

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JUNE 25, 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. [14-11811](#)-A-13 JOSE VARGAS SIERRA AND MOTION TO DISMISS CASE FOR
MHM-1 ANITA VARGAS UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
5-22-14 [[23](#)]

IVAN LOPEZ VENTURA/Atty. for dbt.

No tentative ruling.

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

ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will follow the hearings on the debtors' motions to value and to avoid a lien in this case having docket control nos. RSW-3 and RSW-4.]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1) / continued hearing date;
written opposition required

Disposition: Pending

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

The court continued the hearing on this motion so that a pending motion to value and a pending motion to avoid a lien could be decided. If these motions are granted, the grounds for the trustee's objection will be resolved.

Assuming the debtor's motions to value and to avoid a lien are granted in accordance with the tentative rulings, the court will confirm the Chapter 13 plan for the following reasons:

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.

3. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION TO VALUE COLLATERAL OF
RSW-3 RAMIREZ SPECIALIZED LOAN SERVICING, LLC
MARK AGUILAR/MV 5-9-14 [[82](#)]

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 the moving party consistent with this ruling's instructions

Collateral Value: \$283,000.00

Senior Liens: \$286,080.65

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party's claim is entirely unsecured. The order shall not include any other additional findings or information.

4. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION TO AVOID LIEN OF CAPITAL
RSW-4 RAMIREZ ONE BANK (USA) N.A.
MARK AGUILAR/MV 5-9-14 [[77](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$295,168.32 or \$297,407.65*

Property Value: \$283,000.00

Judicial Lien Avoided: \$9,086.67 (motion) or \$11,326 (plan)

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

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

*The amount of the respondent's lien is unclear based on Class 2 of the plan and the motion: it is \$9,087.67 (motion) or \$11,327 (plan). The exemption is \$1.00. In the future, debtors' counsel should ensure that the motion accurately reflects the proper balance of the debt secured by the lien to be avoided. Fed. R. Bankr. P. 9013.

5. [14-10314](#)-A-13 DANIEL/LINDA MONTES
MHM-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-26-14 [[18](#)]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

A modified plan filed and noticed for hearing, this objection is denied as moot.

6. [12-12523](#)-A-13 LASHON FLETCHER
PLG-2
LASHON FLETCHER/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
5-16-14 [[55](#)]

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

7. [14-11826](#)-A-13 SHAWNA EVANS
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
5-22-14 [[31](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

8. [12-13531](#)-A-13 DONALD/AIDA MORTON
JDC-4
DONALD MORTON/MV
JOHN CARLSON/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
5-7-14 [[129](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. The court will deny confirmation for the reasons discussed.

NOTICE INSUFFICIENT

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address. The service list does not include some of the addresses appearing on proofs of claim filed by creditors.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the motion being noticed. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

INCORRECT USE OF FORM PLAN

The debtors have interlineated the form chapter 13 plan just beneath the title. Section 6 of the plan provides what modifications to the form are permitted and that other than the permitted modifications to the form, the form has not been altered. This court will not permit the type of interlineation by the debtors and does not consider it to

FEASIBILITY

Although the attorney for the debtors proposes to be paid \$1500 through the plan, Section 2.07 does not provide a means for the plan to pay the attorney this amount.

- ## Final Ruling

Senior Liens: \$496,717.54

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party's claim is entirely unsecured. The order shall not include any other additional findings or information.

10. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE MOTION TO VALUE COLLATERAL OF
PK-2 GE CAPITAL RETAIL BANK
ERIC LAFORTUNE/MV 5-19-14 [[26](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

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

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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 ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. 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).

11. [13-13640](#)-A-13 DAVID/MARGARET SANCHEZ MOTION TO MODIFY PLAN
PWG-3 4-14-14 [[52](#)]
DAVID SANCHEZ/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee'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 trustee'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.

12. [14-10545](#)-A-13 TIMOTHY GEDDES MOTION TO DISMISS CASE FOR
MHM-3 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
5-7-14 [[34](#)]
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

13. [13-13747](#)-A-13 DAVID/MICHELE KING
RSW-3
DAVID KING/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
5-7-14 [[67](#)]

No tentative ruling.

14. [14-12747](#)-A-13 CRYSTAL ABBOTT
NES-1
CRYSTAL ABBOTT/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
6-3-14 [[8](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

If this case was filed under Chapter 13 of title 11, the court will extend the automatic stay subject to the condition that all plan payments are timely made to the Chapter 13 trustee for the next six months, and the order shall provide that (i) the debtor shall make such timely payments for the next six months to the Chapter 13 trustee, (ii) if the debtor fails to make any such monthly payment, the Chapter 13 trustee may file a certification of noncompliance with the order on this motion along with a proposed order, and (iii) upon the filing of such certification, the court may then dismiss the case without further notice or a hearing.

15. [14-11450](#)-A-13 STEVEN WILKINS
MHM-1
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO DISMISS CASE
5-20-14 [[19](#)]

No tentative ruling.

16. [14-11955](#)-A-13 DAVID ARNONE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-21-14 [[32](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Although the \$70 installment due May 16, 2014, has been paid, the \$70 installment due June 16, 2014 has not been paid. If the June 16th installment remains unpaid at the time of this hearing, the case will be dismissed.

17. [14-11955](#)-A-13 DAVID ARNONE
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE , MOTION
TO DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS
5-22-14 [[34](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

18. [14-11759](#)-A-13 KARLA SCHWEITZER
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
5-22-14 [[26](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

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

19. [14-11759](#)-A-13 KARLA SCHWEITZER
RSW-1
KARLA SCHWEITZER/MV

MOTION TO VALUE COLLATERAL OF
J.P. MORGAN CHASE BANK,
NATIONAL ASSOCIATION
5-28-14 [[30](#)]

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 the moving party consistent with this ruling's instructions

Collateral Value: \$243,000.00

Senior Liens: \$274,820.31

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

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party's claim is entirely unsecured. The order shall not include any other additional findings or information.

20. [14-11760](#)-A-13 JUSTIN/DESIREE LAY

JPMORGAN CHASE BANK, N.A./MV

ROBERT WILLIAMS/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
5-15-14 [[15](#)]

Final Ruling

A modified plan filed and noticed for hearing, this objection is denied as moot.

21. [14-11760](#)-A-13 JUSTIN/DESIREE LAY

MHM-1

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
5-20-14 [[25](#)]

Final Ruling

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

22. [14-11762](#)-A-13 CUTBERTO/MERANDA

MHM-1

GUTIERREZ

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
5-22-14 [[19](#)]

Final Ruling

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

23. [14-12363](#)-A-13 CARMEN VALENZUELA

FRANCISCO ALDANA/Atty. for dbt.

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-9-14 [[22](#)]

Tentative Ruling

If the \$70 installment due June 4, 2014, has not been paid by the time of this hearing, the case will be dismissed.

24. [11-14165](#)-A-13 CHRISTOPHER WEBB
RSW-1
CHRISTOPHER WEBB/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AMEND/CORRECT
5-14-14 [[90](#)]

Tentative Ruling

Motion: Amend Order

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

Disposition: Granted

Order: Prepared by moving party

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

Federal Rule of Civil Procedure 59 permits a motion to alter or amend a judgment. But the rule only allows amendment 28 days after the judgment is entered. Here, the order sought to be amended was entered October 1, 2013. So Rule 59 is inapplicable.

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time but not more than a year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bankr. P. 9024. The court finds relief is warranted based on inadvertence and excusable neglect.

Alternatively, the court finds that relief is warranted under Rule 60(a). Fed. R. Civ. P. 60(a), *incorporated by* Fed. R. Bankr. P. 9024. Because the relief granted in the order exceeds the scope of the relief sought in the motion, the court will allow the order to be amended to conform to the relief sought in the motion. See Fed. R. Bankr. P. 9013.

25. [11-14165](#)-A-13 CHRISTOPHER WEBB
RSW-2
CHRISTOPHER WEBB/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AMEND/CORRECT
5-14-14 [[94](#)]

Tentative Ruling

Motion: Amend Order

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

Disposition: Granted

Order: Prepared by moving party

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

Federal Rule of Civil Procedure 59 permits a motion to alter or amend a judgment. But the rule only allows amendment 28 days after the

judgment is entered. Here, the order sought to be amended was entered October 1, 2013. So Rule 59 is inapplicable.

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time but not more than a year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bankr. P. 9024. The court finds relief is warranted based on inadvertence and excusable neglect.

Alternatively, the court finds that relief is warranted under Rule 60(a). Fed. R. Civ. P. 60(a), *incorporated by* Fed. R. Bankr. P. 9024. Because the relief granted in the order exceeds the scope of the relief sought in the motion, the court will allow the order to be amended to conform to the relief sought in the motion. See Fed. R. Bankr. P. 9013.

26. [11-14165](#)-A-13 CHRISTOPHER WEBB
RSW-3
CHRISTOPHER WEBB/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AMEND/CORRECT
5-14-14 [[98](#)]

Tentative Ruling

Motion: Amend Order

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

Disposition: Pending

Order: Pending

No certificate of service appears on the docket having docket control number RSW-3, but a certificate of service having RSW-2 appears on the docket that lists an address of Rudy Perez, the respondent creditor named in the motion.

The court will grant the motion only if service of the motion designated with docket control number RSW-3 has been served on the respondent creditor. If the certificate of service incorrectly indicates that the debtor served the motion designated with RSW-2 on Rudy Perez, and if the debtor in fact served the motion designated with docket control number RSW-3 on Perez, then the court will grant the motion at the hearing. Otherwise, if the incorrect motion was served on Perez, the court will continue the motion to July 23, 2014, and a supplemental proof of service may be filed no later than July 9, 2014.

27. [09-10374](#)-A-13 BERNICE MCCOY
SMS-1
BERNICE MCCOY/MV
STEVEN STANLEY/Atty. for dbt.

MOTION WAIVING DEBTOR'S SECTION
1328 CERTIFICATION REQUIREMENT
6-5-14 [[59](#)]

Tentative Ruling

Motion: Waive § 1328 Certification Requirement

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

Disposition: Continued to July 23, 2014

Order: Civil minute order

Some creditors who have filed claims have not received notice or have not received notice at the proper address. Not every creditor or party in interest appearing on the court's matrix has received proper notice of the motion, which tends to indicate that creditors or parties in interest have not received proper notice. In addition, the list of creditors and parties on the proof of service is barely legible. Any future proof of service shall contain clearly legible text.

The moving party did not use the ECF Master Mailing List (also known as the court's matrix). For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

The court will continue the hearing on this matter to July 23, 2014. No later than July 9, 2014, the moving party will file (i) a supplemental proof of service showing notice on the court's matrix, preferably in accordance with the last paragraph of this disposition, and (ii) a continued notice of hearing for July 23, 2014 permitting opposition as described in Local Bankruptcy Rule 9014-1(f)(2).

28. [10-10374](#)-A-13 JOHN/PATTI KLINKE

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM #57 (EFILING
ID 5193745)
5-15-14 [[81](#)]

CYNTHIA SCULLY/Atty. for dbt.

Tentative Ruling

If the fee for filing a transfer of claim remains unpaid as of the hearing date, the court will strike the transfer of claim filed by Diamond Resorts International from its docket (ECF Nos. 57-58).

29. [10-10374](#)-A-13 JOHN/PATTI KLINKE
CRS-1
JOHN KLINKE/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
5-9-14 [[62](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

Collateral Value: \$20,000

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 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 debt secured by the vehicle was not incurred within the 910-day 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 vehicle is the amount set forth above.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding creditor's claim is unsecured to the extent it exceeds the value of the collateral that is unencumbered by senior liens. The order shall not include any other additional findings or information.

30. [10-10374](#)-A-13 JOHN/PATTI KLINKE
CRS-2
JOHN KLINKE/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HSBC
5-9-14 [[68](#)]

Final Ruling

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

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

Collateral Value: \$1000

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 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 debtors state that the collateral was purchased in December 2006, which is presumably when the debt was incurred. The petition was filed on January 15, 2010. 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.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding creditor's claim is unsecured to the extent it exceeds the value of the collateral that is unencumbered by senior liens. The order shall not include any other additional findings or information.

31. [10-10374](#)-A-13 JOHN/PATTI KLINKE
CRS-3
JOHN KLINKE/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HSBC BEST BUY
5-9-14 [[74](#)]

Tentative Ruling

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

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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 ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. But the declaration states that the debtors no longer have the property. Section 506 only applies to claims secured by property of the estate. Klinke Decl. ¶ 5. To the extent a creditor's claim is not secured by a lien on property that is part of the bankruptcy estate, the creditor does not have a secured claim against such estate, and valuing the creditor's collateral serves no purpose.

32. [13-16685](#)-A-13 ROBERT/ORENE BARKER
PK-1

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S)
6-4-14 [[29](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Continued to July 23, 2014 at 9:00 a.m.

Order: Prepared by applicant

The application is not supported by a statement of the debtors consent to the fees requested or statement of no objection to such fees. This statement, or an explanation of why the lack of consent should not affect the amounts requested for approval, may be filed no later than July 9, 2014. If the statement is filed and the statement indicates that the debtor's support the full amount of the fees requested and has no objection to them, the court will adopt the following as the ruling.

Proposed Ruling If Appropriate Documents Timely Filed in Support:

Applicant: Patrick Kavanagh

Compensation approved: \$4175.00

Costs approved: \$0.00

Aggregate fees and costs approved in this application: \$4175.00

Retainer held: \$1500.00 (retainer has been paid)

Amount to be paid as administrative expense: \$2675.00

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case 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 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.

33. [13-10286](#)-A-13 ALI TORKAMAN
MHM-2
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
6-5-14 [[153](#)]

Final Ruling

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

34. [13-10286](#)-A-13 ALI TORKAMAN
PK-1
ALI TORKAMAN/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING WITHDRAWN

MOTION TO CONFIRM PLAN
5-8-14 [[133](#)]

Tentative 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.

35. [13-10286](#)-A-13 ALI TORKAMAN
PK-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PATRICK KAVANAGH
FOR PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S)
5-28-14 [[146](#)]

PATRICK KAVANAGH/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

Applicant: Patrick Kavanagh

Compensation approved: \$3031.00

Costs approved: \$85.28

Aggregate fees and costs approved in this application: \$3116.28

Retainer held: \$0.00

Amount to be paid as administrative expense: \$3116.28

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case 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 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.

The application indicates that the debtor's attorney holds \$750 in his trust account for security only. He states that he intends to release these funds to the debtor upon payment of his fee under the plan. The court will permit this conditioned on the following: prior to discharge, the attorney must file a declaration with the court that authenticates a copy of the check showing return of this security to the debtor.

36. [14-11293](#)-A-13 SANTIAGO PEINADO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-21-14 [[33](#)]

\$70.00 PAID 6/2/14 (MAY
PAYMENT)

Tentative Ruling

Although the \$70 installment due May 16, 2014, has been paid, the \$70 installment due June 16, 2014 has not been paid. If the June 16th installment remains unpaid at the time of this hearing, the case will be dismissed.

37. [14-11293](#)-A-13 SANTIAGO PEINADO
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
5-29-14 [[36](#)]

No tentative ruling.

38. [14-11594](#)-A-13 MICHAEL/SARAH PALMER
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
5-29-14 [[26](#)]

No tentative ruling.

39. [13-14296](#)-A-13 JOSE SANCHEZ
MHM-3
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
6-2-14 [[73](#)]

PHILLIP GILLET/Atty. for dbt.

No tentative ruling.

40. [13-14296](#)-A-13 JOSE SANCHEZ
PWG-2

MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET, JR.,
DEBTOR'S ATTORNEY(S)
5-30-14 [[66](#)]

PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

10:30 a.m.

1. [14-11038](#)-A-7 STEPHANIE HONORE PRO SE REAFFIRMATION AGREEMENT
WITH GREAT AMERICAN FINANCE
COMPANY
6-9-14 [[22](#)]

No tentative ruling.
2. [14-11038](#)-A-7 STEPHANIE HONORE PRO SE REAFFIRMATION AGREEMENT
WITH WESTLAKE FINANCIAL
SERVICES
6-9-14 [[24](#)]

No tentative ruling.
3. [14-10575](#)-A-7 JOB TORRES-RIZO AND
ROSALINDA TORRES PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
5-6-14 [[35](#)]

No tentative ruling.
4. [14-10976](#)-A-7 ARRON/CHRISTINE RAMAY REAFFIRMATION AGREEMENT WITH
SANTANDER CONSUMER USA INC.
5-15-14 [[15](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.
5. [13-16578](#)-A-7 JUAN PANTOJA REAFFIRMATION AGREEMENT WITH
TIDEWATER FINANCE COMPANY
6-2-14 [[130](#)]

FRANK ALVARADO/Atty. for dbt.

No tentative ruling.
6. [14-11787](#)-A-7 PATRICIA WILSON REAFFIRMATION AGREEMENT WITH
NISSAN MOTOR ACCEPTANCE
CORPORATION
5-19-14 [[12](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

1:00 p.m.

1. [11-19802](#)-A-7 JOE/ADELA RODRIGUEZ MOTION TO AVOID LIEN OF
RSW-3 HOUSEHOLD FINANCE CORP. OF
JOE RODRIGUEZ/MV CALIFORNIA
5-20-14 [[27](#)]

ROBERT WILLIAMS/Atty. for dbt.
NEIL SCHWARTZ/Atty. for mv.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption:

5406 Cascade Ridge St., Bakersfield, CA: \$214,781.75

2706 Prospect St., Bakersfield, CA: \$98,266.75

Property Value:

5406 Cascade Ridge St., Bakersfield, CA: \$92,500.00

2706 Prospect St., Bakersfield, CA: \$37,900.00

Judicial Lien Avoided:

5406 Cascade Ridge St., Bakersfield, CA: Entire lien amount

2706 Prospect St., Bakersfield, CA: Entire lien amount

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

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS
HDN-3 DEVELOPMENT INC.
SHAVER LAKEWOODS DEVELOPMENT
INC./MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF SIERRA
PINES AT SHAVER LAKE HOMEOWNERS
ASSOCIATION, CLAIM NUMBER 10
4-30-14 [[144](#)]

Tentative Ruling

Objection: Objection to Proof of Claim No. 10

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

Disposition: Overruled

Order: Civil minute order

The debtor Shaver Lakewoods Development Inc. objects to Proof of Claim No. 10 filed by creditor Sierra Pines at Shaver Lake Homeowners Association asserting a \$1,500,000 unsecured claim. The Debtor argues that the claim should be disallowed in its entirety. Sierra Pines has filed an opposition. The court will overrule the Debtor's claim objection for lack of standing.

DISCUSSION

A debtor lacks standing to object to a claim when the debtor has not shown that the outcome of the claim objection will affect the debtor in some way. *See Dellamarggio ex rel. Barker v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 346-47 (Bankr. E.D. Cal. 2004). "This [standing] requirement is satisfied by cognizable prospects of receiving a distribution or of a nondischargeable debt being affected." *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); *see also* Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:1362 (rev. 2012) (standing conferred by existence of surplus estate or an outcome that would affect a nondischargeable debt).

Here, the Debtor has not shown that there will be a surplus distribution. *See An-Tze Cheng v. K & S Diversified Invs., Inc. (In re An-Tze Cheng)*, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004) (placing burden on objecting party to demonstrate standing), *aff'd*, 160 F. App'x 644 (9th Cir. 2005). The Debtor's Schedule B includes two causes of action with an estimated total value of \$40,000 (though it is unclear whether anything can be recovered). Additionally, the Trustee has sold five real property lots producing approximately \$205,000 in available proceeds (after reducing for associated fees and costs) for the estate. Altogether, the value of the assets potentially available for distribution totals \$245,000.

However, the claims filed in this case (excluding the claim at issue here) far exceed that \$245,000 figure. If the Trustee succeeds in his three adversary proceedings, that will result in a \$56,000 unsecured claim (Claim No. 3), a \$464,000 unsecured claim (Claim No. 4), and a \$12,000 unsecured claim (Claim No. 5). There are also four other filed claims in this case: a \$600,000 unsecured claim (Claim No. 6), a \$2,500 priority claim and \$400 unsecured claim (Claim No. 7), a \$280,000 secured claim (Claim No. 8), and a \$14 priority claim and \$11,000 unsecured claim (Claim No. 9). Altogether, the claims (disregarding their secured or priority status) total over \$1.4 million.

Those claims must be paid in full before the Debtor is entitled to a distribution. *See* § 726 (outlining priority scheme for distribution

CONCLUSION

3. [13-17909](#)-A-7 WILLIE BAKER CONTINUED MOTION FOR TURNOVER
KDG-4 OF PROPERTY
RANDELL PARKER/MV 5-1-14 [[64](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

4. [12-17814](#)-A-7 ROGER/MONIQUE ROMERO MOTION TO SELL
RP-2 5-26-14 [[83](#)]
RANDELL PARKER/MV
CRAIG TRIANCE/Atty. for dbt.

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.

5. [12-16817](#)-A-7 GREGORY STURGES
PK-3

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S)
5-22-14 [[190](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$9,322.50

Costs approved: \$381.89

Aggregate fees and costs approved in this application: \$9,704.39

Retainer held: \$2129.00

Amount to be paid as administrative expense: \$7,575.39

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

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

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

6. [12-16817](#)-A-7 GREGORY STURGES
TGF-4
RANDELL PARKER/MV
PATRICK KAVANAGH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO COMPEL
5-28-14 [[198](#)]

No tentative ruling.

7. [14-11331](#)-A-7 SHERWIN/KARIN DAVIS MOTION TO AVOID LIEN OF MCT
PK-1 GROUP, INC.
SHERWIN DAVIS/MV 5-8-14 [[18](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

8. [14-11331](#)-A-7 SHERWIN/KARIN DAVIS MOTION TO AVOID LIEN OF
PK-2 NATIONAL CREDIT ACCEPTANCE,
SHERWIN DAVIS/MV INC.
PATRICK KAVANAGH/Atty. for dbt. 5-8-14 [[12](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

9. [14-10640](#)-A-7 ANDREW/BARBARA PARKER MOTION TO DISMISS CASE
SMS-2 5-29-14 [[28](#)]
ANDREW PARKER/MV
STEVEN STANLEY/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a).

After the petition was filed, joint debtor has suffered from a heart attack and has substantial medical bills not covered by insurance. Joint debtor would like to dismiss the case and then re-file it to include the medical bills.

The court finds that the interests of the debtor are served by the dismissal given the medical bills that have arisen post-petition that would not be discharged in this case. If the debtor were to receive a discharge in this case, the medical bills would not be discharged as they did not arise before the petition date, see § 524(b), and the debtor would be prevented from obtaining a discharge in a subsequent chapter 7 for 8 years from the petition date in this case.

Creditors' claims will increase if the case is dismissed and refiled so that additional claims are included, and the recovery, if any, available to creditors may be diluted by the dismissal and refile. But there is always the possibility that creditors' recovery will be diluted based on when the petition date is filed, an event ordinarily within the debtors' control, and new claims that arise in the period before the date the petition is filed. Thus the court does not find significant prejudice to creditors that would warrant a denial of the dismissal request.

10. [12-11245](#)-A-7 MICHAEL/DEBORAH PETRINI MOTION FOR COMPENSATION BY THE
KDG-10 LAW OFFICE OF KLEIN, DENATALE,
LISA HOLDER/MV GOLDNER, COOPER, ROSELIEB, &
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEE'S ATTORNEY(S), FEE:
\$25,302.50, EXPENSES: \$379.96
3-14-14 [[134](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

11. [14-12352](#)-A-7 VALLEY MEDICAL GROUP OF AMENDED ORDER TO APPEAR AND
KERN COUNTY, INC. SHOW CAUSE WHY A PATIENT CARE
OMBUDSMAN SHOULD NOT BE
APPOINTED
5-22-14 [[13](#)]

T. BELDEN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Matter: Amended Order to Appear and Show Cause Why a Patient Care Ombudsman Should Not Be Appointed

Disposition: Discharged without appointment of an ombudsman

Order: Civil minute order

The court has issued an Order to Appear and Show Cause Why a Patient Care Ombudsman Should Not Be Appointed. From the declaration filed in response, ECF No. 15, it appears that no patients would likely to be affected by this bankruptcy, which supports the conclusion that no ombudsman should be appointed and the order to show cause discharged.

12. [14-11853](#)-A-7 HECTOR/JUANITA DENOGEAN MOTION TO AVOID LIEN OF
CEF-1 INCENTIVE FINANCIAL SERVICES,
HECTOR DENOGEAN/MV LLC
5-23-14 [[15](#)]

CURTIS FLOYD/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

13. [12-17363](#)-A-7 LARRY/BECKY KINOSHITA
TGF-2
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

CONTINUED MOTION FOR TURNOVER
OF PROPERTY
4-24-14 [[23](#)]

Tentative Ruling

Motion / Objection: Turnover Property to Chapter 7 trustee

Disposition: Continued for an evidentiary hearing

Order: Civil minute order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether accounts receivable of \$32,720.08, or any part thereof, are property of the estate and, if so, whether those amounts are exempt; (ii) whether proceeds from Rabobank accounts #s 9728 and 2600 in the amount of \$199.13, or any part thereof, are property of the estate and, if so, whether those amounts are exempt; (iii) whether earned but unpaid wages of \$3,189.68, or any part thereof, are property of the estate and, if so, whether those amounts are exempt; and (iv) whether the Chapter 7 trustee is entitled to interest under 28 U.S.C. § 1961 or any other provision of law.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines, including:

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

14. [13-12066](#)-A-7 SCOTTIE BILLINGTON
RP-2
RANDELL PARKER/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO SELL
5-26-14 [[43](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 7201 Darrin Avenue, Bakersfield, CA

Buyer: Cheryl Billington

Sale Price: \$7000 (Sale subject to lien of \$224,612 and Cheryl Billington's 1/2 interest)

Sale Type: Private sale subject to overbid opportunity

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

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

15. [13-16975](#)-A-7 DANIEL/TAMI FRENCH
UST-1
TRACY DAVIS/MV

CONTINUED MOTION TO DISMISS
CASE PURSUANT TO 11 U.S.C.
SECTION 707(B)
4-10-14 [[72](#)]

ROBERT WILLIAMS/Atty. for dbt.

ROBIN TUBESING/Atty. for mv.

RESPONSIVE PLEADING

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The debtors' initially filed a response but the response did not offer any evidence to rebut the grounds for the U.S. Trustee's motion. The court permitted the debtors to file opposition no later than June 11, 2014, but no opposition has been filed. The default of the responding party

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

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

This case involves an above-median income debtor whose debts are primarily consumer debts. By the debtors' own admission in filing their B22A form, their monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

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

16. [13-16578](#)-A-7 JUAN PANTOJA
FJA-6
JUAN PANTOJA/MV
FRANK ALVARADO/Atty. for dbt.

OBJECTION TO CLAIM OF ANTONIA
MARTINEZ, CLAIM NUMBER 8
5-1-14 [[118](#)]

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

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).

The objecting party has offered evidence that only \$.45 is owed on the debtor's domestic support obligation. Accordingly, the claimant's

claim will be disallowed in the amount of \$4972.91 and allowed in the amount of \$.45.

1:15 p.m.

1. [12-11008](#)-A-7 RAFAEL ALONSO RESCHEDULED PRE-TRIAL
[12-1095](#) CONFERENCE RE: AMENDED
ZUBCIC V. ALONSO COMPLAINT
5-9-13 [[36](#)]

JOHN DULCICH/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-17909](#)-A-7 WILLIE BAKER CONTINUED OBJECTION TO DEBTOR'S
KDG-2 CLAIM OF EXEMPTIONS
RANDELL PARKER/MV 2-20-14 [[15](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

Tentative ruling.

The debtor having filed amended exemptions, the matter is dropped as moot.

3. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR SUMMARY JUDGMENT
[14-1003](#) DEVELOPMENT INC. KDG-3 AND/OR MOTION FOR SUMMARY
PARKER V. RODRIGUEZ ADJUDICATION
5-28-14 [[39](#)]

KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment

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

Disposition: Denied

Order: Civil minute order

The trustee Randell Parker has filed a motion for summary judgment arguing that he is entitled to judgment in his favor on the two claims for relief asserted in his complaint. The defendant Angela Rodriguez has filed an opposition.

For the reasons set forth below, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

DISCUSSION

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

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

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

First Claim for Relief: Strong Arm Power under § 544(a)(3)

Under § 544(a)(3), "[a] bankruptcy trustee has the power to avoid any transfer that a hypothetical bona fide purchaser for value could have avoided under the law of the state in which the real property is located." *Chase Manhattan Bank, USA, N.A. v. Taxel (In re Deuel)*, 594 F.3d 1073, 1076 (9th Cir. 2010). "While whether a trustee qualifies under section 544(a)(3) is a question of federal law, state law determines whether the trustee's status as a BFP will defeat the rights of the person against whom the trustee seeks to assert his powers." *Robertson v. Peters (In re Weisman)*, 5 F.3d 417, 420 (9th Cir. 1993).

The Trustee argues his bona fide purchaser status defeats the asserted lien rights of Rodriguez due to Rodriguez's unperfected Security Agreement. On this issue, the "Trustee has the initial burden of proving a lack of perfection." *NetBank, FSB v. Kipperman (In re Commercial Money Ctr., Inc.)*, 350 B.R. 465, 486 (B.A.P. 9th Cir. 2006) (citing *Citizens State Bank of Nev., Mo. v. Davison (In re Davison)*, 738 F.2d 931, 936 (8th Cir. 1984) (stating that "the general rule [is] that a trustee in bankruptcy seeking to avoid a purported security interest bears the burden of proving the imperfection or invalidity of that interest"))).

Here, the Trustee has not met his burden because the Preliminary Title Reports, the only evidence establishing the lack of perfection, must

be excluded from the evidence. Rodriguez raised an evidentiary objection to the Preliminary Title Reports based on a lack of authentication and hearsay. The party seeking to introduce an item of evidence "must produce evidence sufficient to support a finding that the item is what the proponent claims it is," and such supporting evidence may include "[t]estimony that an item is what it is claimed to be." Fed. R. Evid. 901(a), (b)(1). The Trustee has not produced any supporting evidence to show that the Preliminary Title Reports are what they claim to be, such as a declaration. Therefore, the Preliminary Title Reports cannot be authenticated and cannot be considered admissible as evidence as this time. Additionally, the Trustee has not cited an applicable hearsay exception for the statements made in the Preliminary Title Reports (i.e., that the Security Agreement was not recorded on the lots). Without these reports, the Trustee has not introduced any evidence of the lack of perfection. And without such evidence, there appears to be a material fact that is genuinely in dispute.

In response to Rodriguez's evidentiary objection, the Trustee's reply has introduced new arguments for why the lack of perfection has been established notwithstanding Rodriguez's appropriate evidentiary objection to the Preliminary Title Reports. One such argument is that the court's prior rulings approving the sales free and clear included a finding that Rodriguez did not record her lien. In essence, the Trustee is arguing the application of collateral estoppel. However, arguments raised for the first time in a reply brief need not be considered by the trial court. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). And the court declines to consider the Trustee's new arguments at this time.

Second Claim for Relief: Objection to Claim under § 502(b)

The second claim for relief in the Trustee's complaint is an objection to the claim filed by Rodriguez, specifically objecting to the amount of the claim. In her proof of claim, Rodriguez asserts that the amount of her claim is \$464,615.99. However, it is unclear what the relief the Trustee is seeking in this motion as to the claim objection.

In the complaint, the Trustee alleged that Rodriguez's claim should be limited to \$419,276.05. In the motion for summary judgment, the Trustee prays that the claim be allowed in the amount of \$464,615.99, the amount asserted by Rodriguez. In different parts of the memorandum of points & authorities, the Trustee refers to a \$434,615.99 claim and a \$464,615.99 claim. Finally, in the reply, the Trustee mentions the \$434,615.99 figure. The court simply cannot understand what relief the Trustee is attempting to seek in the motion.

Because the court has discretion to deny summary judgment, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), the court believes that the proper course is to deny summary judgment on the Trustee's second claim in light of the denial of summary judgment on his first claim.

CONCLUSION

For the reasons set forth above, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

4. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR SUMMARY JUDGMENT
[14-1004](#) DEVELOPMENT INC. KDG-3 AND/OR MOTION FOR SUMMARY
PARKER V. LOO ADJUDICATION
5-28-14 [[37](#)]

KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment
Notice: LBR 9014-1(f)(1); written opposition filed
Disposition: Denied
Order: Civil minute order

The trustee Randell Parker has filed a motion for summary judgment arguing that he is entitled to judgment in his favor on the two claims for relief asserted in his complaint. The defendant Gordon Loo has filed an opposition.

For the reasons set forth below, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

DISCUSSION

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

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

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

First Claim for Relief: Strong Arm Power under § 544(a)(3)

Under § 544(a)(3), "[a] bankruptcy trustee has the power to avoid any transfer that a hypothetical bona fide purchaser for value could have avoided under the law of the state in which the real property is located." *Chase Manhattan Bank, USA, N.A. v. Taxel (In re Deuel)*, 594 F.3d 1073, 1076 (9th Cir. 2010). "While whether a trustee qualifies under section 544(a)(3) is a question of federal law, state law determines whether the trustee's status as a BFP will defeat the rights of the person against whom the trustee seeks to assert his powers." *Robertson v. Peters (In re Weisman)*, 5 F.3d 417, 420 (9th Cir. 1993).

The Trustee argues his bona fide purchaser status defeats the asserted lien rights of Loo due to Loo's unperfected Security Agreement. On this issue, the "Trustee has the initial burden of proving a lack of perfection." *NetBank, FSB v. Kipperman (In re Commercial Money Ctr., Inc.)*, 350 B.R. 465, 486 (B.A.P. 9th Cir. 2006) (citing *Citizens State Bank of Nev., Mo. v. Davison (In re Davison)*, 738 F.2d 931, 936 (8th Cir. 1984) (stating that "the general rule [is] that a trustee in bankruptcy seeking to avoid a purported security interest bears the burden of proving the imperfection or invalidity of that interest"))).

Here, the Trustee has not met his burden because the Preliminary Title Reports, the only evidence establishing the lack of perfection, must be excluded from the evidence. Loo raised an evidentiary objection to the Preliminary Title Reports based on a lack of authentication and hearsay. The party seeking to introduce an item of evidence "must produce evidence sufficient to support a finding that the item is what the proponent claims it is," and such supporting evidence may include "[t]estimony that an item is what it is claimed to be." Fed. R. Evid. 901(a), (b)(1). The Trustee has not produced any supporting evidence to show that the Preliminary Title Reports are what they claim to be, such as a declaration. Therefore, the Preliminary Title Reports cannot be authenticated and cannot be considered admissible as evidence as this time. Additionally, the Trustee has not cited an applicable hearsay exception for the statements made in the Preliminary Title Reports (i.e., that the Security Agreement was not recorded on the lots). Without these reports, the Trustee has not introduced any evidence of the lack of perfection. And without such evidence, there appears to be a material fact that is genuinely in dispute.

In response to Loo's evidentiary objection, the Trustee's reply has introduced new arguments for why the lack of perfection has been established notwithstanding Loo's appropriate evidentiary objection to the Preliminary Title Reports. One such argument is that the court's prior rulings approving the sales free and clear included a finding that Loo did not record his lien. In essence, the Trustee is arguing the application of collateral estoppel. However, arguments raised for the first time in a reply brief need not be considered by the trial court. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). And the court declines to consider the Trustee's new arguments at this time.

Second Claim for Relief: Objection to Claim under § 502(b)

As to the second claim for relief, the Trustee objects to the amount asserted by Loo in his claim, which is based on two promissory notes. While the Trustee does not dispute the amount asserted based on the second promissory note, the Trustee argues that any amount asserted based on the first promissory note must be disallowed on statute-of-limitations grounds. Specifically, the Trustee states that the

promissory note matured on November 7, 2007, and that the four-year statute of limitations under California Code of Civil Procedure § 337 ran ten days before the filing of the petition date on November 17, 2011.

However, the statute-of-limitations issue does not appear to be so easily decided, and there still remains a question of fact as to the amount of Loo's claim. The factual question revolves around a part of the Settlement and Release Agreement. The Settlement and Release Agreement "reinstates any debt and/or obligation that Shaver Lake Woods owed to Shareholders [Loo] as of October 02, 2009," and provides that "Shareholders [Loo] must file claims in the Bankruptcy Case asserting any debt and/or obligation that Shaver Lake Woods owed to Shareholders as of October 02, 2009." The specific question is how the parties intended the "as of October 02, 2009" language to apply to Loo's claim and how it affects any kind of statute-of-limitations arguments. On that date, the statute of limitations appears not to have run yet on the first promissory note.

Because the court has discretion to deny summary judgment, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), the court believes that the proper course is to deny summary judgment on the Trustee's second claim in light of the denial of summary judgment on his first claim.

CONCLUSION

For the reasons set forth above, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

5.	<u>11-62509</u> -A-7 SHAVER LAKEWOODS <u>14-1005</u> DEVELOPMENT INC. KDG-3 PARKER V. NUNEZ	MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION 5-28-14 [<u>38</u>]
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KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment

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

Disposition: Denied

Order: Civil minute order

The trustee Randell Parker has filed a motion for summary judgment arguing that he is entitled to judgment in his favor on the two claims for relief asserted in his complaint. The defendant Henry Nunez has filed an opposition.

For the reasons set forth below, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

DISCUSSION

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no

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

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

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

First Claim for Relief: Strong Arm Power under § 544(a)(3)

Under § 544(a)(3), "[a] bankruptcy trustee has the power to avoid any transfer that a hypothetical bona fide purchaser for value could have avoided under the law of the state in which the real property is located." *Chase Manhattan Bank, USA, N.A. v. Taxel (In re Deuel)*, 594 F.3d 1073, 1076 (9th Cir. 2010). "While whether a trustee qualifies under section 544(a)(3) is a question of federal law, state law determines whether the trustee's status as a BFP will defeat the rights of the person against whom the trustee seeks to assert his powers." *Robertson v. Peters (In re Weisman)*, 5 F.3d 417, 420 (9th Cir. 1993).

Here, there are a number of factual and legal issues that make granting summary judgment improper. First, there appears to be an ambiguity in the Retainer Agreement regarding what Nunez and his clients intended with the handwritten language in the agreement. Did Nunez and his clients intend that Nunez's lien extend to a recovery in litigation (thereby making the lien valid upon the occurrence of some contingency event) or to the real property lots outright (without regard to any contingency)?

Second, possibly depending on how the Retainer Agreement is read, another issue arises regarding what kind of lien is being asserted. Despite both parties suggesting that an attorney's charging lien does not need to be recorded in order to be deemed perfected, *see Cetenko v. United Cal. Bank*, 30 Cal. 3d 528, 532-33 (1982), there still remains a question of whether the lien asserted in the Retainer Agreement actually constitutes an attorney's charging lien entitled to such "secret-lien" protection. This issue of law concerns the

parameters or qualifications of an attorney's charging lien and whether the lien asserted in the Retainer Agreement falls within those parameters or qualifications. However, the parties have not adequately addressed this issue in their papers.

Third, if Nunez's lien does not qualify as an attorney's charging lien under California law and must be perfected by recordation, the Trustee has not met his "initial burden of proving a lack of perfection." *NetBank, FSB v. Kipperman (In re Commercial Money Ctr., Inc.)*, 350 B.R. 465, 486 (B.A.P. 9th Cir. 2006) (citing *Citizens State Bank of Nev., Mo. v. Davison (In re Davison)*, 738 F.2d 931, 936 (8th Cir. 1984) (stating that "the general rule [is] that a trustee in bankruptcy seeking to avoid a purported security interest bears the burden of proving the imperfection or invalidity of that interest"))).

The Trustee has not met his burden because the Preliminary Title Reports, the only evidence establishing the lack of perfection, must be excluded from the evidence. Nunez raised an evidentiary objection to the Preliminary Title Reports based on a lack of authentication and hearsay. The party seeking to introduce an item of evidence "must produce evidence sufficient to support a finding that the item is what the proponent claims it is," and such supporting evidence may include "[t]estimony that an item is what it is claimed to be." Fed. R. Evid. 901(a), (b)(1). The Trustee has not produced any supporting evidence to show that the Preliminary Title Reports are what they claim to be, such as a declaration. Therefore, the Preliminary Title Reports cannot be authenticated and cannot be considered admissible as evidence as this time. Additionally, the Trustee has not cited an applicable hearsay exception for the statements made in the Preliminary Title Reports (i.e., that the Retainer Agreement was not recorded on the lots). Without these reports, the Trustee has not introduced any evidence of the lack of perfection. And without such evidence, there appears to be a material fact that is genuinely in dispute.

In response to Nunez's evidentiary objection, the Trustee's reply has introduced new arguments for why the lack of perfection has been established notwithstanding Nunez's appropriate evidentiary objection to the Preliminary Title Reports. One such argument is that the court's prior rulings approving the sales free and clear included a finding that Nunez did not record his lien. In essence, the Trustee is arguing the application of collateral estoppel. However, arguments raised for the first time in a reply brief need not be considered by the trial court. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). And the court declines to consider the Trustee's new arguments at this time.

Second Claim for Relief: Objection to Claim under § 502(b)

As to the second claim for relief, the Trustee objects to the amount asserted by Nunez in his claim, which is based on the Retainer Agreement. The Trustee argues that Nunez's claim should be reduced from \$88,501.18 to \$12,179.74, but it is unclear how the Trustee reaches this reduced figure. Further, there remain factual and legal issues that make granting summary judgment inappropriate.

First, the Trustee has argued that Nunez's claim includes amounts for services rendered postpetition, but the Trustee has not presented any kind of legal argument regarding whether services rendered postpetition are part of a prepetition claim (arising from the prepetition Retainer Agreement) or represent an entirely separate

postpetition claim.

Second, the Trustee argues that Nunez's claim cannot include legal services provided to non-Debtor entities. It is unclear whether this is a "reasonableness" objection based on § 502(b)(4), which limits a claim "for services of an insider or attorney of the debtor" to the "reasonable value of such services" or whether the objection is on another ground.

Further, there is an issue regarding the Debtor's liability under the Retainer Agreement for Nunez's services provided to the other clients. Nunez argues that the Retainer Agreement provides for joint and several liability among the five clients (including the Debtor), which states that "Client agrees to pay all necessary cost(s) and expense(s) incurred in prosecuting or defending said claim, incident or action." Yet, the term "Client" in that statement (which appears to be a specially defined term in the Retainer Agreement) presents an issue of fact. It seems to be unclear whether the Debtor (Shaver Lake Woods Development, Inc.) was intended to be a "Client" given that the first sentence of the Retainer Agreement refers to only Gordon Loo, Robert Rodriguez, and Angela Rodriguez as "the client(s)."

Because the court has discretion to deny summary judgment, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), the court believes that the proper course is to deny summary judgment on the Trustee's second claim in light of the denial of summary judgment on his first claim.

CONCLUSION

For the reasons set forth above, the court will deny the motion as to both claims. Additionally, the court will not grant partial summary judgment on any material fact under Rule 56(g).

6. [13-17909](#)-A-7 WILLIE BAKER
[14-1048](#)
PARKER ET AL V. BAKER
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT
4-22-14 [[1](#)]

Final Ruling

The matter is continued to July 23, 2014, at 1:15 p.m.

7. [13-11347](#)-A-7 CHRISTOPHER BURGONI CONTINUED PRE-TRIAL CONFERENCE
[13-1099](#) RE: COMPLAINT
BOARD OF TRUSTEES OF THE KERN 9-11-13 [[1](#)]
COUNTY ELECTRICAL PE V.
MARK BAGULA/Atty. for pl.
ORDER #48 CONTINUING TO
8/20/14

Final Ruling

The matter is continued to August 20, 2014, at 1:15 p.m., pursuant to Order, ECF. No. 48.

8. [14-10279](#)-A-7 DONNIE PRICE STATUS CONFERENCE RE: COMPLAINT
[14-1044](#) 4-17-14 [[1](#)]
EXPRESS SERVICES, INC. V.
PRICE
RICHARD MONAHAN/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Assuming the court rules consistently with its pre-hearing disposition on the defendant's motion to dismiss, BH-1, the status conference will be continued to August 20, 2014, at 1:15 p.m. to allow the plaintiff to file and serve its First Amended Complaint and the defendant to respond thereto.

Based on the plaintiff's suggestion in its Status Conference Report, June 19, 2014, ECF #16, the court intends to inquire whether the parties wish to avail themselves of the Bankruptcy Dispute Resolution Program.

9. [14-10279](#)-A-7 DONNIE PRICE MOTION TO DISMISS ADVERSARY
[14-1044](#) BH-1 PROCEEDING/NOTICE OF REMOVAL
EXPRESS SERVICES, INC. V. 5-15-14 [[9](#)]
PRICE
ROBERT BRUMFIELD/Atty. for mv.

Tentative Ruling

Motion: Dismiss Complaint

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

Disposition: Granted and complaint dismissed without prejudice

Order: Civil minute order

Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). Express Services, Inc. doing business as Express Employment Professionals ("Express") has failed to timely file opposition to the motion. Its opposition was filed over a week late.

BACKGROUND

Express Services, Inc. doing business as Express Employment Professionals ("Express") has brought a complaint against the debtor in the related bankruptcy case, Donnie Kay Price ("Price"). The complaint alleges four claims. The complaint includes three claims entitled "Account Stated," "Open Book Account," and "Intentional Breach of Contract" are state law claims (the "State Law Claims"). The fourth is a claim for fraud. The Complaint requests a determination that the debt referenced in the complaint is nondischargeable.

The complaint alleges that Price was the agent and employee of a California corporation called Price Fleet Services, Inc. ("Fleet"). It asserts that Price was the agent and employee of Fleet and was "acting within the course and scope of this agency and employment" when doing the acts alleged in the complaint.

The allegations indicate that Express operates a temporary employment agency in Bakersfield, California, and that on behalf of Fleet, Price complete a credit application with Express. They also assert that Price individually guaranteed "payment of all future charges that [Fleet] would incur for the provision of temporary employment associates. The complaint states that a copy of the credit application is attached, but such a copy is not attached.

The complaint references Fleet as a "co-defendant." Compl. ¶ 10. It also uses the term *defendants* in the plural form. See, e.g., Compl. ¶ 10, 11, 16, 22, 23, the prayer for relief. But Fleet is not a defendant because the caption does not include Fleet. Fed. R. Civ. P. 10(a), *incorporated by* Fed. R. Bankr. P. 7010.

In any case, Express alleges that it entered into a written "Staffing Agreement" with "Defendants" on January 5, 2012. Under this Staffing Agreement, "Defendants agreed that Plaintiff [Express] would provide temporary staffing to assist Defendants in the operations of their business." Compl. ¶ 11. Express claims that it provided temporary staffing services pursuant to this agreement. *Id.* Paragraph 15 states that "There is now due, owing, and unpaid from Defendant to Plaintiff the sum of \$138,540, together with interest" Compl. ¶ 4.

LEGAL STANDARDS UNDER RULE 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); accord *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

DISCUSSION

To succeed on a nondischargeability claim under § 523(a)(2)(A), a creditor must establish five elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). "The purposes of [§ 523(a)(2)(A)] are to prevent a debtor from retaining the benefits of property obtained by fraudulent means and to ensure that the relief intended for honest debtors does not go to dishonest debtors." *Id.*

Fraud Claim

Since this is a claim alleging fraud, Rule 9(b) applies. This rule's heightened pleading standard requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b), incorporated by Fed. R. Bankr. P. 7009. A plaintiff must include the "who, what, when, where, and how" of the fraud. *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003).

The complaint identifies a misrepresentation by "Defendant and Fleet." This misrepresentation was a promise that both "Defendant and Fleet" made by entering the Staffing Agreement and was a promise "to pay the charges incurred by them with Plaintiff for the provision of temporary associates to Defendant and Fleet." Compl. ¶ 25. The complaint next alleges that "Defendant had no intention of performing those promises." Compl. ¶ 26.

But Price was also alleged to be an individual acting as an agent of Fleet when entering the Staffing Agreement, Compl. ¶ 8. He also

signed a credit application on behalf of Fleet. Compl. ¶¶ 8, 10. And he guaranteed Fleet's obligation to Express for charges for temporary staffing. Compl. ¶ 10.

Given Price's status as an agent of Fleet, as a guarantor of Fleet's debts individually, and as someone who signed a credit application on behalf of Fleet, the complaint does not include sufficiently specific factual details about the nature of Price's fraudulent promise and intent not to perform such promise. It does not clearly explain the relationship Price had with Fleet in effectuating the alleged fraud or show how Price's fraudulent promise to Express to pay for staffing services was related to Fleet's obligation to pay for such services.

As a result, the complaint is ambiguous, allowing multiple interpretations of how the fraud was effectuated and what Price's intent may have been. One interpretation is that Price as an agent on behalf of Fleet made the fraudulent promise that Fleet would perform the promise, knowing that Fleet would not pay for Express's staffing services. Even when acting on behalf of the principal, an agent cannot escape liability for fraud. See *Frances T. v. Vill. Green Owners Ass'n*, 42 Cal. 3d 490, 505 (1986) ("[T]he agent is liable for his own acts, regardless of whether the principal is liable"). Alternatively, Price may have participated in the fraud with Fleet as a co-party to the Staffing Agreement so that Fleet and Price, acting in his individual capacity, both made false promises to pay charges under the Staffing Agreement. Another interpretation is Price fraudulently made a promise under his guarantee of Fleet's debt to Express for staffing services with the intent not to perform his guarantee in the event Fleet did not pay.

For the reasons discussed, the fraud claim lacks the requisite specificity required by Rule 9(b). The allegations' have not stated with particularity the nature of the fraudulent promise. They have not explained in detail how it was effectuated by Price given his status as an agent, guarantor, and potential co-party to the Staffing Agreement.

State Law Claims

Express alleges the State Law Claims against the debtor but does not refer to any basis within those claims for their nondischargeability. But assuming each of the State Law Claims are true, they are pre-petition, dischargeable claims that should be dismissed. They are "claim[s] that should have been asserted through the claims allowance process." *Prewitt v. N. Coast Vill., Ltd. (In re N. Coast Vill., Ltd.)*, 135 B.R. 641, 644 (B.A.P. 9th Cir. 1992); *Sears, Roebuck & Co. v. Penney (In re Penney)*, 76 B.R. 160, 162 (Bankr. N.D. Cal. 1987). Thus, the debtor is not the proper party. The claim should be asserted against the estate as provided in § 501 of the Bankruptcy Code.

Additional Facts Introduced in the Motion

In deciding this motion, the court does not consider additional facts that Price raises in the motion that were not alleged in the complaint. For example, Price asserts that the credit application was the only item Price ever signed. This contradicts the complaint which alleges that Price and Fleet entered into the Staffing Agreement and that Price signed a guarantee. The complaint's allegations are accepted as true for purposes of a Rule 12(b)(6) motion, and the additional or contradictory facts alleged in the motion are ignored.

The same is true for Price's facts about Price's departure from the corporation during the time when Express's staffing services were used.

Late-Filed Opposition

Because Express filed its opposition over a week after the deadline for opposition, Express is deemed to have waived any opposition Express may have to the granting of the motion. LBR 9014-1(f)(1)(B). Even if the court were to consider Express's opposition, the court would reject its arguments. The focus of the opposition's arguments is misplaced. A motion to dismiss is not the procedural mechanism to prove or disprove the factual basis for the claims brought. Express argues and reiterates facts, some of which are included in the allegations of the complaint and some of which are new facts not contained in the complaint. With narrow exceptions not applicable here, the court does not consider facts outside the complaint. Instead, the focus of an argument opposing a Rule 12(b)(6) motion should be that the allegations pleaded, if taken as true and construed in the light most favorable to the plaintiff, are sufficient to state a plausible, factual claim for relief, and that allegations of fraud meet Rule 9(b)'s particularity requirement.

CONCLUSION

The motion will be granted. The complaint is dismissed without prejudice. Express may file an amended complaint no later than 14 days after service of the order on the motion. The time for Price to respond to an amended pleading will be in accordance with Federal Rule of Civil Procedure 15(a)(3).

1:30 p.m.

1. [14-12304](#)-A-7 KENNETH ASHFORD MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A./MV 5-13-14 [[10](#)]
VINCENT GORSKI/Atty. for dbt.
TIMOTHY SILVERMAN/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: 2013 Mazda

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. [14-12007](#)-A-7 MARLENE JIMENEZ MOTION FOR RELIEF FROM
MWP-1 AUTOMATIC STAY
TRUE ST HOLDINGS LLC/MV 5-28-14 [[14](#)]
FRANK SAMPLES/Atty. for dbt.
MARTIN PHILLIPS/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: 1301 Kelly Street, Bakersfield, 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. 14-11614 -A-7 DENNIS FITZJERRELL JHW-1 TD AUTO FINANCE LLC/MV SUSAN SALEHI/Atty. for dbt. JENNIFER WANG/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-23-14 [9]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Jeep Wrangler

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

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

4. [14-12327](#)-A-7 LUIS TRAVIESO
ABG-1
KINECTA FEDERAL CREDIT
UNION/MV
FRANK SAMPLES/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-19-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Chevrolet Silverado 1500 Crew Cab Truck

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

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

5. [13-16640](#)-A-7 JACQUES VACHON
KAZ-1
CITIMORTGAGE, INC./MV
D. GARDNER/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-9-14 [[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: 30700 Pinedale Drive, Tehachapi, California

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

Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

6. [14-12554](#)-A-7 SEANDEY BOWE
SW-1
WELLS FARGO BANK N.A./MV
WILLIAM OLCOTT/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-14 [[11](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2002 Mercedes-Benz E430W

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.

7. [13-16975](#)-A-7 DANIEL/TAMI FRENCH
BPN-1
EDWARDS FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS/Atty. for dbt.
BRUCE NEEDLEMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-19-14 [[82](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2007 Toyota Tundra

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.

8. [14-12183](#)-A-7 ISMAEL/DANIELLE RODRIGUEZ
VVF-1
FIRST CREDIT FINANCE/MV
NEIL SCHWARTZ/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-9-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2003 GMC Yukon

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.

9. [14-12283](#)-A-7 SANDRA HERRERA
SW-1
WELLS FARGO BANK, N.A./MV
CURTIS FLOYD/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-5-14 [[10](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2006 GMC Yukon

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.

10. [14-11798](#)-A-7 MOHAMMED ULLAH
APN-1
BMW BANK OF NORTH AMERICA/MV
VINCENT GORSKI/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-22-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 BMW 328i

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).

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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The moving party asserts that no insurance is being maintained on the vehicle described above and that the debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. This constitutes cause for 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.

1:45 p.m.

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

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

T. BELDEN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-1
JOHN VAN DYK/MV

CONTINUED MOTION TO USE CASH
COLLATERAL
2-26-14 [[10](#)]

RILEY WALTER/Atty. for dbt.
ORDER 6/7/14

Final Ruling

The matter is resolved by stipulation and is dropped from calendar.

3. [14-12637](#)-A-11 TOURE/ROLANDA TYLER

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-4-14 [[22](#)]

INOCENCIO MADERA/MV
LEONARD WELSH/Atty. for dbt.

No tentative ruling.