

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

MAY 14, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [13-17405](#)-A-7 GARY KINDLUND MOTION TO SELL AND/OR MOTION TO
RH-3 PAY
JAMES SALVEN/MV
4-10-14 [[38](#)]
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearings on (i) the motion to sell stock in this case having docket control no. RH-4, and (ii) the motion to compromise controversy or approve settlement agreement, having docket control no. RH-5.]

Tentative Ruling

Motion: Sell Property

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Property: 12 acres located at 16877 Grangeville Boulevard, Lemoore, California, subject to the reservation of a life estate for the debtor, Gary Kindlund, in portion of the property (the home, commercial hay barn, and surrounding yard—approximately 3 acres total).

Buyer: Michael T. Gingles and Lupe Gingles

Sale Price: \$120,000 cash

Sale Type: Private sale subject to overbid opportunity

SALE UNDER § 363(b)

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

The declaration of Hawkins in support of the motion reveals that the proposed sale reserves a life estate to the debtor. But the notice provided to creditors pursuant to Rule 2002(a)(2) does not properly describe the relief requested: the notice provides only that the trustee has received an offer to sell the property, implying that the trustee requesting approval of a sale of the entire fee interest. Because only the notice was provided to all creditors and parties in interest, the notice was required to state exactly what interest was being sold, and that the proposed sale was of less than the entire fee and reserves a life estate to the debtor. See LBR 9014-1(d)(4). The motion also lacks this essential information about the sale, so it does not accurately set forth the relief or order sought. See Fed. R. Bankr. P. 9013.

BANK OF AMERICA'S OPPOSITION

Bank of America, N.A. opposes the motion on the ground that it does not consent to free and clear relief under § 363(f). The moving party has not requested that the sale of the property be free and clear of Bank of America's lien. The relief that Bank of America opposes has

not been requested. In fact, secured creditor's liens are to be paid through escrow. Thus, deciding whether free and clear relief is warranted in this case is premature in the absence of dispute about the issue, so Bank of America's opposition is not well taken.

2. [13-17405](#)-A-7 GARY KINDLUND
RH-4
JAMES SALVEN/MV

MOTION TO SELL
4-10-14 [[43](#)]

MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Property: 10 shares of capital stock in the Lemoore Canal & Irrigation Co. [property that must be sold concurrently with 16877 Grangeville Blvd., Lemoore, California, to allow the owner of this real property to utilize the water rights to it]

Buyer: Michael T. Gingles and Lupe Gingles

Sale Price: \$30,000.00

Sale Type: Private sale subject to overbid opportunity

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).

The notice does not state that the sale is subject to overbid at the hearing, a material term of the sale. The notice of a proposed private sale should contain all material terms and conditions of the sale. See Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); see also LBR 9014-1(d)(4) ("When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set for the essential facts necessary for a party to determine whether to oppose the motion.").

Conditioning a sale on the opportunity for higher and better bids is a material term of any private sale because it may substantially alter the price term and change the identity of the buyer. In the future, the moving party should ensure that the notice of hearing contains all material terms and conditions of the sale.

3. [13-17405](#)-A-7 GARY KINDLUND
RH-5
JAMES SALVEN/MV
AGREEMENT WITH GARY L. KINDLUND

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
4-10-14 [[48](#)]

MARK ZIMMERMAN/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: Denied without prejudice
Order: Prepared by moving party

Parties to Compromise: Trustee and Debtor
Dispute Compromised: Unclear

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 court cannot determine what the dispute between the trustee and the debtor was or how that dispute is being compromised. The debtor has claimed an exemption of \$71,680.23 in the real property located at 16877 Grangeville Blvd., Lemoore, CA. The motion to compromise states that "[i]f the debtor was to utilize a homestead exemption in the residence, he would be entitled to a \$100,000 exemption." The motion also indicates that the debtor amended his schedules to exempt farming equipment. The court does not understand what basis the trustee has for disputing the debtor's amendment to his exemptions to protect farming equipment. It cannot tell whether the debtor's choice not to use a \$100,000 homestead exemption is a right given up by the debtor in exchange for not disputing some other action by the trustee, such as the sale. In sum, the court does not understand what the dispute being compromised is, what the material terms of the compromise are, and how such terms comply with the *A & C Properties* factors. See Fed. R. Bankr. P. 9013.

4. [14-10406](#)-A-7 LORI RIZZONELLI
UST-1
TRACY DAVIS/MV
THOMAS HOGAN/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
NON-OPPOSITION

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
4-14-14 [[16](#)]

Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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 motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(I).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). The debtor has filed a declaration stating that she does not oppose the relief requested. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

5. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER MOTION TO EXTEND TIME FOR
HW-1 OBJECTION TO DEBTORS CLAIM OF
CADLES OF GRASSY MEADOWS II, EXEMPTIONS
L.L.C./MV 4-17-14 [[22](#)]
JERRY LOWE/Atty. for dbt.
IAN BONIFIELD/Atty. for mv.

Final Ruling

The notice of hearing on this matter has been amended to set the hearing for May 28, 2014. The matter will be dropped from this calendar.

6. [13-17712](#)-A-7 RUBEN OLVERA AND GLORIA CONTINUED MOTION TO CONVERT
TOG-4 CHAVEZ CASE FROM CHAPTER 7 TO CHAPTER
RUBEN OLVERA/MV 13
3-6-14 [[13](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

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

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the debtors have substantially undervalued the real property located at 2278 Poplar Avenue, Palo Alto, California, and (ii) whether this undervaluation constitutes bad faith that would preclude the debtors from exercising their right to convert their case to chapter 13. See 11 U.S.C. § 706(a), (d); *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)).

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

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;

(10) the dates for the evidentiary hearing and the trial time that will be required;
(11) any other such matters as may be necessary or expedient to the resolution of these issues.

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

7. [14-10117](#)-A-7 ERACLIO SANCHEZ AND MOTION TO COMPEL ABANDONMENT
 TOG-5 RAQUEL SOLIS 4-18-14 [[33](#)]
 ERACLIO SANCHEZ/MV
 THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no 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: Day care provider

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).

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).

8. [14-11040](#)-A-7 FRANCIS MACIEL
JRL-1
FRANCIS MACIEL/MV
JERRY LOWE/Atty. for dbt.
NON-OPPOSITION

MOTION TO COMPEL ABANDONMENT
4-3-14 [[14](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no 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: Sammy's Falafel Express

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).

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).

9. [13-18042](#)-A-7 DALAVAR/MANMINDER PABLA
UST-1
TRACY DAVIS/MV

MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-4-14 [[17](#)]

PETER FEAR/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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.*

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through July 3, 2014.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through July 3, 2014.

10. [13-18043](#)-A-7 TARSEM PABLA
UST-1
TRACY DAVIS/MV

MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-4-14 [[12](#)]

PETER FEAR/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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.*

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through July 3, 2014.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through July 3, 2014.

11. [14-11751](#)-A-7 CARDIOVASCULAR CLINIC, ORDER TO APPEAR AND SHOW CAUSE
INC. WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
4-8-14 [6]

DAVID JENKINS/Atty. for dbt.

Tentative Ruling

The court has issued an Order to Show Cause Why a Patient Care Ombudsman Should Not Be Appointed. After a hearing attended by the U.S. Trustee, case trustee and debtor's counsel, the court shall order the appointment of such an ombudsman by the U.S. Trustee "to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case." 11 U.S.C. § 333(a).

No party has filed any evidence that would support a finding that an ombudsman is not necessary for the protection of patients in this case.

12. [14-12061](#)-A-7 EARL STEES
PBB-1
EARL STEES/MV
PETER BUNTING/Atty. for dbt.
OST 4/29

MOTION TO COMPEL ABANDONMENT
4-28-14 [[11](#)]

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: 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: Packaging machinery repair business

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).

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).

13. [14-12072](#)-A-7 CHRISTOPHER MUNDEN
RJI-1
CHRISTOPHER MUNDEN/MV
RAYMOND ISLEIB/Atty. for dbt.
NON-OPPOSITION

MOTION TO COMPEL ABANDONMENT
4-29-14 [[16](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no 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: Sole proprietorship consisting of an automobile-repair business

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).

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).

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| 14. 12-19194 -A-7 PAMELA WISE
CJO-1
BANK OF AMERICA, NATIONAL
ASSOCIATION/MV
THOMAS ARMSTRONG/Atty. for dbt.
CHRISTINA O/Atty. for mv. | MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
4-17-14 [60] |
|--|--|

Tentative Ruling

Motion: Approval of Mortgage Loan Modification in Chapter 7 Case

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

Disposition: Denied

Order: Civil minute order

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.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. See *Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

15. [13-17898](#)-A-7 J PULIDO
RHT-1
ROBERT HAWKINS/MV
THOMAS GILLIS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
4-17-14 [[15](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2001 Honda Accord

Buyer: Debtor

Sale Price: \$2,269 (\$1500 cash plus \$769.00 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.

9:15 a.m.

1. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN
[13-1073](#)
KARRAKER ET AL V. MCCLARAN
RESPONSIVE PLEADING

RESCHEDULED PRE-TRIAL
CONFERENCE RE: COMPLAINT
6-28-13 [[1](#)]

No tentative ruling.

2. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN
[13-1073](#) WW-2
KARRAKER ET AL V. MCCLARAN

CONTINUED MOTION FOR SUMMARY
JUDGMENT AND/OR MOTION FOR
PARTIAL SUMMARY JUDGMENT
4-2-14 [[71](#)]

TRACY BLAIR/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment

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

Disposition: Denied

Order: Civil minute order

The defendant/debtor Glen McClaran (the "Debtor") has filed a motion for summary judgment (the "Motion"), arguing that the court can enter judgment in his favor on the plaintiff/creditor Eric Kozlowski's ("Kozlowski") two claims for relief under § 523(a)(2)(A) and (a)(6). This action revolves around a transaction between Kozlowski and the Debtor where Kozlowski sold his company's assets in consideration for a \$900,000 promissory note (from Bio Fuels Enterprises, LLC, the Debtor's company), backed by personal guaranty from the Debtor.

For the reasons set forth below, the court will deny the Debtor's Motion. The § 523(a)(2)(A) and (a)(6) claims will proceed to trial.

DISCUSSION

Summary Judgment

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Civ. P. 56. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case." *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

A shifting burden of proof applies to motions for summary judgment. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). "The moving party initially bears the burden of proving the absence of a genuine issue of material fact." *Id.* Meeting this initial burden requires the moving party to show only "an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial." *Id.* The Ninth Circuit has explained that the non-moving party's "burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence." *Id.* "In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor." *Id.* at 387.

A party may support or oppose a motion for summary judgment with affidavits or declarations that are "made on personal knowledge" and that "set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4). The assertion "that a fact cannot be or is genuinely disputed" may be also supported by citing to other materials in the record or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

Failure "to properly address another party's assertion of fact as required by Rule 56(c)" permits the court to "consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). If facts are considered undisputed because a party fails to properly address them, the court may "grant summary judgment if the motion and supporting materials—including facts considered undisputed—show the movant is entitled to it." Fed. R. Civ. P. 56(e)(3).

Evidentiary Objections

Declaration of Eric Kozlowski

Objection #1 (sham declaration) is overruled. This does not directly contradict prior deposition testimony.

Objection #2 (vague/ambiguous/lack of foundation/lack of personal knowledge) is overruled. The timing is not vague or ambiguous given the prior statement's reference to "between 2010 and 2012." The prior statement lays the foundation. The declarant's personal knowledge can be assumed based on his negotiations with the Debtor over the two-year period.

Objection #3 (sham declaration) is overruled. This does not directly contradict prior deposition testimony. Kozlowski is referring to the sale of a partial interest in EFE.

Objection #4 (conclusory) is overruled. This is not a legal conclusion. Kozlowski is simply stating his observation of the situation.

Objection #5 (misstates the evidence) is sustained. This statement misstates the email cited.

Objection #6 (sham declaration) is overruled. This does not directly contradict prior deposition testimony.

Objection #7 (sham declaration/vague/ambiguous/lack of foundation/conclusory) is overruled. This does not directly contradict prior deposition testimony. The use of the word "intriguing" is not vague or ambiguous. The use of "my lease" does not lack foundation. And there are no legal conclusions being asserted.

Objection #8 (speculative/lack of foundation/expert opinion/conclusory) is overruled. Kozlowski is simply reciting how he came up with the figure in his offer; he is not testifying to what the value of the company is.

Objection #9 (misstates the evidence) is overruled. This statement represents what Kozlowski asked for in his offer.

Objection #10 (misstates the evidence/conclusory/lack of foundation/speculation/sham declaration) is overruled. This is simply a rewording of the Debtor's email. This does not directly contradict prior deposition testimony.

Objection #11 (sham declaration/vague/ambiguous/lack of foundation/conclusory) is overruled. This does not directly contradict prior deposition testimony. This is not a vague or ambiguous statement as to the time because it implicitly refers to the time shortly before the sale closed. There is foundation as Kozlowski is implicitly referring to the Debtor communicating with him (as shown by later statements). There is no legal conclusion being presented.

Objection #12 (sham declaration/vague/ambiguous/lack of foundation/lack of personal knowledge) is overruled. This does not directly contradict prior deposition testimony. The statement is not vague and ambiguous as to time (due to the use of "at no time"), the phrase "insolvent," or "business licensing and permits." The meaning of the terms can be inferred from their context. There is personal knowledge because Kozlowski has personal knowledge of what was not disclosed to him (Kozlowski is not necessarily stating that what was not disclosed to him was actually true).

Objection #13 (sham declaration/conclusory/lack of foundation/vague/ambiguous) is overruled. This does not directly contradict prior deposition testimony. Kozlowski is simply making a hypothetical statement.

Objection #14 (sham declaration/conclusory/lack of foundation/vague/ambiguous) is overruled. This does not directly contradict prior deposition testimony. The reference to "partners" is not intended to be specific.

Declaration of Phillip Hoerner

Objection #15 (irrelevant/lack of foundation/vague/ambiguous) is overruled. The statement is being made for foundational/background purposes. The time has been previously referenced.

Objection #16 (irrelevant/lack of foundation/vague/ambiguous) is overruled. The meaning of the term "invested" can be inferred from the context.

Objection #17 (irrelevant/lack of foundation/vague/ambiguous) is overruled. The phrase "came to know" has a plain meaning. The time has been previously referenced.

Objection #18 (irrelevant/vague/ambiguous/lack of foundation/conclusory) is overruled. The terms "led to believe" and "sale" are unambiguous. This is not a legal conclusion. The statement clearly indicates that the Debtor conveyed that information to the declarant.

Objection #19 (hearsay/irrelevant/vague/ambiguous/lack of foundation/conclusory) is overruled. The statement is not hearsay; it is a statement by a party-opponent. It is not vague and ambiguous. No foundation needs to be laid. This is not a legal conclusion.

Objection #20 (irrelevant/vague/ambiguous/lack of foundation/conclusory) is overruled. There is nothing vague or ambiguous about the word "promise" when referring to the prior

statement made. No foundation needs to be laid. This is not a legal conclusion.

Objection #21 (irrelevant/vague/ambiguous/lack of foundation/conclusory) is overruled. The phrase "dropped by the plant periodically before" does not need to be more definite since the relevant part of the statement deals with how the Debtor no longer came to the facility. The declarant is not testifying as to the Debtor's state of mind; he is only testifying as to what he has observed.

Objection #22 (hearsay/irrelevant/vague/ambiguous/conclusory/lack of foundation) is overruled. This is not hearsay; it is a statement by a party-opponent. It is not vague or ambiguous as it is intended to refer to Spring 2012. It is not a conclusory statement that lacks foundation; the declarant is simply restating what the Debtor had said to him.

Objection #23 (hearsay/irrelevant/vague/ambiguous/conclusory/lack of foundation) is overruled. This is not hearsay because it is not being offered for the truth of the matter asserted. The term "notice" is not vague or ambiguous given the prior mention that it was a 30-day notice. It is not a conclusory statement that lacks foundation.

Objection #24 (lack of foundation/speculative/conclusory) is overruled. The support for that statement is based on the following statement in the declaration.

Objection #25 (vague/ambiguous/contradictory) is overruled. The terms "new facility" and "new job" do not need to be defined since they appear to refer to a facility and job that do not actually exist. The declaration can contradict the complaint and Kozlowski's deposition because it was not the declarant who made these prior inconsistent statements.

Objection #26 (vague/ambiguous/lack of foundation/contradictory) is overruled. The term "30-day notice" has been previously defined. No foundation needs to be laid for these statements. The declaration can contradict the complaint and Kozlowski's deposition because it was not the declarant who made these prior inconsistent statements.

Objection #27 (vague/ambiguous) is overruled. The phrase "clean up the facility" and the timing of this action are not vague or ambiguous given the context and prior statements made.

Objection #28 (hearsay/lack of foundation/contradictory) is overruled. The first part of the statement is not hearsay because it is a statement by a party-opponent. The second part of the statement is not hearsay because it is not being offered for the truth of the matter asserted. No foundation needs to be laid. The declaration can contradict the complaint and Kozlowski's deposition because it was not the declarant who made these prior inconsistent statements.

Declaration of Connie Parker

Objection #29 (misstates the facts/lack of foundation) is overruled. The declarant did not refer to Rusty Karraker as a "co-plaintiff" in the declaration. Further, although Karraker is not technically a co-plaintiff with Kozlowski, the court is not confused with the use of "co-plaintiff" as a matter of convenience, rather than requiring Kozlowski to continually refer to Karraker as the "plaintiff in the companion adversary proceeding consolidated with this adversary proceeding."

Section 523(a)(2)(A) and the Misrepresentations at Issue

Under § 523(a)(2)(A), "any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud" is not discharged. To succeed on a nondischargeability claim under § 523(a)(2)(A), a creditor must establish five elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000).

The Debtor has recited the following four misrepresentations (or omissions) at issue on the § 523(a)(2)(A) claim: (1) that EFE was ready to make bio diesel; (2) that the Debtor failed to inform Kozlowski that contract terms with supplier Bio Tech had been changed; (3) that the Debtor had family members and others investing and that investment money was going towards upgrading the equipment; and (4) that the Debtor was working full time for EFE. The Debtor argues that he is entitled to judgment in his favor on the § 523(a)(2)(A) claim because Kozlowski did not establish that he relied on or was damaged by these four misrepresentations.

Instead of disputing the four misrepresentations raised in the Motion and whether he relied on and was damaged by them, Kozlowski focuses on the argument that he relied on and was damaged by five different misrepresentations made by the Debtor: (a) that the promissory note had to be unsecured by requirements of the other investors of BFE; (b) that the Debtor had other partners in the deal; (c) that McClaran was moving the business and equipment from the Fowler facility to a farm owned by Stuart Woolf; (d) that Stuart Woolf had guaranteed an investment; and (e) that McClaran had the ability and intention to run a biodiesel fuel business to pay down the promissory note rather than abandon the business immediately after the sale.

The Debtor, however, argues that these five new misrepresentations should be excluded from consideration as they are part of a sham declaration. If the court does consider these five misrepresentations, then there would be a genuine dispute of material facts that would defeat the Motion.

Sham Declaration.

"The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998 (9th

Cir. 2009)). This rule is what referred to as the sham affidavit (or declaration) rule.

The sham affidavit rule should be applied with caution and is subject to two limitations. *Id.* First, the rule "does not automatically dispose of every case in which a contradictory affidavit is introduced to explain portions of earlier deposition testimony; rather, the [court] must make a factual determination that the contradiction was actually a 'sham.'" *Id.* (internal quotation marks omitted) (citation omitted). Second, the inconsistency between a party's deposition testimony and subsequent affidavit must be clear and unambiguous to justify striking the affidavit." *Id.* at 998-999. "Thus, the non-moving party is not precluded from elaborating upon, explaining or clarifying prior testimony elicited by opposing counsel on deposition [and] minor inconsistencies that result from an honest discrepancy, a mistake, or newly discovered evidence afford no basis for excluding an opposition affidavit." *Id.* at 999 (internal quotation marks omitted).

Here, the Debtor argues that the five additional misrepresentations raised by Kozlowski's declaration contradict his prior deposition testimony and should therefore be excluded from consideration for purposes of the Motion. In support, the Debtor generally cites pp. 162:23-175:22 of Kozlowski's deposition transcript as the relevant testimony. The court disagrees with the Debtor's argument and declines to invoke the sham declaration rule. While the relevant portion of Kozlowski's declaration may not fit squarely with the prior deposition testimony, the court cannot conclude that the declaration is unequivocally inconsistent with the deposition testimony.

In the deposition, the Debtor's counsel stated, "You claim in your Complaint in this adversary proceeding that Mr. McClaran made some false representations to you. What were those representations specifically?" Kozlowski then summarized the first three misrepresentations outlined in the Debtor's Motion: (1) that EFE was ready to make bio diesel; (2) that the Debtor failed to inform Kozlowski that contract terms with the supplier Bio Tech had been changed; and (3) that the Debtor had family members and others investing and that investment money would be going towards upgrading equipment.

After Kozlowski recited these three misrepresentations, the Debtor's counsel asked, "Anything else?" At that point, Kozlowski answered with the fourth and final misrepresentation regarding the Debtor working full time for EFE. After briefly reciting the fourth misrepresentation, the Debtor's counsel followed up by stating, "We're going to go over each of these individually." However, it is unclear based on this interaction whether Kozlowski had another opportunity to recite more misrepresentations. The Debtor's counsel did not unambiguously ask whether these four misrepresentations were the only misrepresentations made to Kozlowski. At no time during the deposition did Kozlowski affirmatively concede there were only four misrepresentations made by the Debtor.

Due to this, the court cannot conclude that Kozlowski's additional misrepresentations in the declaration and opposition unequivocally contradict the deposition testimony. Therefore, any new misrepresentations raised by Kozlowski now in opposition to the Motion can be considered on summary judgment as they are not part of a sham declaration.

If the court does consider the portions of Kozlowski's declaration that refer to the five additional misrepresentations, then there remains a genuine issue of material fact regarding whether Kozlowski relied on and was damaged by these five misrepresentations. And even if a court could interpret these five misrepresentations as contradicting the deposition testimony, thereby excluding such misrepresentations from consideration, this court would exercise its discretion to deny summary judgment because "the better course would be to proceed to a full trial" in this case. *Anderson*, 477 U.S. at 255.

As a result, summary judgment in favor of the Debtor on the § 523(a)(2)(A) claim is improper.

Section 523(a)(6)

Under § 523(a)(6), "any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity" is not discharged. To be nondischargeable under § 523(a)(6), a debtor's conduct must first be tortious under state law. See *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008); *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1205 (9th Cir. 2001). There must also be a willful and malicious injury, with the "malicious" injury requirement being separate from the "willful" injury requirement. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008).

Establishing a malicious injury requires "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Jercich*, 238 F.3d at 1209 (quoting *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997)). The creditor must also show a willful injury, which is a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original). This willful injury requirement is satisfied "only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1442 (9th Cir. 2002). In contrast, "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Geiger*, 523 U.S. at 64. Thus, the standard is a subjective one, where the debtor must have "either a *subjective intent* to harm, or a *subjective belief [or actual knowledge]* that harm is substantially certain." *Su*, 290 F.3d at 1444 (emphasis added). In determining whether the debtor has actual knowledge, the court can infer that the debtor is usually "charged with the knowledge of the natural consequences of his actions." *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010); see also *Su*, 290 F.3d at 1146 n.6 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

The "property of another entity" at issue in this action is not the equipment itself; rather, it is Kozlowski's right to payment pursuant to the promissory note or the guaranty (as consideration for transferring the equipment). Thus, there is an "injury . . . to the property of another entity" when the Debtor breached his duty to pay Kozlowski what he was entitled to under the promissory note and guaranty. See *Jercich*, 238 F.3d at 1205 (providing that "where an intentional breach of contract is accompanied by tortious conduct

which results in willful and malicious injury, the resulting debt is excepted from discharge under § 523(a)(6)").

But the record in this case shows that there remains a genuine issue of material fact over whether the Debtor's failure to pay was willful and malicious. Based on the facts that no payments were made on the promissory note and the guaranty and that the equipment was liquidated shortly after the sale (whether it was done by the Debtor or by Phillip Hoerner), the court can infer that the Debtor may have had the subjective belief that harm was substantially certain (i.e., that Kozlowski would never get paid pursuant to the promissory note and guaranty), thus creating a genuine issue of material fact. And the fact that Kozlowski held the personal belief that the Debtor did not want the business to fail and did not want investors to get nothing has no relevance to the Debtor's own subjective beliefs for purposes of § 523(a)(6).

As a result, summary judgment in favor of the Debtor on the § 523(a)(6) claim is improper.

CONCLUSION

For the reasons set forth above, the court will deny the Debtor's Motion. The § 523(a)(2)(A) and (a)(6) claims will proceed to trial.

3. [13-17820](#)-A-7 ANDRE EDMONDS
[14-1019](#)
EDMONDS V. VISALIA MEDICAL
CLINIC
STEPHEN LABIAK/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-10-14 [[1](#)]

Final Ruling

The status conference is continued to July 9, 2014, at 9:15 a.m. to allow mediation. If the adversary proceeding has not been dismissed prior to that hearing date, a joint status report shall be filed seven days prior to the hearing.

4. [13-16236](#)-A-7 MARIO TALAMANTES
[14-1011](#)
FEAR V. TALAMANTES ET AL
TRUDI MANFREDO/Atty. for pl.
NOTICE OF SETTLEMENT FILED
5/7/14

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-22-14 [[1](#)]

Final Ruling

The adversary proceeding settled, the status conference is continued to July 9, 2014, at 9:15 a.m. to allow a motion to compromise controversy to be heard. If the adversary proceeding has not been dismissed prior to that hearing date, a joint status report shall be filed seven days prior to the hearing.

5. [13-16052](#)-A-7 SALVADOR/ROSA ALCANTAR CONTINUED STATUS CONFERENCE RE:
[13-1115](#) AMENDED COMPLAINT
RODRIGUEZ V. ALCANTAR, III 3-24-14 [[20](#)]
MARIA RODRIGUEZ/Atty. for pl.

No tentative ruling.

6. [12-16876](#)-A-7 WILLIAM VANDER POEL CONTINUED STATUS CONFERENCE RE:
[14-1007](#) COMPLAINT
VANDER POEL, SR. V. MEDINA 1-17-14 [[1](#)]
RILEY WALTER/Atty. for pl.
RESPONSIVE PLEADING

[Note: This status conference will be called at 11:00 a.m.]

No tentative ruling.

7. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION FOR SUMMARY JUDGMENT
[14-1007](#) WW-2 4-14-14 [[27](#)]
VANDER POEL, SR. V. MEDINA
RILEY WALTER/Atty. for mv.
RESPONSIVE PLEADING

[Note: This motion will be called at 11:00 a.m.]

No tentative ruling.

8. [12-16876](#)-A-7 WILLIAM VANDER POEL STATUS CONFERENCE RE: COMPLAINT
[14-1033](#) 3-10-14 [[1](#)]
VANDER POEL, SR. V. MEDINA ET
AL
MICHAEL FLETCHER/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to May 28, 2014, at 9:15 a.m., to be heard in conjunction with the motion for summary judgment calendared for that date and time.

10:00 a.m.

1. [13-10901](#)-A-7 GINA VERTSON MOTION FOR RELIEF FROM
TGM-5 AUTOMATIC STAY
GINA VERTSON/MV
4-22-14 [[49](#)]
TRUDI MANFREDO/Atty. for dbt.
ORDER APPROVING STIPULATION
FILED 4/29/14

Final Ruling

The motion resolved by stipulation and order, this matter is dropped from calendar as moot.

2. [14-10514](#)-A-7 GLENN/JOHNNIE HILL MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 3-31-14 [[19](#)]
ROSALINA NUNEZ/Atty. for dbt.
MARK ESTLE/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: 2404 East Dakota Ave., 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.

3. [14-10930](#)-A-7 ALLEN SCHNEIDER
MDE-1
NATIONSTAR MORTGAGE LLC/MV
MARK ZIMMERMAN/Atty. for dbt.
MARK ESTLE/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-10-14 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1760 W. Median Ave., Porterville, 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.

4. [14-11458](#)-A-7 MICHAEL ANDRUS
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
LAYNE HAYDEN/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-18-14 [[10](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Acura TL

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.

5. 13-17970 -A-7 MONTY/MELANIE HOGGARD HTP-1 BANK OF THE SIERRA/MV HILTON RYDER/Atty. for dbt. HANNO POWELL/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-30-14 [25]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 500 Pepper Drive, Hanford, California

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

6. [14-11283](#)-A-7 AMANDA BOSCARIOL
RLM-1
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY/MV
CHRISTOPHER FISHER/Atty. for dbt.
RICHARD MAHFOUZ/Atty. for mv.

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-16-14 [[13](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: State court litigation against debtor for the limited purpose of proceeding against debtor's automobile insurance policy in relation to an automobile accident

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

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

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

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [14-11187](#)-A-7 MAYRA VALENCIA
MOL-1
243 NORTH MERIDIAN, LLC/MV
MICHAEL LIBRATY/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-9-14 [[16](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

10:30 a.m.

1. [14-10655](#)-A-7 BRANDON/COURTNEY SANDERS

PRO SE REAFFIRMATION AGREEMENT
WITH SPRINGLEAF FINANCIAL
SERVICES, INC.
4-23-14 [[15](#)]

GEOFFREY ADALIAN/Atty. for dbt.

No tentative ruling.

2. [14-11083](#)-A-7 DAVID HERNANDEZ

PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
4-15-14 [[12](#)]

LAYNE HAYDEN/Atty. for dbt.

No tentative ruling.

3. [14-11194](#)-A-7 RICHARD/ESTHER RODRIGUEZ

REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
4-15-14 [[10](#)]

GEORGE LOGAN/Atty. for dbt.

No tentative ruling.

4. [14-11194](#)-A-7 RICHARD/ESTHER RODRIGUEZ

REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
4-15-14 [[11](#)]

GEORGE LOGAN/Atty. for dbt.
DUPLICATE

Tentative Ruling

The reaffirmation agreement appears to be an exact duplicate of the
reaffirmation agreement filed as ECF No. 10 and will be denied as
moot.

1:30 p.m.

1. [12-10503](#)-A-11 GAIL MOORE

CONTINUED NOTICE OF INTENT TO
CLOSE CHAPTER 11 CASE
2-21-14 [[370](#)]

T. BELDEN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Matter: Notice of Intent to Close Chapter 11 Case

Notice: Continued date of the hearing [initial hearing set by Gail Moore's limited objection to Notice of Intent to Close Ch. 11 Case]

Disposition: Continued to July 1, 2014, at 1:30 p.m.

Order: Civil minute order

The court is inclined to continue the hearing on this matter to July 1, 2014 at 1:30 p.m. If continued, the debtor shall file notice of continued hearing served on all creditors no later than 14 days before the next continued hearing date and file a status report no later than 7 days before the next continued hearing date.

2. [10-62315](#)-A-11 BEN ENNIS

LRP-14

DAVID STAPLETON/MV

RILEY WALTER/Atty. for dbt.

MICHAEL GOMEZ/Atty. for mv.

OBJECTION TO CLAIM OF WARE
MALCOMB, CLAIM NUMBER 11
3-19-14 [[1449](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Continued to July 9, 2014, at 1:30 p.m. and supplemental declarations and notice of continued hearing filed no later than May 26, 2014

Order: Civil minute order

The court tentatively agrees with the Plan Administrator that a substantial portion of Claim No. 11 filed by Ware Malcomb is unenforceable against the Debtor, Ben Ennis. Exhibit A to Claim 11 summarizes the contracts and documents provided in support of the claim. Only two contracts are included in support of the claim—a contract for the Riverwalk Marketplace project between Claimant and Ennis Commercial Properties, LLC and a contract for the Cartmill Crossings-North project between Claimant and Ennis-Henry Tulare, LLC.

The portion of the claim to which the Plan Administrator objects as unenforceable includes the contractual claim for services under these two contracts. For the reasons stated in the objection, these contractual debts owed to Claimant under these two contracts (for services rendered on the Riverwalk Marketplace project and the Cartmill Crossings-North project) are liabilities solely of the limited liability companies who entered those contracts with the Claimant. Absent evidence of a basis for finding the debtor liable for these claims, the court will find that the debtor is not liable to the Claimant under these two contracts based solely on being a member or manager of either of these companies or signing the contract as a

The objecting party, however, does not address a portion of the claim amount that appears to relate to contracts that are not included in the supporting documentation. Exhibit 2-a attached to Claim No. 11 is an invoice statement for several projects that are not included in the two contracts. Included on this exhibit are invoice amounts of \$7,665.00 for a project described as "Ennis Delano Retail Center," \$1,808.62 for a project described as "Ennis-Henderson Court, and \$1,966.09 for a project described as "Cartmill Crossings-South." The very last document in support of the claim shows interest of \$4,583.54 accruing on this portion of the claim for these three projects.

Thus, the total portion of the claim not addressed by the objection, including interest on this amounts, is \$16,023.25. The court at this time will not disallow this portion of the claim without some ground for concluding that it is unenforceable.

The court will continue the hearing on the objection to July 9, 2014, at 1:30 p.m. Supplemental declarations along with a notice of continued hearing are to be filed no later than May 26, 2014. The notice of continued hearing may require opposition no later than 14 days before the hearing pursuant to LBR 3007-1(b)(1).

3. [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.

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

ELAINE NGUYEN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value nonresidential real property that is the responding party's collateral. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested including (i) the value of the real property collateral located at 4278 West Ashlan,

Fresno, California, and (ii) the amount of the adequate protection payment pursuant to § 362(d)(3).

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

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

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

5. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO COMPROMISE
 HAR-12 INC. CONTROVERSY/APPROVE SETTLEMENT
 A & A TRANSPORT, CO., INC./MV AGREEMENT WITH BURROWS &
 CASTADIO, INC.
 4-24-14 [[100](#)]
- HILTON RYDER/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: A&A Transport Co., Inc. (Debtor) and Burrows & Castadio, Inc. (BC)

Dispute Compromised: Adversary proceeding to recover alleged preference under § 547 comprising Debtor's granting a deed of trust on Debtor's real property to BC and Debtor's transferring \$50,000 to BC on account of an antecedent debt owed by Debtor to BC

Summary of Material Terms: The deed of trust will be released and BC will return the \$50,000 to Debtor in four installments of \$12,500. The complaint in the adversary will remain pending until the final installment has been paid. BC will have an unsecured claim of \$512,876.70 which includes the amount of its proof of claim filed with the court plus the \$50,000 returned to Debtor.

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

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

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

6. [14-10851](#)-A-11 JOHN/BETTY VAN DYK

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-25-14 [[1](#)]

RILEY WALTER/Atty. for dbt.

No tentative ruling.

7. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-6

DISCLOSURE STATEMENT FILED BY
JOINT DEBTOR BETTY JEAN VAN
DYK, DEBTOR JOHN WILLIAM VAN
DYK
3-21-14 [[50](#)]

RILEY WALTER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

8. [14-10268](#)-A-11 RODRIGO ROMERO

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-22-14 [[1](#)]

ANTHONY EGBASE/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the status conference is concluded.

9. [14-10268](#)-A-11 RODRIGO ROMERO
AOE-4
RODRIGO ROMERO/MV

MOTION FOR APPROVAL OF
DISCLOSURE STATEMENT OF APRIL
1, 2014 FILED BY DEBTOR RODRIGO
ROMERO OF APRIL 1, 2014 AND/OR
MOTION FOR ORDER FIXING
DEADLINES
4-1-14 [[56](#)]

ANTHONY EGBASE/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

10. [13-13284](#)-A-11 NICOLETTI OIL INC.
LC-3
LARRY CLEVELAND/MV
DAVID GOLUBCHIK/Atty. for dbt.

MOTION FOR COMPENSATION FOR
LARRY CLEVELAND, ACCOUNTANT(S)
4-16-14 [[314](#)]

Final Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Larry Cleveland

Compensation approved: \$20,309

Costs approved: \$0

Aggregate fees and costs approved in this application: \$20,309

Retainer held: \$0

Amount to be paid as administrative expense: \$20,309

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional 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. The moving party is authorized to draw on any retainer held.

11. [14-11991](#)-A-11 CENTRAL AIR MOTION TO APPROVE STIPULATION
BJG-1 CONDITIONING, INC. FOR RELIEF FROM THE AUTOMATIC
WORKMAN BROS. DEVELOPMENT STAY
CO./MV 4-30-14 [[26](#)]
HAGOP BEDOYAN/Atty. for dbt.
CHRISTOPHER BRUMFIEL/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT SERVICE

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).

While the motion may have been served on the debtor (by serving the debtor's counsel), Fed. R. Bankr. P. 7004(b)(3), (9), and on the debtor's attorney as required by Rule 7004(g), the motion has not been served on the twenty largest unsecured creditors, see Fed. R. Bankr. P. 4001(d)(1)(C). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "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). None of the entities on the proof of service show that an authorized agent or officer has been served. The proof of service should show service on entities was properly mailed to the attention of an officer or other authorized agent as described in Rule 7004.

In addition, the court notes that at least several of the 20 largest unsecured creditors do not appear on the proof of service. In refiling this motion, counsel should ensure that each of the 20 largest unsecured creditors is served to comply with Rule 4001(d)(1)(C).

INSUFFICIENT NOTICE

Notice of the motion was also insufficient. The notice does not comply with Rule 4001(d)(2) and LBR 9014-1(d)(3) because it does not state when objections (or opposition) may be filed and served. The hearing of any refiled motion shall be set in accordance with the applicable rules. The notice of hearing should clearly indicate whether the moving party is using the notice procedure under LBR 9014-1(f)(1) or the notice procedure under LBR 9014-1(f)(2).

12. [14-11991](#)-A-11 CENTRAL AIR
KDG-1 CONDITIONING, INC.
CENTRAL AIR CONDITIONING,
INC./MV
HAGOP BEDOYAN/Atty. for dbt.

FINAL HEARING RE: MOTION TO USE
CASH COLLATERAL
4-21-14 [[4](#)]

No tentative ruling.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
[12-1209](#) PROPERTIES, LLC
ENNIS COMMERCIAL PROPERTIES,
LLC V. ENNIS
MICHAEL GOMEZ/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-16-12 [[1](#)]

Final Ruling

The adversary proceeding dismissed by order, ECF No. 28, the status conference is concluded.

2:00 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

CONTINUED 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

CONTINUED 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.