

**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 30, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

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

**ERRORS IN FINAL RULINGS**

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

9:00 a.m.

1. [14-10802](#)-A-7 CARLOS SANCHEZ MOTION TO DISMISS CASE  
SAS-1 3-21-14 [[16](#)]  
SHERYL STRAIN/MV  
THOMAS GILLIS/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Dismiss Case for Failure to Provide Pay Advices Timely to the Trustee

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

**Disposition:** Granted

**Order:** Civil minute order

### **LEGAL STANDARDS FOR PROVISION OF PAY ADVICES TO TRUSTEES**

No later than 7 days before the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. Under Local Bankruptcy Rule 1007-1(c)(1), the court has required debtors not to file payment advices or other evidence of payment. Instead, debtors are to provide such documents to the assigned case trustee not later than 7 days before the first date set for the creditors' meeting. Section 521(i), by contrast, is premised on the requirement that a debtor *file* such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, within which time such materials must be filed, but a very different deadline is imposed for providing documents to the trustee under Local Bankruptcy Rule 1007-1(c)(1). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules. Failure to provide pay advices timely to the



this property since the date of the petition and on the petition date; (iii) whether the debtor resided on the property on the date the respondent's lien attached to the Feland property; and (vi) the intention with which the debtor has occupied the property. See Cal. Civ. Proc. Code § 704.710(c) (continuous residency requirement); *Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson)*, 824 F.2d 754, 757 (9th Cir. 1987); *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 21 (B.A.P. 9th Cir. 2003).

Unless all parties are prepared at the hearing to establish relevant scheduling dates and deadlines, the court will continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

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

4. [13-15413](#)-A-7 SASCHA WILLIAMS MOTION TO EMPLOY GOULD AUCTION  
PFT-2 AND APPRAISAL COMPANY AS  
PETER FEAR/MV AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
3-26-14 [[35](#)]

JEFF REICH/Atty. for dbt.  
PETER FEAR/Atty. for mv.

#### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2004 Ford Excursion

**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.

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 for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

5. [12-17727](#)-A-7      ELIZABETH RAMIREZ      MOTION TO SELL  
RHT-1      3-20-14 [[44](#)]  
ROBERT HAWKINS/MV  
ERIC ESCAMILLA/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2004 GMC Yukon

**Buyer:** Debtor

**Sale Price:** \$5497 (\$2772 cash plus \$2725 exemption credit)

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

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

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

will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

6. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR MOTION TO PAY  
JES-3 4-2-14 [[27](#)]  
JAMES SALVEN/MV

VINCENT GORSKI/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Tentative Ruling**

**Motion:** Compensate Real Estate Broker

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

**Disposition:** Granted as to Coldwell Banker, Commercial C&C Properties;  
denied as to James Ramsay

**Order:** Prepared by moving party

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

The motion requests authority to pay James Ramsay, an applicant that has not been named in the order employing the real estate broker at docket No. 18. Accordingly, the motion will be denied to the extent it seeks to pay an applicant who is not specified in the order employing a broker for this transaction.

7. [13-18032](#)-A-7 JESUS/YULIANA CONTRERAS OBJECTION TO DEBTOR'S CLAIM OF  
JES-2 EXEMPTIONS  
JAMES SALVEN/MV  
3-21-14 [[20](#)]  
THOMAS GILLIS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Tentative Ruling**

**Objection:** Claim of Exemptions

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

The objection was filed March 21, 2014. The debtors subsequently filed an amended Schedule C on April 21, 2014. The court will overrule the objection as moot.

8. [13-18132](#)-A-7 TREENA PEREZ  
SAS-1  
SHERYL STRAIN/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
3-24-14 [[12](#)]

SCOTT SAGARIA/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

### **Final Ruling**

**Motion:** Extend Trustee's Deadline for Objecting to Discharge under § 727(a)

**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).

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

It is unclear whether the debtor has all of the documents that the trustee seeks (e.g., payment advices and tax returns for years for which no return was filed), whether the documents exist (e.g., does the debtor have pay advices for the relevant period) and whether the debtor is required under § 521(e)(2)(A)(i) to produce some of these documents to the trustee (e.g., the tax returns for 2010, 2011, 2012) if they do exist. But the court does not need to decide these issues. The trustee has filed a facially proper motion to compel the debtor to turn over these documents to the extent that they exist and are held by the debtor. And the trustee has also requested some documents from the debtor, such as documents relating to the debtor's vehicle and secured vehicle loan and documents necessary to determine the debtor's tax status for 2013. These documents appear to be "necessary to enable the trustee to perform the trustee's duties under [the Code]." See 11 U.S.C. § 521(a)(3).

Further, the debtor has not opposed the motion. Based on the motion's statements, the court finds that the debtor has been unable to attend the continued meeting of creditors on February 21, 2014, and that the trustee has been unable to complete her analysis of the assets and financial condition of the debtor. Cause exists to extend the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended to and through May 31, 2014.

9. [13-18132](#)-A-7 TREENA PEREZ  
SAS-2  
SHERYL STRAIN/MV  
SCOTT SAGARIA/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

MOTION TO COMPEL  
4-2-14 [[16](#)]

### **Final Ruling**

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

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

**Disposition:** Granted as specified in this ruling

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

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 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).

Section 542(e) further 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.A. § 542(e).

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.

In this case, the trustee has made the requisite showing that documents and papers sought relate to the debtor's property or financial affairs. Additionally, the trustee has made the requisite showing of the estate's interest in the property sought by turnover (the 2013 tax refund, if any) to the extent such property exists. The court's only concern is that the order not be drafted to compel the debtor to turn over documents or property that may not exist or may not be in the possession or control of the debtor.

Thus, the motion will be granted, but the order shall state that the documents and property described in the motion and supporting papers—to the extent that they exist and are held in the debtor's possession or control— shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

10. [12-11035](#)-A-7 MARIA LEMUS  
AGG-1  
MARIA LEMUS/MV

CONTINUED MOTION FOR ORDER  
CONFIRMING THAT ANY LOAN  
MODIFICATION GIVEN BY WELLS  
FARGO BANK WOULD NOT CONSTITUTE  
A VIOLATION OF THE DISCHARGE  
INJUNCTION  
3-18-14 [[29](#)]

ALBERT GARCIA/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification in Chapter 7 Case

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

**Disposition:** Denied

**Order:** Civil minute order

The debtor requests declaratory relief that a mortgage loan modification entered into after the debtor's discharge will not violate the discharge injunction. The debtor states that the proposed loan modification with Wells Fargo Home Mortgage/Wells Fargo Bank ("Wells Fargo") is necessary so that Wells Fargo will give her the loan modification she seeks. The debtor did not, however, enter a reaffirmation agreement with Wells Fargo prior to the entry of her discharge.

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-565 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

The Declaratory Judgment Act provides that federal courts may grant declaratory relief "whether or not further relief is or could be sought" but only if the relief is sought "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Supreme Court has recognized the potential for declaratory relief to present a non-justiciable case that "fall[s] outside the constitutional definition of a 'case' in Article III." *Calderon v. Ashmus*, 523 U.S. 740, 746 (1998). A party may not seek declaratory relief that would constitute "an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937)).

Under constitutional-ripeness principles, therefore, courts must preclude "federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution." *Id.* at 748. "The issues presented must be definite and concrete, not hypothetical and abstract. Where a dispute hangs on future contingencies that may or may not occur, it may be too impermissibly speculative to present a justiciable controversy." *Educ. Credit Mgmt. Corp. v. Coleman (In re Coleman)*, 560 F.3d 1000, 1005 (9th Cir. 2009) (citations omitted) (internal quotation marks omitted). "The constitutional ripeness of a declaratory judgment action depends upon whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a

declaratory judgment." *Id.* (quoting *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003) (internal quotation marks omitted).

The debtor essentially seeks to decide the issue of whether (i) the debt owed to Wells Fargo has been discharged, and (ii) whether a loan modification would violate the discharge injunction. No facts have been presented showing whether the mortgage or deed of trust was recourse or non-recourse.

But even if the mortgage loan were recourse debt, so that the discharge eliminated the personal liability of the debtor, the debtor's motion seeks declaratory relief that the court cannot grant. No dispute appears to be actually present between the debtor and Wells Fargo about whether the discharge injunction would be violated by the proposed mortgage loan modification. This presents a question in the absence of a definite and concrete dispute. The question presented for resolution has many future contingencies before it would become an immediate, definite and concrete dispute. Such contingencies include whether the modification is effectuated and whether a proceeding to enforce the discharge violation is brought in response to such modification.

11. [14-10447](#)-A-7 MARIA NAVA MOTION TO AVOID LIEN OF  
MAZ-1 PORTFOLIO RECOVERY ASSOC., LLC  
MARIA NAVA/MV 3-26-14 [[17](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

12. [13-16457](#)-A-7 DES BANGAR MOTION TO SELL  
TGM-2 4-2-14 [[48](#)]  
JAMES SALVEN/MV  
GARY HUSS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

**No tentative ruling.**

13. [13-17265](#)-A-7 ROBERT DONABEDIAN MOTION TO SELL  
RHT-1 3-26-14 [[21](#)]  
ROBERT HAWKINS/MV  
PETER FEAR/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2003 Toyota Solara

**Buyer:** Debtor

**Sale Price:** \$10,377 (\$3000 cash plus \$7377 exemption credit)

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

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

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.

14. [14-10665](#)-A-7 CYNTHIA ARELLANO MOTION TO SHUT DOWN BUSINESS  
SAS-1 3-19-14 [[21](#)]  
SHERYL STRAIN/MV  
TYSON TAKEUCHI/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.  
RESPONSIVE PLEADING  
WITHDRAWN,

#### **Tentative Ruling**

**Matter:** Ex Parte Application for Order Requiring Debtor to Shut Down Business

**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).

The trustee seeks to shut down the debtor's sole proprietorship business asserting that the debtor is not authorized to use property of the estate under § 363 and the business is property of the estate that has not been abandoned. The debtor has withdrawn her opposition and stated that she does not oppose the relief requested by the trustee. The court will grant the motion and order that the debtor's business be shut down until such assets are abandoned or no longer property of the estate.

15. [14-11068](#)-A-7 SANDY CLARK MOTION FOR WAIVER OF THE  
SANDY CLARK/MV CHAPTER 7 FILING FEE OR OTHER  
FEE  
SCOTT LYONS/Atty. for dbt. 3-5-14 [5]

**Final Ruling**

The fee paid in full, the motion is denied as moot.

16. [11-12673](#)-A-7 JAMES/MARY BRIXEY MOTION TO AVOID LIEN OF  
DRJ-5 NORTHERN CALIFORNIA COLLECTION  
MARY BRIXEY/MV SERVICE, INC. OF SACRAMENTO, A  
CORP.  
M. ENMARK/Atty. for dbt. 4-10-14 [53]

**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:** \$137,035.31

**Property Value:** \$118,159.00

**Judicial Lien Avoided:** \$18,876.31

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.

17. [13-14682](#)-A-7 THERESA PIERRO  
TMT-2  
TRUDI MANFREDO/MV  
GARY HUSS/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.

MOTION TO SELL  
3-24-14 [[37](#)]

**Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Brokers

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2358 S. Anna St., Fresno, California

**Buyer:** Ralph Hovannisian and Janet Hovannisian

**Sale Price:** \$26,500.00

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

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 for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

18. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER MOTION TO SELL  
JES-5 3-27-14 [[36](#)]  
JAMES SALVEN/MV  
BRIAN HADDIX/Atty. for dbt.  
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:** 1978 Glasspar fishing boat, fishing gear and tackle, 1960 Ford F-100

**Buyer:** Debtors

**Sale Price:**

-1978 Glasspar fishing boat: \$895 cash

-Fishing gear and tackle: \$120 cash

-1960 Ford F-100: \$25

**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.

19. [14-11682](#)-A-7 ANTONIO TINOCO MOTION TO CONVERT CASE FROM  
RR-1 CHAPTER 7 TO CHAPTER 13  
ANTONIO TINOCO/MV 4-12-14 [[15](#)]  
RANDY RISNER/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). 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.

20. [14-11383](#)-A-7 MARTHA LOPEZ  
MARTHA LOPEZ/MV  
ALEXIA KIRKLAND/Atty. for dbt.

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
3-20-14 [[5](#)]

**No tentative ruling.**

21. [13-17885](#)-A-7 CONNIE BETHEL  
SAS-1  
SHERYL STRAIN/MV  
KEITH KNOCHEL/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-2-14 [[21](#)]

**Tentative Ruling**

**Objection:** Objection to Debtor's Claim of Exemption

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

**Disposition:** Denied as moot

**Order:** Civil minute order

After the trustee's objection was filed on April 2, 2014, the debtor amended her Schedule C. The trustee's objection is to an exemption claimed in a certain note secured by real property ("Note").

The debtor's opposition states that Schedules B and C were amended to "alter the value of the Note" and that the amendment makes the "Note [] no longer completely exempt." The court will deny the objection as moot given the post-objection amendment to Schedules B and C.

22. [14-10689](#)-A-7 KRISTINA DATRICE CONTINUED MOTION FOR WAIVER OF  
THE CHAPTER 7 FILING FEE OR  
KRISTINA DATRICE/MV OTHER FEE  
2-17-14 [5]  
JANINE ESQUIVEL/Atty. for dbt.

**No tentative ruling.**

23. [13-16195](#)-A-7 AVELINO/MARIBEL ORMONDE MOTION TO SELL  
JES-3 4-2-14 [35]  
JAMES SALVEN/MV  
GEOFFREY ADALIAN/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2316 West Delta Avenue, Visalia, CA

**Buyer:** Tom Carr

**Sale Price:** \$122,500 (JPMorgan Chase Bank, N.A.'s lien will be paid through escrow as well as the debtor's exemption)

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

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 for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

24. [14-11299](#)-A-7 ELVIA ALMONTE ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-14-14 [[27](#)]

**Final Ruling**

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

25. [14-11947](#)-A-7 MANUEL ALEMAN MOTION TO COMPEL ABANDONMENT  
PK-1 4-18-14 [[15](#)]  
MANUEL ALEMAN/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OST 4/18

**Tentative Ruling**

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

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

**Disposition:** Denied without prejudice

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

**Business Description:** Manuel's Casa de Mariscos

The court cannot tell precisely what list of business assets the debtor seeks to abandon. Paragraph 4 of the motion states that the business assets include a liquor license, fixtures, equipment, and supplies. The motion does not state whether the fixtures have been exempted, or whether the supplies have been exempted. The motion does not ambiguously identify which assets are to be abandoned, and the grounds for such abandonment with respect to each asset to be abandoned.

The motion states that the liquor license has a scheduled value of \$20,000, but then states that only a portion of such value is exempt (\$15,925). No information is given about why the non-exempt portion of the value of the liquor license is of inconsequential benefit to the estate.

The motion should clarify these points. The grounds for the motion have not been provided with sufficient particularity. See Fed. R. Bankr. P. 9013.

9:15 a.m.

1. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN MOTION FOR SUMMARY JUDGMENT  
[13-1073](#) WW-2 AND/OR MOTION FOR PARTIAL  
KARRAKER ET AL V. MCCLARAN SUMMARY JUDGMENT  
4-2-14 [[71](#)]
- TRACY BLAIR/Atty. for mv.  
CONTINUED BY ORDER TO  
5/14/14

**Final Ruling**

This matter is continued to May 14, 2014, at 9:15 a.m. pursuant to stipulation and order.

2. [13-14423](#)-A-7 DAVID/JENIFER JUSTICE CONTINUED STATUS CONFERENCE RE:  
[13-1105](#) GEORGE V. JUSTICE COMPLAINT  
RUSSELL REYNOLDS/Atty. for pl. 10-3-13 [[1](#)]  
RESPONSIVE PLEADING, CLOSED  
3/18/14

**Final Ruling**

The case settled and closed, the status conference is concluded.

3. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION TO STRIKE  
[14-1007](#) WW-1 3-28-14 [[19](#)]  
VANDER POEL, SR. V. MEDINA  
RILEY WALTER/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Strike Defendant's 2nd Affirmative Defense

**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). The response filed by the defendant states that the defendant "withdraws the second affirmative defense contained in his answer and concurrently files an amended answer which omits the second affirmative defense." The court treats this response as a non-opposition or a lack of opposition.

Thus, the default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The plaintiff's Reply indicates that on April 16, 2014, defendant Medina filed an Amended Answer without consent of the plaintiff or

leave of court. The court must consider whether the amended answer has legal effect in determining whether the motion is moot.

If an amendment is no longer allowed as a matter of course, Federal Rule of Civil Procedure 15(a)(2) requires the opposing party's written consent or the court's leave before a party may amend its pleading. Fed. R. Civ. P. 15(a)(2), *incorporated by* Fed. R. Bankr. P. 7015. An answer to a complaint is considered a "pleading." Fed. R. Civ. P. 7(a)(2).

The defendant's amended answer was filed on April 16, 2014, at docket number 35. Rule 15(a)(1)(A) permitted the defendant to amend his answer no later than 21 days after his serving the answer. Defendant never served his answer, but this will not allow him to take advantage of an extended period of time in which to amend his answer. LBR 9014(e)(1) provides that pleadings must be served on or before the date they are filed. Accordingly, the court will treat the period during which the defendant's answer may have been amended as a matter of course as having started on the date his original answer was filed, February 20, 2014, and having expired on March 13, 2014.

Accordingly, defendant's amended answer has no legal effect because it was not filed in accordance with the applicable rules. As a result, the motion is not moot and the court will consider the defendant's original answer.

For the reasons stated in the motion, the court will grant the motion. The court takes judicial notice of the Notice of Conversion filed on March 22, 2013, at docket no. 161. The notice provides that the deadline for a complaint to determine nondischargeability as June 25, 2013. The meeting of creditors in the converted chapter 7 case was first set for April 26, 2013, and 60 days after this date is June 25, 2013. No complaint to determine nondischargeability pursuant to § 523(a)(6) and (c), and Rule 4007(c), was filed before this deadline by defendant Medina. Accordingly, the defendant's second affirmative defense based on § 523(a)(6) will be stricken as an insufficient defense.

4. [14-10691](#)-A-7 JOHN/MESHELL RUIZ STATUS CONFERENCE RE: COMPLAINT  
[14-1031](#) 3-5-14 [[1](#)]  
RUIZ, II V. KINGS CREDIT  
SERVICES, INC.  
TIMOTHY SPRINGER/Atty. for pl.

**No tentative ruling.**

10:00 a.m.

1. [14-11308](#)-A-7 ANA GAETA MOTION FOR RELIEF FROM  
EAT-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 4-2-14 [[17](#)]  
MARISOL NAGATA/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

2. [12-11617](#)-A-7 NICHOLAS/JESSICA ESCOBEDO MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 4-4-14 [[69](#)]  
THOMAS ARMSTRONG/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

**Tentative Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, the motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). Contested matters require Rule 7004 service of the motion. Fed. R. Bankr. P. 9014(b).

In contested matters, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). The debtor is the party against whom relief is sought by the motion for stay relief. The motion must be served on the party against whom relief is sought in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(a)-(b).

In this case, the motion did not comply with Rule 7004 because service on the debtor or was insufficient. If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney. Lastly, the trustee was not served. Rule 9013 requires that the trustee also be served the motion. Fed. R. Bankr. P. 9013.

3. [14-10230](#)-A-7 ARIEL CLEOFAS MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK N.A./MV 4-8-14 [[21](#)]  
ADAM BARASCH/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2007 BMW 525I

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

4. [14-10160](#)-A-7 LEONARDO PORTILLO MOTION FOR RELIEF FROM  
ASW-1 AUTOMATIC STAY  
SUNTRUST MORTGAGE, INC./MV 3-25-14 [[27](#)]  
JOELY BUI/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 4782 East Lowe Avenue, Fresno, California

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the

estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

No other relief will be awarded.

10:30 a.m.

1. [14-10822](#)-A-7 MARIA CAZARES PRO SE REAFFIRMATION AGREEMENT  
WITH SPRINGLEAF FINANCIAL  
SERVICES  
4-9-14 [[14](#)]

No tentative ruling.

2. [14-11133](#)-A-7 CLAUDIA SEGURA PRO SE REAFFIRMATION AGREEMENT  
WITH MERCED SCHOOL EMPLOYEES  
FCU  
4-2-14 [[15](#)]

No tentative ruling.

3. [14-10742](#)-A-7 SARAH VALENZUELA PRO SE REAFFIRMATION AGREEMENT  
WITH SPRINGLEAF FINANCIAL  
SERVICES  
4-2-14 [[12](#)]

No tentative ruling.

4. [14-10666](#)-A-7 ARMANDO/MONICA ALVARADO PRO SE REAFFIRMATION AGREEMENT  
WITH TOYOTA MOTOR CREDIT  
CORPORATION  
4-7-14 [[18](#)]

No tentative ruling.

11:00 a.m.

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

**Final Ruling**

This matter is continued to July 1, 2014, at 9:00 a.m. to allow the Chapter 7 trustee to prosecute a Rule 9019 motion. In the event that such a motion has not been decided by June 18, 2014, trustee Hawkins shall file a status report 14 days prior to the hearing.

1:30 p.m.

1. [13-17444](#)-A-11 A & A TRANSPORT, CO., CONTINUED CHAPTER 11 STATUS  
INC. CONFERENCE  
12-4-13 [[6](#)]  
  
HILTON RYDER/Atty. for dbt.

**Final Ruling**

The status conference is continued to July 30, 2014, at 1:30 p.m. A status report shall be filed 14 days prior to the hearing.

2. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO APPROVE STIPULATION  
HAR-10 INC. FOR RELIEF FROM THE AUTOMATIC  
A & A TRANSPORT, CO., INC./MV STAY  
3-28-14 [[82](#)]  
  
HILTON RYDER/Atty. for dbt.

**Final Ruling**

**Motion:** Approval of Agreement to Terminate the Stay  
**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).

Having reviewed the motion's well-pleaded facts, the court finds that the agreement to terminate the stay should be approved. The court will approve the agreement and allow Thomas Strout to have relief from stay pursuant to that agreement and subject to its terms and conditions. The motion will be granted.

3. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO APPROVE STIPULATION  
HAR-9 INC. FOR RELIEF FROM THE AUTOMATIC  
A & A TRANSPORT, CO., INC./MV STAY  
3-28-14 [[78](#)]  
HILTON RYDER/Atty. for dbt.

**Final Ruling**

**Motion:** Approval of Agreement to Terminate the Stay  
**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).

Having reviewed the motion's well-pleaded facts, the court finds that the agreement to terminate the stay should be approved.

The court will approve the agreement and allow Jose Figueroa to have relief from stay pursuant to that agreement and subject to its terms and conditions. The motion will be granted.

4. [14-10851](#)-A-11 JOHN/BETTY VAN DYK MOTION FOR COMPENSATION BY THE  
WW-7 LAW OFFICE OF WALTER & WILHELM  
DEBTOR'S ATTORNEY(S).  
4-2-14 [[59](#)]  
RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Application:** Interim Compensation and Expense Reimbursement  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Approved  
**Order:** Prepared by applicant

**Applicant:** Walter & Wilhelm Law Group  
**Compensation approved:** \$12,064.00  
**Costs approved:** \$2071.60  
**Aggregate fees and costs approved in this application:** \$14,135.60  
**Retainer held:** \$30,340.25  
**Amount to be paid as administrative expense:** \$0.00

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 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 for "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. The moving party is authorized to draw on any retainer held.

5. [13-14894](#)-A-11 JORENE MIZE MOTION FOR COMPENSATION BY THE  
RAF-12 LAW OFFICE OF FRAZEE LAW GROUP  
FOR ROSEANN FRAZEE, DEBTOR'S  
ATTORNEY(S).  
4-2-14 [[249](#)]
- ROSEANN FRAZEE/Atty. for dbt.

**Final Ruling**

The matter is continued to May 28, 2014, at 1:30 p.m. pursuant to order, ECF No. 256.

6. [12-12998](#)-A-11 FARSHAD TAFTI AMENDED MOTION FOR COMPENSATION  
MKK-3 FOR M. KATHLEEN KLEIN,  
M. KLEIN/MV ACCOUNTANT(S).  
4-24-14 [[280](#)]
- PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** M. Kathleen Klein

**Compensation approved:** \$21,831.50

**Costs approved:** \$0.46

**Aggregate fees and costs approved in this application:** \$21,831.96

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$21,831.96

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

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

The court also finds that all previous interim fee awards fix reasonable compensation and expenses for the services rendered and costs incurred and finalizes those awards.

7. [12-12998](#)-A-11 FARSHAD TAFTI  
PLF-8

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF PETER L. FEAR FOR  
PETER L. FEAR, DEBTOR'S  
ATTORNEY(S)  
3-27-14 [[273](#)]

PETER FEAR/Atty. for dbt.

#### **Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Offices of Peter L. Fear

**Compensation approved:** \$49,714.00

**Costs approved:** \$3,661.00

**Aggregate fees and costs approved in this application:** \$53,375.00

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$53,375.00

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 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 for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

The court also finds that all previous interim fee awards fix reasonable compensation and expenses for the services rendered and costs incurred and finalizes those awards.

8. [14-11991](#)-A-11 CENTRAL AIR MOTION FOR ADMINISTRATIVE  
KDG-2 CONDITIONING, INC. EXPENSES  
CENTRAL AIR CONDITIONING, 4-24-14 [[13](#)]  
INC./MV  
HAGOP BEDOYAN/Atty. for dbt.  
OST 4/24

#### **Tentative Ruling**

**Motion:** Fix, Allow and Pay Claims under § 503(b)(9)

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

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

**Order:** Prepared by moving party consistent with this ruling

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).

For the reasons stated in the motion, the court will grant the motion in part to allow pro rata payment of \$3500 per week to the creditors holding § 503(b)(9) claims who have been identified in the motion. The court will fix the claims of such creditors as set forth in paragraph 7 of the motion.

The court will deny the motion to the extent it seeks to fix and limit the creditors holding § 503(b)(9) claims to those identified in the motion. Regardless of whether a creditor has received notice of this motion, the court will not restrict a creditor from attempting to show it holds a § 503(b)(9) claim.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1033](#) PROPERTIES, LLC  
ENNIS COMMERCIAL PROPERTIES,  
LLC V. NICHOLSON ET AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING
- RESCHEDULED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
2-7-14 [[76](#)]

**No tentative ruling.**

2. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1050](#) PROPERTIES, LLC  
ENNIS COMMERCIAL PROPERTIES,  
LLC ET AL V. HA DEVCO, INC. ET  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING
- RESCHEDULED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
1-14-14 [[56](#)]

**No tentative ruling.**

3. [10-62315](#)-A-11 BEN ENNIS  
[13-1107](#)  
STAPLETON ET AL V. WATKINS ET  
AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING
- CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-11-14 [[50](#)]

**No tentative ruling.**

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#)  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING
- CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-12-14 [[46](#)]

**No tentative ruling.**

5. [13-17444](#)-A-11 A & A TRANSPORT, CO., STATUS CONFERENCE RE: COMPLAINT  
[14-1032](#) INC. 3-5-14 [[1](#)]  
A & A TRANSPORT CO., INC. V.  
BURROWS & CASTADIO, INC.  
HILTON RYDER/Atty. for pl.

**Final Ruling**

The status conference is continued to July 1, 2014, at 1:45 p.m. to obtain default judgment of the defendant. If default judgment is not obtained, plaintiff shall file a status report 14 days prior to the continued hearing.

6. [14-10268](#)-A-11 RODRIGO ROMERO STATUS CONFERENCE RE: COMPLAINT  
[14-1028](#) U.S. TRUSTEE V. ROMERO 2-28-14 [[1](#)]  
GREGORY POWELL/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**