

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

AUGUST 15, 2013

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 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. [05-10001](#)-A-7 DDJ, INC.
CF-8

OBJECTION TO TRUSTEE'S FINAL
REPORT BY JOE FLORES AND CONNIE
FLORES
6-20-13 [[723](#)]

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Objection to Trustee's Final Report
Notice: LBR 9014-1(f)(1); written opposition filed
Disposition: Objection overruled
Order: Civil minute order

The chapter 7 trustee filed a final report and application for final fees and reimbursement of expenses. Creditors Joe and Connie Flores filed an objection to the Trustee's final report within the time allowed by the order fixing deadlines, arguing that the court has no jurisdiction to review the Trustee's final report while the Flores still have appeals pending.

For the reasons set forth below, the court will disregard the Flores' objection to the Trustee's final report.

VEXATIOUS LITIGANT ORDER

The court previously entered an order declaring the Flores to be vexatious litigants (ECF No. 621). Among other things, the order required that the Flores obtain an order from any judge of this court before filing any papers in either of the DDJ bankruptcy cases and that they include certain bolded language at the top of their filed documents. Here, the Flores have filed a joint objection to the Trustee's final report and application for final compensation. However, the Flores did not obtain any court order that allowed such a filing and did not include the necessary bolded language in the filing, thus violating the vexatious litigant order.

As a result, the court will disregard the following documents:

- (1) Joint objection to the Trustee's final report (ECF No. 729);
- (2) Notice of hearing (ECF No. 730),
- (3) Request for judicial notice along with attached exhibits (ECF No. 731),
- (4) Declaration of Joe Flores along with attached exhibits (ECF No. 732),
- (5) Certificate of service (ECF No. 733),
- (6) Notice of erratum (ECF No. 734),
- (7) Memorandum of points and authorities in support of the joint objection (ECF No. 735), and
- (8) Certificate of service (ECF No. 736).

JURISDICTION

Even if the court disregards the Flores' joint objection, the court nevertheless considers sua sponte whether it has jurisdiction. The Floreses had argued that the court lacked jurisdiction because the Floreses' appeals to the Ninth Circuit are still pending.

However, fairly recently, the Ninth Circuit entered two orders dismissing the Flores' appeals for failure to pay the filing fees. The first order (entered August 5, 2013) dismissed appeals in the following cases: Nos. 13-60047, 13-60048, 13-60049, 13-60050, 13-60051, 13-60052, 13-60053, 13-60054, 13-60055, and 13-60058. The second order (entered August 7, 2013) dismissed appeals in the following cases: Nos. 13-60056, 13-60057, 13-60059, 13-60060, 13-60061, 13-60062, 13-60063, 13-60064, 13-60065, and 13-60066. The Flores do not appear to have any other appeals pending with the Ninth Circuit. The two dismissal orders by the Ninth Circuit indicated that they would constitute the mandate of the court once served on the Bankruptcy Appellate Panel. The B.A.P. then transmitted a copy of the mandates to the clerk of the Bankruptcy Court for the Eastern District of California on August 5 and 8, 2013, respectively.

Since the mandate terminated the Ninth Circuit's appellate jurisdiction and the Flores have no other appeals pending, the court believes that it now has jurisdiction to consider the Trustee's final report.

CONCLUSION

For the reasons set forth above, the court will disregard the Flores' objection to the Trustee's final report.

2. [12-11501](#)-A-7 MAUDETTE BLASE
THA-2
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RANDY LEE VANWEY
7-2-13 [[34](#)]

THOMAS ARMSTRONG/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a

consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

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

3. [13-11204](#)-A-7 GILBERT LAZALDE AND EYDIE MOTION TO CONVERT CASE FROM
PBB-1 FREEMAN CHAPTER 7 TO CHAPTER 13
GILBERT LAZALDE/MV 7-29-13 [[46](#)]
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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). 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 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). *See* 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. *See id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

4. [13-14514](#)-A-7 CHARLES ROSS AND MARIAMA MOTION TO COMPEL ABANDONMENT
GH-1 HEBERT 7-29-13 [[25](#)]
CHARLES ROSS/MV

GARY HUSS/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party

Business Description: Styles by Mari (cosmetology business)

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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.

5. [13-14514](#)-A-7 CHARLES ROSS AND MARIAMA CONTINUED MOTION FOR ORDER
JES-1 HEBERT REQUIRING DEBTOR TO SHUT DOWN
JAMES SALVEN/MV
BUSINESS

7-12-13 [[13](#)]

GARY HUSS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Ex Parte Application for Order Requiring Debtor to Shut Down Business

Notice: Continued date of hearing; written opposition filed

Disposition: Denied as moot

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(3). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Because the court will grant debtor's motion to abandon the debtor's cosmetology business, the business will no longer be property of the estate. Accordingly, the application to shut down the debtor's business will be denied as moot.

6. [13-14215](#)-A-7 DAVID/STEFANIE EDDINGS MOTION TO COMPEL ABANDONMENT
BDB-1 7-31-13 [[15](#)]
DAVID EDDINGS/MV
BENNY BARCO/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party

Business Description: Debtor is engaged in a business as a direct salesperson.

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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. §

8. [13-12717](#)-A-7 JESSE/LORENA AVILA
UST-1
AUGUST LANDIS/MV

CONTINUED MOTION TO DISMISS
CASE PURSUANT TO 11 U.S.C.
SECTION 707(B)
6-27-13 [[17](#)]

OVIDIO OVIEDO/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case Pursuant to 11 U.S.C. § 707(b)

Notice: LBR 9014-1(f)(1) / continued date of the hearing; written
opposition filed

Disposition: Denied as moot

Order: Civil minute order

As a result of debtors' motion under § 706(a), the case is converted
to a case under Chapter 13. The U.S. Trustee's motion to dismiss will
be denied as moot.

9. [12-15819](#)-A-7 DANILO/AMYLENE BAUTISTA
PLF-2
JAMES SALVEN/MV

MOTION TO COMPEL
7-16-13 [[59](#)]

LARS FULLER/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

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

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 542 of the Bankruptcy Code requires the debtor and third
parties to turn over to the chapter 7 trustee property that the
trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of
inconsequential value or benefit to the estate is not required to be
turned over to the trustee. See *id.* Other narrow exceptions and
defenses are described in § 542. See *id.* § 542(b)-(d). In addition,
secured creditors turning over collateral may require adequate
protection as a precondition to turning over the property. See *United
States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The order shall state that no later than 7 days from the date of service of the order on this motion, the debtor shall either (i) turn over both vehicles described in the motion to the trustee, or (ii) pay the trustee cash for the nonexempt portion of any vehicle not turned over.

10. [10-61725](#)-A-7 PAMELA ENNIS
THA-4
THOMAS ARMSTRONG/MV

MOTION FOR COMPENSATION FOR
THOMAS H. ARMSTRONG, TRUSTEE'S
ATTORNEY(S), FEE: \$8435.75,
EXPENSES: \$467.89.
7-17-13 [[123](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Thomas H. Armstrong

Compensation approved: \$8,435.75

Costs approved: \$467.89

Aggregate fees and costs approved: \$8,903.64

Retainer held: \$0.00

Amount to be paid as administrative expense: \$8,903.64

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

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

11. [12-17531](#)-A-7 KEVIN/JANIS JENKINS
TMT-4
TRUDI MANFREDO/MV

OBJECTION TO CLAIM OF ZUMWALT
HANSEN & ASSOCIATES, INC.,
CLAIM NUMBER 10
6-17-13 [[81](#)]

THOMAS ARMSTRONG/Atty. for dbt.
TRUDI MANFREDO/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 motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

A proof of claim is "deemed allowed, unless a party in interest objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim filed and executed in accordance with [the Federal Rules of Bankruptcy Procedure]. This presumption is rebuttable. See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006).

A proof of claim that is facially irregular, however, is not considered compliant with the Rules, and is not given the evidentiary presumption of validity. *Id.* at 707 n.7.

The proof of claim to which the trustee objects does not show any of the boxes specifying a basis for priority under § 507(a) have been checked. Nor does the supporting documentation state or reveal any such basis. The objection will be sustained and the claim will not be permitted to have priority status, but will be allowed as a general unsecured claim.

12. [12-17036](#)-A-7 RUBEN/ESTELLE GALVAN
TMT-1
TRUDI MANFREDO/MV
JOSEPH ARNOLD/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
MOTION WITHDRAWN

MOTION TO SELL
7-17-13 [[22](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

13. [13-14936](#)-A-7 JESUS RIVERA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-29-13 [[12](#)]

FEE PAID (\$306)

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

14. [08-15141](#)-A-7 LINDA PINSON
[13-1032](#) TGM-1
SALVEN V. PINSON ET AL
TRUDI MANFREDO/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
7-8-13 [[22](#)]

Final Ruling

Motion: Entry of Default Judgment

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

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). During the pendency of the debtor's bankruptcy case, the debtor transferred the real property described in the complaint and motion. The transfer was made by the debtor to both herself and Teddy Pinson as joint tenants. The remedy for such unauthorized transfers is that the trustee may avoid the transfer and recover the property for the benefit of the estate. See 11 U.S.C. §§ 549(a), 550(a).

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

15. [08-15141](#)-A-7 LINDA PINSON
[13-1032](#) TGM-2
SALVEN V. PINSON ET AL
TRUDI MANFREDO/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
7-8-13 [[27](#)]

Final Ruling

Motion: Entry of Default Judgment

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

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). During the pendency of the debtor's bankruptcy case, the debtor transferred the real property described in the complaint and motion. The transfer was made by the debtor to both herself and Teddy Pinson as joint tenants. The remedy for such unauthorized transfers is that the trustee may avoid the transfer and recover the property for the benefit of the estate. See 11 U.S.C. §§ 549(a), 550(a).

The California Franchise Tax Board ("FTB") recorded a notice of its tax lien in Merced County against Teddy Pinson. The FTB's lien secures an obligation owed by Teddy Pinson, not the debtor. The lien of the Franchise Tax Board attached only to Teddy Pinson's interest in the real property once it had been transferred to him. Because the transfer of the real property to Teddy Pinson is avoided under § 549, Teddy Pinson no longer has any interest in the property to which FTB's lien may attach. As a result, the FTB's lien may also be avoided.

In addition, another ground for avoidance of lien of the FTB exists. The FTB's lien constituted an unauthorized transfer following the petition within the meaning of § 549(a). See 11 U.S.C. § 101(54) (defining a "transfer"). Accordingly, the FTB's lien may be avoided on this ground as well.

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

16. [13-14045](#)-A-7 PAM NUNTHATEE
GH-1
PAM NUNTHATEE/MV
GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO COMPEL
ABANDONMENT
7-20-13 [[19](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(3) and order shortening time; written opposition filed by the trustee

Disposition: Denied

Order: Prepared by moving party

Business Description: Unnamed farming operation

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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 debtor contends that the property has no value to the estate and is worth only \$5,000. The chapter 7 trustee opposes the motion, citing the existence of a 2005 Kabota tractor and/or a John Deere tractor. The values of these items may be as much as \$46,000 collectively. Large amounts of cash have not yet been accounted for. As a result, the court intends to deny the motion.

17. [13-14045](#)-A-7 PAM NUNTHATEE
JES-1
JAMES SALVEN/MV

CONTINUED MOTION FOR ORDER
REQUIRING DEBTOR TO SHUT DOWN
BUSINESS
7-12-13 [[11](#)]

GARY HUSS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

[If the court grants the debtor's Motion to Compel the Chapter 7 trustee to Abandon Property of the Estate, Item No. 16, the court will drop the matter as moot. Otherwise, the court will rule as follows.]

Tentative Ruling

Motion: Requiring Debtor to Shut Down Business

Notice: LBR 9014-1(f)(3); no written opposition required

Disposition: Granted

Order: Prepared by Chapter 7 trustee

Business Description: Unnamed farming operation

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The commencement of a Chapter 7 case creates an estate. 11 U.S.C. § 541(a). Except as provided otherwise, the estate is comprised of all legal or equitable interests of the debtor as of the commencement of the case. *Id.* When a Chapter 7 case is commenced a trustee is appointed; the trustee is the representative of the estate. 11 U.S.C. §§ 701(a), 323(a). The Chapter 7 trustee must collect and reduce to money property of the estate and account for property received. 11 U.S.C. § 704(a)(1),(2). It is the Chapter 7 trustee, not the debtor, who has authority to use property of the estate. 11 U.S.C. § 363(b). The Chapter 7 trustee, and only the trustee, can operate the debtor's sole proprietorship business post-petition. 11 U.S.C. §§ 363(c)(1), 721; *In re Gracey*, 80 B.R. 675 (Bankr. E.D. Pa. 1987), *aff'd*, 849 F.2d 601 (3rd Cir.), cert. denied 488 U.S. 880 (1988); see also, *In re Lah*, 91 B.R. 441 (Bankr. N.D. Ohio 1988). From this it follows that a Chapter 7 trustee assigned to a case in which the debtor has a going business concern must: (1) obtain permission to operate the business, 11 U.S.C. § 721; (2) sell the business, 11 U.S.C. 363(b)(1); (3) abandon it, 11 U.S.C. § 554; or (4) force the closure of the business until such time as the property is no longer property of the estate.

In this case, the debtor has an interest in a sole proprietorship. The Chapter 7 trustee has not received permission to operate the business, sold it, or abandoned it. As a result, the court will grant the motion.

18. [12-17446](#)-A-7 BERNARD EWELL
GGH-2
BERNARD EWELL/MV

MOTION TO AVOID LIEN OF
METROPOLITAN ADJUSTMENT BUREAU
AND/OR MOTION TO AVOID LIEN OF
GLORIA SIERRA , MOTION TO AVOID
LIEN OF DENNIS M. WRIGHT ,
MOTION/APPLICATION TO AVOID
LIEN OF JIM BARNES
7-12-13 [[22](#)]

GARY HOOD/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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each lien in this case. Under the reverse-priority analysis, Gloria Sierra's judicial lien would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens, though it is still subject to any senior consensual lien. In determining whether her lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Sierra's judicial lien, plus all other liens (excluding judicial liens lower in priority), plus the exemption amount together exceed the

property's value by an amount greater than or equal to the debt secured by such lien. As a result, her judicial lien may be avoided entirely.

All other judicial liens may be avoided as well because Sierra's avoidable judicial lien has a higher priority than such other liens. Stated differently, the sum of the debt secured by the consensual liens plus the debtors' exemption amount exceeds the fair market value of the real property, so all judicial liens subject to this motion are properly avoidable under § 522(f).

19. [13-11759](#)-A-7 FLOYD MYERS ORDER TO SHOW CAUSE WHY ORDER GRANTING DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE SHOULD NOT BE VACATED AND THE FILING FEE PAID IN FULL
7-17-13 [[34](#)]

Tentative Ruling

Proceeding: Order to Show Cause Regarding Vacating of Order Approving Filing Fee

Disposition: Order Approving Filing Fee Vacated

Order: Civil minute order

Federal Rule of Civil Procedure 60(b) authorizes the court to vacate an order based on mistake, inadvertence, surprise or excusable neglect.

On March 15, 2013, Floyd Myers filed a Chapter 7 bankruptcy petition and an Application for Waiver of Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing. The debtor has a household of two. His application represented the household income to be \$1,352 per month and the court granted the fee waiver. On June 27, 2013, Myers filed amended Schedule I in support of a reaffirmation agreement, wherein he declared his income to be \$2,232.00. Amended Schedule I, Line 16, June 27, 2013, ECF No. 26.

The Bankruptcy Court may waive the filing fee in a case under Chapter 7 of 11 U.S.C. for an individual if that individual "has income of less than 150% of income official poverty line...applicable to a family of the size involved and is unable to pay the fee in installments." 28 U.S.C. § 1930(f)(1). The 150% of the poverty line for a household of two is \$1,938.75. Under the debtor's household income, as now disclosed, the debtor does not qualify for the fee waiver and the fee waiver was improvidently granted. The order granting waiver of the Chapter 7 filing fee will be vacated, and the Clerk is authorized to establish a payment schedule for the debtor.

20. [12-18461](#)-A-7 ELIZABETH CLOSE
TMT-1
TRUDI MANFREDO/MV
SUSAN HEMB/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
7-5-13 [[22](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: BMW 525i

Buyer: Debtor

Sale Price: \$7,185.00 (\$1,460.00 cash plus \$843.00 exemption credit and sale subject to lien of BMW Financial Services in the amount of \$4,882.00)

Sale Type: Private sale subject to overbid opportunity

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling and enter the default of the responding party. In entering such default, 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.

21. [13-13069](#)-A-7 DAVID/BEATRIZ HERRERA
TMT-1
TRUDI MANFREDO/MV
ALBERT GARCIA/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
MOTION WITHDRAWN

OBJECTION TO DEBTOR'S AMENDED
CLAIM OF EXEMPTIONS
7-5-13 [[28](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

22. [12-13170](#)-A-7 AUGUSTINE PENA
TMT-6
TEYMOUR FARHANG/MV

MOTION FOR COMPENSATION FOR
TEYMOUR FARHANG, BROKER(S),
FEE: \$562.50, EXPENSES: \$0.00.
7-8-13 [[436](#)]

VINCENT GORSKI/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Teymour Farhang
Compensation approved: \$562.50
Costs approved: \$0.00
Aggregate fees and costs approved: \$562.50
Retainer held: \$0.00
Amount to be paid as administrative expense: \$562.50

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

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

23. [12-19276](#)-A-7 LEO/ELIZABETH NINO
TMT-2
TRUDI MANFREDO/MV
BRUCE NICKEL/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
MOTION WITHDRAWN

CONTINUED MOTION TO FIX
DEBTORS' EXEMPTIONS
6-26-13 [[115](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

24. [12-19276](#)-A-7 LEO/ELIZABETH NINO
TMT-3
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
7-24-13 [[140](#)]

BRUCE NICKEL/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2002 Yamaha Motorcycle and 2005 Chevrolet Silverado

Sale Type: Public auction

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling and enter the default of the responding party. In entering such default, 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.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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

25. [12-10682](#)-A-7 DORIS OSBACK-ROSE
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
7-17-13 [[28](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 915 Rosebrook Avenue, Clovis, CA

Buyer: Debtor

Sale Price: \$79,000.00 (\$4,000.00 cash plus \$75,000.00 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

26. [13-14994](#)-A-7 PENNY CHANDLER-WRIGHT

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-30-13 [[15](#)]

HRG DROPPED FROM CALENDAR BY
AMENDED ORDER FILED 8/5/13

Final Ruling

The hearing being dropped from calendar by an order filed August 5, 2013, this matter is dropped from calendar as moot.

27. [13-14696](#)-A-7 JOSE AGUILAR AND SARA ORTIZ
JOSE AGUILAR/MV
RESPONSIVE PLEADING, ORDER
FOR INSTALLMENTS 8/1/13

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
7-5-13 [[4](#)]

Tentative Ruling

The debtors filed an application for waiver of the filing fee. The chapter 7 trustee opposed the application and a hearing was set. However, the hearing will be dropped as moot as the debtors have filed a motion to pay the filing fee in installments, and the court has issued an order granting it.

28. [13-14513](#)-A-7 LEONOR MARTINEZ
LEONOR MARTINEZ/MV
GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

RESCHEDULED HEARING RE: MOTION
FOR WAIVER OF THE CHAPTER 7
FILING FEE OR OTHER FEE
6-28-13 [[5](#)]

Tentative Ruling

Application: Waiver of Chapter 7 Filing Fee
Notice: LBR 9014-1(f)(2); opposition filed by the trustee
Disposition: Pending
Order: Pending

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

LEGAL STANDARD

The Bankruptcy Court may waive the filing fee in a case under Chapter 7 of the Bankruptcy Code for an individual if that individual "has income of less than 150% of income official poverty line . . . applicable to a family of the size involved and is unable to pay the fee in installments." 28 U.S.C. § 1930(f)(1).

ANALYSIS

The trustee opposes the debtor's application for waiver of the filing fee on the basis that the debtor paid her bankruptcy attorney \$1,000.00 in connection with the case. The debtor responds by citing 28 U.S.C. § 1930(f)(1) for the proposition that a debtor is not disqualified for a fee waiver based on payment or agreement to pay attorneys' fees in connection with the case. But 28 U.S.C. § 1930(f) does not contain such language. However, Section II.A.5 of the *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of [BAPCPA]* provides: "A debtor is

not disqualified for a waiver of the filing fee solely because the debtor has paid (or promised to pay) a bankruptcy attorney, bankruptcy petition preparer, or debt relief agency in connection with the filing."

Income below 150% of the Poverty Guidelines

Addressing the first element of the two-part waiver test, the application shows the debtor's income of \$1,061.71 is below 150% of the poverty line. Published by the U.S. Department of Health and Human Services, the poverty guidelines show that \$1,436.25 as the amount for a family size of one. This element of the test appears satisfied.

Inability to Pay the Fee in Installments

The statute also requires that the individual seeking the fee waiver must be "unable to pay the fee in installments." See 28 U.S.C. § 1930(f)(1). The trustee has questioned the debtor's inability to pay the fee in installments because the debtor has paid a \$1,000.00 retainer to her attorney. The debtor's response indicates that the filing fee was paid from the debtor's savings. The issue is whether the debtor's payment of this amount shows an ability to pay the filing fee in installments.

The debtor's combined average monthly income from Line 16 of Schedule I is \$1,061.71. The debtor's average monthly expenses equal \$1097.38, leaving a negative monthly net income. There appears to be a discrepancy on the fee waiver application form, however, in that only \$646.00 is listed as the total monthly expenses of the debtor on Schedule J. The court would like the debtor to address whether this discrepancy is a result of an error, or whether it accurately reflects that debtor has lower expenses and monthly net income of several hundred dollars per month available to pay the filing fee in installments.

The application form also shows \$8,269.17 in the debtor's checking account. The question is whether these funds, or any monthly disposable income that the debtor may have, result in an ability to pay the filing fee in installments.

9:15 a.m.

1. [12-19113](#)-A-7 BARBARA ADAMS FURTHER STATUS CONFERENCE RE:
[13-1014](#) AMENDED COMPLAINT
ADAMS V. ECMC 4-2-13 [[18](#)]
GEORGE LOGAN/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Description: Dischargeability, 11 U.S.C. § 523(a)(8)

Complaint filed: January 30, 2013

Status: At Issue

Disposition: Status Conference will be conducted

Appearance by counsel and Pro Se Parties: Required (personal or telephonic)

The status of the case is at issue. The court intends to confirm that the parties have concluded discovery and, if so, to set deadlines for dispositive motions and set a trial date.

2. [13-14027](#)-A-7 ADRIAN VELASQUEZ STATUS CONFERENCE RE: COMPLAINT
[13-1071](#) 6-18-13 [[1](#)]
U.S. TRUSTEE V. VELASQUEZ
MARK POPE/Atty. for pl.

Final Ruling

This matter is continued to October 2, 2013, at 9:15 am. to allow the plaintiff to obtain an entry of default by the Clerk and to prove up the judgment.

3. [11-16049](#)-A-7 DENNIS/KARI STANLEY CONTINUED STATUS CONFERENCE RE:
[13-1053](#) COMPLAINT
SALVEN V. DWS ENTERPRISES, INC. ET AL 5-13-13 [[1](#)]
CARL COLLINS/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Description: Avoidance, 11 U.S.C. § 544, 547, 548, 550

Complaint filed: May 13, 2013

Status: At issue

Disposition: Status Conference will be conducted

Appearance by counsel and Pro Se Parties: Required

The court intends to make the following orders with respect to this case: (1) establish a deadline for Rule 26(a)(2) disclosures (October 16, 2013, suggested); (2) set a discovery cut off (December 18, 2013,

suggested); (3) set a deadline for dispositive motions (December 11, 2013, suggested); and (4) set the date of a pretrial conference (December 11, 2013, suggested). Not less than 14 days prior to the pretrial conference the parties shall file a joint status report.

4. [13-12452](#)-A-7 MARK DIAZ CONTINUED STATUS CONFERENCE RE:
[13-1044](#) COMPLAINT
DIAZ V. CACH, LLC 4-24-13 [[1](#)]
TIMOTHY SPRINGER/Atty. for pl.
DEFAULT ENTERED

Final Ruling

Judgment having been entered, the status conference is concluded.

5. [12-15254](#)-A-7 ESTEVAN ALVAREZ CONTINUED STATUS CONFERENCE RE:
[12-1153](#) COMPLAINT
WASHBURN ET AL V. ALVAREZ 9-17-12 [[1](#)]
WILLIAM COWIN/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

On July 23, 2013, the court approved the Stipulation and Order for Entry of Judgment, July 23, 2013, ECF No. 65. As approved by the court, the order provided, "Plaintiff shall submit a judgment hereon no less than 10 days after entry of this order." *Id.* No such judgment has been submitted. Plaintiff shall lodge a judgment here forthwith. Unless such a judgment has been lodged by September 16, 2013, the Clerk shall dismiss the case for failure to prosecute the action. Fed. R. Civ. P. 41(b), *incorporated by* Fed. R. Bankr. P. 7041.

6. [12-17757](#)-A-7 VIOLET RIOS MOTION FOR SUMMARY JUDGMENT
[12-1210](#) MAS-1 7-15-13 [[20](#)]
UNION BANK, N.A. V. RIOS
MARK SERLIN/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 plaintiff Union Bank has moved for summary judgment on its § 523(a)(6) claim against the debtor/defendant Violet Rios. The Bank argues that summary judgment in its favor is proper if the court applies collateral estoppel to a state court default judgment (the "Judgment") entered against Rios on a complaint alleging three causes of action (the "Complaint"). Rios has opposed the motion.

For the reasons set forth below, the court will deny the motion for summary judgment.

SUMMARY JUDGMENT

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

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

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

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

SECTION 523(a)(6)

Section 523(a)(6) excepts from discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." The "malicious" injury requirement is separate from the "willful" injury requirement. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008).

A "malicious" injury involves "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001) (quoting *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997)).

A "willful" injury is a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original). This willful injury requirement is satisfied "only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1442 (9th Cir. 2002). In contrast, "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Geiger*, 523 U.S. at 64. Thus, the standard is a subjective one, where the debtor must have "either a subjective intent to harm, or a subjective belief [or actual knowledge] that harm is substantially certain." *Su*, 290 F.3d at 1444 (emphasis added). In determining whether the debtor has actual knowledge, the court can infer that the debtor is usually "charged with the knowledge of the natural consequences of his actions." *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010); see also *Su*, 290 F.3d at 1146 n.6 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

COLLATERAL ESTOPPEL

Principles of collateral estoppel, also known as issue preclusion, "do indeed apply in discharge exception proceedings pursuant to § 523(a)." *Grogan v. Garner*, 498 U.S. 279, 284 & n.11 (1991). "In addition, 28 U.S.C. § 1738 requires [federal courts], as a matter of full faith and credit, to apply the pertinent state's collateral estoppel principles." *Cal-Micro, Inc. v. Cantrell*, 329 F.3d 1119, 1123 (9th Cir. 2003) (citing *Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995)).

The five threshold requirements that must be met to apply the doctrine are well established under California law. See, e.g., *id.*; see also *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 n.3 (B.A.P. 9th Cir. 1995) (noting that federal and state law requirements for application of the doctrine are the same). "[1] First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. [2] Second, this issue must have been actually litigated in the former proceeding. [3] Third, it must have been necessarily decided in the former proceeding. [4] Fourth, the decision in the former proceeding must be final and on the merits. [5] Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." *Cantrell*, 329 F.3d at 1123.

"The party seeking to assert collateral estoppel has the burden of

proving all the requisites for its application. To sustain this burden, a party must introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *Kelly*, 182 B.R. at 258. The court will not apply collateral estoppel if any reasonable doubt exists as to what the prior judgment decided. *Id.* (citing *Spilman v. Harley*, 656 F.2d 224, 227-28 (6th Cir. 1981)).

Collateral estoppel may be applied in the context of default judgments subject to two limiting principles. First, "collateral estoppel applies only if the defendant has been personally served with summons or has actual knowledge of the existence of the litigation." *Cantrell*, 329 F.3d at 1124. Second, collateral estoppel will apply "only where the record shows an express finding upon the allegation for which preclusion is sought." *Id.* at 1124 (quoting *Williams v. Williams (In re Williams' Estate)*, 223 P.2d 248, 252 (Cal. 1950)) (internal quotation marks omitted). The requirement that the record show an express finding may be waived if an issue was implicitly and necessarily decided in the prior proceeding. *Id.* at 1124-25.

ANALYSIS

Here, the court concludes that collateral estoppel does not apply since the Bank has not conclusively established that the issue of Rios's intent (i.e., the subjective intent to harm, or the subjective belief that harm was substantially certain) was necessarily decided in the Judgment.

In the motion, the Bank argues that the court entered the default judgment on the second cause of action for conspiracy to defraud. However, that is not clear from the Judgment. The Complaint asserted three causes of action: (1) fraudulent transfer, (2) conspiracy to defraud, and (3) successor liability. For each cause of action, the Bank prayed for the same amount of damages (\$60,434.60 plus interest) against the same defendant Rios. The Judgment was for that same amount, but it did not specify which underlying cause of action supported the damages remedy. Thus, the Judgment may have been on one of the causes of action, all three of them, or a different combination, but nevertheless it is ambiguous.

The fact that the court cannot determine which of the causes of action supported the Judgment is significant in this case. Since there is no indication to the contrary, the court assumes that the state court found in favor of the Bank on all three causes of action--rather than on just the conspiracy to defraud cause of action--and awarded damages to the Bank accordingly. Even if this was true and the conspiracy to defraud cause of action required that Rios acted with an intent sufficient to satisfy § 523(a)(6), the issue of Rios's intent was not necessarily decided in the Judgment because the other two causes of action did not require the same intent sufficient to satisfy § 523(a)(6) as well. The issue of Rios's intent would have been necessarily decided if (1) the court entered judgment for the Bank on only the conspiracy to defraud cause of action or (2) the court entered judgment on all three causes of action and each of them required that the defendant acted with the requisite intent in order to be found liable. However, neither of those scenarios appears to be the case here.

For the first cause of action for fraudulent transfer under California's Uniform Fraudulent Transfer Act, the Complaint alleged both actual fraud ("The [transferor R.F. Rios, Inc.] . . . conveyed

all or virtually all assets . . . with intent to hinder, delay, or defraud creditors such as the Bank.") and constructive fraud ("Such transfer of the [transferor R.F. Rios, Inc.'s] assets and property was made for less than reasonably equivalent value"). Yet, as one bankruptcy court has pointed out, "A fraudulent transfer judgment in and of itself will generally not suffice [to establish intent for collateral estoppel purposes], as a court can enter a fraudulent transfer judgment even where the transferee acted innocently. A judgment that a transfer is constructively fraudulent does not require a showing of intent on the part of the transferor or transferee; an actually fraudulent transfer judgment can be based solely on the intent of the transferor." *Ly v. Byrd (In re Byrd)*, Adv. No. 12-3003DM, Case No. 11-13788DM, 2012 WL 2018087, at *5 (Bankr. N.D. Cal. July 20, 2012). Since the Complaint alleges that Rios was the transferee in the alleged fraudulent transfer transaction, the Judgment did not necessarily decide the issue of her intent on the first cause of action.

For the third cause of action, there are a number of ways to establish successor liability. One California court has noted the following: "(1) the successor expressly or impliedly agrees to assume the subject liabilities . . . , (2) the transaction amounts to a consolidation or merger of the successor and the predecessor, (3) the successor is a mere continuation of the predecessor, or (4) the transfer of assets to the successor is for the fraudulent purpose of escaping liability for the predecessor's debts." *CenterPoint Energy, Inc. v. Superior Court*, 157 Cal. App. 4th 1101, 1120 (2007) (citing *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (1977)). While the Bank would obviously argue that successor liability was a result of the fourth ground, which requires the transferee/purchaser's fraudulent intent, the allegations in the Complaint also support the third ground ("[The Debtor is] using the [transferor R.F. Rios, Inc.'s] assets in the conduct of [her] business."). Thus, the Judgment again did not necessarily decide the issue of Rios's intent on the third cause of action.

CONCLUSION

Because the first and third causes of action did not decide the issue of Rios's intent, that issue was not necessarily decided in the Judgment, even if the second cause of action would have decided that issue. As a result, collateral estoppel cannot be applied.

For these reasons, the court will deny the motion for summary judgment.

7. [12-15467](#)-A-7 CINDY GEORGE
[12-1173](#)
VETTER ET AL V. THE BANK OF
NEW YORK MELLON ET AL
MICHAEL FINLEY/Atty. for pl.
RESPONSIVE PLEADING,
BAKERSFIELD CASE

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
5-13-13 [[54](#)]

Tentative Ruling

Description: Cancellation of Instruments, et. al.

Complaint filed: October 29, 2012

Status: Not At Issue

Disposition: Status Conference will be conducted

Appearance by counsel and Pro Se Parties: Required

The court will conduct a Status Conference and intends to discuss: (1) jurisdiction, in light of the trustee's abandonment, Notice of Intent to Abandon, May 20, 2013, ECF No. 48; (2) real party in interest rules, Fed. R. Civ. P. 17, incorporated by Fed. R. Bankr. P. 7017; and (3) abstention, 11 U.S.C. § 305.

10:00 a.m.

1. [13-14109](#)-A-7 RAYLENE DAUGHERTY NOVEL
MBW-1
SAFE 1 CREDIT UNION/MV
FRANK SAMPLES/Atty. for dbt.
JAMES BURBOTT/Atty. for mv.
BAKERSFIELD CASE

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-10-13 [[14](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3218 Laurel Drive, Bakersfield, California

Value: \$83,000.00

Liens: \$178,597.07

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada*,

Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-14530](#)-A-7 KATHRYN JONES MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY/MV 7-17-13 [[26](#)]
RANDY RISNER/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: 2010 Ford F250

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 nunc pro tunc, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [13-14338](#)-A-7 ARTHUR/IRENE ARROYO MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
ALLY FINANCIAL INC./MV 7-16-13 [[18](#)]
MARK ZIMMERMAN/Atty. for dbt.
TORIANA HOLMES/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: 2010 Chevrolet Malibu

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. [09-18842](#)-A-7 ELOY LICON AND HELEN MOTION FOR RELIEF FROM
CJO-1 FERNANDEZ AUTOMATIC STAY
GREENTREE SERVICING LLC/MV 7-19-13 [[76](#)]
JAMES MILLER/Atty. for dbt.
CHRISTINA O/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 4893 North Millbrook Avenue, Fresno, California

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

5. [12-18177](#)-A-7 CHRISTOPHER/MISTY JONES MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
BANK OF NEW YORK MELLON/MV 7-3-13 [25]
D. GARDNER/Atty. for dbt.
JARED BISSELL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2250 West Putnam Court, Porterville, California

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

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.

10:30 a.m.

1. [13-14232](#)-A-7 STANLEY/SHARON FISHER PRO SE REAFFIRMATION AGREEMENT
WITH CARMAX AUTO FINANCE
7-24-13 [[11](#)]
GARY HUSS/Atty. for dbt.

No tentative ruling.

2. [13-13641](#)-A-7 SALVADOR/MARIA BARAJAS PRO SE REAFFIRMATION AGREEMENT
WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
6-19-13 [[9](#)]
GEORGE LOGAN/Atty. for dbt.

No tentative ruling.

3. [13-13043](#)-A-7 JOSEPHINE CASTILLO PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION
7-17-13 [[12](#)]

No tentative ruling.

4. [13-13043](#)-A-7 JOSEPHINE CASTILLO

PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION
7-17-13 [[15](#)]

No tentative ruling.

5. [13-12957](#)-A-7 MARTIN/CHRISY CEJA

REAFFIRMATION AGREEMENT WITH
CAPITAL ONE AUTO FINANCE
7-17-13 [[18](#)]

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

1:30 p.m.

1. [10-62315](#)-A-11 BEN ENNIS MOTION FOR COMPENSATION FOR
MMW-52 TERENCE J. LONG, CHAPTER 11
JUSTIN HARRIS/MV TRUSTEE(S), FEE: \$72373.35,
EXPENSES: \$164.85.
7-25-13 [[1222](#)]
- RILEY WALTER/Atty. for dbt.
JUSTIN HARRIS/Atty. for mv.

No tentative ruling.

2. [13-13531](#)-A-11 DANIEL'S MEXICAN GRILL, MOTION TO EMPLOY STEPHEN LABIAK
SL-3 LLC AS ATTORNEY(S)
DANIEL'S MEXICAN GRILL, LLC/MV 7-25-13 [[60](#)]
STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

Application: Employ Stephen Labiak as Attorney

Notice: LBR 9014-1(f)(2)

Disposition: Granted in part as to employment, denied in part without prejudice as to compensation

Order: Prepared by moving party

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling and enter the default of the responding party. In entering such default, 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).

Stephen Labiak requests approval of his employment to represent the debtor in a civil case entitled *J and J Sports Prods., Inc. v. Daniel De La Cerda*. Labiak already has been employed to represent the debtor in possession in this case. Order Approving Emp't, Aug. 2, 2013, ECF No. 70.

Because Labiak is an attorney that has represented (and is representing) the debtor in this case, the court will approve Labiak's employment for a specified special purpose under § 327(e). Labiak has provided a declaration in which he states that he neither has nor represents an interest adverse to the debtor or the estate. His declaration also does not reveal any problematic connections that would present a conflict of interest.

Lastly, the motion states that "Debtor's attorney is requesting attorney [sic] fees of \$2,000.00 for representing Debtor in the [civil case]." To the extent the motion requests approval of compensation, the motion will be denied without prejudice. The court will not approve compensation in the absence of an application for compensation filed in accordance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

3. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA CONTINUED CHAPTER 11 STATUS

CONFERENCE
12-14-12 [[12](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

4. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA
PLF-15

CONTINUED HEARING RE:
DISCLOSURE STATEMENT FILED BY
DEBTOR ANTONIO CLIMACO
TEIXEIRA, JOINT DEBTOR MARIA
BERNARDETTE TEIXEIRA
6-7-13 [[138](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

5. [12-60065](#)-A-11 TONY TEIXEIRA & SON
DAIRY

CONTINUED CHAPTER 11 STATUS
CONFERENCE
12-14-12 [[24](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

6. [12-60065](#)-A-11 TONY TEIXEIRA & SON
PLF-15 DAIRY

CONTINUED HEARING RE:
DISCLOSURE STATEMENT FILED BY
DEBTOR TONY TEIXEIRA & SON
DAIRY
6-12-13 [[195](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [11-62472](#)-A-11 DYNACO, INC.
HAR-29
DYNACO, INC./MV

MOTION FOR FINAL DECREE
7-24-13 [[397](#)]

HILTON RYDER/Atty. for dbt.

Tentative Ruling

Motion: Enter Final Decree Closing Chapter 11 Case

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

Disposition: Granted

Order: Prepared by moving party

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Under § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." 11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022. "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" See *In re Ground Sys., Inc.*, 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Rule 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. See Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. These factors present a court with "flexibility in determining whether an estate is fully administered," and "not all of the factors . . . need to be present to establish that a case is fully administered for final decree purposes." *In re Provident Fin., Inc.*, Nos. MT-10-1134-JuPaD, MT-10-1135-JuPaD, Bankr. No. 09-61756, 2010 WL 6259973 (B.A.P. 9th Cir. Oct. 12, 2010) (unpublished opinion).

The Advisory Committee Note also states that entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed." Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. It further provides that "[t]he court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code." *Id.*

Here, factors supporting a finding of full administration of the estate have been satisfied. The order confirming the plan has become final pursuant to Rule 8002 as the plan was confirmed November 30, 2012. Payments under the confirmed plan have commenced given that all cost-of-administration claims of which the debtor is aware have been paid. There do not appear to be any unresolved contested matters, adversary proceedings or motions, other than the present motion for a final decree. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

8. [13-13284](#)-A-11 NICOLETTI OIL INC.

CONTINUED CHAPTER 11 STATUS
CONFERENCE

5-15-13 [[16](#)]

DAVID GOLUBCHIK/Atty. for dbt.

Final Ruling

The status conference is continued to September 4, 2013, at 1:30 p.m. to coincide with the hearing on the motion for stay relief filed by ExxonMobil Oil Corporation.

9. [13-13284](#)-A-11 NICOLETTI OIL INC.

MOTION FOR RELIEF FROM
AUTOMATIC STAY

7-17-13 [[88](#)]

LRP-1

EXXONMOBIL OIL CORPORATION/MV

DAVID GOLUBCHIK/Atty. for dbt.

MICHAEL GOMEZ/Atty. for mv.

STIPULATION AND ORDER

CONTINUING TO 9/4/13 AT 1:30

P.M.

Final Ruling

Motion: Relief from Stay

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

Disposition: Continued to September 4, 2013, at 1:30 p.m.

Order: Not applicable; an order approving a stipulation continuing the hearing has been issued

The court has issued an order approving a stipulation between the debtor and ExxonMobil Oil Corporation to continue the hearing to September 4, 2013, at 1:30 p.m. The order also sets deadlines for filing and serving opposition to the motion and any reply to such opposition.