

UNITED STATES BANKRUPTCY COURT

Eastern District of California

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

WEDNESDAY

August 21, 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, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [13-14406](#)-A-7 RONALD/LYNN THOMAS MOTION TO COMPEL ABANDONMENT
PBB-1 8-6-13 [[14](#)]
RONALD THOMAS/MV
PETER BUNTING/Atty. for dbt.
NON-OPPOSITION

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no written opposition required—non-opposition filed by trustee

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

Order: Prepared by moving party

Business Description: Ron Thomas Construction (Construction / Home Remodeling)

The trustee has filed a non-opposition to the motion. No other 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.

2. [13-13910](#)-A-7 JAMES HOLTERMANN MOTION TO DISMISS CASE
RHT-1 7-17-13 [[12](#)]
JAMES HOLTERMANN/MV
GREG BLEVINS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [13-13911](#)-A-7 KENNETH/JENNINE SEARCY MOTION TO DISMISS CASE
RHT-1 7-17-13 [[13](#)]
ROBERT HAWKINS/MV
GREG BLEVINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [13-13812](#)-A-7 CHARLES COX AND BARBARA OPPOSITION RE: TRUSTEE'S MOTION
PFT-1 WILLIAMS-COX TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-9-13 [[10](#)]

JOEL WINTER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Deadlines

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

Disposition: Granted in part, conditionally denied in part

Order: Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion. The court will deny the motion to dismiss subject to the condition that debtor attend the continued meeting of creditors.

Certain deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is August 30, 2013, at 9:30 a.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

The motion will be granted in part and conditionally denied in part. The motion will be granted to the extent it requests extension of certain deadlines so that they run from the continued date of the meeting of creditors. The motion will be conditionally denied in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor appear at the continued meeting of creditors, but if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

5. [09-12615](#)-A-7 JOSE/LAUDELINA AZEVEDO
TOG-4

CONTINUED ORDER TO SHOW CAUSE
AS TO PETER J. DEAN AND CENTRAL
VALLEY DAIRYMEN, INC. RE:
CONTEMPT
4-15-13 [[31](#)]

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADINGS

Tentative Ruling

Motion: Order to Show Cause Contempt

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

Disposition: Schedule Evidentiary Hearing

Order: Civil minute order

This is the second hearing on this matter. At the first hearing, the court set a discovery cut off of August 20, 2013. See, Civil Minute Order, June 3, 2013, ECF No. 45. Discovery now closed, the court will set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: (1) whether the defendants, or any of them, have violated the discharge injunction of 11 U.S.C. § 524, and the damages therefrom; (2) whether Joe Azevedo and Jose Azevedo are the same person; (3) whether defendants' had notice of the bankruptcy; (4) whether Jose Azevedo continued to participate in *Nunes v. Central Valley Dairyman*, No. 147653 (Merced County Superior Court 2004), and if so, whether he waived his rights under § 524 by doing so; and (5) whether any debt to the defendants was excepted from discharge by 11 U.S.C. § 523(a)(3), and *In re Beezley*, 994 F.2d 1433, 1435 (9th Cir. 1993), and the impact of that on present proceedings.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) the dates for the evidentiary hearing and the trial time that will be required; (iii) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (iv) any other such matters as may be necessary or expedient to the resolution of these issues.

After the hearing, the court will issue a pretrial order.

6. [13-14420](#)-A-7 MANUEL LOPEZ
SAC-1
MANUEL LOPEZ/MV
7-12-13 [[13](#)]
SCOTT COBEN/Atty. for dbt.
NON-OPPOSITION

CONTINUED MOTION TO COMPEL
ABANDONMENT

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2) / Continued date of the hearing; no written opposition required—trustee has entered a statement of non-opposition on the docket

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

Order: Prepared by moving party

Business Description: J and M Gonzalez Trucking Inc.

At the prior hearing, the court continued the hearing to allow the trustee to file opposition by August 14, 2013. The trustee entered a statement of non-opposition on the docket. No other opposition has been raised or filed.

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.

7. [12-16235](#)-A-7 JULIE EASLEY
PFT-1
PETER FEAR/MV
GRISELDA TORRES/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SELL
7-10-13 [[34](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: One-half interest in real property located at 35051 Avenue 13 1/4, Madera, CA

Buyer: Debtor

Sale Price: \$35,500.00 cash

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.

8. [13-12349](#)-A-7 MICHAEL/ROSEMARY TALMADGE OBJECTION TO DEBTORS' CLAIM OF
JES-1 EXEMPTIONS
JAMES SALVEN/MV
6-7-13 [[18](#)]
JOSEPH ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Claim of Exemptions

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

Disposition: Continued to September 4, 2013, at 9:00 a.m.

Order: Civil minute order if appropriate

The hearing on the trustee's objection to the debtors' claim of exemptions will be continued to September 4, 2013, at 9:00 a.m. to coincide with the debtors' pending motion to convert their Chapter 7 case to a Chapter 13 case. If the court decides to grant the debtors' conversion motion, such decision will render the trustee's objection the claim of exemptions moot.

9. [13-10150](#)-A-7 DEBRA DAVIS
JES-1
JAMES SALVEN/MV
5-13-13 [[42](#)]
WILLIAM COLLIER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS

Tentative Ruling

Objection: Debtor's Claim of Exemptions

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

Disposition: Continued for evidentiary hearing

Order: Civil minute order

This is the second hearing on this matter. At the first hearing, the court set a discovery cut off of August 19, 2013. Civil Minutes, June 19, 2013, ECF No. 56. Discovery now closed and the court will set an evidentiary hearing.

BACKGROUND

The debtor claimed exemptions in a 1996 horse trailer valued at \$3,500.00, a 2003 Kawasaki off-road motorcycle valued at \$500.00, and a New Holland Tractor and other various farm implements and equipment together valued at \$2,700.00 ("Personal Property"). Am. Schedule C, ECF No. 33. The debtor has exempted the Personal Property as tools of the debtor's trade under section 703.140(b)(6) of the California Code of Civil Procedure. Cal. Civ. Proc. Code § 703.140(b)(6).

The debtor owns a corporation named Sport Equine Incorporated that has filed a separate bankruptcy case. Sport Equine Incorporated has been designated as Case No. 13-10149. The addresses provided on the petition for Sport Equine Incorporated and the individual debtor in this case are the same.

PROPERTY OF THE ESTATE

The court is uncertain whether the trustee is raising the issue that the Personal Property is owned by the corporation and therefore may not be exempted on such ground. In any event, if a question arises about whether property claimed exempt is property of the estate, then a bankruptcy court must determine first whether the property is property of the estate. "The exemption question arises only if the [property is] first determined to be property of the estate. In fact, if the [property is] not property of the estate, the bankruptcy court should not make a decision on the exemption question." *Ehrenberg v. S. Cal. Permanente Med. Grp. (In re Moses)*, 167 F.3d 470, 474 (9th Cir. 1999) (quoting *Spirtos v. Moreno (In re Spirtos)*, 992 F.2d 1004, 1007 (9th Cir. 1993)).

If the trustee contends that the Personal Property cannot be exempted because it is not property of the estate, then the trustee has not raised such issue in the procedurally proper manner. The trustee must file an adversary proceeding as the proper procedure for seeking such a determination. Fed. R. Bankr. P. 7001(2) (listing as a proceeding to determine "other interest in property" as an adversary proceeding); see also *Cogliano v. Anderson (In re Cogliano)*, 355 B.R. 792, 805 (B.A.P. 9th Cir. 2006). In the absence of such an adversary proceeding, the court will presume that the schedules are accurate in listing the Personal Property as property of the estate.

DISPUTE REGARDING EXISTENCE OF TRADE OR BUSINESS

The trustee asserts that the "[t]rade or business to which claim is made was operated by a corporate entity" which the debtor owns entirely and which has filed a separate bankruptcy case. The trustee argument appears to be that the debtor does not have a trade or business in which the Personal Property is used because (i) the trade or business to which the Personal Property relates is operated by a corporate entity and not the debtor, (ii) there is no trade or business in which the Personal Property could be used because the corporation makes no money and is operated as a cooperative among friends for boarding horses, and (iii) operating a facility for horse boarding or rescue is the debtor's passion and not a money-making activity sufficient to qualify for a trade or business.

In her response, the debtor contends that she has a number of different trades or skills and activities. These are not limited to boarding and rescue. She asserts that she is as an equestrian rider, trainer and caregiver. She boards horses, but also trains and sells horses. She also teaches riding and horsemanship skills. The debtor states by declaration that she makes her living by these activities. In other words, the debtor states that she is engaged in for profit and non-profit endeavors and activities. She also asserts that the corporation (Sport Equine Inc.) was formed for the purpose of the non-profit rescue operation to provide services and fundraising for horses to be rescued.

EVIDENTIARY HEARING REQUIRED

At the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

The court identifies the following factual issues: (1) whether the debtor has a trade, business, or occupation in which she may claim the Personal Property exempt as tools of the trade under section 703.140(b)(6) of the California Code of Civil Procedure (whether such trade is boarding, training, caregiving, or selling horses and whether such trade is operated by her corporation or herself individually as a sole proprietorship), *see, e.g., In re Vigil*, 101 B.R. 189, 190-91 (Bankr. N.D. Cal. 1989) (applying similar exemption for tools of the trade under section 704.060(a)(3) and finding that even if debtor has no current business does not mean the debtor does not have a trade or occupation to which the tools are necessary); and (2) whether such Personal Property is necessary to such trade, business, or occupation.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) the dates for the evidentiary hearing and the trial time that will be required; (iii) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (iv) any other such matters as may be necessary or expedient to the resolution of these issues.

After the hearing, the court will issue a pretrial order.

10. [13-13753](#)-A-7 EDWARD/DENISE CENTENO
KMM-1
EDWARD CENTENO/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
7-23-13 [[12](#)]

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); 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: Sole proprietorship consisting of the following businesses: (i) breeding cats, and (ii) farming and raising chickens and selling eggs

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); 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.

11. [13-13160](#)-A-7 TONJA KING
JES-1
JAMES SALVEN/MV
BRET ADAMS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-24-13 [[16](#)]

Tentative Ruling

Objection: Claim of Exemptions

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

Disposition: Sustained in part; overruled in part

Order: Civil minute order pursuant to the instructions below

The Chapter 7 trustee objects to the debtor's claim of exemptions on two grounds. First, the trustee objects to the debtor's claim of an exemption of 100% of the recovery of a class action lawsuit listed with a recovery value that is "unknown." Second, the trustee objects to the debtor's claim of an exemption in unpaid earnings under §

706.050 of the California Code of Civil Procedure. The debtor opposes the objection but only as to the second ground.

EXEMPTION IN LAWSUIT

The debtor has not made any argument in opposition to objection to her exemption in a class action lawsuit listed on Schedule C. The lawsuit is claimed exempt under section 704.140 of the California Code of Civil Procedure. Section 704.140 allows for an exemption in a *personal injury* cause of action. Cal. Civ. Proc. Code § 704.140(a).

Schedule A discusses cracks and defects in the debtor's single family home. At the end of the description of defects, a reference is made to the "class action law suit against Centex homes listed in personal property." This appears to be the same class action lawsuit listed on Schedule C.

The lawsuit appears to be for structural damage to the debtor's real property, not injury to the debtor's person. Without more detail provided on Schedule C, and because the debtor has not addressed the trustee's opposition, the court concludes that the class action lawsuit against a homebuilder is not a personal injury lawsuit.

EXEMPTION IN UNPAID EARNINGS

Whether Unpaid Disposable Unpaid Earnings May be Claimed Exempt

The debtor has claimed an exemption in earned, but unpaid, wages under section 706.050 of the California Code of Civil Procedure. The language on Schedule C describes the funds in which the exemption is claimed as earnings "owed to Debtor . . . after deductions." The trustee objects on grounds that section 706.050 does not apply to claims of exemption in bankruptcy.

Under California law, a debtor in bankruptcy may claim one of two sets of exemptions. A debtor may claim the regular state exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) (the "regular state exemptions"). A debtor may also claim the special bankruptcy exemptions available to California debtors in bankruptcy under section 703.140(b) ("special bankruptcy exemptions"). But a debtor may not claim exemptions from both sets of exemptions. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

Here, the debtor elected the regular state exemptions, not the special bankruptcy exemptions under section 703.140(b). The debtor is not attempting to use exemptions from both sets of exemptions. She relies on section 706.050, a statutory provision in a different chapter of the same division entitled "Enforcement of Money Judgments," which is Chapter 5 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure. See *id.* § 706.050.

Nothing in Chapter 4 prohibits a debtor's use of exemptions outside Chapter 4 in bankruptcy. See, e.g., *In re Lantz*, No. 07-13481, 2009 WL 113729, at *3 (Bankr. E.D. Cal. Jan. 13, 2009) (Rimel, J.) (finding that debtor relying on section 703.140(b) exemptions could rely on similar version of exemption statute for unpaid earnings under Chapter 5, section 706.050). Section 703.140(a) prohibits only the simultaneous use of both exemption schemes found in Chapter 4, the regular state exemptions and the special bankruptcy exemptions under section 703.140(b). See *id.* § 703.140(a).

Furthermore, a substantial portion of an employee's unpaid earnings are exempt under Chapter 4 because they are not subject to enforcement of a money judgment. Section 704.210 provides that "[p]roperty that is not subject to enforcement of a money judgment is exempt without making a claim." Cal. Civ. Proc. Code § 704.210. A substantial portion of disposable earnings held by an employer is not subject to enforcement of a money judgment under Chapter 5 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure.

Section 706.020 provides that "[e]xcept for an earning assignment order for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any *judicial procedure other than pursuant to this chapter.*" *Id.* § 706.020 (emphasis added). Section 706.021 provides for levy execution on an employee's earnings *only* by an earnings withholding order on the employer. Section 706.050 does not allow levy on a substantial percentage of such earnings. *Id.* § 706.050.

As a result, a substantial percentage of disposable earnings held by an employer is not subject to enforcement of a money judgment by any *judicial procedure* including the wage garnishment procedures under Chapter 5. Therefore, such percentage of disposable earnings held by an employer is not subject to enforcement of a money judgment, and it is thus exempt under section 704.201. *See id.* § 704.210.

Amount and Characterization of Debtor's Earnings

"Disposable earnings" are defined as "the portion of an individual's earnings that remains after deducting all amounts required to be withheld by law." Cal. Civ. Proc. Code § 706.011. The minimum amount that is not subject to levy is 75% of disposable earnings. *See id.* § 706.050(a). A percentage higher than 75% may not be subject to levy if subsection (a)(2) of section 706.050 applies. *See id.*

Stated differently, the maximum amount of disposable earnings that may be subject to levy is 25%. *Id.* A percentage less than 25% may be subject to levy if an individual's disposable earnings exceed the state minimum wages for the period, and the amount by which the individual's disposable earnings exceed the state minimum wage for the period is *less than* 25% of the individual's disposable earnings. *See id.*

The trustee has not objected to the amount of unpaid earnings claimed exempt or to the characterization of the debtor's earnings as being unpaid. The trustee only argues that the debtor may not claim an exemption under Chapter 5. The debtor has claimed 75% of the unpaid wages as exempt, which percentage is a proper amount that may be protected from levy under section 706.050(a).

CONCLUSION

The trustee's objection will be sustained in part and overruled in part. The order will state as follows: (i) the trustee's objection is sustained as to the debtor's claim of exemption in the class action law suit against Centex Homebuilders, and that the debtor shall amend her claim of exemptions to remove the exemption claimed in the lawsuit not later than 14 days from the date of service of the order resolving this matter; and (ii) the trustee's objection is overruled as to the debtor's claim of exemption in unpaid earnings under section 705.060 of the California Code of Civil Procedure.

12. [11-60663](#)-A-7 HUMMER TRANSPORTATION,
RHT-2 INC.
ROBERT HAWKINS/MV
RESPONSIVE PLEADING
- MOTION TO EMPLOY KENNETH J.
ALLEN AS SPECIAL COUNSEL
7-19-13 [[88](#)]

No tentative ruling.

13. [11-60663](#)-A-7 HUMMER TRANSPORTATION,
RHT-3 INC.
HUME, SMITH, GEDDES, GREEN &
SIMMONS, LLP/MV
HAGOP BEDOYAN/Atty. for mv.
RESPONSIVE PLEADING
- MOTION TO SET ASIDE
7-23-13 [[94](#)]

No tentative ruling.

14. [13-13965](#)-A-7 ROBERT SCHWEITZER
RHT-1
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.
- MOTION TO DISMISS CASE
7-17-13 [[30](#)]

No tentative ruling.

15. [13-14173](#)-A-7 ALFREDO ARREGUIN

ALFREDO ARREGUIN/MV
RESPONSIVE PLEADING

CONTINUED MOTION FOR WAIVER OF
THE CHAPTER 7 FILING FEE OR
OTHER FEE
6-14-13 [[5](#)]

Tentative Ruling

Application: Waiver of Chapter 7 Filing Fee

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

Disposition: Denied and the Clerk is instructed to issue an installment plan order for payment of the filing fee

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 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).

At the initial hearing, the court continued the hearing and ordered the debtor to file Schedule I including his spouse's income. No Schedule I has been filed. The application will be denied. The Clerk is instructed to issue an order for payment of the filing fee in installments.

16. [12-14385](#)-A-7 VERONICA AKONDO

SAS-1
SHERYL STRAIN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DELBRIS AKONDO
NICHOLSON
7-22-13 [[34](#)]

ROBERT HAWKINS/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.

17. [13-15419](#)-A-7 CHARLES/LORETTA CROW MOTION TO COMPEL ABANDONMENT
PBB-1 8-12-13 [6]
CHARLES CROW/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(3) and order shortening time; no written opposition required

Disposition: Granted

Order: Prepared by moving party

Business Description: Milk distributor

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.

18. [13-15413](#)-A-7 SASHA ALEXANDER WILLIAMS MOTION TO COMPEL ABANDONMENT
RLF-1 8-13-13 [[6](#)]
SASHA WILLIAMS/MV
JEFF REICH/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: Fresno Kenpo Karate

The court will treat the motion as having been noticed under LBR 9014-1(f)(2). 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.

9:15 a.m.

1. [12-11501](#)-A-7 MAUDETTE BLASE CONTINUED STATUS CONFERENCE RE:
[13-1024](#) COMPLAINT
MANFREDO V. VANWEY 3-6-13 [[1](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The adversary has been dismissed. The status conference is concluded.

2. [11-61079](#)-A-7 JOSEPH/MARICELA DE LOS CONTINUED STATUS CONFERENCE RE:
[12-1009](#) SANTOS COMPLAINT
RENTERIA ET AL V. DE LOS 1-13-12 [[1](#)]
SANTOS ET AL
RUSSELL REYNOLDS/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Description: Discharge, 11 U.S.C. § 727(c),(d),(e)
Complaint filed: January 13, 2012
Status: Resolved by settlement
Disposition: Status Conference will be conducted
Appearance by counsel and Pro Se Parties: Required

The Status Conference scheduled for March 27, 2013, was continued to May 30, 2013, because the parties notified the court that the case had settled. Compare, Civil Minute Order, March 28, 2013, ECF No. 39, with Status Conference Statement, March 22, 2013, ECF No. 35. On May 30, 2013, the matter was again continued at the request of the parties. Again on July 31, 2013, the parties requested a continuance. Civil Minute, July 31, 2013, ECF No. 47. And the Joint Status Report filed August 6, 2013, continues to report matter has settled. The court intends to inquire as to the status of settlement. If the matter has not resolved, the court will set a trial date. Discovery is closed. Civil Minute Order, March 14, 2013, ECF No. 9.

10:00 a.m.

1. [11-10199](#)-A-7 MICHAEL PEREZ MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, NATIONAL 7-16-13 [[93](#)]
ASSOCIATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1930 West Mallard Lane, Hanford, California

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

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

10:30 a.m.

1. [13-14224](#)-A-7 RAMON TORRES PRO SE REAFFIRMATION AGREEMENT
WITH ALLY FINANCIAL
8-5-13 [[16](#)]

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OMNIBUS OBJECTION TO
FRB-7 PROPERTIES, LLC CLAIMS
CITIZENS BUSINESS BANK/MV 4-12-13 [[888](#)]
PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
ORDER CONTINUING HEARING TO
10/2/13 AT 1:30 P.M.

Final Ruling

By the parties' stipulation and an order approving it, the hearing has been continued to October 2, 2013, at 1:30 p.m.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OBJECTION TO CLAIM OF
FRB-8 PROPERTIES, LLC EHA-MODESTO II, LLC, CLAIM
CITIZENS BUSINESS BANK/MV NUMBER 18
4-12-13 [[887](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
ORDER CONTINUING HEARING TO
10/2/13 AT 1:30 P.M.

Final Ruling

By the parties' stipulation and an order approving it, the hearing has been continued to October 2, 2013, at 1:30 p.m.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED OBJECTION TO CLAIM OF
FRB-9 PROPERTIES, LLC HA COMMERCIAL, LLC, CLAIM
CITIZENS BUSINESS BANK/MV NUMBER 20
4-12-13 [[895](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
ORDER CONTINUING HEARING TO
10/2/13 AT 1:30 P.M.

Final Ruling

By the parties' stipulation and an order approving it, the hearing has been continued to October 2, 2013, at 1:30 p.m.

4. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-30
GLASSRATNER ADVISORY AND
CAPITAL GROUP, LLC/MV
- CONTINUED MOTION FOR
COMPENSATION FOR GLASSRATNER
ADVISORY AND CAPITAL GROUP,
LLC, FINANCIAL ADVISOR(S), FEE:
\$4320.00, EXPENSES: \$17.50.,
MOTION FOR ALLOWANCE OF PAYMENT
OF HOLDBACK FUNDS
7-10-13 [[727](#)]

RONALD CLIFFORD/Atty. for dbt.

Final Ruling

This matter was continued to August 21, 2013, to allow the debtor-in-possession to provide further supporting documentation. Civil Minute, July 31, 2013, ECF No. 772. That documentation was to be filed no later than August 14, 2013. *Id.* No further documentation filed as of August 19, 2013, the motion is denied without prejudice.

5. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-31
RONALD CLIFFORD/MV
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BLAKELEY &
BLAKELEY LLP FOR RONALD A.
CLIFFORD, DEBTOR'S ATTORNEY(S),
FEE: \$382952.02, EXPENSES:
\$12759.66.
7-31-13 [[760](#)]

RONALD CLIFFORD/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn by the moving party, the matter is dropped as moot.

6. [10-62315](#)-A-11 BEN ENNIS
MMW-53
JUSTIN HARRIS/MV
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF MOTSCHIEDLER,
MICHAELIDES, WISHON, BREWER &
RYAN, LLP FOR JUSTIN D. HARRIS,
TRUSTEE'S ATTORNEY(S), FEE:
\$13167.00, EXPENSES: \$2096.23.
7-24-13 [[1215](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Final Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Motschiedler, Michaelides

Additional compensation approved: \$13,167.00

Previous compensation approved: \$239,792.09

Additional costs approved: \$2,096.23

Previous costs approved: \$33,970.98

Aggregate fees and costs approved: \$289,026.30

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 an attorney in a Chapter 11 case and for "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 all interim awards, as well as this application, for compensation and expenses sought are reasonable, actual and necessary. All such amounts are approved on a final basis.

7. [13-13531](#)-A-11 DANIEL'S MEXICAN GRILL,
LLC CONTINUED CHAPTER 11 STATUS
CONFERENCE
5-24-13 [[7](#)]
STEPHEN LABIAK/Atty. for dbt.

No tentative ruling.

8. [13-14037](#)-A-11 GIL/MARIA GILBUENA CONTINUED CHAPTER 11 STATUS
CONFERENCE
6-13-13 [[12](#)]
J. IRIGOYEN/Atty. for dbt.

No tentative ruling.

9. [13-14037](#)-A-11 GIL/MARIA GILBUENA MOTION TO USE CASH COLLATERAL
AND/OR MOTION FOR ADEQUATE
JMI-8
GIL GILBUENA/MV
PROTECTION
8-1-13 [[119](#)]
J. IRIGOYEN/Atty. for dbt.

No tentative ruling.

10. [13-14037](#)-A-11 GIL/MARIA GILBUENA CONTINUED MOTION TO EMPLOY J.M.
JMI-9 IRIGOYEN AS ATTORNEY(S)
GIL GILBUENA/MV 6-25-13 [[53](#)]
J. IRIGOYEN/Atty. for dbt.

No tentative ruling.

11. [13-12551](#)-A-11 WIDE WEST SERVICES, LLC ORDER TO SHOW CAUSE RE JAMES L.
PAGANO
7-11-13 [[131](#)]
JAMES PAGANO/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

12. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, STIPULATION FOR RELIEF FROM
JMW-1 INC. AUTOMATIC STAY
7-12-13 [[58](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Motion: Approve Stipulation for Adequate Protection and Relief from Stay

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

Disposition: Approved

Order: Prepared by moving party

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

No opposition has been filed to the approval of the stipulation between secured creditor Wells Fargo Equipment Finance, Inc. and the Debtor. The court will approve the stipulation.

13. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS

CONTINUED CHAPTER 11 STATUS
CONFERENCE

11-28-12 [[29](#)]

RILEY WALTER/Atty. for dbt.

No tentative ruling.

14. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS

CONTINUED MOTION TO SELL

WW-18

7-3-13 [[212](#)]

JORGE SANTOS/MV

RILEY WALTER/Atty. for dbt.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted (backup offer) on the condition that the sale is not made to an undisclosed nominee or designee of the buyer

Order: Prepared by moving party

Property: Corner of 18th Avenue and Everett Avenue, Laton, Kings County 18104 Everett Avenue, Laton, Kings County, CA ("Dairy #1") and a mobile home (the mobile home was financed by Green Tree Mortgage on which about \$55,000.00 is owed and will be paid through escrow to Green Tree Mortgage)

Buyer: Double (N) Farms—but not buyer's undisclosed assignee or nominee

Sale Price: \$1.8 million

Sale Type: Private sale subject to overbid opportunity

Additional Terms: Buyer agrees to a 5-year lease (rent free) to Debtor of the mobile home or of a residence that buyers will provide to seller (and such lease of a residence will have an option to extend the lease or an option to purchase)

Real Estate Broker: Pearson Realty

Compensation Requested: 4% commission (2% of the commission will come from a surcharge pursuant to § 506(c) with the consent of Farm Credit West)

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

SALE UNDER § 363(b)

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). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. See, e.g., 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). 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.

SALE UNDER § 333(a)

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.

NO § 363(f) RELIEF GRANTED

The court clarifies that no relief under § 363(f) is being granted. The order shall not contain language approving the proposed surcharge of Farm Credit West's collateral unless Farm Credit West affirmatively consents on the record.

15. [13-11288](#)-A-11 ABEL/STACY LUNA

CONTINUED CHAPTER 11 STATUS
CONFERENCE
3-5-13 [[7](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

16. [13-11288](#)-A-11 ABEL/STACY LUNA
PLF-4

HEARING RE: DISCLOSURE
STATEMENT FILED BY DEBTOR ABEL
LUNA JR., JOINT DEBTOR STACY
LYNNE LUNA
7-16-13 [[44](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Motion to Approve Disclosure Statement

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

Disposition: Continued to allow filing of amended disclosure statement

Order: Civil minute order

No responding party is required to file written opposition to the granting of the motion; opposition may be presented at the hearing. 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 debtors Abel and Stacy Luna (the "Debtors") have filed a combined disclosure statement and plan (the "Disclosure Statement" or "Plan") and now request court approval of the Disclosure Statement. For the reasons set forth below, the court will continue the hearing on approval of the Disclosure Statement to allow the Debtors to make changes.

The Debtors are to file an amended disclosure statement and plan (combined or separate), which must address the issues raised by the court in this ruling, by Wednesday, September 4, 2013, along with a redlined version. The hearing on approval of the amended disclosure statement will be held on Wednesday, October 2, 2013, at 1:30 p.m. Any opposition must be filed 14 days before the hearing.

DISCUSSION

Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a plan of reorganization must contain adequate information "that would enable [an investor typical of holders of claims or interest of the relevant class] to make an informed judgment about the plan." § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *Computer Task Grp., Inc. v. Brotby (In re Brotby)*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted). Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

The court will now address its issues with the Disclosure Statement and Plan.

Priority Tax Claims (section 5.03). The section addressing the treatment of priority tax claims should include the aggregate amount of the claims to be paid under the Plan, as well as a reference to Exhibit B.

UST Fees (section 5.04). The section addressing UST fees should include the estimated amount of outstanding UST fees to be paid on the effective date.

Professional Fees (section 5.05). The section addressing the professional fees should include the estimated amount of professional fees to be paid under the Plan.

Class 2.2 (section 6.02). The Plan does not indicate when payments on account of Class 2.2 will begin (e.g., one month after the effective date, etc.).

Class 2.3 (section 6.03). The Plan does not indicate when payments on account of Class 2.3 will begin (e.g., one month after the effective date, etc.).

Class 3/General Unsecured Claims (section 6.04). It is unclear whether the Plan intends to serve as a motion to value collateral for purposes of treating the holders of the second and third deeds of trust against the principal residence as general unsecured claims, or whether a separate motion will be filed.

Further, it is unclear whether the Plan intends to serve as a motion to avoid the lien of Target National Bank, or whether a separate motion will be filed.

Impaired Classes (section 9.01). The Disclosure Statement should list which specific classes are impaired and entitled to vote.

Effective Date (section 16.02). The definition for the "Effective Date" of the Plan in section 16.02 is inconsistent with the definition provided in Exhibit A.

Material Default. There is no provision dealing with what constitutes a material default under the Plan and what a creditor's remedies are upon a material default.

In a similar vein, it is unclear how the Debtors can default on their payments on account of (1) professional fees (section 5.05), (2) priority tax claims (section 5.03), and (3) general unsecured claims (section 6.04), given the seemingly fluid treatment for these claims provided in the Plan. When looking at Exhibit C (the cash flow budget), it appears that the Debtors can make payments in whatever amount that they can or want, as long as some payment is made when the payment comes due. Thus, the court does not know whether one of these affected creditors can claim that the Debtors are defaulting on their obligations.

For example, the exhibit shows payments to priority tax creditors as follows: (1) \$1,204.75 in July 2015, (2) \$4,074.24 in October 2015, (3) \$4,282.27 in January 2016, and (4) \$171.30 in April 2016 (these payments begin after all professional fees/administrative expenses are paid in full). There does not appear to be any sort of established formula when coming up with these payment figures (it appears to be based on disposable income), and it is unclear whether these figures are not intended to be mandatory and binding on the Debtors (i.e., the Debtors can pay less than \$1,205.75 in July 2015). It follows that as long as the Debtors are making some sort of payment on a quarterly basis, they would not be in default. If this is the case, the Disclosure Statement and Plan should clearly say so.

CONCLUSION

For the reasons set forth above, the court will continue the hearing on approval of the Disclosure Statement to allow the Debtors to make changes.

The Debtors are to file an amended disclosure statement and plan (combined or separate), which must address the issues raised by the court in this ruling, by Wednesday, September 4, 2013, along with a redlined version. The hearing on approval of the amended disclosure statement will be held on Wednesday, October 2, 2013, at 1:30 p.m. Any opposition must be filed 14 days before the hearing.

17. [12-12998](#)-A-11 FARSHAD TAFTI

CONTINUED CHAPTER 11 STATUS
CONFERENCE

4-5-12 [[15](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

18. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-3

HEARING RE: CONFIRMATION OF
DEBTOR'S AMENDED PLAN

7-1-13 [[166](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Hearing: Confirmation of Chapter 11 Plan

Notice: LBR 9014-1(f)(1) and order fixing deadline to file objections to the plan no later than August 7, 2013; written opposition filed

Disposition: Confirmed

Order: Prepared by moving party

CONFIRMATION REQUIREMENTS UNDER § 1129(a)

The Debtor seeks confirmation of Debtor's Amended Combined Disclosure Statement and Plan Dated April 17, 2013. Based on the plan and all other papers filed in support, the court finds that the plan complies with the applicable confirmation requirements set forth in 11 U.S.C. § 1129(a).

Furthermore, the debtor's submission of ballots shows that all impaired classes have accepted the plan. See 11 U.S.C. § 1126(c), (f), 1129(a)(8). Unimpaired classes are deemed to have accepted the plan. *Id.* § 1126(f).

JULIEN OIL COMPANY'S OBJECTION

Julien Oil Company ("Julien") objects to the plan on grounds that it violates the absolute priority rule of § 1129(b)(2)(B). Julien also objects on grounds that the disclosure statement and plan do not provide adequate information.

Julien's Lack of Standing

First, Julien does not have standing to raise an objection to confirmation. Julien's raises its objection under § 1129(b)(2)(B)(ii). But a creditor may raise an objection under § 1129(b) only if that creditor is a member of an impaired class that has not accepted the plan. See 11 U.S.C. § 1129(b)(1).

Julien is a member of the class of general unsecured creditors (Class 3). The class of general unsecured creditors has accepted the plan. The Debtor's summary of ballots, and copies of ballots, show that two ballots were received from unsecured creditors by the deadline for submitting written acceptances or rejections of the plan.

Both timely ballots from unsecured creditors accepted the plan, and their claims totaled \$168,824.00. Thus, the plan has been accepted by creditors holding 100% of the amount of the claims held by *Class 3 creditors who have accepted or rejected the plan*. See 11 U.S.C. § 1126(c). Likewise, the plan has been accepted by creditors that hold more than one-half in number of the claims held by Class 3 creditors who have accepted or rejected the plan. See *id.*

Julien is not a creditor who has filed a written acceptance or rejection of the plan by the fixed deadline, so its claim is not taken into account. Julien's ballot was not submitted by the deadline of July 31, 2013 fixed by the court for submitting written acceptances or rejections of the plan. Under Rule 3018(a), "[a] plan must be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017." See Fed. R. Bankr. P. 3018(a). Julien has not made a showing of excusable neglect in support of an enlargement of time for accepting or rejecting the plan under Rule 9006(b). Fed. R. Bankr. P. 9006(b); see also *In re Paul*, 101 B.R. 228, 230-31 (Bankr. S.D. Cal. 1989).

Inapplicability of § 1129(b) When All Impaired Classes Have Accepted the Plan

In addition, § 1129(a)(8) has been satisfied because all impaired classes have voted to accept the plan. Section 1129(b), under which Julien objects, requires that "all of the applicable requirements of subsection 1129(a) of this section other than paragraph (8) are met with respect to [the] plan[.]" This ground for objecting under § 1129(b) is inapplicable because § 1129(a)(8) has been satisfied.

It follows that Julien cannot raise an objection based on the absolute priority rule of § 1129(b)(2)(B)(ii) because Julien has not met a prerequisite for raising an objection under §1129(b)—showing that at least one impaired class has not accepted the plan under § 1129(a)(8), and that Julien is a member of such class. As discussed, all impaired classes have voted to accept the plan including Class 3.

Absolute Priority Rule

This court generally follows the bankruptcy appellate panel in the Ninth Circuit. Although the court recognizes the split of authority on the issue, the court will follow the bankruptcy appellate panel's decision in *In re Friedman*, 466 B.R. 471 (B.A.P. 9th Cir. 2012). Accordingly, even if Julien had standing to object to confirmation under § 1129(b)(2)(B)(ii), the court would hold that the absolute priority rule is inapplicable in this case because the Debtor is an individual.

Objection Based on Lack of Adequate Information

Lastly, Julien's objection addressed at the disclosure statement and plan lacking adequate information is moot. The court has already approved the disclosure statement as containing adequate information. See Order Approving Discl. Statement, June 19, 2013, ECF No. 159.