON  
          ET AL  
          SYDNEY SMITH/Atty. for mv.  
          RESPONSIVE PLEADING

**No tentative ruling**

8.     [10-62315](#)-A-11   BEN ENNIS                                 MOTION TO ENFORCE ORDER ON  
          [13-1108](#)                 LRP-16                                 PLAINTIFF'S MOTION TO COMPEL  
          STAPLETON ET AL V. NICHOLSON                                 PRODUCTION OF DOCUMENTS AND  
          ET AL   APPEARANCE AT DEPOSITION  
  3-18-15 [[221](#)]  
  
          MICHAEL GOMEZ/Atty. for mv.  
          RESPONSIVE PLEADING

**No tentative ruling**

9. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#) WW-1  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL WILHELM/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION FOR PROTECTIVE  
ORDER  
2-25-15 [[205](#)]

### **Tentative Ruling**

**Motion:** Protective Order Re Depositions of Ben Ennis and Roberta Ennis

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

Ben Ennis moves under Fed. R. Civ. P. 26(c) for a protective order precluding and/or limiting the plaintiff and defendants' right to depose himself and his wife, Robert Ennis. The motion will be denied.

### **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

##### *Declarations filed After March 11, 2015*

Raising new factual allegations in support of the motion after opposition is filed is not proper. As one commentator noted, "Reply papers should be limited to matters raised in the opposition papers. It is improper for the moving party to "shift gears" and introduce new facts or different legal arguments in the reply brief than presented in the moving papers. [See *Lujan v. National Wildlife Federation* (1990) 497 US 871, 894-895, 110 S.Ct. 3177, 3192--court has discretion to disregard late-filed factual matters; *Zamani v. Carnes* (9th Cir. 2007) 491 F3d 990, 997--"district court need not consider arguments

raised for the first time in a reply brief"; see also *Ojo v. Farmers Group, Inc.* (9th Cir. 2009) 565 F3d 1175, 1186, fn. 12 (citing text); *Malin v. JPMorgan* (ED TN 2012) 860 F.Supp.2d 574, 577]"Tashima and Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, Motion Practice § 12:107 (Rutter Group 2014). As consequence, the supplemental declarations are improper, raising due process concerns. But even considering the additional declarations, the motion will be denied.

*Roberta Ennis*

The motion will be denied as to Roberta Ennis. At the outset, the court notes a lack of standing to bring this motion. It was brought only by Ben Ennis. See Motion for Protective Order, filed February 25, 2015, ECF # 205. Article III of the Constitution gives this court jurisdiction over cases and controversies. Standing is but one component of that issue. In simplest terms, standing requires (1) an injury in fact; (2) causation; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). In most instances, a plaintiff cannot assert the rights of third persons. See, *Kowalski v. Tesmer*, 543 U.S. 125, 134 (2004); *McCollum v. California Dept. of Corrections & Rehab.*, 647 F.3d 870, 879-880 (9th Cir. 2011) (prison chaplain did not have standing to sue for denial of prisoners denied access to worship services). Spouses do not necessarily have standing to act for the other. See e.g., *In re Siskin*, 231 B.R. 514, 518-519 (Bankr. E.D.N.Y. 1999). Here, Ben Ennis fails to point to an injury that he -- as opposed to his spouse -- has suffered. And he offers not power of attorney or order appointing himself as a guardian for his wife. As a result, the court does not find standing.

But even if Ben Ennis did have standing, he has made an insufficient showing of cause. Ennis offers two species of cause (1) medical conditions, i.e., severe situation stress, depression, anxiety and a surgery conducted on February 3, 2015; and (2) a lack of knowledge for his business affairs.

The problem as to the claim of medical disability is that the motion is unsupported by medical evidence. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). His declaration offered in support of the motion is insufficient. It states only, "Roberta is an invalid and in a wheel chair. She has been diagnosed with severe situation stress, depression and anxiety. She had surgery on February 3, 2015 and is still recovering. A second surgery is also planned. She is under the care of a general practitioner, cardiologist and orthopedic specialist. Her doctor has strongly advised against her testifying or being deposed." Declaration of Ben Ennis ¶ 8, filed February 25, 2015, ECF # 208. *Campos v. Webb County Tex.*, 288 FRD 134, 136-138 (S.D. Tex. 2012). The key is the last sentence, wherein Ennis recites that his wife's physicians advised against participation. Of course, this is inadmissible hearsay. Fed. R. Evid. 801-802. Ennis does not offer the declaration of a physician in support of the motion.

The other species of cause, i.e., lack of knowledge on the subjects on which she is to be deposed, also does not demonstrate cause. Ennis declares, "...Roberta was never active in my business dealings throughout our 50+ year marriage. She has no knowledge regarding, and was never involved in, my business transactions with Nicholson." Declaration of Ben Ennis ¶ 8, filed February 25, 2015, ECF # 208. One of the legitimate purposes of a deposition is to pin a witness down to

one particular version of the facts, including a claim of a lack of knowledge. And the parties deposition appears to be nothing more than that. If it is true that Roberta Ennis truly knows nothing of her husband's business affairs, hers will be a short deposition and a protective order on the basis of a lack of knowledge is not necessary.

#### *Ben Ennis*

The motion will also be denied without prejudice as to Ben Ennis. Several dimension of problems undercut Ennis' motion. 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). Michael S. Barnett, M.D. declares that no deposition should occur. Declaration of Barnett ¶ 5, filed February 25, 2015, ECF # 209. Similar supporting declarations from Dr. Reddy and Dr. Goodin are offered. Declarations of Reddy and Goodin, filed March 13, 18, ECF # 219, 228. The force of these declarations is undercut by Ennis' own admitted earlier participation in the case, Declaration of Ennis ¶¶ 2, 4, filed February 25, 2015, ECF # 208, and by his willingness to sit for the deposition under specified conditions, Declaration of Ennis at ¶15.

#### 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."). Ennis's willingness to be deposed for approximately one-half of that amount -- and possibly for a longer duration -- suggests that a protective order is unnecessary. Declaration of Ben Ennis ¶ 15(B),(H), filed February 25, 2015, ECF # 208. A protective order at this time would be premature. If Ennis believes the scope, duration, timing or manner of the deposition presents cause under Rule 26(c) he may renew the motion.

More importantly, a less intrusive remedy exists. If during the course of the deposition, Ben Ennis or his counsel is 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 (4th Cir. 1977).

For each of these reasons, 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.

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 the motion is denied.

**2:15 p.m.**

1. [13-17744](#)-A-11 SREP V, LLC  
UST-1  
TRACY DAVIS/MV  
PETER FEAR/Atty. for dbt.  
GREGORY POWELL/Atty. for mv.  
ORDER ECF NO. 241,  
CONTINUING TO 4/29/15

CONTINUED MOTION FOR REVIEW OF  
FEES  
1-14-15 [[195](#)]

**Final Ruling**

The matter is continued to April 29, 2015, at 2:15 p.m.