

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**TUESDAY**

**MAY 20, 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. 14-11206-A-13 MARIA RICO  
MHM-1  
MICHAEL MEYER/MV  
  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS  
4-17-14 [[19](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

2. 14-11206-A-13 MARIA RICO  
RSW-1  
MARIA RICO/MV  
  
MOTION TO VALUE COLLATERAL OF  
UNITED GUARANTY RESIDENTIAL  
INSURANCE COMPANY OF NORTH  
CAROLINA  
4-29-14 [[23](#)]

ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$138,000.00

**Senior Liens:** \$194,251.56

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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

3. 13-17714-A-13 MARK AGUILAR AND PATRICIA  
RSW-2 RAMIREZ MOTION TO CONFIRM PLAN  
MARK AGUILAR/MV 3-18-14 [[48](#)]

ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Continued to June 25, 2014, at 9:00 a.m.

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

The trustee objects to confirmation because motions to value collateral have not been filed and granted even though the plan reduces two secured creditor's claims based on the value of their collateral. Both a motion to value collateral and a motion to avoid a lien are pending on the docket. These must be decided before or in conjunction with confirmation of the plan. See LBR 3015-1(j). The court will continue the hearing to the hearing dates set for the motion to value collateral and the motion to avoid a lien.

4. 14-10314-A-13 DANIEL/LINDA MONTES MOTION TO DISMISS CASE FOR  
MHM-2 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV AND/OR MOTION TO DISMISS CASE  
4-30-14 [[27](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

5. 14-10314-A-13 DANIEL/LINDA MONTES  
RSW-1  
DANIEL MONTES/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SPECIALIZED LOAN SERVICING, LLC  
5-6-14 [[34](#)]

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$120,699

**Senior Liens:** \$139,876

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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

6. 14-10314-A-13 DANIEL/LINDA MONTES  
RSW-2  
DANIEL MONTES/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
5-6-14 [[38](#)]

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$2000

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).

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular collateral in which the creditor has a purchase money security interest is limited to collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of non-vehicular personal property. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the collateral is the amount set forth above.

7. 13-17216-A-13 RICKEY/JESSICA HOYER MOTION TO CONFIRM PLAN  
RSW-2 4-8-14 [[42](#)]  
RICKEY HOYER/MV

ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). Creditor Bank of America opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

#### **CONFIRMATION**

Without the benefit of a reply, the court cannot determine whether the grounds for the creditor's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the creditor's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

**75 DAY ORDER**

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

8. 13-16828-A-13 ROBERT MOORE  
MHM-2  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
4-23-14 [[47](#)]

**No tentative ruling.**

9. 13-16828-A-13 ROBERT MOORE  
NES-1  
ROBERT MOORE/MV  
2-18-14 [[27](#)]  
NEIL SCHWARTZ/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN

**No tentative ruling.**

10. 13-14334-A-13 ANTONIO/ANAVEL AGUIRRE  
NES-7  
ANTONIO AGUIRRE/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO CONFIRM PLAN  
3-25-14 [[105](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

11. 10-12441-A-13 JEFFREY BROWN  
NES-6  
JEFFREY BROWN/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
GE CAPITAL RETAIL BANK  
4-21-14 [[89](#)]

#### Final Ruling

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party

**Collateral Value:** \$190,700

**Senior Liens:** \$288,341

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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding

party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

12. 14-10545-A-13 TIMOTHY GEDDES  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
4-30-14 [[29](#)]

**No tentative ruling.**

13. 13-16947-A-13 ENRIQUE GOMEZ  
JRH-2  
ENRIQUE GOMEZ/MV  
IVETA OVSEPYAN/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN  
4-1-14 [[61](#)]

**No tentative ruling.**

14. 12-16950-A-13 MALCOLM/BETTY RAWLS  
WIN-4  
MALCOLM RAWLS/MV  
MICHELLE CHOE/Atty. for dbt.
- MOTION TO MODIFY PLAN  
4-3-14 [[70](#)]

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

15. 14-10860-A-13 GEORGE TAYLOR  
MHM-1  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS , MOTION TO DISMISS CASE  
4-17-14 [[30](#)]
- JAMES SMITH/Atty. for dbt.
- Final Ruling**
- The case dismissed, the matter is dropped from calendar as moot.
16. 14-11162-A-13 DENNIS/LASHANE WILLIAMS  
MHM-1  
MICHAEL MEYER/MV
- ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS  
4-17-14 [[26](#)]
- No tentative ruling.**
17. 14-11162-A-13 DENNIS/LASHANE WILLIAMS  
PD-1  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB/MV  
ROBERT WILLIAMS/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.
- OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB  
4-16-14 [[23](#)]
- No tentative ruling.**
18. 14-10570-A-13 RAYMUNDO DOMINGUEZ AND  
MHM-1 MARTHA SOLIS  
MICHAEL MEYER/MV
- ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN
- MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE  
4-8-14 [[15](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.

19. 14-10690-A-13 CHRYSSTAL ABBOTT  
BHT-1  
PLATINUM HOME MORTGAGE  
CORPORATION/MV  
NEIL SCHWARTZ/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY PLATINUM HOME MORTGAGE  
CORPORATION  
3-28-14 [[18](#)]

[This matter will be called subsequent to the chapter 13 trustee's motion to dismiss, MHM-1]

**No tentative ruling.**

20. 14-10690-A-13 CHRYSSTAL ABBOTT  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
4-17-14 [[27](#)]

NEIL SCHWARTZ/Atty. for dbt.

**No tentative ruling.**

21. 13-12891-A-13 JOHN/JAYNE DESCHUTTER  
PK-4  
JOHN DESCHUTTER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
DISMISSED

MOTION TO PAY  
4-29-14 [[120](#)]

**No tentative ruling.**

22. 10-63994-A-13 SEAN/MAREN BURGESS  
MHM-1  
MICHAEL MEYER/MV

ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO NOTICE OF INTENT  
TO ENTER DISCHARGE BY MICHAEL  
H. MEYER  
3-24-14 [[57](#)]

**Tentative Ruling**

**Matter:** Objection to Notice of Intent to Enter Chapter 13 Discharge  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Overruled  
**Order:** Prepared by the court (clerk)

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

The trustee has objected to joint debtor Sean Burgess's discharge because the debtor's § 1328 Certificate indicated that the debtor had not paid all domestic support obligations. But after filing this certificate, Sean Burgess filed another such certificate on May 16, 2015, indicating all domestic support obligations have been paid. Unless the trustee has grounds for disputing the credibility of the debtor's certification filed May 16, 2014, the court will overrule the objection.

23. [14-11594-A-13](#) MICHAEL/SARAH PALMER ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-5-14 [[18](#)]  
\$70.00 INSTALLMENT PAYMENT  
5/7/14
- Final Ruling**
- The order to show cause is discharged and the case will remain pending.
24. [13-14296-A-13](#) JOSE SANCHEZ OBJECTION TO CONFIRMATION OF  
MHM-2 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
4-15-14 [[52](#)]  
PHILLIP GILLET/Atty. for dbt.  
RESPONSIVE PLEADING
- No tentative ruling.**
25. [13-17699-A-13](#) JOAQUIN DE LA CERDA MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
4-7-14 [[17](#)]  
NEIL SCHWARTZ/Atty. for dbt.
- No tentative ruling.**
26. [13-17699-A-13](#) JOAQUIN DE LA CERDA MOTION TO VALUE COLLATERAL OF  
NES-1 ARREDONDO VENTURES, INC  
JOAQUIN DE LA CERDA/MV 4-15-14 [[23](#)]  
NEIL SCHWARTZ/Atty. for dbt.

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

10:30 a.m.

1. 14-10610-A-7 GEORGE/VALENTINE RIPSOM

PATRICK KAVANAGH/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH  
TOYOTA MOTOR CREDIT CORPORATION  
4-7-14 [[16](#)]

**No tentative ruling.**

2. 14-10486-A-7 DONALD/TONIE MCCOOL

DAVID LOZANO/Atty. for dbt.

PRO SE REAFFIRMATION AGREEMENT  
WITH BALBOA THRIFT & LOAN  
4-14-14 [[21](#)]

**No tentative ruling.**

3. 14-10994-A-7 CHRISTOPHER/CHRISTINA

RADZIKOWSKI

PATRICK KAVANAGH/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH  
TOYOTA MOTOR CREDIT CORPORATION  
4-7-14 [[13](#)]

**No tentative ruling.**

1:00 p.m.

1. 13-17909-A-7 WILLIE BAKER MOTION TO EMPLOY LISA HOLDER AS  
KDG-1 ATTORNEY(S)  
RANDELL PARKER/MV 4-10-14 [[45](#)]  
NEIL SCHWARTZ/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**Final Ruling**

**Application:** Employ Lisa Holder as Attorney Nunc Pro Tunc to January 23, 2014

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

**Disposition:** Granted

**Order:** Prepared by applicant

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).

For the reasons stated in the application and supporting declaration, the court will grant the motion. Lisa Holder's employment is approved nunc pro tunc to January 23, 2014.

2. 13-17909-A-7 WILLIE BAKER MOTION FOR TURNOVER OF PROPERTY  
KDG-4 5-1-14 [[64](#)]  
RANDELL PARKER/MV  
NEIL SCHWARTZ/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute 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 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). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

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. § 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 of the estate's interest in the property sought by turnover. The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee under § 542(a) and (e) at once and no later than 7 days from the date of service of the order on this motion.

3. 14-11643-A-7 TERRY/TRENA HOPE

TERRY HOPE/MV

PHILLIP GILLET/Atty. for dbt.

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
3-31-14 [[5](#)]

#### **Final Ruling**

Having reviewed the debtors' declaration in support of the application for fee waiver, Declaration of Debtors, filed May 2, 2014, ECF #15, the court finds that a waiver of the fee is appropriate. 28 U.S.C. § 1930(f)(1). The application is granted and the filing fee is waived.

4. 14-11947-A-7 MANUEL ALEMAN

PK-2

MANUEL ALEMAN/MV

PATRICK KAVANAGH/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
4-30-14 [[31](#)]

#### **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:** Manuel's Casa de Mariscos f/d/b/a Manuel's Restaurant

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).

5. 13-15454-A-7    DON MCKAY TRUCKING, INC.  
JES-2  
JAMES SALVEN/MV

MOTION FOR COMPENSATION FOR  
JAMES E. SALVEN, ACCOUNTANT(S),  
FEE: \$2205.00, EXPENSES:  
\$192.73  
2-18-14 [32]

JACOB EATON/Atty. for dbt.

#### Tentative Ruling

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved in part only as to the amounts requested and denied in part as to the timing of payment

**Order:** Prepared by applicant

**Applicant:** James Salven

**Compensation approved:** \$2205.00

**Costs approved:** \$192.73

**Aggregate fees and costs approved in this application:** \$2397.73

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 a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

To the extent that the motion requests an order requiring the trustee pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

6. 12-17363-A-7 LARRY/BECKY KINOSHITA MOTION FOR TURNOVER OF PROPERTY  
TGF-2 4-24-14 [23]  
RANDELL PARKER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.

#### Tentative Ruling

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

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

**Disposition:** Granted in part (turnover as against the debtors) denied in part (request for interest before entry of a money judgment)

**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 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). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

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. § 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 of the estate's interest in the property sought by turnover. The motion will be granted in part to compel the debtor to turn over any property described in the motion that is in the debtor's possession. To the extent that the motion seeks post-judgment interest, the motion is denied in part. The statute cited, 28 U.S.C. § 1961, allows interest on judgments from the date the judgment has been entered. Here, in the absence of a judgment, the court will not allow post-judgment interest.

The order shall state that the property described in the motion and supporting papers —or the value of such property to the extent that it

is no longer in the debtor's possession—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.

7. [14-10064-A-7](#) STEPHANIE YBARRA

JUSTIN GRAHAM/Atty. for dbt.  
\$25.00 FEE PAID 4/1/14

CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
3-31-14 [[41](#)]

**Final Ruling**

The order to show cause is discharged and the case will remain pending.

8. [14-12068-A-7](#) SAM/PAULINE ESCANDON

WILLIAM EDWARDS/Atty. for dbt.  
\$306.00 FEE PAID 5/6/14

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-6-14 [[11](#)]

**Final Ruling**

The order to show cause is discharged and the case will remain pending.

9. [12-18869-A-7](#) RUSSELL BUSHNELL JR  
KDG-5

ASHTON DUNN/Atty. for dbt.

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER, COOPER, ROSENLIEB AND  
KIMBALL, LLP TRUSTEE'S  
ATTORNEY(S)  
4-25-14 [[47](#)]

**Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved in part only as to the amounts requested and denied in part as to the timing of payment

**Order:** Prepared by applicant

**Applicant:** Klein, DeNatale, Goldner, Cooper, Rosenlieb, & Kimball, LLP

**Compensation approved:** \$9578.00

**Costs approved:** \$85.94

**Aggregate fees and costs approved in this application:** \$9663.94

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 a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

To the extent that the motion requests an order requiring the trustee pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

10. 13-16975-A-7 DANIEL/TAMI FRENCH MOTION TO DISMISS CASE PURSUANT  
UST-1 TO 11 U.S.C. SECTION 707(B)  
TRACY DAVIS/MV 4-10-14 [72]  
ROBERT WILLIAMS/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to June 25, 2014, at 1:00 p.m. to allow the parties to resolve this matter, and a joint status report to be filed no later than June 11, 2014

**Order:** Civil minute order

The debtors have filed a response to the US Trustee's motion stating that the debtors are in the process of attempting to resolve the motion with the US Trustee by submitting further documentation to the US Trustee. The court will grant the debtors' request for a continuance to allow this process to continue.

11. 14-11582-A-7 RICARDO ALVARDO MOTION FOR WAIVER OF THE  
RICARDO ALVARDO/MV CHAPTER 7 FILING FEE OR OTHER  
FEE  
CYNTHIA SCULLY/Atty. for dbt. 3-31-14 [5]

**No tentative ruling.**

1:15 p.m.

1. 11-62509-A-7 SHAVER LAKEWOODS  
14-1003 DEVELOPMENT INC.  
PARKER V. RODRIGUEZ  
KALEB JUDY/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-6-14 [[1](#)]

**No tentative ruling.**

2. 11-62509-A-7 SHAVER LAKEWOODS  
14-1003 DEVELOPMENT INC. KDG-2  
PARKER V. RODRIGUEZ

MOTION TO DISMISS CAUSE(S) OF  
ACTION FROM FIRST AMENDED  
COUNTERCLAIM , AND/OR MOTION TO  
STRIKE FIRST AND FOURTH CLAIMS,  
AND/OR MOTION TO STRIKE JURY  
TRIAL  
4-15-14 [[21](#)]

KALEB JUDY/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. 11-62509-A-7 SHAVER LAKEWOODS  
14-1004 DEVELOPMENT INC.  
PARKER V. LOO  
KALEB JUDY/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-6-14 [[1](#)]

**No tentative ruling.**

4. 11-62509-A-7 SHAVER LAKEWOODS  
14-1004 DEVELOPMENT INC. KDG-2  
PARKER V. LOO

MOTION TO DISMISS CAUSE(S) OF  
ACTION FROM FIRST AMENDED  
COUNTERCLAIM AND/OR MOTION TO  
STRIKE , AND/OR MOTION TO  
STRIKE FIRST AND FOURTH CLAIMS,  
AND/OR MOTION TO STRIKE JURY  
TRIAL  
4-15-14 [[21](#)]

KALEB JUDY/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

5. [11-62509](#)-A-7 SHAVER LAKEWOODS  
[14-1005](#) DEVELOPMENT INC.  
PARKER V. NUNEZ  
1-6-14 [[1](#)]  
KALEB JUDY/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT

**No tentative ruling.**

6. [11-62509](#)-A-7 SHAVER LAKEWOODS  
[14-1005](#) DEVELOPMENT INC. KDG-2  
PARKER V. NUNEZ

KALEB JUDY/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CAUSE(S) OF ACTION FROM FIRST  
AMENDED COUNTERCLAIM AND/OR  
MOTION TO STRIKE , MOTION TO  
STRIKE  
3-25-14 [[15](#)]

**No tentative ruling.**

7. [13-17117](#)-A-7 PAUL BARNETT  
[14-1020](#) TGF-1  
PENSION INCOME, LLC V. BARNETT  
VINCENT GORSKI/Atty. for mv.  
CONTINUED TO 7/23/14 PER CMO  
#18

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
4-3-14 [[9](#)]

**Final Ruling**

The motion is continued to July 23, 2014, at 1:15 p.m., pursuant to Civil Minute Order ECF #18.

8. [13-13967](#)-A-7 MOTEL IOSHPE  
[14-1026](#)  
MAYTAL, LLC V. GORSKI ET AL  
ANTHONY HAMASSIAN/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-18-14 [[1](#)]

**No tentative ruling.**

9. 13-13967-A-7 MOTEL IOSHPE  
14-1026 PWG-1  
MAYTAL, LLC V. GORSKI ET AL  
PHILLIP GILLET/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
3-25-14 [9]

**Tentative Ruling**

**Motion:** Dismiss Adversary Proceeding

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

**Disposition:** Granted

**Order:** Civil minute order

A bankruptcy court must dismiss an adversary proceeding over which it has no jurisdiction. Fed. R. Civ. Proc. 12(b)(1), (h)(3), incorporated by Fed. R. Bankr. Proc. 7012. The plaintiff bears the burden of proof on the question of jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 376-78 (1994).

Bankruptcy jurisdiction is a creature of statute. See 28 U.S.C. § 1334; 11 U.S.C. § 330(a); General Order No. 182 of the U.S. District Court for the Eastern District of California. Jurisdiction is either core or non-core.. See 28 U.S.C. § 157(b)(2)(A). "Core proceedings are proceedings which have no existence outside of bankruptcy. *In re Alexander*, 49 B.R. 733, 736 (Bankr.D.N.D.1985). Actions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings. *In re Wood*, 825 F.2d 90, 96 (5th Cir.1987)...." *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990).

Jurisdiction can be transitory. "A bankruptcy court has jurisdiction over disputes regarding alleged property of the bankruptcy estate at the outset of the case. *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir.1987). When property leaves the bankruptcy estate, however, the bankruptcy court's jurisdiction typically lapses, *In re Hall's Motor Transit Co.*, 889 F.2d 520, 523 (3d Cir.1989); *In re Xonics, Inc.*, 813 F.2d at 131; *In re Muller*, 72 B.R. 280, 284 (C.D.Ill.1987), aff'd, 851 F.2d 916 (7th Cir.1988), cert. denied, 490 U.S. 1007, 109 S.Ct. 1645, 104 L.Ed.2d 160 (1989), and the property's relationship to the bankruptcy proceeding comes to an end. See *In re Hall's Motor Transit Co.*, 889 F.2d at 523." *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990).

"[The appellant's] principal argument is that once a bankruptcy court acquires jurisdiction of a dispute, the power to decide lasts forever. The accounts receivable of Xonics and related firms were property of the estate under 11 U.S.C. § 541(a). Adjusting competing claims of creditors to the property of a bankrupt is the central function of bankruptcy law....But [*In re Chicago, Rock Island & Pacific R.R.*, 794 F.2d 1182, 1186-88 (7th Cir.1986)] establishes that jurisdiction does not follow the property. It lapses when property leaves the estate. *Sanborn II* dealt with a dispute between the former tenant of the bankrupt and the person who purchased the property from the bankrupt. While the property belonged to the estate, the court was empowered to adjudicate rental disputes. [*In re Chicago, Rock Island & Pacific R.R.*, 794 F.2d 1182, 1186-88 (7th Cir.1986)]...concluded that once the property has been sold the court needs a new source of jurisdiction (such as diversity), if the dispute is to remain in federal court...Otherwise anyone who could trace his title to a bankrupt could invoke federal jurisdiction to settle disputes affecting that

property." *Matter of Xonics, Inc.*, 813 F.2d 127, 131 (7th Circuit 1987), disagreed with on other grounds, *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988).

This adversary proceeding seeks to adjudicate the ownership of a digital billboard as between the debtor, the Chapter 7 trustee and Phillip Gillet, Jr. But this property left the estate when Phillip Gillett, Jr. purchased that asset from the estate. See, Report of Sale, November 30, 2013, ECF #19. The estate now lacks any interest in the property or stake in the outcome. As a result, the court lacks jurisdiction and the motion will be granted.

10. 13-13967-A-7 MOTEL IOSHPE  
14-1026 TGF-1  
MAYTAL, LLC V. GORSKI ET AL  
VINCENT GORSKI/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
3-26-14 [[13](#)]

#### Tentative Ruling

**Motion:** Dismiss Adversary Proceeding

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

**Disposition:** Granted

**Order:** Civil minute order

A bankruptcy court must dismiss an adversary proceeding over which it has no jurisdiction. Fed. R. Civ. Proc. 12(b)(1), (h)(3), incorporated by Fed. R. Bankr. Proc. 7012. The plaintiff bears the burden of proof on the question of jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 376-78 (1994).

Bankruptcy jurisdiction is a creature of statute. See 28 U.S.C. § 1334; 11 U.S.C. § 330(a); General Order No. 182 of the U.S. District Court for the Eastern District of California. Jurisdiction is either core or non-core.. See 28 U.S.C. § 157(b)(2)(A). "Core proceedings are proceedings which have no existence outside of bankruptcy. *In re Alexander*, 49 B.R. 733, 736 (Bankr.D.N.D.1985). Actions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings. *In re Wood*, 825 F.2d 90, 96 (5th Cir.1987)...". *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990).

Jurisdiction can be transitory. "A bankruptcy court has jurisdiction over disputes regarding alleged property of the bankruptcy estate at the outset of the case. *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir.1987). When property leaves the bankruptcy estate, however, the bankruptcy court's jurisdiction typically lapses, *In re Hall's Motor Transit Co.*, 889 F.2d 520, 523 (3d Cir.1989); *In re Xonics, Inc.*, 813 F.2d at 131; *In re Muller*, 72 B.R. 280, 284 (C.D.Ill.1987), aff'd, 851 F.2d 916 (7th Cir.1988), cert. denied, 490 U.S. 1007, 109 S.Ct. 1645, 104 L.Ed.2d 160 (1989), and the property's relationship to the bankruptcy proceeding comes to an end. See *In re Hall's Motor Transit Co.*, 889 F.2d at 523." *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990).

"[The appellant's] principal argument is that once a bankruptcy court acquires jurisdiction of a dispute, the power to decide lasts forever.

The accounts receivable of Xonics and related firms were property of the estate under 11 U.S.C. § 541(a). Adjusting competing claims of creditors to the property of a bankrupt is the central function of bankruptcy law....But [*In re Chicago, Rock Island & Pacific R.R.*, 794 F.2d 1182, 1186-88 (7th Cir.1986)] establishes that jurisdiction does not follow the property. It lapses when property leaves the estate. *Sanborn II* dealt with a dispute between the former tenant of the bankrupt and the person who purchased the property from the bankrupt. While the property belonged to the estate, the court was empowered to adjudicate rental disputes. [*In re Chicago, Rock Island & Pacific R.R.*, 794 F.2d 1182, 1186-88 (7th Cir.1986)]...concluded that once the property has been sold the court needs a new source of jurisdiction (such as diversity), if the dispute is to remain in federal court...Otherwise anyone who could trace his title to a bankrupt could invoke federal jurisdiction to settle disputes affecting that property." *Matter of Xonics, Inc.*, 813 F.2d 127, 131 (7th Circuit 1987), disagreed with on other grounds, *In re Fietz*, 852 F.2d 455, 457(9th Cir. 1988).

This adversary proceeding seeks to adjudicate the ownership of a digital billboard as between the debtor, the Chapter 7 trustee and Phillip Gillet, Jr. But this property left the estate when Phillip Gillett, Jr. purchased that asset from the estate. See, Report of Sale, November 30, 2013, ECF #19. The estate now lacks any interest in the property or stake in the outcome. As a result, the court lacks jurisdiction and the motion will be granted.

1:30 p.m.

1. 14-10610-A-7 GEORGE/VALENTINE RIPSOM MOTION FOR RELIEF FROM  
PPR-1 AUTOMATIC STAY  
BANK OF AMERICA, N.A./MV 4-9-14 [17]  
PATRICK KAVANAGH/Atty. for dbt.  
JEANNETTE MARSALA/Atty. for mv.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1999 Recreational VE Safari

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.

2. 14-10943-A-7    LORI CLEVELAND  
MON-1  
MIGUEL PORTILLO/MV  
ROBERT WILLIAMS/Atty. for dbt.  
JOHN MONTE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-17-14 [13]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted to the extent specified in this ruling

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

**Subject:** State court action (Miguel Portillo v. Charmaine Cleveland, Lori Mae Cleveland, Does 1-20 inclusive, Los Angeles County Superior Court, Case No. BC 503205

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).

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.

3. 14-10961-A-7 MIGUEL GARCIA AND KATIA  
APN-1 FLORES  
NISSAN MOTOR ACCEPTANCE  
CORPORATION/MV  
PHILLIP GILLET/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-18-14 [[17](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2013 Nissan Murano

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. 13-17678-A-7 EULALIE WOOLFOLK  
TJP-1  
CARFINANCE CAPITAL/MV  
ALLAN WILLIAMS/Atty. for dbt.  
THOMAS PRENOVOST/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-15-14 [[16](#)]

**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:** 2010 Chrysler Town & Country Minivan

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.

5. 14-10878-A-7 JOSEPH/CLARA LAMM  
VC-1  
BRANCH BANKING AND TRUST  
COMPANY/MV  
D. GARDNER/Atty. for dbt.  
MICHAEL VANLOCHEM/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-11-14 [11]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted to the extent specified in this ruling

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The moving party indicates that 8 prepetition and 2 postpetition payments are past due. No opposition has been filed. The court finds cause to grant stay relief. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. 14-11478-A-7 LANCE/JANICE ST PIERRE  
THA-1  
DON AKINS/MV  
VINCENT GORSKI/Atty. for dbt.  
THOMAS ARMSTRONG/Atty. for mv.  
RESPONSIVE PLEADING  
  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-9-14 [[11](#)]

No tentative ruling.

7. 14-10279-A-7 DONNIE PRICE  
DAM-1  
INTERIM CAPITAL, LLC/MV  
ROBERT BRUMFIELD/Atty. for dbt.  
DENNETTE MULVANEY/Atty. for mv.  
DISCHARGED  
  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-2-14 [[25](#)]

**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:** 305-317 Daniels Lane, Bakersfield, CA

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

**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.

1:45 p.m.

1. 13-12358-A-11 CENTRAL VALLEY SHORING,  
INC.  
LEONARD WELSH/Atty. for dbt.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
4-2-13 [1]

No tentative ruling.

2. 13-12358-A-11 CENTRAL VALLEY SHORING,  
LKW-11 INC.  
LEONARD WELSH/Atty. for dbt.

HEARING RE: DISCLOSURE  
STATEMENT FILED BY DEBTOR  
CENTRAL VALLEY SHORING, INC.  
3-28-14 [190]

#### Tentative Ruling

**Motion:** Motion to Approve Disclosure Statement

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

**Disposition:** Approved subject to the Debtor making minor changes

**Order:** Prepared by the court

The debtor Central Valley Shoring (the "Debtor") has filed a disclosure statement (the "Disclosure Statement") and plan (the "Plan") and now requests court approval of the Disclosure Statement. No party in interest has filed an opposition. The Official Committee of Unsecured Creditors and the secured creditor Wells Fargo Equipment Finance have filed statements in support of approval of the Disclosure Statement.

Subject to the Debtor making the minor changes to the Disclosure Statement and Plan as indicated below, the court will approve the Disclosure Statement. The Debtor is to file the amended Disclosure Statement and Plan with the court by Tuesday, May 27, 2014, along with redlined versions of the documents. Once the amended documents are filed and approved by the court, the court will then issue an order approving the Disclosure Statement and setting forth the scheduling for confirmation. The relevant dates and deadlines for confirmation will be discussed with the parties at the hearing.

#### DISCUSSION

Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a plan of reorganization must contain adequate information "that would enable [an investor typical of holders of claims or interest of the relevant class] to make an informed judgment about the plan." § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted). Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

The court now turns to the minor issues with the Disclosure Statement and Plan.

Priority Tax Claims. There is an inconsistency between the Plan and the Disclosure Statement regarding the treatment of priority tax claims. The Plan (p. 3) provides that priority tax claims will accrue interest at a rate of 6% per annum, while Exhibit D of the Disclosure Statement provides that such claims will accrue interest at a rate of 2% per annum. This will need to be reconciled.

Further, for clarification to the relevant parties, the Debtor should include a list of those creditors that it intends to treat as a priority tax claim in the Disclosure Statement.

Lastly, although not fatal on its face, the treatment of priority tax claims in the Plan does not appear to comply with the payment provisions of § 1129(a)(9)(C). Because this case is more than 12 months old, and payments on these claims, once they begin, will continue for 48 months, these installment payments do not occur "over a period ending not later than 5 years after the date of the order for relief." § 1129(a)(9)(C)(ii). The court notes that as long as the Debtor obtains affirmative consent from the applicable creditor (i.e., a creditor's failure to oppose is not consent for § 1129(a)(9) purposes), the Debtor does not need to make any changes to the Disclosure Statement and Plan.

Class 3: EDD's Secured Tax Claim. Although not fatal on its face, the treatment of the EDD's secured tax claim in Class 3 in the Plan does not appear to comply with the payment provisions of § 1129(a)(9)(D). Because this case is more than 12 months old, and payments on this claim, once they begin, will continue for 48 months, these installment payments do not occur "over a period ending not later than 5 years after the date of the order for relief." § 1129(a)(9)(C)(ii). The court notes that as long as the Debtor obtains affirmative consent from the EDD (i.e., a creditor's failure to oppose is not consent for § 1129(a)(9) purposes), the Debtor does not need to make any changes to the Disclosure Statement and Plan.

Class 5: IRS's Secured Tax Claim. Although not fatal on its face, the treatment of the IRS's secured tax claim in Class 5 in the Plan does not appear to comply with the payment provisions of § 1129(a)(9)(D). Because this case is more than 12 months old, and payments on this claim, once they begin, will continue for 48 months, these installment payments do not occur "over a period ending not later than 5 years after the date of the order for relief." § 1129(a)(9)(C)(ii). The court notes that as long as the Debtor obtains affirmative consent from the IRS (i.e., a creditor's failure to oppose is not consent for § 1129(a)(9) purposes), the Debtor does not need to make any changes to the Disclosure Statement and Plan.

Class 9: Equity Interests. The Disclosure Statement and Plan do not expressly indicate whether the interest holders in Class 9 are impaired or unimpaired and whether they are entitled to vote.

## **CONCLUSION**

Subject to the Debtor making the minor changes to the Disclosure Statement and Plan as indicated above, the court will approve the Disclosure Statement. The Debtor is to file the amended Disclosure Statement and Plan with the court by Tuesday, May 27, 2014, along with redlined versions of the documents. Once the amended documents are

filed and approved by the court, the court will then issue an order approving the Disclosure Statement and setting forth the scheduling for confirmation. The relevant dates and deadlines for confirmation will be discussed with the parties at the hearing.

3. 13-12358-A-11 CENTRAL VALLEY SHORING,  
UST-1 INC.  
TRACY DAVIS/MV  
CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 11 TO CHAPTER  
7  
3-19-14 [[180](#)]  
LEONARD WELSH/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

The court intends to drop the matter from calendar as moot given the UST's indication in the status report that it intends to withdraw the motion.