

**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**

**JUNE 4, 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 CONTINUED MOTION TO SELL AND/OR  
RH-3 MOTION TO PAY  
JAMES SALVEN/MV 4-10-14 [[38](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

**Buyer:** Michael T. Gingles and Lupe Gingles

**Sale Price:** \$120,000

**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). 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.

At the hearing on May 14, 2014, the court addressed Bank of America, N.A.'s opposition. Bank of America, N.A. opposed the motion on the ground that it did not consent to a sale free and clear under § 363(f). But the relief Bank of America opposes has not been requested. Thus, the court rejects the opposition for the reasons stated in the civil minutes dated May 14, 2014. Civ. Mins., May 14, 2014, ECF No. 59.

2. [13-17405](#)-A-7 GARY KINDLUND CONTINUED MOTION TO SELL  
RH-4 4-10-14 [[43](#)]  
JAMES SALVEN/MV  
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:** Granted

**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, CA, to allow the owner of this real property to utilize the water rights that run with it]

**Buyer:** Michael T. Gingles and Lupe Gingles

**Sale Price:** \$30,000

**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.

3. [14-10115](#)-A-7 JAMESON SMITH  
JMA-1  
JAMESON SMITH/MV  
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO AVOID LIEN OF FORD  
MOTOR CREDIT COMPANY, LLC.  
4-22-14 [[18](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Denied without prejudice

**Order:** Prepared by moving party

### **REQUIREMENTS FOR LIEN AVOIDANCE**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

## INSUFFICIENT GROUNDS FOR RELIEF

### Insufficient Facts to Show a Lien Exists

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion seeks to avoid a judicial lien. But the motion does not set forth sufficient facts indicating the existence of a judicial lien.

The motion states that a writ of execution was issued as to the personal property of the debtor, and that the debtor had no real property. But the motion does not show that a valid levy occurred. "An execution lien is created by a levy under a writ of execution. . . . Without a valid levy, there [is] no lien." *Grover v. Bay View Bank*, 104 Cal. Rptr. 2d 677, 682 (Ct. App. 2001) (citation omitted); see also Cal. Civ. Proc. Code § 697.710. For example, a levy requires compliance with certain procedures, such as the procedures described in § 700.010 of the California Code of Civil Procedure. Further, a levy on tangible personal property in the judgment debtor's possession requires that the levying officer "take the property into custody." Cal. Civ. Proc. Code § 700.030.

The motion presents no factual matter from which the court can infer that a valid levy occurred, which gave rise to an execution lien under California law. Without a valid lien, the court is unable to grant a request to avoid a lien.

### Insufficient Facts to Show Impairment of Exemption

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the 2008 Acura TL Base that is encumbered. Even if the property is overencumbered, some amount of exemption must be claimed to present a prima facie case for relief under § 522(f).

4. [14-11817](#)-A-7 ALFRED/SHERI SENTER MOTION TO COMPEL ABANDONMENT  
TPH-1 5-20-14 [[14](#)]  
ALFRED SENTER/MV  
THOMAS HOGAN/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:** Alfred Senter Insurance Sales

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. [13-16439](#)-A-7 TINA ARTEAGA OBJECTION TO DEBTOR'S CLAIM OF  
JES-1 EXEMPTIONS  
JAMES SALVEN/MV 5-2-14 [[40](#)]

**Tentative Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

**Disposition:** Overruled

**Order:** Prepared by objecting party

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed a spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division

2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The trustee asserts that the debtor is married based on Schedule I and also that the debtor is separated. The debtor has filed a response to the objection. The debtor's declaration indicates that when she began filling out the paperwork to file bankruptcy, she was separated and in the process of obtaining a divorce, but that once the debtor actually filed bankruptcy, she had completed her divorce. The debtor attached a copy of her dissolution judgment to her response, and this judgment indicates the dissolution was entered on July 29, 2013, two months before her petition was filed. Thus, the debtor appears to have inadvertently left information in her petition and schedules incorrectly describing her marital status as separated. The court will overrule the objection.

6. [13-17351](#)-A-7 VICTOR/JOSEFINA RAMOS MOTION TO SELL  
SAS-1 5-7-14 [[21](#)]  
SHERYL STRAIN/MV  
GREG BLEVINS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2006 Chevrolet Malibu

**Buyer:** Debtors

**Sale Price:** \$2775.00

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

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

#### **SALE UNDER § 363(b)(1)**

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.

**NOTICE DEFECT**

The notice does not state the name of the proposed buyer (the debtor), a material term of the sale. The notice of a proposed private sale should contain all material terms and conditions of the sale, which include the parties to 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). In the future, counsel should ensure that the notice of hearing contains all material terms and conditions of the sale. The court will waive this defect this time.

7. [14-12558](#)-A-7 SHARON OLSON MOTION TO EMPLOY JOHN WALKE AS  
TMT-1 BROKER(S)  
TRUDI MANFREDO/MV 5-20-14 [[14](#)]  
DAVID JENKINS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

**Tentative Ruling**

**Application:** Approval of Employment  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Approved in part, denied in part  
**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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment of the broker identified in the motion.

The court will deny the application in part as to a request for approval of an hourly rate of \$125 per hour. The court will consider a fee application and reasonable compensation pursuant to § 330(a) when an application is presented. At such time, the court will determine the method and amount of reasonable compensation.

8. [14-10561](#)-A-7 DORA REYES OBJECTION TO DEBTOR'S CLAIM OF  
JES-1 EXEMPTIONS  
JAMES SALVEN/MV 5-2-14 [[28](#)]

**Tentative Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File Spousal Waiver  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Sustained in part, denied in part

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The objection is sustained in part. The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).

To the extent the trustee request that the claimed exemptions be limited in amount consistent with the California exemption statute under § 703.140(b), the court will overrule the objection. Because the court has sustained the objection to the debtor's exemptions under § 703.140(b) given the absence of a spousal waiver, the request to limit the exemptions under such statute is moot.

9. [13-11665](#)-A-7 DENNIS MCGOWAN MOTION TO SELL FREE AND CLEAR  
PLF-4 OF LIENS AND/OR MOTION FOR  
JAMES SALVEN/MV COMPENSATION FOR BARRINGTON  
REALTY & MORTGAGE, REALTOR(S).  
5-14-14 [[36](#)]

PETER BUNTING/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

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

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

**Disposition:** Granted in part (authorization of sale, payment of commission to Barrington Realty & Mortgage, and sale free and clear of Wahlbergs' lien), denied in part (payment of commission to named agent Mekhirarian)

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

**Property:** 3798 North Polk Avenue, Fresno, CA

**Buyer:** Raul Cornejo

**Sale Price:** \$107,500

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

**Sale Free and Clear of Lien:** Relief granted as stated below and the order prepared pursuant to the instructions below

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

#### **SALE AUTHORIZATION 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). 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.

#### **COMPENSATION UNDER § 330(a)**

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

The court finds that the compensation sought is reasonable. The court will approve the application only as to Barrington Realty & Mortgage, the broker named in the order employing the broker. The court will not approve the application as to Mark Mekhirarian whose name does not appear in such order.

#### **SALE FREE AND CLEAR UNDER § 363(f)**

The sale will be free and clear of Alfred G. Wahlberg and Claudia K. Wahlberg's lien, if any, on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f)(4).

The Wahlberg's lien was satisfied years ago and a reconveyance of the deed of trust has not been recorded. The holders of this lien have confirmed that it was paid off many years ago. "A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien." See *Alliance Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235 (1995). "The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation." *In re Thomas*, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989).

Accordingly, a bona fide dispute exists as to the validity of this lien. The court will not approve the sale free and clear of any other lien or interest not identified in this ruling.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. Furthermore, if the filing fee for the motion was deferred and remains unpaid at the time the order is submitted, then the order shall state

that the trustee shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court directly from the sale proceeds.

10. [13-17885](#)-A-7 CONNIE BETHEL  
SAS-2  
SHERYL STRAIN/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH CONNIE KAY  
BETHEL  
5-6-14 [[33](#)]

KEITH KNOCHEL/Atty. for dbt.

### **Final Ruling**

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

**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).

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.

11. [14-11269](#)-A-7 JORGE/LUDIVINA HERNANDEZ

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
4-28-14 [[12](#)]

GREG BLEVINS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Prepared by chapter 7 trustee

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

The court will conditionally deny the motion in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is June 5, 2014, at 9:00 a.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

10:00 a.m.

1. [14-12123](#)-A-7 TAMARA BROWN MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE 5-21-14 [[12](#)]  
CORPORATION/MV  
VINCENT FROUNJIAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2009 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). 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. [13-18042](#)-A-7 DALAVAR/MANMINDER PABLA MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON/MV 5-6-14 [[22](#)]  
PETER FEAR/Atty. for dbt.  
MICHAEL GONZALES/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:** 712 Maple Ave., Livingston, 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. [14-10547](#)-A-7 JOHN/CHRISTINA BIRDSELL MOTION FOR RELIEF FROM  
JMS-1 AUTOMATIC STAY  
SBI BUILDERS, INC./MV 5-2-14 [[39](#)]  
JERRY LOWE/Atty. for dbt.  
JOSEPH SWEENEY/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

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

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

**Order:** Prepared by movant consistent with this ruling

**Subject:** state court litigation in the Fresno County Superior Court (SBI Builders, Inc. v. Valleywide Construction, Inc., et al, Case No. 12CEF01779)

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).

Courts considering a request to pursue litigation in a collateral forum frequently consider: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant

in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

The debtors oppose the motion by citing to the *Sonnax* factors, but the debtors do not apply such factors to the facts of their particular case. The debtors mention that the purpose of the stay is to shield debtors from litigation and creditor harassment, but the debtors do not state why the relief from stay requested will harm the debtors. The debtors' statements are conclusory and need not be considered.

Here, the creditor requests relief from stay only to pursue recovery against Debtors' insurance. The creditor states that it will be limiting its recovery to applicable insurance proceeds. The creditor "will agree to waive claims against Debtors to the extent such claims exceed the insurance proceeds applicable to Creditor's state court action." Reply to Debtors' Opp'n to Mot. Relief from Stay at 1-2, ECF No. 56. The creditor admits that any judgment it obtains will not be enforced against the debtors personally or against the estate. Creditor's Mem. P. & A. Supp. Mot. Relief from Stay at 6, ECF No. 41.

Under the *Sonnax* factors, relief would result in a complete resolution of the issues since enforcement and collection is not against the debtors but only against insurance. There will not be any significant interference with the bankruptcy case. The court finds it likely that the insurer will assume responsibility for defending the action, and footnote 2 of the memorandum in support suggests this is the case. The interests of the estate and creditors will not be prejudiced by allowing the litigation in state court to proceed for the limited purposes described in the motion.

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.

4. [12-13170](#)-A-7 AUGUSTINE PENA  
NLG-1  
SETERUS, INC./MV  
VINCENT GORSKI/Atty. for dbt.  
NICHOLE GLOWIN/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-5-14 [[494](#)]

**No tentative ruling.**

10:30 a.m.

1. [14-10823](#)-A-7 MIGUEL/MARIA CHUELA PRO SE REAFFIRMATION AGREEMENT  
WITH TOYOTA MOTOR CREDIT  
CORPORATION ( 2011 CAMRY )  
5-13-14 [[12](#)]  
  
OSCAR SWINTON/Atty. for dbt.  
  
**No tentative ruling.**
2. [14-10823](#)-A-7 MIGUEL/MARIA CHUELA PRO SE REAFFIRMATION AGREEMENT  
WITH TOYOTA MOTOR CREDIT  
CORPORATION ( 2011 COROLLA )  
5-14-14 [[14](#)]  
  
OSCAR SWINTON/Atty. for dbt.  
  
**No tentative ruling.**
3. [14-11531](#)-A-7 KENNETH KIMBLEY PRO SE REAFFIRMATION AGREEMENT  
WITH AMERICREDIT FINANCIAL  
SERVICES, INC.  
5-14-14 [[13](#)]  
  
GRISELDA TORRES/Atty. for dbt.  
  
**No tentative ruling.**
4. [14-11564](#)-A-7 ALFONSO/YESENIA CHAGOYA REAFFIRMATION AGREEMENT WITH  
AMERICREDIT FINANCIAL SERVICES,  
INC.  
5-14-14 [[24](#)]  
  
NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
  
**No tentative ruling.**
5. [14-11775](#)-A-7 JOSHUA HUNTER REAFFIRMATION AGREEMENT WITH  
SANTANDER CONSUMER USA INC.  
5-14-14 [[10](#)]  
  
TIMOTHY SPRINGER/Atty. for dbt.  
  
**No tentative ruling.**

6. [14-11678](#)-A-7 ESMERALDA GONZALEZ

PRO SE REAFFIRMATION AGREEMENT  
WITH WELLS FARGO DEALER  
SERVICES  
5-19-14 [[12](#)]

**No tentative ruling.**

7. [14-11391](#)-A-7 PABLO/MARIA GARCIA

REAFFIRMATION AGREEMENT WITH  
TOYOTA MOTOR CREDIT CORPORATION  
5-9-14 [[15](#)]

THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

1:30 p.m.

1. [10-62315](#)-A-11 BEN ENNIS  
LRP-13  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

OMNIBUS OBJECTION TO CLAIMS  
4-18-14 [[1482](#)]

### **Tentative Ruling**

**Objection:** Omnibus Objection One to Claims

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

**Disposition:** Sustained in part, denied in part

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

### **PROCEDURAL MATTERS**

#### Service of Process

The court notes that many of the entities on the proof of service facially appear not to have been served pursuant to Rule 7004. Two examples are Baker Distributing Company and HA Devco Inc. Others have not been properly served, such as Freeman Cement, which includes "Attn: Billy Freeman" but does not include any indication of Freeman's status as an agent.

However, it is unclear whether service is required in addition to notice pursuant to Rule 3007 and 9014(a). A split of authority exists over whether a claim objection must be served or whether mere notice pursuant to Rule 3007 and Rule 9014 will suffice. *See, e.g., In re Gordon*, No. BK-S-11-22221-LBR, 2013 WL 1163773, at \*1-3 (Bankr. D. Nev. Mar. 20, 2013).

If the plan administrator desires a continuance to ensure service on all of the claimants is accomplished, the court will continue the hearing for that limited purpose. Otherwise, the court will sustain the objection as discussed below.

#### Rule 3007(d) and (e)

This omnibus objection procedure was authorized by an order issued March 17, 2014. Order Authorizing Plan Adm'r to Employ Omnibus Claims Objection, Mar. 17, 2014, ECF No. 1446. This order authorized the plan administrator to join all claims valued at zero dollars in one claims objection. Rule 3007(d) also permits the omnibus procedure used "if all the claims [joined in the omnibus objection] were filed by the same entity." Because Ben Ennis scheduled all of the claims included in the objection, those claims were deemed filed by such scheduling. *See* 11 U.S.C. § 1111(a). The same entity has therefore "filed" all of the claims in the objection. The court also finds that the objection substantially complies with Rule 3007(e).

## CLAIMS OBJECTION

This omnibus objection objects to the claims of 74 claimants identified in the objection. These claims were scheduled by the debtor, Ben Ennis, on behalf of the claimants. In chapter 11 cases, any claim that appears in the schedules "is deemed filed under section 501," unless it "is scheduled as disputed, contingent, or unliquidated." 11 U.S.C. § 1111(a); see also Fed. R. Bankr. P. 3003(b)(1).

The grounds for the objection are that the plan administrator is not aware of the basis for the claims even after searching the records of Ben Ennis. Further, the claims lack evidentiary support. The claimants were scheduled by the debtor but none of them filed a proof of claim or any documentation with the court to show the validity of its claim.

## OTHER RELIEF

The objection also asks that the court order that notice was adequate. The court generally does not permit such language in its orders and will make no such finding.

2. [10-62315](#)-A-11 BEN ENNIS OMNIBUS OBJECTION TO CLAIMS  
LRP-16 4-18-14 [[1489](#)]  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

## Tentative Ruling

**Objection:** Omnibus Objection Two to Claims

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

**Disposition:** Sustained in part, denied in part

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

## PROCEDURAL MATTERS

### Service of Process

The court notes that many of the entities on the proof of service facially appear not to have been served pursuant to Rule 7004. Two examples are Baker Distributing Company and HA Devco Inc. Others have not been properly served, such as Freeman Cement, which includes "Attn: Billy Freeman" but does not include any indication of Freeman's status as an agent.

However, it is unclear whether service is required in addition to notice pursuant to Rule 3007 and 9014(a). A split of authority exists over whether a claim objection must be served or whether mere notice pursuant to Rule 3007 and Rule 9014 will suffice. See, e.g., *In re Gordon*, No. BK-S-11-22221-LBR, 2013 WL 1163773, at \*1-3 (Bankr. D. Nev. Mar. 20, 2013).

If the plan administrator desires a continuance to ensure service on all of the claimants is accomplished, the court will continue the hearing for that limited purpose. Otherwise, the court will sustain the objection as discussed below.

#### Rule 3007(d) and (e)

This omnibus objection procedure was authorized by an order issued March 17, 2014. Order Authorizing Plan Adm'r to Employ Omnibus Claims Objection, Mar. 17, 2014, ECF No. 1446. This order authorized the plan administrator to join all claims valued at zero dollars in one claims objection. Rule 3007(d) also permits the omnibus procedure used "if all the claims [joined in the omnibus objection] were filed by the same entity." Because Ben Ennis scheduled all of the claims included in the objection, those claims were deemed filed by such scheduling. See 11 U.S.C. § 1111(a). The same entity has therefore "filed" all of the claims in the objection. The court also finds substantial compliance with Rule 3007(e).

#### **CLAIMS OBJECTION**

This omnibus objection objects to the claims of 37 claimants identified in the objection. These claims were scheduled by the debtor, Ben Ennis, on behalf of the claimants. In chapter 11 cases, any claim that appears in the schedules "is deemed filed under section 501," unless it "is scheduled as disputed, contingent, or unliquidated." 11 U.S.C. § 1111(a); see also Fed. R. Bankr. P. 3003(b)(1).

The grounds for the objection are that the plan administrator is not aware of the basis for the claims even after searching the records of Ben Ennis. Further, the claims lack evidentiary support. The claimants were scheduled by the debtor but none of them filed a proof of claim or any documentation with the court to show the validity of its claim.

#### **OTHER RELIEF**

The objection also asks that the court order that notice was adequate. The court generally does not permit such language in its orders and will make no such finding.

3. [10-62315](#)-A-11 BEN ENNIS MOTION TO SELL FREE AND CLEAR  
LRP-17 OF LIENS  
DAVID STAPLETON/MV 5-14-14 [[1504](#)]  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

**No tentative ruling.**

4. [10-62315](#)-A-11 BEN ENNIS MOTION TO SELL FREE AND CLEAR  
LRP-18 OF LIENS  
DAVID STAPLETON/MV 5-14-14 [[1512](#)]  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

**No tentative ruling.**

5. [14-10851](#)-A-11 JOHN/BETTY VAN DYK MOTION FOR COMPENSATION BY THE  
WW-8 LAW OFFICE OF WALTER & WILHELM  
LAW GROUP FOR RILEY C. WALTER,  
DEBTOR'S ATTORNEY(S).  
4-28-14 [[85](#)]

RILEY WALTER/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Compensation approved:** \$4,801.50

**Costs approved:** \$1,590.72

**Aggregate fees and costs approved in this application:** \$6,392.22

**Retainer held:** \$35,340.25

**Amount to be paid as administrative expense:** \$0.00

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

6. [14-11991](#)-A-11 CENTRAL AIR MOTION TO APPROVE STIPULATION  
BJG-2 CONDITIONING, INC. FOR RELIEF FROM THE AUTOMATIC  
WORKMAN BROS. DEVELOPMENT STAY  
CO./MV 5-20-14 [[61](#)]  
HAGOP BEDOYAN/Atty. for dbt.  
CHRISTOPHER BRUMFIELD/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** Seven construction defect actions filed in state court and listed in the stipulation attached as Exhibit A

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 stipulation permits the moving parties to have stay relief to allow them to proceed against the Debtor's applicable insurance proceeds only. The moving parties waive any direct claim, pre-petition, post-petition, administrative, or other claim, as against the estate beyond available insurance proceeds. For the reasons stated in the motion and supporting papers, the court will approve the stipulation.

7. [14-11595](#)-A-11 RAY FISHER PHARMACY, CONTINUED STATUS CONFERENCE RE:  
INC. CHAPTER 11 VOLUNTARY PETITION  
ALAN KINDRED/Atty. for dbt. 3-31-14 [[1](#)]

**No tentative ruling.**