

**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 10, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

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

**ERRORS IN FINAL RULINGS**

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

9:00 a.m.

1. [14-13319](#)-A-7 ELMER MALDONADO  
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-21-14 [[12](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued meeting of creditors.

The court will conditionally deny the motion 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 attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such 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 following deadlines are extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

### **CIVIL MINUTE ORDER**

The court will issue a minute order that conforms substantially to the following form:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 2, 2014, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

2. [05-61838](#)-A-7 TOBY/JULIE KEENEY  
JTW-2  
JANZEN TAMBERI AND WONG/MV

CONTINUED MOTION FOR  
COMPENSATION FOR JANZEN,  
TAMBERI AND WONG,  
ACCOUNTANT(S).  
7-24-14 [[54](#)]

PATRICIA CARRILLO/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(1); written opposition filed by joint-debtor Julie Keeney

**Disposition:** Approved

**Order:** Civil Minute Order

**Applicant:** Janzen, Tamberi & Wong, an Accountancy Corporation

**Compensation approved:** \$1,488.50

**Costs approved:** \$11.04

**Aggregate fees and costs approved in this application:** \$1499.54

### **CONTINUED HEARING**

This matter was continued from August 27, 2014, to allow the applicant to provide supplemental service of the application. Civil Minute Order, August 30, 2014, ECF #71. The applicant, acting through James E. Salven, Chapter 7 trustee, has done so.

### **DISCUSSION**

#### Compensation Application

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and

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

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

The court notes that while the average hourly rate may be determined mathematically from the hours worked and the fees requested, the hourly rate, or various hourly rates, should be included clearly in any future fee applications.

#### Debtor's Objection

Based on her comments at the August 27, 2014, hearing the court believes that Julie L. Kennney has withdrawn any further opposition to the application. But since the opposition has not been withdrawn in writing the court will rule on her opposition.

Joint debtor Julie Keeney objects on the basis that the fee request is made too long after the petition was filed. The debtor further objects that notice of the application was not received by the debtors.

#### *Standing to Raise Objections*

First, the debtors do not have standing to object. The debtor lacks standing because the debtor has not shown that the outcome of the claim objection affects the debtor in some way. See *Dellamarggio ex rel. Barker v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 346-47 (Bankr. E.D. Cal. 2004). "This [standing] requirement is satisfied by cognizable prospects of receiving a distribution or of a nondischargeable debt being affected." *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); see also Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:1362 (rev. 2012) (standing conferred by existence of surplus estate or an outcome that would affect a nondischargeable debt).

Although the cases cited specifically apply to claim objections rather than applications for administrative expenses, such as an application for compensation and reimbursement of expenses, they are applicable by analogy to the latter situation.

The trustee's Notice of Final Report indicates that certain claims of unsecured creditors, the claims of tardily filed, general unsecured claims, are being paid at 59.8%. The debtor has not raised facts that would show that the final report is incorrect to the extent that it does not show a distribution to the debtors. Nor is a nondischargeable debt of the debtors likely to be affected by the application.

#### *Notice*

Regardless of where the notice was sent, the debtors clearly had notice of this application in time to file a timely response. The objection was filed on August 7, 2014, which is more than 14 days prior to the hearing and well within the time permitted for objection. See LBR 9014-1(f)(1).

In any event, the debtor's own objection admits that the debtors did not apprise the court or anyone of their change of address. The debtors are required to do so, so their reasons for not apprising the court of their address changes in writing are not relevant. Service on the debtor pursuant to Rule 7004(b)(9) is sufficient at the address shown on the petition or the debtor's last filed address in the case. Similarly, notice sent to the debtor's address shown on the petition, or the last-filed address of the debtors, will suffice. See 11 U.S.C. § 102(1); see also Fed. R. Bankr. P. 7004(b)(9). Because the debtors did not update their address as they admit in a filed writing, notice was sufficient at the address shown on the petition.

#### **VIOLATION OF LOCAL RULES**

The applicant has violated Local Bankruptcy Rule 9014-1(d)(3), which requires that the notice, or any notice of continued hearing, accurately recite the due date of written opposition. The notice of continued hearing, filed September 5, 2014, requires written opposition 14 days prior to the hearing. Notice, filed September 5, 2014, ECF #74. Since the continued hearing is September 24, 2014, the notice of continued hearing appears to require written opposition to motion not later than September 10, 2014, which is 5 days after service of the notice. Such an abbreviate notice is not consistent with Federal Rule of Bankruptcy Procedure 2002(a)(6) or Local Bankruptcy Rule 9014-1(f)(2). In the future, violations of local rules, particularly those pertaining to fee applications, may result in summary denial of the application.

#### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Final Application for Compensation filed by Janzen Tamberi & Wong having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the application is approved; (2) on a final basis Janzen Tamberi & Wong is awarded compensation of \$1,488.50; and (3) on a final basis, Janzen Tamberi & Wong awarded costs of \$11.04.

3. [14-12558](#)-A-7 SHARON OLSON  
TAT-3  
TRUDI MANFREDO/MV  
DAVID JENKINS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL  
8-29-14 [[37](#)]

### **Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party consistent with this ruling

**Property:** 1664 E. Lester Avenue, Fresno, CA

**Buyer:** David Hewitt

**Sale Price:** \$155,000

**Sale Type:** Private sale subject to overbid opportunity

The motion was set for hearing on less than 28 days' notice. Because more than 21 days' notice was given to creditors and parties in interest as provided by Rule 2002(a), the court will treat the motion as having been noticed under LBR 9014-1(f)(2).

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 "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 as to Guarantee Real Estate but not as to the buyer's broker. The motion represents that only Guarantee was employed. However, because the commission has been approved as to Guarantee, Guarantee is not prohibited directing that the other broker's commission be paid from escrow or otherwise in accordance with its obligations under state custom or law.

4. [14-12659](#)-A-7 JOSEPH/ENRIQUETA RIOS MOTION FOR DENIAL OF DISCHARGE  
UST-1 OF BOTH DEBTORS UNDER 11 U.S.C.  
TRACY DAVIS/MV SECTION 727(A)  
8-19-14 [[17](#)]  
  
LAYNE HAYDEN/Atty. for dbt.  
GREGORY POWELL/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

5. [14-12262](#)-A-7 RAUL PATINO-NEGRETE CONTINUED MOTION TO AVOID LIEN  
MAZ-1 OF PORTFOLIO RECOVERY  
RAUL PATINO-NEGRETE/MV ASSOCIATES, LLC  
7-22-14 [[18](#)]  
  
MARK ZIMMERMAN/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to October 15, 2014, at 9:00 a.m., and a supplemental proof of service may be filed no later than October 1, 2014 (14 days before the continued hearing) along with a notice of continued hearing using the notice procedure of 9014-1(f)(2)

**Order:** Prepared by moving party

The court continued the hearing to correct a technical service problem. Although the proof of service appears to resolve the service problem addressed by the court, another service problem has arisen. The proof of service for the continued hearing states that only the notice of continued hearing was served rather than the motion. Rule 9014(b) requires that the motion be served. Because the motion was not served, the court will further continue the hearing to allow service of the motion.

As stated in the prior minutes, if service of the motion has been made and is otherwise proper as of the continued hearing date, and no other objection is raised, the court will grant the relief requested by adopting the proposed ruling set forth in the final three paragraphs of the civil minutes dated August 27, 2014, at ECF No. 27.

6. [11-18670](#)-A-7 LARDOW, INC. A  
PLF-2 CALIFORNIA CORPORATION  
TRUDI MANFREDO/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JANICE E. WILLEY  
9-3-14 [[61](#)]

ADRIAN WILLIAMS/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Parties to Compromise:** Trudi Manfredo, chapter 7 trustee, and Janice Willey

**Dispute Compromised:** Whether a portion of the life insurance proceeds should be paid to Willey upon entry of an order approving this compromise rather than after the trustee has administered this estate and made the final distribution

**Summary of Material Terms:** The trustee shall deposit the settlement proceeds into the trustee's bank account and keep \$375,000 of the proceeds to pay claims in this bankruptcy and turn over the remainder of the life insurance proceeds of approximately \$375,000, within a reasonable time after entry of an order approving the compromise

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

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

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



7. [14-11171](#)-A-7 JASON PHELPS  
SL-1  
JASON PHELPS/MV  
8-11-14 [[16](#)]  
STEPHEN LABIAK/Atty. for dbt.

CONTINUED MOTION TO COMPEL  
ABANDONMENT

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Real Property Description:** 1517 N. Central Court, Visalia, California  
and 722 W. Owens Street, Tulare, California

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

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

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

8. [13-17574](#)-A-7 MARIA BUSTOS  
JES-2  
JAMES SALVEN/MV

MOTION TO SELL  
8-21-14 [[27](#)]

### **Final Ruling**

**Motion:** Sell Personal Property

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The notice does not state that the sale is subject to overbid at the hearing, a material term of the sale. The notice of a proposed private sale should contain all material terms and conditions of the sale. See Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); see also LBR 9014-1(d)(4). Conditioning a sale on the opportunity for higher and better bids is a material term of any private sale because it may substantially alter the price term and change the identity of the buyer. In the future, the trustee should ensure that the notice of hearing contains all material terms and conditions of the sale.

9. [14-13177](#)-A-7 ROBERT/JEANETTE HERRERA MOTION TO COMPEL ABANDONMENT  
PLG-2 8-25-14 [[11](#)]  
ROBERT HERRERA/MV  
STUART PRICE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

10. [14-13177](#)-A-7 ROBERT/JEANETTE HERRERA MOTION FOR REDEMPTION  
SMP-1 8-25-14 [[15](#)]  
ROBERT HERRERA/MV  
STUART PRICE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [14-13778](#)-A-7 LUIS JOHNSON OPPOSITION RE: TRUSTEE'S MOTION  
RHT-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-21-14 [[12](#)]

**Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

**DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued meeting of creditors.

The court will conditionally deny the motion 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 attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

#### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such 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 following deadlines are extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

#### **CIVIL MINUTE ORDER**

The court will issue a minute order that conforms substantially to the following form:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 2, 2014, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

12. [14-12293](#)-A-7 GINO CATTUZZO  
JDR-3  
GINO CATTUZZO/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
8-29-14 [[58](#)]

**Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification in Chapter 7 Case

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

**Disposition:** Denied

**Order:** Civil minute order

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-565 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. See *Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

13. [14-13583](#)-A-7 TONY WOODRUFF  
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-21-14 [[18](#)]

**Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

**DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once,

the court will not dismiss the case provided the debtor appears at the continued meeting of creditors.

The court will conditionally deny the motion 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 attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

#### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such 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 following deadlines are extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

#### **CIVIL MINUTE ORDER**

The court will issue a minute order that conforms substantially to the following form:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 2, 2014, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

9:15 a.m.

1. [13-18043](#)-A-7 TARSEM PABLA STATUS CONFERENCE RE: COMPLAINT  
[14-1075](#) 7-28-14 [[1](#)]  
MANFREDO V. PABLA ET AL  
TRUDI MANFREDO/Atty. for pl.  
RESPONSIVE PLEADING

**Final Ruling**

The status conference has been rescheduled to October 1, 2014, at 9:15 a.m.

2. [14-12470](#)-A-7 ANNETTE FRANCIS STATUS CONFERENCE RE: COMPLAINT  
[14-1069](#) 7-15-14 [[1](#)]  
KHARAZI V. FRANCIS  
H. KHARAZI/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [14-11089](#)-A-7 DONALD ATKINS CONTINUED STATUS CONFERENCE RE:  
[14-1061](#) COMPLAINT  
PRIMERICA LIFE INSURANCE 6-11-14 [[1](#)]  
COMPANY V. ATKINS ET AL  
OPHIR JOHNA/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

10:00 a.m.

1. [14-13731](#)-A-7 MICHAEL/PATRICIA GRACIE MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
CALIFORNIA REPUBLIC BANK/MV 9-10-14 [[17](#)]  
MARK ZIMMERMAN/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:** 2012 Chrysler 200 Touring vehicle

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

Section 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. [14-11336](#)-A-7 RAUL/REBECCA JARA  
PPR-1  
THE BANK OF NEW YORK MELLON/MV  
STARR WARSON/Atty. for dbt.  
MELISSA VERMILLION/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-22-14 [[37](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition filed by Bank of the Sierra

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 596 West Fir Street, Lindsay, CA

### **OPPOSITION**

Bank of the Sierra opposes the motion on two grounds. First, it contends that it did not receive a copy of the motion even though it has filed a request for special notice. But Bank of the Sierra has had actual notice of the motion in time to oppose the motion, so any lack of notice is considered harmless and will be waived. Rule 7004 service of the motion, moreover, is not required by Rule 4001(a).

Further, Bank of the Sierra argues that the movant's lien position is protected by an adequate equity cushion of approximately \$160,110.05, which ignores Bank of the Sierra's lien on the property. But this argument must be rejected because it fails to recognize that under § 362(d)(2), all liens encumbering the collateral are taken into account in determining whether the debtor has equity. See *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984). Section 362(d)(2), moreover, refers to the *debtor's* equity, which requires determining whether the debtor has value in the property that is unencumbered by liens. 11 U.S.C. § 362(d)(2).

Essentially, Bank of the Sierra's argument improperly conflates the distinct concepts of adequate protection under § 362(d)(1) with debtor's equity under § 362(d)(2).

Bank of the Sierra does not dispute the value of the property or the amount of the lienholders' debt. Accordingly, the movant is entitled to stay relief if the total liens on the property exceed the value of the property.

## SECTION 362(d)(2)

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 equals \$215,087.95. This amount exceeds the value of the collateral, which is \$200,000, so the debtor has no equity in the property.

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

3. [14-13751](#)-A-7 JESSE PENA  
APN-1  
GATEWAY ONE LENDING &  
FINANCE/MV  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-25-14 [[14](#)]

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2003 GMC Sierra 2500 vehicle

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

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



4. [12-13170](#)-A-7 AUGUSTINE PENA  
PPR-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
FRANCISCO ALDANA/Atty. for dbt.  
CATHERINE VINH/Atty. for mv.  
DISCHARGED

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
7-17-14 [[546](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 1557 Mateus Avenue, Tulare, CA

The notice of continued hearing was filed timely pursuant to the court's prior civil minute order. Because it was filed less than 28 days before the hearing, the court will treat the matter as having been set for hearing under LBR 9014-1(f)(2).

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

The Ninth Circuit Court of Appeals having denied the debtor's petition for rehearing, Order, September 23, 2014, ECF #38, the court intends to rule as follows.

### **AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [14-12972](#)-A-7 MARK/DARLENE JONES  
JFL-1  
SETERUS, INC./MV  
PETER FEAR/Atty. for dbt.  
JAMES LEWIN/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-25-14 [[18](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition filed by Bank of the Sierra

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 250 North Oakmore Street, Tulare, CA

### **OPPOSITION**

Bank of the Sierra opposes the motion on two grounds. First, it contends that it did not receive a copy of the motion even though it has filed a request for special notice. But Bank of the Sierra has had actual notice of the motion in time to oppose the motion, so any lack of notice is considered harmless and will be waived. Rule 7004 service of the motion, moreover, is not required by Rule 4001(a) regardless of whether a party's special notice request contains.

Further, Bank of the Sierra argues that the movant's lien position is protected by an adequate equity cushion of approximately \$263,305.62, which ignores Bank of the Sierra's lien on the property as well as other junior liens. But this argument must be rejected because it fails to recognize that under § 362(d)(2), all liens encumbering the collateral are taken into account in determining whether the debtor has equity. See *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984). Section 362(d)(2), moreover, refers to the debtor's equity, which requires determining whether the debtor has value in the property that is unencumbered by liens. 11 U.S.C. § 362(d)(2).

Essentially, Bank of the Sierra's argument improperly conflates the distinct concepts of adequate protection under § 362(d)(1) with debtor's equity under § 362(d)(2).

Bank of the Sierra does not dispute the value of the property or the amount of the lienholders' debt. In fact, Bank of the Sierra admits that there may be no "overall equity" in the property. See Opp'n at 3:12, ECF No. 34. Accordingly, the movant is entitled to stay relief if the total liens on the property exceed the value of the property.

### **RELIEF AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

## RELIEF AS TO 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 equals \$673,104.08. This amount exceeds the value of the collateral, which is \$545,000, so the debtor has no equity in the property.

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

6. [14-12972](#)-A-7 MARK/DARLENE JONES  
JLG-1  
BANK OF THE SIERRA/MV  
PETER FEAR/Atty. for dbt.  
JESSICA GIANNETTA/Atty. for mv.

MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY  
9-10-14 [[28](#)]

## Tentative Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted in part (stay relief as to the estate under § 362(d)(2)), denied in part (confirmation that the stay has terminated), denied in part as moot (stay relief as to the debtor)

**Order:** Prepared by moving party

**Subject:** 2006 Cardinal 362BHLE RV

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

The movant requests confirmation that the stay has terminated as to the property identified above and alternatively requests relief from the stay under § 362(d). The court has decided to grant the motion for relief from stay under § 362(d)(2). Because the motion for stay relief will be granted, the request that the court confirm that the stay has terminated will be denied.

## AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 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 in part as to stay relief under § 362(d)(2), and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

11:00 a.m.

1. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,  
EVN-77 LLC  
BHAVIKA'S PROPERTIES, LLC/MV

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW RE  
EVIDENTIARY HEARING ON  
DEBTOR'S MOTION TO VALUE  
COLLATERAL  
1-15-14 [[79](#)]

ELAINE V. NGUYEN/Atty. for dbt.

**No tentative ruling.**

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-44  
JOHN VISSER/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH SOUTHERN  
CALIFORNIA EDISON COMPANY  
8-27-14 [[1015](#)]

RONALD CLIFFORD/Atty. for dbt.

### 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.

2. [12-17336](#)-A-11 VISSER FARMS  
RAC-41  
VISSER FARMS/MV  
CLAIM NUMBER 3

CONTINUED OBJECTION TO CLAIM OF  
FRUIT GROWERS SUPPLY COMPANY,

4-9-14 [[370](#)]

SCOTT BLAKELEY/Atty. for dbt.  
RESPONSIVE PLEADING

### Final Ruling

The court continues the hearing on this objection to October 29, 2014, at 1:30 p.m., to allow the filing of another motion to approve the settlement in this matter.

3. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,  
LLC  
ELAINE NGUYEN/Atty. for dbt.  
ORDER CONTINUING 9/16/14
- CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-1-13 [[1](#)]

**Final Ruling**

The status conference has been continued to October 15, 2014, at 1:30 p.m.

4. [13-17744](#)-A-11 SREP V, LLC  
THA-11  
SREP V, LLC/MV  
THOMAS ARMSTRONG/Atty. for dbt.
- MOTION BY THOMAS H. ARMSTRONG  
TO WITHDRAW AS ATTORNEY  
9-4-14 [[122](#)]

**No tentative ruling.**

5. [14-11991](#)-A-11 CENTRAL AIR  
KDG-14 CONDITIONING, INC.  
WARD STRINGHAM/MV  
HAGOP BEDOYAN/Atty. for dbt.  
WARD STRINGHAM/Atty. for mv.
- MOTION FOR COMPENSATION FOR  
WARD R. STRINGHAM, SPECIAL  
COUNSEL(S).  
8-25-14 [[180](#)]

**Final Ruling**

The hearing has been continued to October 15, 2014, at 1:30 p.m.,  
pursuant to Notice of Rescheduled Hearing, ECF #217.

6. [14-11991](#)-A-11 CENTRAL AIR  
DG-15 CONDITIONING, INC.  
CENTRAL AIR CONDITIONING,  
INC./MV

MOTION TO ENLARGE SCOPE OF  
COURT'S PREVIOUS ORDER FIXING,  
ALLOWING AND AUTHORIZING DEBTOR  
TO PAY CLAIMS  
9-2-14 [[194](#)]

HAGOP BEDOYAN/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Enlarge Scope of Court's Previous Order Fixing, Allowing and Authorizing Debtor to Pay Claims

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

**Disposition:** Continued to allow supplemental service on the creditors identified no later than October 15, 2014; notice of continued hearing and a supplemental proof of service shall be filed no later than October 15, 2014

**Order:** Civil minute order

The previous motion filed by the debtor for the relief requested by the present motion was denied without prejudice for service problems. In denying the prior motion, the court identified two problems with service: (1) although the proof identified categories of creditors such as the 20-largest creditors, secured creditors, special notice parties, and employed professionals, who had been given notice, the proof did not include a list of the § 503(b)(9) creditors, and (2) the creditors affected by the motion who did appear on the proof of service were not served pursuant to Rule 7004.

Not all creditors whose claims are affected by this motion have been served pursuant to Rule 7004(b)(3). The court considers the present motion to be a contested matter as to each creditor (1) who has an existing § 503(b)(9) claim established by the previous order that may be reduced by the amended order, or (2) who did not have an existing § 503(b)(9) claim under the previous order and who will now have § 503(b)(9) claim that is fixed by the amended order.

A review of Exhibit B (containing the amended list of § 503(b)(9) claims) and Exhibit A (containing the existing order fixing and allowing § 503(b)(9) claims) indicates that the following creditor's claims will either be reduced or originally fixed by the amended order: Auto Zone, Curry Printing, Ed Dena's, Home Depot, O'Reilly Auto Parts, Russell Sigler, Inc., and Smith Auto.

The court will continue the hearing so that these creditor's may be served pursuant to Rule 7004(b)(3). Service may be made by the date identified above.

7. [13-14894](#)-A-11 JORENE MIZE

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
7-17-13 [[1](#)]

ROSEANN FRAZEE/Atty. for dbt.

**No tentative ruling.**

8. [13-14894](#)-A-11 JORENE MIZE  
RAF-10  
ROSEANN FRAZEE/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED AMENDED/MODIFIED PLAN  
5-30-14 [[304](#)]

**Tentative Ruling**

**Matter:** Hearing on Confirmation of the Amended Plan

**Notice:** Order Approving Disclosure Statement, Rules 2002(b), 3017(d), 3020(b); written objections required

**Disposition:** Confirmed

**Order:** Prepared by the debtor pursuant to the instructions below

Notice and a hearing on confirmation have been provided as required by Federal Rules of Bankruptcy Procedure 2002(b), 3017(c) and (d), and 3020(b), and the Order Approving the Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof. Pursuant to the provisions of §§ 1128 and 1129, the court will confirm the Chapter 11 plan in this case.

The order of confirmation shall conform to the appropriate Official Form and the other requirements of Rule 3020(c). The order shall not contain any provisions that materially alter the plan except as expressly provided by the court at the confirmation hearing.

9. [13-14894](#)-A-11 JORENE MIZE  
RAF-13  
JORENE MIZE/MV

CONTINUED MOTION TO APPROVE  
MODIFICATIONS TO DEBTOR'S  
SECOND AMENDED PLAN AND/OR  
MOTION TO DEEM CREDITORS TO  
HAVE ACCEPTED MODIFIED PLAN.  
8-1-14 [[324](#)]

ROSEANN FRAZEE/Atty. for dbt.

**Tentative Ruling**

**Motion:** For an Order Approving Modifications to Debtor's Second Amended Chapter 11 Plan of Reorganization (Revised) and Deeming Creditors to Have Accepted Modified Plan

**Notice:** LBR 9014-1(f)(2) / continued hearing date; no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

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

The court finds that the proposed modification affects only the treatment of Creditor Fry and will only be placed in the Plan's provisions for Class 4 treatment, which is the treatment of Creditor Fry's claim. This modification is made by the consent of Creditor Fry pursuant to a stipulation between the debtor and Creditor Fry.

Pursuant to Rule 3019 of the Federal Rules of Bankruptcy Procedure, such modification language will not adversely change the treatment of any creditor's claim or equity holder's interest who has not accepted



the modification in writing. The modification affects only the treatment of Creditor Fry's claim, which creditor has accepted in writing the modification. Therefore, all creditors who have previously accepted the plan are deemed to have accepted the plan as modified by the proposed modification.

Further, the court finds that disclosure is not required under § 1127(c) as no further votes are being solicited and the votes cast have been made by creditors who are not affected by the modification or who have consented to the modification. Thus, the prior disclosure statement with respect to voting creditors is considered adequate. Disclosure with respect to creditors who did not vote is immaterial because no votes are being solicited from such creditors as to the plan as modified, and no votes from such creditors based on the unmodified plan are being deemed to have accepted the modified plan.

10. [13-14894](#)-A-11 JORENE MIZE  
RAF-14  
SPECIALTY APPRAISALS, INC./MV  
ROSEANN FRAZEE/Atty. for dbt.

MOTION FOR COMPENSATION FOR  
RICHARD E. GREY, APPRAISER(S)  
8-26-14 [[330](#)]

#### **Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Richard Grey

**Compensation approved:** \$3,100.00 (an amount that includes prior interim award of \$2,820)

**Costs approved:** \$0.00

**Aggregate fees and costs approved in this application:** \$3,100.00

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$31,00.00

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

2:00 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1033](#) PROPERTIES, LLC  
ENNIS COMMERCIAL PROPERTIES,  
LLC V. NICHOLSON ET AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
2-7-14 [[76](#)]

**No tentative ruling.**

2. [10-12709](#)-A-11 ENNIS COMMERCIAL  
[12-1050](#) PROPERTIES, LLC  
ENNIS COMMERCIAL PROPERTIES,  
LLC ET AL V. HA DEVCO, INC. ET  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
1-14-14 [[56](#)]

**No tentative ruling.**

3. [10-62315](#)-A-11 BEN ENNIS  
[13-1107](#)  
STAPLETON ET AL V. WATKINS ET  
AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-11-14 [[50](#)]

**No tentative ruling.**

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#)  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-12-14 [[46](#)]

**No tentative ruling.**

3:00 p.m.

- |  |  |
|--|--|
| <p>1.     <a href="#">13-17444</a>-A-11   A &amp; A TRANSPORT, CO.,<br/>           INC.</p> <p>HILTON RYDER/Atty. for dbt.</p> <p><b>No tentative ruling.</b></p>  | <p>RESCHEDULED STATUS CONFERENCE<br/>         RE: CHAPTER 11 VOLUNTARY<br/>         PETITION<br/>         11-21-13 [<a href="#">1</a>]</p> |
| <p>2.     <a href="#">13-17444</a>-A-11   A &amp; A TRANSPORT, CO.,<br/>         HAR-18                            INC.<br/>         A &amp; A TRANSPORT, CO., INC./MV<br/>         HILTON RYDER/Atty. for dbt.</p> <p><b>No tentative ruling.</b></p>   | <p>MOTION TO SELL<br/>         9-3-14 [<a href="#">241</a>]</p>  |
| <p>3.     <a href="#">13-17444</a>-A-11   A &amp; A TRANSPORT, CO.,<br/>         HAR-19                            INC.<br/>         A &amp; A TRANSPORT, CO., INC./MV<br/>         HILTON RYDER/Atty. for dbt.</p> <p><b>No tentative ruling.</b></p>   | <p>MOTION TO SELL<br/>         9-3-14 [<a href="#">246</a>]</p>  |
| <p>4.     <a href="#">13-17444</a>-A-11   A &amp; A TRANSPORT, CO.,<br/>         WW-2                               INC.<br/>         THE OFFICIAL CREDITORS<br/>         COMMITTEE/MV<br/>         HILTON RYDER/Atty. for dbt.<br/>         MICHAEL WILHELM/Atty. for mv.<br/>         RESPONSIVE PLEADING</p> <p><b>No tentative ruling.</b></p> | <p>CONTINUED MOTION TO CONVERT<br/>         CASE FROM CHAPTER 11 TO CHAPTER<br/>         7<br/>         7-29-14 [<a href="#">170</a>]</p>  |