

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

SEPTEMBER 4, 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. [13-13002](#)-A-7 JOSE RIOS AND ANGELIA MOTION TO AVOID LIEN OF DENNIS
FPS-1 LEON M. WRIGHT, DBA CENTRAL BUSINESS
JOSE RIOS/MV BUREAU
7-29-13 [[18](#)]

FRANK SAMPLES/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

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

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

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

2. [13-13910](#)-A-7 JAMES HOLTERMANN CONTINUED MOTION TO DISMISS
RHT-1 CASE
ROBERT HAWKINS/MV 7-17-13 [[19](#)]
GREG BLEVINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING, CASE
DISMISSED

Final Ruling

Having reviewed the Declaration of Gregory Blevins, August 30, 2013, ECF 27, the matter is resolved as specified in the Order, August 23, 2013, ECF No. 24, and the court now drops the continued hearing.

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

Final Ruling

Having reviewed the Declaration of Gregory Blevins, August 30, 2013, the matter is resolved as specified in the Order, August 23, 2013, ECF No. 23, and the court now drops the continued hearing.

4. [12-18516](#)-A-7 JACKLYN FRONK MOTION TO COMPROMISE
RAH-1 CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT
8-7-13 [[20](#)]
TRUDI MANFREDO/Atty. for dbt.
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.

5. [13-10721](#)-A-13 RALPH/ELVA AGUERO

ORDER TO SHOW CAUSE RE:
SANCTIONS FOR FAILURE TO OBEY A
COURT ORDER
7-30-13 [[61](#)]

NELLIE AGUILAR/Atty. for dbt.
CASE DISMISSED

No tentative ruling.

6. [11-13043](#)-A-7 MORRIS/SHARON GARCIA

OBJECTION TO CLAIM OF SJV
ENTERPRISE HOLDING LLC,
7-10-13 [[444](#)]

RH-8
SHERYL STRAIN/MV
HAGOP BEDOYAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Id.* at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

ANALYSIS

The trustee objects to the claim because the note is not attached to the claim. The trustee contends that the claim cannot be enforced without the note, and that the interest and other charges cannot be determined without the note.

In essence, the trustee objects only on grounds that the note is not attached to the claim. The objection addresses only the claimant's noncompliance with Rule 3001(c) and (f). The objection does not raise a factual or legal ground for disallowing the claim. The objection does not contest the liability or amount of the claim for a reason other than that the claim is not supported by a copy of the note.

The declaration also incorrectly refers to the amount of the claim as \$6,603.02. Strain Decl. ¶ 2. The amount asserted in the claim is \$45,951.05. Section 3 of the proof of claim contains "6603.02" which describes the "[l]ast four digits of any number by which creditor identifies debtor" and not the amount of the claim listed in section 1 of the proof of claim.

CONCLUSION

The evidence is insufficient to sustain the objection and disallow the claim. In addition, the court cannot find a basis for disallowing the claim under the well-pled facts of the objection for default purposes. The objection will be overruled without prejudice.

7. [13-10743](#)-A-7 DEBRA DEJONG ORDER TO SHOW CAUSE REGARDING
KEVIN O'CASEY
7-23-13 [[54](#)]
KEVIN O'CASEY/Atty. for dbt.

No tentative ruling.

8. [12-11448](#)-A-7 ROBERT SALAS MOTION TO SELL AND/OR MOTION
JES-3 FOR COMPENSATION FOR MOHAVE
JAMES SALVEN/MV INTEGRITY REAL ESTATE SERVICES,
BROKER(S), FEE: \$1000.00,
EXPENSES: \$0.00.
8-7-13 [[44](#)]
ROSALINA NUNEZ/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 18661 N. Rancho Road, Dolan Springs, AZ

Buyer: Rancho Mojave Properties

Sale Price: \$2,900.00

Sale Type: Private sale subject to overbid opportunity

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

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.

9. [13-12349](#)-A-7 MICHAEL/ROSEMARY TALMADGE CONTINUED OBJECTION TO DEBTOR'S
JES-1 CLAIM OF EXEMPTIONS
JAMES SALVEN/MV
6-7-13 [[18](#)]
JOSEPH ARNOLD/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The chapter 7 trustee's objection to the debtors' claim of exemptions will be overruled as moot given the court's decision to grant the debtors' motion to convert the case to a case under Chapter 13 of the Bankruptcy Code.

10. [13-12349](#)-A-7 MICHAEL/ROSEMARY TALMADGE MOTION TO CONVERT CASE FROM
JMA-2 CHAPTER 7 TO CHAPTER 13
MICHAEL TALMADGE/MV 8-6-13 [[28](#)]
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Prepared by moving party

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

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. 11 U.S.C. § 706(a), (d). A debtor's right to

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

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

11. [10-11551](#)-A-7 LARRY/DANETTE SAILER MOTION TO COMPROMISE
CWC-2 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH DAVID R. SMITH
AND ANNETTE SMITH
8-6-13 [[74](#)]

PETER BUNTING/Atty. for dbt.
CARL COLLINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted and the order may be effective nunc pro tunc

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.

12. [10-11551](#)-A-7 LARRY/DANETTE SAILER CONTINUED MOTION FOR
DAI-1 COMPENSATION BY THE LAW OFFICE
CHRISTOPHER SEYMOUR/MV OF DOWLING AARON INC. FOR
CHRISTOPHER E. SEYMOUR,
TRUSTEE'S ATTORNEY(S), FEE:
\$44951.77, EXPENSES: \$5048.23.
6-21-13 [[66](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

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

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

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

13. [09-16756](#)-A-7 TRAVIS/STACEY VICKERS
WW-2
TRAVIS VICKERS/MV

MOTION TO AVOID LIEN OF VIKING
READY MIX CO., INC., MOTION TO
AVOID LIEN OF NORTHERN
CALIFORNIA COLLECTION SERVICE,
INC., OF SACRAMENTO, MOTION TO
AVOID LIEN OF L.A. COMMERCIAL
GROUP, INC., MOTION TO AVOID
LIEN OF KINGS FEDERAL CREDIT
UNION
7-30-13 [[50](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. *See In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, the judicial lien of Viking Ready Mix Co., Inc. ("Viking") would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens sought to be avoided, though it is still subject to any senior consensual lien. In determining whether Viking's lien may be avoided, the court must exclude all junior

judicial liens that would already have been avoided. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Viking's judicial lien, plus all other liens (excluding judicial liens lower in priority), plus the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by such judicial lien. As a result, Viking's judicial lien may be avoided entirely.

All other judicial liens held by the responding parties may be avoided as well because they are lower in priority than Viking's avoidable judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtors' exemption amount equals or exceeds the fair market value of the real property, so all judicial liens subject to this motion are properly avoidable under § 522(f).

14. [13-13762](#)-A-7 HAROLD THORNTON OPPOSITION RE: TRUSTEE'S MOTION
TMT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-24-13 [[18](#)]

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 September 16, 2013, at 8:30 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.

15. [11-12264](#)-A-7 GENEAL CHIMA
HF-1
RALIE SINGH/MV
JEFF REICH/Atty. for dbt.
NICHOLAS FORESTIERE/Atty. for mv.
ORDER DENYING MOTION TO
QUASH ENTERED 7/29/13.

MOTION TO QUASH
7-26-13 [[135](#)]

Final Ruling

The court issued an order denying the motion to quash. The matter is dropped from calendar as moot.

16. [13-13568](#)-A-7 KING'S DRYWALL, INC.
MDP-1

OPPOSITION BY CATERPILLAR
FINANCIAL SERVICES CORPORATION
RE: TRUSTEE'S REPORT OF NO
DISTRIBUTION
8-1-13 [[15](#)]

PETER FEAR/Atty. for dbt.
MARK PONIATOWSKI/Atty. for mv.

Tentative Ruling

Objection: Report of No Distribution

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

Disposition: Overruled

Order: Civil minute order

Creditor Caterpillar Financial Services Corporation has filed a timely objection to the Chapter 7 trustee's Report of No Distribution. The basis for the objection is the existence of an unsecured asset: Caterpillar model 304CCR Excavator, Serial Number FPK00801. Caterpillar's objection does not provide a value for the asset. But it does note that the asset is collateral for a loan owed to Caterpillar in the amount of \$30,553.38.

Title 11 U.S.C. § 350(a) authorizes the closure of a Chapter 7 case that has been fully administered. A case is presumed fully administered if the trustee's final report has issued and no objection to that report occurs within 30 days. Fed. R. Bankr. P. 5009(a). The term "fully administered" is not a defined term. The existence of an unsecured asset is grounds for the court to find the case has not been fully administered. In re Petty, 93 B.R. 208, 211-212 (B.A.P. 9th Cir. 1988). Schedules A and B in support of the petition indicate the debtor has not assets. Voluntary Petition, May 20, 2013, ECF No. 1. The Statement of Financial Affairs indicates no transfers of properties. Secured creditor has demonstrated that the debtor purchased the Caterpillar model 304CCR Excavator, Serial Number FPK00801, in 2009. Decl. Of Stacy Black ¶ 9 and Exhibit A thereto, August 1, 2013, ECF No. 17. But there appears to be no equity for the benefit of unsecured creditors. The purchase price in 2009, was \$27,423. Id. at Exhibit A. Caterpillar is owed in excess of \$30,000, and the excavator is now in excess of 4 years old. The court finds that the case has been fully administered and overrules the objection.

17. [13-11275](#)-A-7 GUADALUPE PUENTES
SAS-2
SHERYL STRAIN/MV

MOTION TO EMPLOY BAIRD AUCTIONS
& APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION & PAYMENT OF
AUCTIONEER FEES AND EXPENSES
8-2-13 [[27](#)]

GARY HUSS/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Jeep Commander

Sale Type: Public auction

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

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

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

18. [13-10881](#)-A-7 JOSE/ROSE SILVA

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-14-13 [[36](#)]

JOSE SILVA/MV

JOSE SILVA/Atty. for mv.

Tentative Ruling

Matter: Application for Waiver of the Chapter 7 Filing Fee

Notice: Order scheduling hearing and notice of hearing; no written opposition required

Disposition: Pending

Order: Civil minute order

The Bankruptcy Court may waive the filing fee in a case under Chapter 7 of 11 U.S.C. for an individual if that individual "has income of less than 150% of income official poverty line . . . applicable to a family of the size involved and is unable to pay the fee in installments." 28 U.S.C. § 1930(f)(1).

The debtors have applied for a waiver of the filing fee in this case. The filing fee has been charged for reopening the case after the debtors' case was closed without a discharge because the final installment of the filing fee in the amount of \$78.00 was not paid. (Initially, the debtors filed for bankruptcy on February 11, 2013.)

The debtors have indicated that their family comprises 5 members. They listed \$2,800.00 on the application form as their total combined monthly income from Line 16 of Schedule I. Line 16 of Schedule I, however, that was filed with the petition in February 2013 shows \$5,003.27. The debtors filed a Schedule I with their voluntary petition on February 11, 2013, but have not filed any amended Schedule I.

Based on the DHHS Poverty Guidelines for 2013, the debtors' income must be less than \$3,446.25 to be less than 150% of the income official poverty line.

At the hearing, the court will inquire as to whether the hearing on this matter should be continued so that the debtors may file an amended Schedule I if their net income on Line 16 of Schedule I is below \$3,446.25.

19. [12-18004](#)-A-7 LA BONITA, INC., A
KDG-2 CALIFORNIA CORPORATION
JEFFREY VETTER/MV

MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL CO. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION & PAYMENT OF
AUCTIONEER FEES AND EXPENSES
8-21-13 [[144](#)]

D. GARDNER/Atty. for dbt.
LISA HOLDER/Atty. for mv.
BAKERSFIELD CASE

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer and Pay Liens pursuant to Carve-out Agreement with California Employment Development Department

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

Disposition: Granted

Order: Prepared by moving party

Property: Inventory, equipment, and vehicles described on Exhibit A to the notice, and all tangible personal property not described on Exhibit A located at the Debtor's business premises (office sites and production shop) described in the notice of hearing

Sale Type: Public auction

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling and enter the default of the responding party. In entering such default, the court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

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

20. [13-15717](#)-A-7 SHERRY DEVINE
DRJ-1
SHERRY DEVINE/MV
DAVID JENKINS/Atty. for dbt.
OST 8/28

AMENDED MOTION TO COMPEL
ABANDONMENT
8-29-13 [[13](#)]

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 only as to the business and such business assets described in the motion

Order: Prepared by moving party

Business Description: Sole proprietorship assets of debtor's small restaurant business in Coalinga, CA

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.

21. [13-14844](#)-A-7 JOSE/MARIA CAMACHO
TOG-3
JOSE CAMACHO/MV
THOMAS GILLIS/Atty. for dbt.
OST 8/28

MOTION TO COMPEL ABANDONMENT
8-28-13 [[18](#)]

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 only as to the business and such business assets described in the motion

Order: Prepared by moving party

Business Description: Sole proprietorship assets of trucking business

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of the business and the assets of such business only to the extent described in the motion.

22. [13-15309](#)-A-7 PABLO CASTANEDA AND ROCIO MOTION TO COMPEL ABANDONMENT
TOG-3 SATURINO 8-23-13 [[18](#)]
PABLO CASTANEDA/MV
THOMAS GILLIS/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 only as to the business and such business assets described in the motion

Order: Prepared by moving party

Business Description: Sole proprietorship assets of car wash business

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of the business and the assets of such business only to the extent described in the motion.

9:15 a.m.

1. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN STATUS CONFERENCE RE: COMPLAINT
[13-1073](#) 6-28-13 [[1](#)]
KARRAKER ET AL V. MCCLARAN
DAVID EMERZIAN/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN STATUS CONFERENCE RE: COMPLAINT
[13-1075](#) 7-1-13 [[1](#)]
KOZLOWSKI ET AL V. MCCLARAN
CONNIE PARKER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

3. [12-18516](#)-A-7 JACKLYN FRONK CONTINUED STATUS CONFERENCE RE:
[13-1004](#) AMENDED COMPLAINT
FRONK ET AL V. FRONK 4-5-13 [[24](#)]
MYRON SMITH/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

4. [12-18516](#)-A-7 JACKLYN FRONK AMENDED MOTION TO WITHDRAW AS
[13-1004](#) COUNSEL
FRONK ET AL V. FRONK 8-16-13 [[45](#)]
THOMAS ARMSTRONG/Atty. for mv.
OST 8/15/13 - NOTICED FOR 9
A.M.

Tentative Ruling

Motion: Withdraw as Counsel

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

Disposition: Continued to September 11, 2013, at 9:15 a.m. with a supplemental proof of service filed no later than September 6, 2013

Order: Civil minute order if appropriate

The motion was not served on co-counsel Myron Smith at the correct address. A docket entry shows that Myron Smith's address has changed to 1284 W Shaw Ave. #103, Fresno, CA 93705.

A supplemental proof of service showing service of the motion on Myron Smith may be filed no later than September 6, 2013.

In addition, although the declaration mentions the efforts made to notify the client of the motion to withdraw, the declaration does not include the client's current or last known address or addresses. See LBR 2017-1(e). A supplemental declaration may also be filed no later than September 6, 2013.

5. [12-18726](#)-A-7 ERIK/MELANIE HAROLDSSEN CONTINUED STATUS CONFERENCE RE:
[13-1006](#) COMPLAINT
USAA FEDERAL SAVINGS BANK V. 1-9-13 [[1](#)]
HAROLDSSEN
JOSH HARRISON/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the Status Conference is concluded.

10. [10-64343](#)-A-7 SONIA ALVAREZ
[11-1269](#)
ALVAREZ V. BANK OF AMERICA ET
AL
JOHN PINGEL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR SANCTIONS
7-29-13 [[292](#)]

No tentative ruling.

10:00 a.m.

1. [13-14012](#)-A-7 FRANCISCA SOLORIO
CJO-1
RESURGENT CAPITAL SERVICES,
LP/MV
THOMAS GILLIS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-15-13 [[14](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 420 North Palm Street, Woodlake, California

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

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

2. [13-15152](#)-A-7 GUILLERMO CONTRERAS AND MOTION FOR RELIEF FROM
CJO-1 CANDIDA DE CONTRERAS AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 8-9-13 [[15](#)]
ASSOCIATION/MV
SCOTT LYONS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 700 East Monterey Street, Avenal, California

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

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject 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. [13-12855](#)-A-7 JULIUS DIAS, JR MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 8-6-13 [[14](#)]
DAVID JENKINS/Atty. for dbt.
KRISTI WELLS/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 12726 Road 36, Madera, 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.

SERVICE DEFECTS

Motions for stay relief must be served on the Chapter 7 trustee. Fed. R. Bankr. P. 9013. Sheryl A. Strain is the Chapter 7 trustee in this case. She was served electronically. Proof of Service, August 6, 2013, ECF No. 19. The Eastern District of California is governed by Local Bankruptcy Rule 7005-1. Trustee Strain has opted-out of electronic service and the motion was not properly served upon her. But since Trustee Strain has issued a Report of No Distribution, the court believes the error is of no consequence and will grant the motion.

4. [13-15267](#)-A-7 EDWARD MADRUGA MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 8-21-13 [[11](#)]
DAVID LANGE/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2006 Honda Civic LX

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

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

5. [13-14082](#)-A-7 ALFREDO/MYRA RENTERIA MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 7-24-13 [[13](#)]
GEOFFREY ADALIAN/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: 3235 North University Street, Visalia, 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. [13-13107](#)-A-7 LISA PEREZ PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
7-16-13 [[25](#)]

No tentative ruling.

2. [13-14714](#)-A-7 DANIEL/MARIA RIVAS PRO SE REAFFIRMATION AGREEMENT
WITH TRAVIS CREDIT UNION
8-5-13 [[12](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

The hearing was noticed in error. Pursuant to the court's Notice to Disregard, no hearing will be held.

3. [13-13132](#)-A-7 EMILIO/MARIA VASQUEZ PRO SE REAFFIRMATION AGREEMENT
WITH JPMORGAN CHASE BANK, N.A.
8-9-13 [[15](#)]
EDDIE RUIZ/Atty. for dbt.

No tentative ruling.

4. [13-13043](#)-A-7 JOSEPHINE CASTILLO PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO FINANCIAL
NATIONAL BANK
8-6-13 [[22](#)]

No tentative ruling.

5. [13-13973](#)-A-7 TERRY NIECE REAFFIRMATION AGREEMENT WITH
BANK OF THE WEST
8-12-13 [[28](#)]
TAMIE CUMMINS/Atty. for dbt.

No tentative ruling.

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-32
JOHN VISSER/MV
RONALD CLIFFORD/Atty. for dbt.
RESPONSIVE PLEADING

MOTION FOR PAYMENT OF ALLOWED
FEES AND EXPENSES
8-7-13 [[777](#)]

Tentative Ruling

Motion: Application for Payment of Allowed Fees and Expenses

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

Disposition: Conditionally granted in part; denied in part

Order: Prepared by moving party

The firm Blakeley & Blakeley has filed an application for payment of its already allowed fees and expenses, which would be paid from previously allowed carve outs and Blakeley's remaining retainers. Specifically, Blakeley has requested payments from the following carve outs:

- (1) \$6,500 from the sale of Walnut Ranch;
- (2) \$6,500 from the sale of Clovis, New Mexico Ranch;
- (3) \$7,455.50 from the sale of Visser Calf Ranch;
- (4) \$4,814 from the sale of Portales Calf Ranch;
- (5) \$6,482.50 from the sale of John Visser Ranch/Manzanillo;
- (6) \$9,191 from the sale of Graceland Dairy.

Additionally, Blakeley has requested payments from the following retainers:

- (1) \$12,703.10 from the Vissers' retainer;
- (2) \$16,312.31 from the Visser Farms' retainer.

Wells Fargo has filed an opposition, raising a number of objections.

For the reasons set forth below, the court will conditionally grant the application in part and deny the application in part, the condition being that the order approving the second interim fees (RAC-29) be signed by this court before this order will be signed. Because Blakeley has represented that the estate is administratively solvent, payment of its administrative expenses is proper.

Once the above condition has been met, the following will be allowed: payments, in the requested amounts, out of (1) the carve out from the Walnut Ranch sale, (2) the carve out from the Clovis, New Mexico Ranch, (3) the carve out from the Portales Calf Ranch sale, (4) the carve out from the John Visser Ranch/Manzanillo sale, and (5) the two retainers. Payment out of the carve out from the Graceland Dairy sale will be conditionally allowed, with the condition being that the sale has closed. Lastly, payment from the carve out from the Visser Calf Ranch sale will be disallowed.

The court will now turn to Wells Fargo's objections.

Motion Supported by Evidence

First, Wells Fargo objects to all of the payments on the basis that the relief requested is not supported by evidence. However, in the court's view, the declaration from Ronald Clifford and the annotated billing records are minimally sufficient to satisfy Blakeley's burden

in this case. Wells Fargo has not introduced any counterevidence or otherwise indicated which of the payment amounts are suspect or do not add up based on the billing records. Therefore, this objection is overruled.

Carve Out from Sale of Visser Calf Ranch

Next, Wells Fargo objects to the payment out of the carve out from the sale of the Visser Calf Ranch property, arguing that no such carve out exists. Blakeley contends that the order approving the sale of such property provides for such carve out. The court agrees with Wells Fargo.

The sale order in question provides, in relevant part, the following: "The net proceeds of the sale, *after deducting the professional and real estate broker's fees and expenses*, and closing costs shall be paid to FCW to be paid on its first priority lien on the Assets." Order Approving Debtors' Motion for Authority to Sell Visser Ranch (ECF No. 596) (emphasis added). Blakeley believes that this reference to "professional fees and expenses" constitutes a legitimate carve out.

The court does not interpret that reference as the operative clause granting the Debtors' counsel a carve out. Any carve out for the Debtors' counsel should or would have been more spelled out like in the other sale orders. Even the reference to the real estate broker's fees does not stand on its own, since there is another paragraph in the sale order that discusses the broker's fee being 5.5%. Lastly, the court points out that it is unclear where the \$15,000 carve out figure comes from since there is no reference to "\$15,000" anywhere in the order.

As a result, payment out of a carve out from the sale of the Visser Calf Ranch property must be disallowed.

Carve Out from Sale of Graceland Dairy

Wells Fargo also objects to the payment out of the carve out from the sale of Graceland Dairy, arguing that payment should not be allowed until the sale has closed. The court agrees and conditionally allows payment on the condition that the sale has closed.

Remaining Amounts from Carve Outs

Lastly, Wells Fargo has also requested that any amounts remaining from the carve outs be released to the appropriate secured creditor. The court will deny that requested relief without prejudice because Wells Fargo has not followed the proper procedure. Wells Fargo has requested its relief in an opposition, rather than filing a separate motion. See Fed. R. Bankr. P. 9013 (requiring that a request for an order be by written motion); LBR 9014-1(i) (setting forth procedure for filing countermotion).

CONCLUSION

For the reasons set forth above, the court will conditionally grant the application in part and deny the application in part, the condition being that the order approving the second interim fees (RAC-29) be signed by this court before this order allowing payment will be signed. Because Blakeley has represented that the estate is administratively solvent, payment of its administrative expenses is

proper.

Once the above condition has been met, the following will be allowed: payments, in the requested amounts, out of (1) the carve out from the Walnut Ranch sale, (2) the carve out from the Clovis, New Mexico Ranch, (3) the carve out from the Portales Calf Ranch sale, (4) the carve out from the John Visser Ranch/Manzanillo sale, and (5) the two retainers. Payment out of the carve out from the Graceland Dairy sale will be conditionally allowed, with the condition being that the sale has closed. Lastly, payment from the carve out from the Visser Calf Ranch sale will be disallowed.

2. [13-14037](#)-A-11 GIL/MARIA GILBUENA ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-14-13 [[127](#)]

J. IRIGOYEN/Atty. for dbt.
FEE PAID (\$340)

Final Ruling

The fee having been paid, the order to show cause is discharged as moot.

3. [13-13284](#)-A-11 NICOLETTI OIL INC. CONTINUED CHAPTER 11 STATUS CONFERENCE
5-15-13 [[16](#)]

DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.

4. [13-13284](#)-A-11 NICOLETTI OIL INC. CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
LRP-1 7-17-13 [[88](#)]

EXXONMOBIL OIL CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

5. [13-13284](#)-A-11 NICOLETTI OIL INC. MOTION TO EXTEND TIME TO FILE PROOFS OF CLAIM
LRP-2 8-6-13 [[131](#)]
EXXONMOBIL OIL CORPORATION/MV

DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Motion to Extend Time to File Proofs of Claim
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).

The creditor ExxonMobil requests that the court extend the time to file proofs of claim pursuant to Rule 3003(c)(3). The deadline currently imposed by the court is September 11, 2013, and ExxonMobil requests that the court extend this deadline to November 27, 2013.

Because ExxonMobil has demonstrated cause for the extension and the Debtor has not opposed its motion, the court will grant the motion and will extend the deadline for filing proofs of claim to November 27, 2013.

6. [13-14894](#)-A-11 JORENE MIZE MOTION TO EMPLOY ROSEANN FRAZEE
AS ATTORNEY(S)
JORENE MIZE/MV 8-13-13 [[26](#)]
ROSEANN FRAZEE/Atty. for dbt.

Tentative Ruling

Motion: Motion to Employ the Frazee Law Group
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Continued to October 2, 2013 to allow filing of supplemental declaration
Order: Civil minute order

The debtor seeks to employ the Frazee Law Group as her bankruptcy counsel. In support of the application, the debtor has attached a declaration from RoseAnn Frazee, a member of the law group.

Because of deficiencies with the declaration, the court will continue the matter to allow the debtor to file a supplemental declaration. The declaration is to be filed by September 18, 2013, and the hearing is continued to October 2, 2013, at 1:30 p.m.

FRAZEE'S DECLARATION

Frazee's declaration states, "The Firm and I are 'disinterested persons' within the meaning of 11 U.S.C. § 101." The court deems this to be insufficient because Frazee has not laid the proper foundation to establish her knowledge of the lack of a connection. Federal Rule of Evidence 602 provides that a "witness may testify to a matter only

if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter" and that "[e]vidence to prove personal knowledge may consist of the witness's own testimony." Here, Frazee has only made a bare statement that she knows of no connection; there is no supporting testimony to support this statement (e.g., that it was based on her review of the schedules, statements, etc.). Thus, she has not properly laid the necessary foundation.

CONCLUSION

Because of deficiencies with the declaration, the court will continue the matter to allow the debtor to file a supplemental declaration. The declaration is to be filed by September 18, 2013, and the hearing is continued to October 2, 2013, at 1:30 p.m.

7. [13-14894](#)-A-11 JORENE MIZE CHAPTER 11 STATUS CONFERENCE
ROSEANN FRAZEE/Atty. for dbt. 7-24-13 [[21](#)]

No tentative ruling.

8. [13-14894](#)-A-11 JORENE MIZE MOTION TO USE CASH COLLATERAL
RAF-2 8-20-13 [[31](#)]
JORENE MIZE/MV
ROSEANN FRAZEE/Atty. for dbt.

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: Wells Fargo Bank and Lestie Fry

Expiration: Not stated

Adeq. Protection: To Be Determined

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2),(e), 361; Fed. R. Bankr. P. 4001(b).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure

4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(i)-(iv); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted creditor and any other party in interest so requesting approval.

9. [13-14894](#)-A-11 JORENE MIZE
RAF-3
JORENE MIZE/MV
ROSEANN FRAZEE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
LESTIE FRY
8-20-13 [[34](#)]

Tentative Ruling

Motion: Motion to Value Collateral

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

Disposition: Granted

Order: Prepared by moving party

Collateral: Real property located at 40807 Highway 41, Oakhurst, California

Collateral Value: \$290,000

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 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.

According to the Notice of Unified Trustee's Sale filed as an exhibit to the motion, the secured creditor Lestie Fry may also have collateral in some of the Debtor's personal property. No such personal property has been identified in this motion to value. Therefore, to the extent that such personal property exists, the order shall not be construed as fixing the creditor's secured claim at \$290,000.

10. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-5
FARSHAD TAFTI/MV
PETER FEAR/Atty. for dbt.

MOTION TO REJECT LEASE OR
EXECUTORY CONTRACT
8-6-13 [[171](#)]

Final Ruling

Motion: Motion to Reject Unexpired Lease

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).

A debtor-in-possession ("DIP") may assume or reject an unexpired lease with the court's approval. § 365(a). In evaluating motions to reject leases, the court applies the business judgment rule. *See In re Pomona Valley Med. Group*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Bendor Corp. (In re G.I. Indust., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000). Under this standard, the decision to reject receives only a " cursory review." *In re Pomona Valley*, 476 F.3d at 670. The court presumes "that the [DIP] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.* (citing *Navellier v. Sletten*, 262 F.3d 923, 946 n.12 (9th Cir. 2001)). The rejection of an unexpired lease should be approved absent a finding that the decision to reject is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

Here, the Debtor seeks to reject a lease (to the extent that it may be unexpired) with Lamar Outdoor Advertising for a billboard located on the Debtor's property. The decision to reject the lease satisfies the business judgment rule since the Debtor intends to sell the property and a prospective purchaser wishes to purchase the property not subject to the lease.

Therefore, the court will grant the motion.

Additionally, the court directs that the order shall serve as a notice pursuant to Rule 3002(c)(4) and shall clearly set forth that Lamar Outdoor Advertising, the holder of the claim arising from the rejection of the lease, will have 60 days from the entry of the order to file a proof of claim. The Debtor shall serve this notice on Lamar Outdoor Advertising and then file a certificate of service with the court within 7 days of the entry of the order.

1:45 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER CONTINUED STATUS CONFERENCE RE:
[13-1060](#) COMPLAINT
PENNY NEWMAN GRAIN CO. V. 5-29-13 [[1](#)]
WELLS FARGO BANK, N.A.
BRADLEY SILVA/Atty. for pl.

No tentative ruling.

2. [12-17310](#)-A-11 JOHN/GRACE VISSER CONTINUED MOTION TO DISMISS
[13-1060](#) MDM-1 ADVERSARY PROCEEDING/NOTICE OF
PENNY NEWMAN GRAIN CO. V. REMOVAL
WELLS FARGO BANK, N.A. 6-27-13 [[8](#)]
M. MINNICK/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [10-62315](#)-A-11 BEN ENNIS STATUS CONFERENCE RE: COMPLAINT
[13-1074](#) 6-28-13 [[1](#)]
STAPLETON V. HA DEVCO, INC. ET
AL
JUSTIN HARRIS/Atty. for pl.

Final Ruling

This matter is continued to October 2, 2013, at 1:45 p.m. to allow the plaintiff to seek the entry of default of the defendant.

4:00 p.m.

1. [11-12277](#)-A-7 JAMES PRICE
[11-1071](#)
TELLES V. PRICE
7-13-12 [[72](#)]
BRIAN WHELAN/Atty. for pl.
CONTINUED FOR FINDINGS AND
FACT AND CONCLUSIONS OF LAW

CONTINUED TRIAL RE: AMENDED
COMPLAINT