

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

WEDNESDAY

JULY 22, 2015

9:00 A.M. CHAPTER 7 CASES

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.

1. [15-12301](#)-A-7 JAMEY PECK

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-2-15 [[28](#)]

\$30.00 AMENDMENT FEE PAID

Tentative Ruling

Order to Show Cause: Dismissal of Case for Failure to Pay Fees

Date Issued: July 2, 2015

Disposition: Case Dismissed

Order: Civil minute order

On June 18, 2015, a document was filed with the court that required a payment of \$30.00. The document filed for which a fee was not paid was an Amended Verification and Master Address List at docket no. 18.

The court then generated and served on the filing party a Notice of Payment Due. Payment has still not been made as prescribed by 28 U.S.C. § 1930(b). If the debtor has not paid this \$30 filing fee as of the date and time of the hearing, then the court will order that the case be dismissed.

2. [15-10830](#)-A-7 LARISSA SIMENTAL

MOTION TO COMPEL ABANDONMENT
6-30-15 [[25](#)]

MAZ-1

LARISSA SIMENTAL/MV

MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

Real Property Description: 334 E. Adrian Way, Hanford, CA

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f) (1).

3. [15-11535](#)-A-7 JOHN HALOPOFF FINAL HEARING RE: MOTION FOR
KDG-2 ORDER AUTHORIZING TRUSTEE TO
TRUDI MANFREDO/MV OPERATE BUSINESSES ON INTERIM
BASIS UNTIL NOVEMBER 20, 2015,
EFFECTIVE AS OF APRIL 21, 2015
6-15-15 [[48](#)]

JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.

No tentative ruling

4. [15-12437](#)-A-7 MICHAEL/KATHLEEN DECKER MOTION FOR WAIVER OF THE
MICHAEL DECKER/MV CHAPTER 7 FILING FEE OR OTHER
FEE
6-19-15 [[5](#)]
- ERIC ESCAMILLA/Atty. for dbt.
ORDER, GRANTING ECF NO. 18

Final Ruling

The motion will be dropped as moot. A new motion for a waiver of the filing fee has been granted by an order entered at docket no. 18.

5. [15-12344](#)-A-7 TRAVIS/CHARITY GODDEN MOTION TO COMPEL ABANDONMENT
SAH-1 6-18-15 [[11](#)]
TRAVIS GODDEN/MV
SUSAN HEMB/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to August 11, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2)

Order: Civil minute order

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

8. [15-11055](#)-A-7 CHERYL JACQUEZ MOTION TO EXTEND DEADLINE TO
UST-1 FILE A COMPLAINT OBJECTING TO
TRACY DAVIS/MV DISCHARGE OF THE DEBTOR AND/OR
 MOTION TO EXTEND TIME TO FILE A
 MOTION TO DISMISS CASE UNDER
 SEC. 707(B)
 6-19-15 [[16](#)]

MARK ZIMMERMAN/Atty. for dbt.
TERRI DIDION/Atty. for mv.

Final Ruling

Motion: Motion to Extend Deadlines

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

Disposition: Granted and stipulation approved

Order: Prepared by the movant pursuant to 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).

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

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

deadline will be extended through July 3, 2014.

Based on the motion and supporting papers, the court will grant the motion. The court approves the stipulation, finding that cause exists to extend the U.S. Trustee's deadline for objecting to discharge under § 727(a) and the U.S. Trustee's deadline to file a motion to dismiss under § 707(b) and (c). These deadlines are extended, only for the U.S. Trustee, through and including July 31, 2015. A copy of the stipulation shall be attached to the order as an exhibit.

9. [14-15959](#)-A-7 CLIFTON'S FLOWER & MOTION TO SELL
PFT-1 GARDEN CENTER 6-18-15 [[11](#)]
PETER FEAR/MV
LEONARD WELSH/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1964 Chevrolet Truck

Buyer: Robert Alvarez

Sale Price: \$500

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.

10. [11-18670](#)-A-7 LARDOW, INC. A OBJECTION TO CLAIM OF
TMT-3 CALIFORNIA CORPORATION INTERCERAMIC, INC., A
TRUDI MANFREDO/MV CORPORATION, CLAIM NUMBER 2
6-1-15 [[92](#)]
ADRIAN WILLIAMS/Atty. for dbt.
PETER FEAR/Atty. for mv.

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).

This bankruptcy case was filed on July 29, 2011. It was administered as an asset case and closed on June 5, 2013. Before the case was closed, claimant Interceramic, Inc. filed a proof of claim, Claim No. 2, in the amount of \$48,078.24. After the case was reopened, the claimant filed an amended claim for \$50,913.44.

The trustee objects to the amended claim as it includes postpetition interest. The judgment attached to the claim shows it was filed on June 29, 2011 in the amount of \$44,564.20. Also attached to the proof of claim is a declaration in support of post-judgment interest calculation. This declaration shows that interest was calculated from June 29, 2011 through September 18, 2014.

"The Code . . . prohibits claims for postpetition interest on unsecured claims." *In re Del Mission Ltd.*, 998 F.2d 756, 757 (9th Cir. 1993) (citing 11 U.S.C. §§ 502(b)(2), 506(b)). Because the judgment seeks postpetition interest, the portion of the claim comprising postpetition interest will be disallowed.

The trustee's calculations appear correct in that only \$366.30 of prepetition interest should be allowed, and the total claim, including prepetition interest, equals \$44,930.50. The objecting party shall prepare an order disallowing the claim to the extent of postpetition interest, and allowing the claim in the amount of \$44,930.50 as a general unsecured claim.

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| 11. | 11-18670 -A-7 | LARDOW, INC. A | OBJECTION TO CLAIM OF C B |
| | TMT-4 | CALIFORNIA CORPORATION | MERCHANT SERVICES, CLAIM NUMBER |
| | TRUDI MANFREDO/MV | | 17 |
| | | | 6-1-15 [97] |
| | ADRIAN WILLIAMS/Atty. for dbt. | | |
| | PETER FEAR/Atty. for mv. | | |

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).

This bankruptcy case was filed on July 29, 2011. It was administered as an asset case and closed on June 5, 2013. The case was then reopened.

Before the case was closed, claimant C B Merchant Services filed a proof of claim no. 8. This is an allowed, general unsecured claim for \$1778.92.

On December 12, 2014, after the case was reopened, claimant filed proof of claim no. 17 in the amount of \$3180.00. Claim no. 17 is divided into 5 parts or sections. The first three of those sections indicate debts owed by an entity other than the debtor as explained by the trustee. These amounts will be disallowed as amounts that are unenforceable against the debtor and property of the debtor but are instead enforceable against entities other than the debtor. The total amounts disallowed as claims unenforceable against the debtor equal \$2,143.44.

The trustee also objects to the fourth and fifth parts of the claim, which are against the debtor but are also duplicative of amounts claimed in the claimant's proof of claim no. 8. As shown by the trustee, these fourth and fifth parts of the claim duplicate respectively the first and second parts of claim no. 8. The fourth part of claim no. 17 duplicates the first part of claim no. 8 in that both claims have the same: (1) date of referral, (2) date of service, (3) amount referred, and (4) same client (Valley Yellow Pages) and (5) same obligor. Likewise, the fifth part of claim no. 17 duplicates the first part of claim no. 8 in that both claims have the same: (1) date of referral, (2) date of service, (3) amount referred, and (4) same client (Valley Yellow Pages) and (5) same obligor. These duplicative fourth and fifth parts of claim no. 17 will be disallowed in the aggregate, including interest and accounting for any decrease in principal balance, in the amounts of \$730.49 (the remaining balance for the fourth part) and \$1215.92 respectively.

For the reasons stated above and in the objection, the court disallows Claim No. 17 in its entirety. Portions of the claim are not enforceable against the debtor. The remaining portions of the claim are duplicative of Claim No. 8.

12. [15-10881](#)-A-7 CHRISTOPHER/PAULA MARSH MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 6-24-15 [[34](#)]
TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/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: 2009 Ford Focus

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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

13. [15-11283](#)-A-7 GLORIA ESTILLORE MOTION TO EMPLOY DAVID A.
TMT-2 ROBERTS AS SPECIAL COUNSEL
TRUDI MANFREDO/MV 7-8-15 [[56](#)]
DAVID JENKINS/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

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

14. [15-11535](#)-A-7 JOHN HALOPOFF MOTION TO USE CASH COLLATERAL
KDG-4 7-9-15 [[77](#)]
TRUDI MANFREDO/MV
JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.
OST 7/10/15

No tentative ruling