

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

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

WEDNESDAY

AUGUST 20, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA CONTINUED MOTION TO VALUE
LKW-2 DE CAMPOS COLLATERAL OF BANK OF NEW YORK
ANDRES ALVAREZ/MV MELLON
6-18-14 [[28](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

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

Disposition: Granted

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

Collateral Value: \$82,000

Secured Claim: \$82,000

The court continued this matter to allow the respondent to obtain an appraisal of the subject real property. The Joint Status Conference Statement indicates that the debtors and respondent have agreed that the value of the respondent's collateral will be \$82,000 for purposes of the debtor's chapter 13 case. The parties have also agreed that the respondent's secured claim will be \$82,000.

Accordingly, the court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount shown above equal to the value of the collateral unencumbered by senior liens and a general unsecured claim for the balance of the claim. Pursuant to the joint status statement, the order shall also state that nothing in the order shall be construed to prevent the respondent from objecting to treatment of its secured claim in the debtors' chapter 13 plan. The order shall not include any other additional findings or information.

2. [12-15726](#)-A-13 ALVARO PINON MOTION TO APPROVE LOAN
TOG-8 MODIFICATION
ALVARO PINON/MV
6-18-14 [[43](#)]
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

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

PROCEDURE

The court is concerned by the quality of the notice of this matter. The first notice has the incorrect hearing date, and the amended notice contains the following statement: "By this motion, Debtor will, and hereby do [sic], seek an order determining the value of said collateral."

This statement confuses the meaning of the notice. The notice may suggest that the motion is valuing collateral, modifying a loan, or both.

Further, the amended notice states that it is being filed under LBR 9014-1(f)(2), but then requires a written opposition no later than 14 calendar days before the hearing date. The notice conflates the procedures under LBR 9014-1(f)(1) and (f)(2). Written opposition is required 14 days before the hearing date only when notice under LBR 9014-(f)(1) is used. Because the motion states that it is being filed and served pursuant to LBR 9014-1(f)(2), no written opposition should have been required. As a result, the motion fails to comply with LBR 9014-1(d)(3) as it does not accurately advise potential respondents whether and when written opposition must be filed.

The court will deem the motion as having been brought pursuant to LBR 9014-1(f)(2) and waive the other defects.

MERITS

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

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

3. [14-11826](#)-A-7 SHAWNA EVANS MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 7-22-14 [[46](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

4. [14-11826](#)-A-7 SHAWNA EVANS CONTINUED MOTION TO CONFIRM
RSW-2 PLAN
SHAWNA EVANS/MV
6-5-14 [[35](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

5. [11-16328](#)-A-13 CHARLES THOMEY AND MOTION TO MODIFY PLAN
PK-3 TIFFANY RILEY-THOMEY 6-27-14 [[69](#)]
CHARLES THOMEY/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

6. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE
PK-3
ERIC LAFORTUNE/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GE CAPITAL RETAIL BANK
7-9-14 [[61](#)]

Final Ruling

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

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

Disposition: Granted

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

Collateral Value: \$500.00

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

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

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

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

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in an amount equal to the value of the collateral shown above and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

7. [14-12932](#)-A-13 ALICIA MARTINEZ
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
7-23-14 [[18](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled 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)(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 plan proposes to reduce a Class 2 secured claim based on the value of the collateral. The trustee objects on grounds of the debtor's failure to file a motion to value such claim that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

Since the trustee's objection was filed, however, the debtor has filed a motion to value collateral that is to be heard on this court's calendar. This valuation motion appears to address the trustee's motion. If that motion is granted finally, the court will overrule this objection as moot.

8. [14-12932](#)-A-13 ALICIA MARTINEZ
RSW-1
ALICIA MARTINEZ/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BENEFICIAL/HFC
8-5-14 [[21](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

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

Collateral Value: \$75,000

Senior Liens: \$108,334

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In*

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

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

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

9. [13-13633](#)-A-13 CRAIG/VICKI CARLSON MOTION TO INCUR DEBT
RSW-2 8-6-14 [[33](#)]
CRAIG CARLSON/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Medical]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to cover the costs of a knee surgery. Without the surgery, the debtor will be unable to go back to work. The court will grant the motion, and the trustee will approve the order as to form and content.

10. [09-18544](#)-A-13 JUAN/ANN PRIETO
DMG-5
JUAN PRIETO/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
5-14-14 [[161](#)]

No tentative ruling.

11. [13-13747](#)-A-13 DAVID/MICHELE KING
NLG-1
SETERUS, INC./MV
ROBERT WILLIAMS/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-9-14 [[81](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

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).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The moving party states on the stay relief summary sheet that the debtors have surrendered the property in their plan. Although the moving party's name does not appear in Class 3 of the plan, the court will assume that the moving party claim is listed in Class 3 under a different name than that of the moving party.

Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 2.10 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. The motion will be denied as moot. No effective relief can be awarded.

12. [14-12747](#)-A-13 CHRYSTAL ABBOTT
BRT-1
PLATINUM HOME MORTGAGE
CORPORATION/MV
NEIL SCHWARTZ/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY PLATINUM HOME MORTGAGE
CORPORATION
7-24-14 [[29](#)]

Final Ruling

The case dismissed August 19, 2014, the objection is denied as moot.

13. [14-13053](#)-A-13 JEFFREY HINOJOS

THE BANK OF NEW YORK MELLON/MV

PATRICK KAVANAGH/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
7-24-14 [[25](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained

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)(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.

CONFIRMATION

The objecting creditor states that the debtor's plan payment of \$1512 assumes that the debtor will have a second job that the debtor does not currently have. Schedule I filed with the petition shows expected income from a "Projected Second Job" at line 8h. Amended Schedule J shows net income of \$1512, which equals the plan payment.

The debtor's declaration states that he has completed his examination for an insurance license and is awaiting the license. The declaration also states that he has received unpaid training and expects to start work when the process is complete. He also anticipates reducing his housing costs by having a roommate.

While the court acknowledges the progress made toward a second job, the debtor has not secured this job on which the funding for his plan payment depends. The court does not find that the plan is feasible. Confirmation must be denied on this ground. The court will not consider the other grounds for objection.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such

date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The civil minute order shall be in substantially the following form:

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

14. [14-12354](#)-A-13 CHAIRRALYN WASHINGTON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-9-14 [[20](#)]
RANDY RISNER/Atty. for dbt.

Final Ruling

The installment due July 7, 2014 having been paid, the order to show cause is discharged and the case remains pending.

15. [14-11759](#)-A-13 KARLA SCHWEITZER CONTINUED MOTION TO DISMISS
MHM-2 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
7-8-14 [[42](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [14-11760](#)-A-13 JUSTIN/DESIREE LAY CONTINUED MOTION TO DISMISS
MHM-2 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
7-8-14 [[53](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

17. [14-11760](#)-A-13 JUSTIN/DESIREE LAY
RSW-1
JUSTIN LAY/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
6-20-14 [[35](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to September 17, 2014, at 9:00 a.m.

Order: Civil minute order

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

The trustee objects to confirmation because the plan reduces two Class 2 claims based on the value of the collateral: the claim of Chase and U.S. Department of HUD c/o Deval LLC. However, the debtor has resolved valuations of the Class 2 claim of Chase as of the hearing date. The resolution of the motion to value the Class 2 claim of U.S. Department of HUD c/o Deval LLC is pending, and the court will continue the hearing date for this objection to the continued hearing date on this valuation motion.

18. [14-11760](#)-A-13 JUSTIN/DESIREE LAY
RSW-2
JUSTIN LAY/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
DEPARTMENT OF HUD C/O DEVAL LLC
7-7-14 [[49](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Continued to September 17, 2014, at 9:00 a.m. to allow the filing of a supplemental proof of service no later than 14 days prior to the date of the continued hearing

Order: Civil Minute Order

The motion names the respondent as "U.S. Department of HUD c/o Deval LLC." The motion appears to have served an agent of Deval LLC. But the motion also attempts to serve the U.S. Department of HUD. The court does not find that service on the U.S. Department of HUD is sufficient. But if Deval LLC is the only party that the debtors want to serve, then service is proper. But if the U.S. Department of HUD is intended to be served, then service on such governmental agency is insufficient. The court does not decide which respondent is the correct one, leaving that choice to the expertise of counsel.

Service on federal government agencies must be made pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(5). Fed. R. Bankr. P. 7004(b)(5). Under this rule, service must be made both (1) on the agency, and (2) on the United States. See *id.* Rule 7004(b)(4) prescribes the manner of service on the United States and requires

service to be made to the attention of the civil process clerk at the U.S. attorney's office for this district and division and to the attention of the Attorney General of the United States at Washington, District of Columbia. Fed. R. Bankr. P. 7004(b)(4).

At the debtors' option, the court will either grant the motion or continue it to allow a supplemental service. If the motion is granted, the order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

19. [14-12360](#)-A-13 SERGIO BUENO
MHM-1
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
7-23-14 [[26](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [14-11162](#)-A-13 DENNIS/LASHANE WILLIAMS
MHM-2
MICHAEL MEYER/MV
CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
7-8-14 [[38](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

21. [14-12569](#)-A-13 DAVID MURBACH
DMG-1
DAVID MURBACH/MV
D. GARDNER/Atty. for dbt.
MOTION TO CONFIRM PLAN
6-26-14 [[21](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

1987).

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

22. [14-12569](#)-A-13 DAVID MURBACH
MHM-2
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING,
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
7-31-14 [[38](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [14-12769](#)-A-13 ELEODORO/MARGARITA
MHM-1 VASQUEZ
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
7-22-14 [[25](#)]
- PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

24. [14-10570](#)-A-13 RAYMUNDO DOMINGUEZ AND
ALP-1 MARTHA SOLIS
WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
BALPREET THIARA/Atty. for mv.
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-10-14 [[32](#)]

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part (stay relief under § 362(d)(1)), denied in part (relief under § 362 (d)(4) and attorneys fees)

Order: Prepared by moving party (see specific instructions below)

Subject: 375 Rhine Street, Daly City, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The debtor does not oppose relief under § 362(d)(1) but object to relief under § 362(d)(4).

Subsection (d)(4) of § 362 allows a creditor having a claim secured by real property relief from stay "of an act against real property . . . if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme may involve either (i) unauthorized transfer of an interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such real property. *Id.* § 362(d)(4)(A)-(B).

Insufficient facts and evidence have been presented for the court to conclude that the debtors filed their petition as part of a scheme to delay, hinder or defraud the moving creditor. No facts show that the debtor took any action to obtain an interest in the real property or that this case is anything other than a "real estate dumping or hijacking" incident. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The moving party has not shown that the debtor filed its case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the unauthorized quit claim deed, "Raymundo Dominguez, A Single Man" is in fact the same person as the joint debtor named as the grantee. The petition indicates that the debtor is married and not a single man. And many persons with this name could reside in California. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Thus, the property may not even be property of the estate.

The court will grant the motion in part and deny the motion in part. The borrower—who is not the debtor—has missed 3 payments since the debtor filed the petition, even though the debtor may have nothing to do with this delinquency. To the extent that the property may be property of the estate affected by the debtors' bankruptcy, relief from stay under § 362(d)(1) is granted to allow the creditor to foreclose on the real property.

The request for relief under § 362(d)(4) is denied, and the order shall not reference § 362(d)(4) nor shall it state that the debtor was part of a scheme to delay, hinder or defraud creditors. The request for attorneys' fees is also denied, as is the request for binding relief despite conversion of the case to a case under any other chapter of the Bankruptcy Code.

25. [09-10374](#)-A-13 BERNICE MCCOY
MHM-1
MICHAEL MEYER/MV
STEVEN STANLEY/Atty. for dbt.

CONTINUED OBJECTION TO
DISCHARGE BY MICHAEL H. MEYER
5-22-14 [[56](#)]

Tentative Ruling

The matter will be continued to October 22, 2014, at 9:00 a.m.

26. [09-10374](#)-A-13 BERNICE MCCOY
SMS-1
BERNICE MCCOY/MV

STEVEN STANLEY/Atty. for dbt.

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

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Continued to October 22, 2014, at 9:00 a.m.; no later than September 24, 2014, counsel will file a statement indicating that counsel has complied with the procedural requirements imposed by this ruling

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).

MERITS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC

3-191 required under LBR 5009-1.

At the continued hearing on October 22, 2014, if the procedural requirements below have been met, the court will grant the motion, and the order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328."

PROCEDURAL COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037 in filing the motion or the supporting papers. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than September 10, 2014. A redacted copy of any sealed documents will be filed to replace such sealed documents. The court will continue the hearing on this matter until the attorney files a supplemental declaration that describes what actions were taken to comply with Rule 9037 for all papers filed in connection with this matter.

27. [14-12585](#)-A-13 ANTONIO GARCIA AND
MHM-1 CHRISTINA MUNOZ-GARCIA
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
7-23-14 [[25](#)]

WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

An amended plan filed, the objection is overruled as moot.

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

28. [10-19987](#)-A-13 ARIEL/MIRNA DIAZ
RSW-8
MIRNA DIAZ/MV
MOTION TO WAIVE FILING OF
DEBTOR'S 11 USC 1328
CERTIFICATE
7-11-14 [[126](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party

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

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

The order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328."

29. [11-63487](#)-A-13 KENNETH/BARBARA HARRIS MOTION TO MODIFY PLAN
PK-5 7-3-14 [[89](#)]
KENNETH HARRIS/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

30. [11-19692](#)-A-13 CHARLES/MYLENE GABRIEL
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
7-28-14 [[76](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

10:30 a.m.

1. [14-11918](#)-A-7 MARIO HART

PRO SE REAFFIRMATION AGREEMENT
WITH STERLING JEWELERS INC DBA
KAY JEWELERS
7-8-14 [[13](#)]

CURTIS FLOYD/Atty. for dbt.

No tentative ruling.

1:00 p.m.

1. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR PROTECTIVE ORDER
PWG-1 8-4-14 [[74](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

No tentative ruling.

2. [12-11008](#)-A-7 RAFAEL ALONSO MOTION TO COMPEL
VG-5 6-13-14 [[34](#)]
VINCENT GORSKI/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
ORDER RESTORING HEARING DTD
7/30/14
RESPONSIVE PLEADING

No tentative ruling.

3. [13-17909](#)-A-7 WILLIE BAKER MOTION TO COMPROMISE
KDG-6 CONTROVERSY/APPROVE SETTLEMENT
RANDELL PARKER/MV AGREEMENT WITH WILLIAM D. BAKER
7-30-14 [[101](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: William Baker and the trustee, Randall Parker

Dispute Compromised: An adversary proceeding against William Baker to compel turnover of property, to avoid transfer and preference payment and for recovery of transfer, declaratory relief, and claim objection, and related trustee's objection to debtor's exemptions

Summary of Material Terms:

—The settlement provides William Baker with half of the proceeds (\$19,745.42) less the amount William Baker owes to the debtor (\$1255.69) for a net amount of \$18,489.73.

—William Baker's Claim of \$40,000 will be reduced by the net settlement amount (\$18,489.73) and allowed for \$21,510.27.

—Though not mentioned in the motion or supporting memorandum, debtor withdraws her claim of exemption in 1409 Lookout Lane, Bakersfield in the amount of \$7,178.52, and the trustee will also withdraw his objection to the debtor's claim of exemption in the 2012 Honda (totaling approximately \$18,135), and the debtor is barred from amending her exemptions. Order on Tr.'s Obj. to Debtor's Exemptions, Aug. 2, 2014, ECF No. 108.

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).

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.

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

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

No tentative ruling.

5. [14-13017](#)-A-7 MICHAEL NICHOLSON-CURTIS
MICHAEL NICHOLSON-CURTIS/MV
GINGER MARCOS/Atty. for dbt.

MOTION TO AVOID LIEN OF
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB
7-7-14 [[17](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT SERVICE

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R.

Application: First and Final Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved in part only as to the amounts requested and denied in part as to the timing of payment
Order: Prepared by applicant

Applicant: M. Kathleen Klein

Compensation approved: \$2,461.00

Costs approved: \$154.52

Aggregate fees and costs approved in this application: \$2,615.52

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 "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

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

7.	14-12821 -A-7 DANIEL/JUDEE SWAINSTON LKW-1 DANIEL SWAINSTON/MV LEONARD WELSH/Atty. for dbt. ORDER RESTORING HEARING DTD 7/29/14	MOTION TO AVOID LIEN OF STEVEN J. PELLE 6-10-14 [9]
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Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted in part (as the amount of the judicial lien avoided below); denied in part (as to the amount of the judicial lien not avoided)

Order: Prepared by moving party

Liens Plus Exemption: \$630,114.00

Property Value: \$397,500.00

Judicial Lien Avoided: \$232,614.00

Judicial Lien Not Avoided: \$386.00

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

LEGAL STANDARDS

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).

ANALYSIS

The debtors assert that two judicial liens held by Steven J. Pelle impair their exemptions in their residential real property located at 7108 Topaz Lane, Bakersfield, California. As discussed, these two liens may be avoided only to the extent that they impair the debtors' exemptions.

The exhibits include copies of two abstracts of judgment recorded in the Kern County Official Records. Both abstracts list the judgment creditor as Steven J. Pelle. Both abstracts show that the underlying judgment was entered on July 26, 2012. The court does not know whether these two abstracts reflect a single judgment of \$250,000 or two different judgments held by Pelle for the same amount against the debtors.

But the court need not resolve whether Pelle holds two separate underlying judgments or whether his abstracts reflect a single judgment. The debtors' unopposed assertion establishes that the abstracts of judgment recorded by Pelle secure repayment of about \$233,000 of judgment debt held by Pelle.

The value of the debtor's exemption in the 7108 Topaz Lane property is \$14,114.00. The property is encumbered by a consensual lien securing a balance of \$383,000 (Cenlar, FSB deed of trust). The value of the property is \$397,500.

The court finds that the liens, exemption amount, and property's value are as set forth above. The motion is granted in part and denied in part because the responding party's judicial liens (\$233,000), all other liens (\$383,000), and the exemption amount (\$14,114) together (\$630,114) do not exceed the property's value (\$397,500) by an amount equal to the entire debt secured by the responding party's lien. The responding party's lien is not avoided to the extent set forth above. The balance of respondent's lien is avoided.

The court notes that the lien would be avoidable in its entirety if the debt owed to Cenlar, FSB were \$383,386 as shown on the copy of Schedule D attached as an exhibit. But the motion states that such debt is \$383,000. At the hearing, the debtors will clarify whether the \$383,000 figure in the motion is a result of a typographical

error, in which case the court will grant the motion entirely and avoid the judgment creditor's lien entirely.

8. [14-12821](#)-A-7 DANIEL/JUDEE SWAINSTON MOTION TO COMPEL ABANDONMENT
LKW-2 7-23-14 [[16](#)]
DANIEL SWAINSTON/MV
LEONARD WELSH/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 7108 Topaz Lane, Bakersfield, CA

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

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).

9. [13-11347](#)-A-7 CHRISTOPHER BURGONI TRUSTEE'S FINAL REPORT
ORC-1 6-24-14 [[45](#)]
LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

10. [14-11947](#)-A-7 MANUEL ALEMAN
RP-1
RANDELL PARKER/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO SELL
7-31-14 [[52](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Liquor License

Buyer: Debtor

Sale Price: \$20,000 (\$5,000 cash plus exemption credit of \$15,000)

Sale Type: Private sale subject to overbid opportunity

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

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

11. [13-10752](#)-A-7 MARK/BARBARA SHIRES
TSB-2
RANDELL PARKER/MV
VINCENT GORSKI/Atty. for dbt.

MOTION TO EMPLOY SINCLITICO &
BURNS AS SPECIAL COUNSEL
4-11-14 [[36](#)]

No tentative ruling.

12. [13-16258](#)-A-7 JAMES/ETHEL ANTHONY
TGF-4

AMENDED MOTION FOR COMPENSATION
FOR VINCENT A. GORSKI,
TRUSTEE'S ATTORNEY(S).
7-29-14 [[38](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: The Gorski Firm, APC

Compensation approved: \$2276.00

Costs approved: \$429.13

Aggregate fees and costs approved in this application: \$2705.13

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

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

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

13. [14-13577](#)-A-7 LARRY/NANCY REMESAL ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-31-14 [[11](#)]
\$29.00 FEE PAID 7/31/14

Final Ruling

The fee paid, the order to show cause is discharged and the case remains pending.

14. [14-13692](#)-A-7 PRIMITIVO VALDEZ AND MOTION TO COMPEL ABANDONMENT
LKW-1 DELMI FERNANDEZ 7-30-14 [[9](#)]
PRIMITIVO VALDEZ/MV
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Maintenance and repair business

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

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

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

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

15. [14-11594](#)-A-7 MICHAEL/SARAH PALMER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-14 [[36](#)]
- \$20.00 INSTALLMENT PAID
7/16/14

Final Ruling

The fee paid, the order to show cause is discharged and the case which has now been converted remains pending.

16. [14-13196](#)-A-7 SAMUEL CANTU ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-14 [[16](#)]
- DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

17. [12-11899](#)-A-7 CRAIG/SANDRA SCHARPENBERG MOTION FOR COMPENSATION BY THE
DMG-3 LAW OFFICE OF YOUNG WOOLDRIDGE,
LLP FOR D. MAX GARDNER,
TRUSTEE'S ATTORNEY(S)
7-25-14 [[67](#)]

LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

The motion is denied without prejudice. The motion is unsupported by the consent of the trustee.

18. [12-11899](#)-A-7 CRAIG/SANDRA SCHARPENBERG MOTION FOR COMPENSATION FOR M.
MKK-2 KATHLEEN KLEIN, ACCOUNTANT(S)
M. KLEIN/MV 8-1-14 [[71](#)]
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: M. Kathleen Klein, Certified Public Accountant

Compensation approved: \$856.50

Costs approved: \$63.98

Aggregate fees and costs approved in this application: \$920.48

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).

PROCEDURAL ISSUES

Notice Procedures under Local Bankruptcy Rules

The application was not noticed properly pursuant to the court's local rules. The notice filed by the applicant requires written opposition, and requires such opposition no later than 14 days preceding the hearing or continued hearing date. The applicant therefore has selected the notice procedure under Local Bankruptcy Rule 9014-1(f)(1), which requires that the motion be served no later than 28 days prior to the hearing date and that opposition be served and filed with the court at least 14 days prior to the hearing date or continued hearing date. The notice of hearing must also inform parties of whether and when written opposition is required. LBR 9014-1(d)(3).

But here, the notice of hearing was not transmitted to all creditors and parties in interest by the deadline required under the notice procedure of LBR 9014-1(f)(1). The notice of hearing was transmitted to all creditors and parties in interest on August 1, 2014, which is only 19 days before the hearing date. Potential respondents had less than 14 days to oppose the motion if they were to file opposition no

later than August 6, 2014. In fact, given that the notice was mailed, respondents likely had little or no time at all to file opposition after receiving the notice.

Because less than 28 days' notice of the hearing was given to all creditors and parties in interest, the court will deem the motion as having been noticed under Local Bankruptcy Rule 9014-1(f)(2). See LBR 9014-1(f)(1) (when written opposition is required no later than 14 days before the hearing, then at least 28 days' notice of the motion must be given), (f)(2) (when fewer than 28 days' notice is required, no written opposition shall be required and the motion must be noticed at least 14 days before the hearing).

Notice Procedures under Federal Bankruptcy Rules

The application was not required to be noticed to all creditors by the federal bankruptcy rules. The Federal Rules of Bankruptcy Procedure do not require a notice of an application for compensation that does not exceed \$1000.00. Fed. R. Bankr. P. 2002(a)(6). Such an application may be brought ex parte. *Id.* But if an application is noticed to all creditors even though notice is not required, such notice should nevertheless be consistent with the court's local rules as indicated above. See LBR 9014-1(d), (f).

COMPENSATION APPLICATION

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

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

1:15 p.m.

1.	<u>11-62509</u> -A-7	SHAVER LAKEWOODS	CONTINUED STATUS CONFERENCE
	<u>14-1003</u>	DEVELOPMENT INC.	COMPLAINT
	PARKER V. RODRIGUEZ		1-6-14 [<u>1</u>]
	MARK WHITTINGTON/Atty. for pl.		
	RESPONSIVE PLEADING		

Final Ruling

The status conference is continued to September 17, 2014, at 1:15 p.m. Not later than 14 days prior to the continued status conference, the parties shall each file and serve a memorandum of points and authorities addressing a right to a jury trial on the issues raised by the complaint and counter-claim. The court will issue a civil minute order.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO STRIKE
[14-1003](#) DEVELOPMENT INC. KDG-4 7-10-14 [[69](#)]
 PARKER V. RODRIGUEZ
 MARK WHITTINGTON/Atty. for mv.
 RESPONSIVE PLEADING

Final Ruling

Counter-Defendant Randell Parker's motion to strike is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings shall be filed by either party in this matter. The court will issue a civil minute order.

3. 11-62509-A-7 SHAVER LAKEWOODS MOTION FOR SUMMARY JUDGMENT
14-1003 DEVELOPMENT INC. KDG-5 AND/OR MOTION FOR SUMMARY
PARKER V. RODRIGUEZ ADJUDICATION
7-23-14 [74]

MARK WHITTINGTON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Randell Parker's motion for summary judgment is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings or evidence shall be filed by either party in this matter. The court will issue a civil minute order.

4. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED STATUS CONFERENCE
[14-1004](#) DEVELOPMENT INC. COMPLAINT
PARKER V. LOO 1-6-14 [[1](#)]
MARK WHITTINGTON/Atty. for pl.

Final Ruling

The status conference is continued to September 17, 2014, at 1:15 p.m. Not later than 14 days prior to the continued status conference, the parties shall each file and serve a memorandum of points and authorities addressing a right to a jury trial on the issues raised by the complaint and counter-claim. The court will issue a civil minute order.

5. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO STRIKE
 [14-1004](#) DEVELOPMENT INC. KDG-4 7-10-14 [[64](#)]
PARKER V. LOO
MARK WHITTINGTON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Counter-Defendant Randell Parker's motion to strike is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings shall be filed by either party in this matter. The court will issue a civil minute order.

6. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR SUMMARY JUDGMENT
 [14-1004](#) DEVELOPMENT INC. KDG-5 AND/OR MOTION FOR SUMMARY
PARKER V. LOO ADJUDICATION
 7-23-14 [[69](#)]
MARK WHITTINGTON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Randell Parker's motion for summary judgment is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings or evidence shall be filed by either party in this matter. The court will issue a civil minute order.

7. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED STATUS CONFERENCE
 [14-1005](#) DEVELOPMENT INC. COMPLAINT
PARKER V. NUNEZ
1-6-14 [[1](#)]
MARK WHITTINGTON/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to September 17, 2014, at 1:15 p.m. Not later than 14 days prior to the continued status conference, the parties shall each file and serve a memorandum of points and authorities addressing a right to a jury trial on the issues raised by the complaint and counter-claim. The court will issue a civil minute order.

8. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO STRIKE
[14-1005](#) DEVELOPMENT INC. KDG-4 7-10-14 [[64](#)]
PARKER V. NUNEZ

MARK WHITTINGTON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Counter-Defendant Randell Parker's motion to strike is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings shall be filed by either party in this matter. The court will issue a civil minute order.

9. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR SUMMARY JUDGMENT
[14-1005](#) DEVELOPMENT INC. KDG-5 AND/OR MOTION FOR SUMMARY
PARKER V. NUNEZ
ADJUDICATION

7-23-14 [[69](#)]

MARK WHITTINGTON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Randell Parker's motion for summary judgment is continued to September 17, 2014, at 1:15 p.m. The record is closed. LBR 9014-1(f). No further pleadings or evidence shall be filed by either party in this matter. The court will issue a civil minute order.

10. [13-17909](#)-A-7 WILLIE BAKER CONTINUED STATUS CONFERENCE
[14-1048](#) COMPLAINT
PARKER ET AL V. BAKER 4-22-14 [[1](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to October 22, 2014, at 1:15 p.m. to allow the parties to memorialize and effectuate settlement. If the adversary proceeding has not been dismissed, not later than October 8, 2014, the parties shall file a status report.

11. [13-11347](#)-A-7 CHRISTOPHER BURGONI
[13-1099](#)
BOARD OF TRUSTEES OF THE KERN
COUNTY ELECTRICAL PE V.
MARK BAGULA/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT
9-11-13 [[1](#)]

Final Ruling

The status conference is continued to September 17, 2014, at 1:15 p.m.

1:30 p.m.

1. [14-12805](#)-A-7 JUAN ARAIZA
KAZ-1
NATIONSTAR MORTGAGE LLC/MV
STEVEN ALPERT/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-23-14 [[13](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Continued to September 17, 2014 at 1:30 p.m. A supplemental proof of service shall be filed no later than 14 days before the continued hearing date.

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are the parties against whom relief is sought by a motion for relief from the automatic stay.

In this case, the motion did not comply with Rules 7004 and 9014 as service was insufficient. If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was properly made on the debtor's attorney.

Federal Rule of Civil Procedure 5(b) includes service by electronic means if the person has consented in writing. Fed. R. Civ. P. 5(b)(2)(E). Local Bankruptcy Rule 7005-1 permits a registered user of the court's electronic filing system to consent to receive service by electronic means under Federal Rule of Civil Procedure 5(b)(2)(E). This local rule describes how consent is accomplished. The Clerk maintains a roster of names and email addresses of registered users of

the court's electronic filing system who have consented to service by electronic means. LBR 7005-1(c). It further specifies the method of service by electronic means upon those who have consented to such service. LBR 7005-1(d).

In this case, service was not properly made because the attorney was not served at the correct email address shown appearing on the roster described in LBR 7005-1(c).

2. [14-13310](#)-A-7 LAWRENCE/PATRICE LABLUE MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
FIFTH THIRD MORTGAGE 7-17-14 [[9](#)]
COMPANY/MV
STEVEN STANLEY/Atty. for dbt.
CHRISTINA O/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: 6951 Buick Dr., Indianapolis, Indiana

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

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

3. [14-12871](#)-A-7 VERNON WARNER
ABG-1
KINECTA FEDERAL CREDIT
UNION/MV
CURTIS FLOYD/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-30-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Dodge Ram 1500 Truck

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

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

4. [14-11478](#)-A-7 LANCE/JANICE ST PIERRE
TRM-53
HILTON GRAND VACATIONS
MANAGEMENT, LLC/MV
VINCENT GORSKI/Atty. for dbt.
THOMAS MULALLY/Atty. for mv.
DISCHARGED

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-23-14 [[43](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Timeshare located at 455 Karen Ave., Las Vegas, NV

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).

PROCEDURE

The continued notice of hearing was improperly noticed under the court's local rules. The motion and notice of continued hearing was served on July 30, 2014 for a hearing on August 20, 2014. If the notice procedure of LBR 9014-1(f)(1) is used so that written opposition is required at least 14 days before the hearing, then the motion and notice must be served no later than 28 days before the hearing. Here, the motion and notice of continued hearing were served 21 days before the continued hearing date. This was insufficient. The court will treat the motion as having been noticed under LBR 9014-1(f)(2).

MERITS

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.

5.	14-13184 -A-7 NEIL HOYLE APN-1 SANTANDER CONSUMER USA INC./MV ROBERT WILLIAMS/Atty. for dbt. AUSTIN NAGEL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-23-14 [12]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2013 Jeep Compass

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.

6. [12-16788](#)-A-7 JOHN/LINDA ALZIEBLER MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
FREEDOM HOME MORTGAGE 7-8-14 [[35](#)]
CORPORATION/MV
NEIL SCHWARTZ/Atty. for dbt.
CHRISTINA O/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 22311 Elm, Tehachapi, California

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

7. [13-16694](#)-A-7 BERNARD/BERTIE WINTERS MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
WILMINGTON TRUST, NATIONAL 7-10-14 [[15](#)]
ASSOCIATION/MV
CYNTHIA SCULLY/Atty. for dbt.
HALIE LEONARD/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 504 Gargano Street, Bakersfield, California

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

1:45 p.m.

1. [14-12637](#)-A-11 TOURE/ROLANDA TYLER
LKW-2
TOURE TYLER/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF INOCENCIO AND
NOEMI MADERA
6-26-14 [[42](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

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

Disposition: Granted

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

Collateral Value: \$800,000.00

Secured Claim - 1st Deed of Trust: \$800,000.00

Secured Claim - 2nd Deed of Trust: \$0.00

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

MADERA'S FIRST DEED OF TRUST

The motion requests that the court value nonresidential real property that is the responding party's collateral. The court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount shown above for the first deed of trust (equal to the value of the collateral unencumbered by senior liens) and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

MADERA'S SECOND DEED OF TRUST

The motion requests that the court value nonresidential real property that is the responding party's collateral. The court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount shown above for the second deed of trust (equal to the value of the collateral unencumbered by senior liens) and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

DEBTOR'S RESPONSE

The creditors, Inocencio and Noemi Madera, have filed a response. This response, however, not dispute the value of the collateral stated in the motion nor does it oppose the relief requested on any legitimate grounds. Accordingly, the court will treat the value of the collateral requested by the debtors as undisputed. The arguments raised by the debtor are irrelevant to the value of the collateral. The court does not rule on any requests made in the debtor's response to the motion.