

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: APRIL 26, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [15-14906](#)-A-7 VICTOR/EVILA NAJERA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-4-16 [[50](#)]

ANTHONY EGBASE/Atty. for dbt.
\$60.00 CONVERSION FEE PAID
4/11/16

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO SELL
LRP-44 PROPERTIES, LLC 3-24-16 [[1614](#)]
DAVID STAPLETON/MV
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.
ORDER ECF #1620

[The hearing on this matter will be called concurrently with two other matters on this calendar: (1) the hearing on matter no. 5 on this chapter 7 calendar, the motion to sell in In re Pamela Ennis, Case No. 10-61725 and (2) the hearing on matter no. 9 on this chapter 7 calendar, the motion to sell in In re Brian Ennis, Case No. 10-61970. All three motions will be called at the end of the calendar.]

No tentative ruling

3. [15-13516](#)-A-7 CINDY JUAREZ MOTION TO SELL
JES-1 3-30-16 [[19](#)]
JAMES SALVEN/MV
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2008 Chevy Silverado

Buyer: Cindy Juarez

Sale Price: \$11,644 (\$3044 cash plus \$1800 exemption credit and accounting for a \$6800 lien to which the sale is made subject)

Sale Type: Private sale subject to overbid opportunity

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

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

4. [15-14022](#)-A-7 JULIE BOOKOUT MOTION TO COMPEL ABANDONMENT
TGM-2 3-15-16 [[33](#)]
JULIE BOOKOUT/MV
TRUDI MANFREDO/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

5. [10-61725](#)-A-7 PAMELA ENNIS MOTION TO SELL
THA-18 3-30-16 [[269](#)]
RANDELL PARKER/MV
RILEY WALTER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

[This matter will be called concurrently with matter nos. 1 and 5 at the end of this calendar.]

No tentative ruling

6. [16-10355](#)-A-7 DAVINA MORENO OPPOSITION RE: TRUSTEE'S MOTION
JES-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-10-16 [[21](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for May 20, 2016. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

7. [14-13661](#)-A-7 LAWRENCE GOWIN
DRJ-3
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH HENRY GOWIN AND
GL TRUST
4-6-16 [[46](#)]

DAVID JENKINS/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Chapter 7 trustee James Salven, Henry Gowin, and Robert Gown as Trustee of Gowin Living Trust

Dispute Compromised: The dispute is over the estate's share of the net sale proceeds (approximately \$232,355.85) of certain real property located at 1545 Eldorado Dr., Salinas, CA, after a lawsuit was filed by 2 co-owners of the real property asserting claims against the debtor, another co-owner, for partition and sale, and damages for ouster, private nuisance, breach of fiduciary duty, waste and injunctive relief. The state court had entered summary judgment against the debtor before the debtor's bankruptcy filing and the debtor had no counterclaims against the other co-owners. The other co-owners had no liens against the debtor's 1/3 share of the sale proceeds.

Summary of Material Terms: After minor adjustments described in the motion, the estate will receive 30.84% of the net sale proceeds, and the other co-owners will receive 34.664% and 34.496% of the sale proceeds respectively. Interest on the sale proceeds will be prorated paid to the estate and the other 2 co-owners based on such percentages. The other 2 co-owners have filed proofs of claims in this case: this compromise is without prejudice to their amendment of such claims or the trustee's objection to the claims.

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).

APPROVAL OF COMPROMISE

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

compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 46. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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 approve a compromise 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 granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 46.

8. [16-10469](#)-A-7 JEFFREY BOHN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-1-16 [[21](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Order to Show Cause: Dismissal of Case for Failure to Pay Filing Fees

Date Issued: April 1, 2016

Disposition: Docket No. 13 will be deemed of no effect

Order: Civil minute order

The Order to Show Cause was issued because an Amended Schedule E was filed in this case at docket no. 13 without the appropriate filing fee. However, the debtor's attorney has affirmed that the debtor did not file the document and that it presumably was filed by a creditor.

Only the debtor may file schedules or amended schedules absent a court order permitting a party other than the debtor to do so. 11 U.S.C. § 521(a)(1); Fed. R. Bankr. P. 1007(b)(1). Under certain circumstances not relevant here, the court may order a trustee or petitioning creditor, or other party, to file schedules, statements or lists required by the Code and Rules. Fed. R. Bankr. P. 1007(k).

Because a party other than a debtor filed a schedule without court authorization, the document will be stricken from the docket as an unauthorized filing.

CIVIL MINUTE ORDER

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

The order to show cause having come before the court, and the court having reviewed the debtor's response indicating that the debtor did not file the schedule for which the order to show cause was issued and that debtor should not be responsible for paying a filing fee for a document debtor did not file,

IT IS ORDERED that the amended Schedule E filed at docket no. 13 is deemed of no effect as having been filed by a party other than the debtor without court authorization under Fed. R. Bankr. P. 1007(k).

IT IS FURTHER ORDERED that the order to show cause is discharged without payment of the filing fee for which it was issued.

9. [10-61970](#)-A-7 BRIAN ENNIS MOTION TO SELL
THA-11 3-30-16 [[374](#)]
JAMES SALVEN/MV
RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

[This matter will be called concurrently with matter nos. 1 and 5 on this calendar, but will be called at the end of the 9:00 a.m. calendar.]

No tentative ruling.

10. [14-13881](#)-A-7 RAQUEL FLORES CONTINUED MOTION FOR RELIEF
MDE-1 FROM AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 2-17-16 [[42](#)]
SCOTT LYONS/Atty. for dbt.
MARK ESTLE/Atty. for mv.
DISCHARGED

No tentative ruling.

11. [14-16088](#)-A-7 GILBERT SALAS
RHT-1
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GILBERT SALAS
3-29-16 [[17](#)]

ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

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

The parties request approval of a compromise that settles a dispute about the debtor's prepetition transfer of a vehicle valued at \$6000. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include the transferee's payment of \$4000 (or 66.7% of the value of the vehicle), which has been received by the estate, and the estate's release of any claim it has against the transferee arising from the transfer. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

The trustee's motion to approve a compromise 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. The court approves the parties' compromise, which settles a dispute about the debtor's prepetition transfer of a vehicle valued at \$6000. The terms and conditions of the compromise include the transferee's payment of \$4000 (or 66.7% of the value of the vehicle), which has been received by the estate, and the estate's release of any claim it has against the transferee arising from the transfer.

12. [15-13790](#)-A-7 CARL/LAURA JOHANSSON MOTION TO SELL
PFT-2 3-30-16 [[23](#)]
PETER FEAR/MV
THOMAS ARMSTRONG/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2 motor vehicles and a trailer

Buyer: Debtor

Sale Price:

-2006 Honda Civic LX: \$3400 (\$500 cash plus \$2900 exemption credit)

-1998 Chevrolet Suburban 2500: \$1000 cash

-Small Bigtex Utility Trailer: \$500 cash

Sale Type: Private sale subject to overbid opportunity

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

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

13. [16-10307](#)-A-7 ERNESTO RODRIGUEZ
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-15-16 [[18](#)]

DISMISSED

Tentative Ruling

An order has been issued dismissing the case. The court can no longer consider the debtor's late-filed opposition to the trustee's request for dismissal.

The Notice of Hearing on the trustee's motion to dismiss, filed at docket no. 19, required that the Notice of Hearing and Opposition be filed no later than 14 days before the hearing. The 14-day deadline occurred April 13, 2016. The clerk's file-date stamp shows that the debtor's Notice of Hearing and Opposition was filed April 20, 2016, which is 7 days past due.