

**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**

**OCTOBER 2, 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. [11-62910](#)-A-7 OPTICAL MEASURING CONDITIONAL NON-OPPOSITION TO  
KDG-4 SYSTEMS TRUSTEE'S FINAL REPORT  
9-10-13 [[109](#)]  
CHRISTIAN JINKERSON/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** Chapter 7 trustee's Final Report

**Notice:** LBR 9014-1(f)(2) / LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained in part and overruled in part

**Order:** Civil minutes

No responding party is required to file written opposition to the sustaining of the objection; opposition may be presented at the hearing. If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

### **LEGAL STANDARDS**

After a Chapter 7 case has been fully administered and the trustee discharged, the court shall close the case. 11 U.S.C. § 350(a). A Chapter 7 is presumptively administered if no objection has been filed within 30 days after the final report. Fed. R. Bankr. P. 5009(a).

### **DISCUSSION**

Here, creditor Gerald R. Richert has filed a "Conditional Non-Opposition to Trustee's Final Report," suggesting that the Chapter 7 trustee should: (1) investigate whether CACSI is the current holder of Claim No. 8 (originally filed on behalf of Wells Fargo Bank); (2) investigate whether Portfolio Recovery Associates is the current holder of Claim No. 11 (originally filed on behalf of Bank of the Sierra); and (3) provide to the debtor documentation necessary for the debtor's final tax return. Conditional Non-Opposition to Trustee's Final Report, September 10, 2013, ECF No. 109.

#### Claim No. 8

Objector Richert filed Claim No. 8 on behalf of Wells Fargo Bank. Claim No. 8, August 30, 2012. Richert has produced a letter from CACSI, dated September 21, 2012, and a Bill of Sale from Wells Fargo Bank to CACH, LLC suggesting that either CACSI or CACH, LLC are now the holder of that claim. The Bill of Sale is dated May 15, 2012, suggesting that Wells Fargo Bank was not the holder of the underlying debt on the date the Proof of Claim was filed.

Federal Rule of Bankruptcy Procedure 3001(e)(1) provides, "If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee." Since the Bill of Sale from Wells Fargo Bank predates the Proof of Claim, the objection will be sustained.

#### Claim No. 11

Objector Richert filed Claim No. 11 on behalf of Bank of the Sierra in the amount of \$2,861.39. Claim No. 11, August 30, 2012. No account

number is listed. Richert has produced correspondence from Portfolio Recovery Associates, who purports to be the transferee of a debt from U.S. Bank National Associates in the amount of \$2,835.24. Not having the account number for the Bank of the Sierra debt and the amounts different, the court finds these to be different debts and the objection is overruled.

#### Tax Source Data

Richert, who is charged with the responsibility of filing the final tax return for the debtor, requests that the Chapter 7 trustee provide his accountant, Kathleen Klein, with such information and documentation as is necessary file the final return. 11 U.S.C. § 704(a)(7) provides that "The trustee shall...unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest." Richert's request consistent with the trustee's statutory duties, the objection is sustained.

2. [13-15612](#)-A-7 ADRIAN VALENCIA

ADRIAN VALENCIA/MV

ADRIAN VALENCIA/Atty. for mv.

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
8-21-13 [5]

#### **Tentative Ruling**

**Application:** Waiver of Chapter 7 Filing Fee

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

**Disposition:** Granted

**Order:** Civil minute order

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

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

#### **150% POVERTY LEVEL**

The debtor has a household of four, which is comprised of himself and three minor children. The court does not include the debtor's 21 year old adult child still living at home. One hundred and fifty percent of the poverty level for a household of four is \$2,943.75 per month. Line 16 of Schedule J shows income of \$2,731.80 per month. As a result, the debtor qualifies for the fee waiver.

#### **OTHERWISE UNABLE TO PAY IN INSTALLMENTS**

Review of the schedules and statements reveal no assets from which the fee could be paid in installments. Line 16 of Schedule I shows \$2,731.80 and Line 18 of Schedule J shows \$2,955.00, revealing no projected disposable income. There is no evidence of voluntary deductions on Schedule I or over withholding of taxes.

As a result, the application will be approved.

3. [13-16114](#)-A-7 TERRALL/CHRISTINE MOTION TO COMPEL ABANDONMENT  
BCS-1 WILLIAMS 9-16-13 [9]  
TERRALL WILLIAMS/MV  
BENJAMIN SHEIN/Atty. for dbt.  
NON-OPPOSITION

### **Tentative Ruling**

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

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

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

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Sole proprietorship doing business as Chris' Hair Studio (hair styling 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 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).

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

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

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

4. [13-11915](#)-A-7 ALICE ISAGUIRRE  
TMT-1  
TRUDI MANFREDO/MV  
PATRICIA CARRILLO/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL  
8-28-13 [[28](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 4 vehicles

**Buyer:** Debtor

**Sale Price:**

-1992 Chevrolet Blazer: \$2,341.00 (\$300.00 cash and accounting for the sale to the debtor being subject to a lien in the amount of \$2,041.00)

-1999 Saturn: \$300.00 cash

-2002 Acura RSX: \$2,523.00 (\$1,000.00 cash and accounting for the sale to the debtor being subject to a lien in the amount of \$1,523.00)

-2008 Toyota Scion: \$6,770.30 (\$1,608.30 cash plus \$2,725.00 exemption credit and accounting for the sale to the debtor being subject to a lien in the amount of \$2,437.00)

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

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

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

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

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

NELLIE AGUILAR/Atty. for dbt.  
CASE DISMISSED

### **Final Ruling**

Kevin O'Casey having failed to pay the Clerk sanctions of \$3,750.00 by September 30, 2013, the matter is dropped from calendar. The court will issue a further Order to Show Cause.

6. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN OBJECTION TO DEBTORS' CLAIM OF  
LDM-1 EXEMPTIONS  
BETTY EGAN/MV 8-9-13 [[20](#)]  
HAGOP BEDOYAN/Atty. for dbt.  
LARRY MILLER/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition filed  
**Disposition:** Sustained in part; overruled in part  
**Order:** Civil minute order

The creditor Betty Egan ("Egan") has filed an objection to the debtors Boghos and Helen Krikorian's (the "Debtors") claim of exemptions in two automobiles and two life insurance policies. The Debtors have filed an opposition to the objection.

For the reasons set forth below, the court will sustain the objection in part and will overrule the objection in part. The Debtors will be allowed to exempt \$2,900 in their automobiles and \$22,950 in their life insurance policies.

### **DISCUSSION**

#### Automobiles

Egan first objects to the Debtor's claim of exemptions in two automobiles. At the time that they filed their schedules, the Debtors were acting pro se. On Schedule C, they claimed a \$5,000 exemption in an "automobile" valued at \$5,000 pursuant to C.C.P. § 704.010. While the description of "automobile" appeared vague, Schedule B shows that the Debtors have listed a 1998 BMW and a 2004 Honda, valued together at \$5,000. Thus, the parties can reasonably deduce that the Debtors are seeking to exempt these two automobiles in Schedule C.

Nevertheless, Egan argues that the exemption is still improper since Egan believes that C.C.P. § 704.010(a)(1) allows only a \$2,300 exemption in the aggregate equity in motor vehicles. While this is what the statute reads, that exemption amount has actually increased to \$2,900 effective April 1, 2013 based on an adjustment to the change in the consumer price index. See Cal. Civ. Proc. Code § 703.150. Since the Debtors filed their bankruptcy on June 3, 2013, the new exemption amount applies to their case.

However, the \$5,000 exemption in the two automobiles still exceeds the \$2,900 exemption amount. Therefore, the court will sustain Egan's

objection in part and overrule her objection in part and will allow the Debtors to claim a \$2,900 exemption in the two automobiles.

### Life Insurance Policies

Egan similarly argues that the Debtors' exemption of two life insurance policies exceeds the statutory maximum amount, but, again, Egan has stated the wrong amount in the statute.

On Schedule C, the Debtors have claimed a \$22,950 exemption in "life insurance" valued at \$25,000 pursuant to C.C.P. § 704.100(b). On Schedule B, the Debtors have disclosed two life insurance policies described as "Jackson American General," with one valued at \$20,000 and another valued at \$5,000.

Egan contends that § 704.100(b) only allows the married Debtors to claim \$19,400 (\$9,700 x 2), but the adjustment on April 1, 2013 increased the exemption amount to \$24,450 (\$12,225 x 2). Here, the Debtors have claimed an exemption amount that falls below the \$24,450 threshold. Therefore, the court will overrule Egan's objection as to the Debtors' claim of exemption in the life insurance policies.

### **CONCLUSION**

For the reasons set forth above, the court will sustain the objection in part and will overrule the objection in part. The Debtors will be allowed to exempt \$2,900 in their automobiles and \$22,950 in their life insurance policies.

7. [10-61725](#)-A-7 PAMELA ENNIS  
THA-5  
SHERYL STRAIN/MV

MOTION TO PAY AND/OR MOTION FOR  
COMPENSATION FOR SHERYL ANN  
STRAIN, CHAPTER 7 TRUSTEE(S),  
FEE: \$99750.00, EXPENSES: \$0.00  
8-28-13 [[130](#)]

RILEY WALTER/Atty. for dbt.  
THOMAS ARMSTRONG/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

8. [13-15733](#)-A-7 ROBERTA FREDERICK  
PLF-1  
ROBERTA FREDERICK/MV  
PETER FEAR/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
9-18-13 [[27](#)]

### **Tentative Ruling**

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

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

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

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Sole proprietorship doing business as Roberta M. Frederick, L.V.N.

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).

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

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

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

9. [13-15733](#)-A-7 ROBERTA FREDERICK MOTION FOR ORDER REQUIRING  
SAS-1 DEBTOR TO SHUT DOWN BUSINESS  
SHERYL STRAIN/MV 9-13-13 [[21](#)]  
PETER FEAR/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

**Tentative Ruling**

The court intends to drop this motion as moot, in light of the ruling on the motion to compel abandonment, PLF-1.

10. [11-19935](#)-A-7 ROBERT/CARLA BOX MOTION TO SELL  
TMT-2 9-4-13 [[91](#)]  
TRUDI MANFREDO/MV  
SUSAN HEMB/Atty. for dbt.  
HAGOP BEDOYAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2004 Cargo Trailer

**Buyer:** Debtors

**Sale Price:** \$1,800.00 (\$1,050.00 cash plus \$750.00 exemption credit)

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

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

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

11. [12-17835](#)-A-7 SALVADOR PEREZ  
TMT-1  
TRUDI MANFREDO/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH GEORGE MUNOZ  
9-4-13 [[29](#)]

TRUDI MANFREDO/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.

12. [13-13135](#)-A-7 ESTHER FLORES  
JDM-1  
ESTHER FLORES/MV  
JAMES MILLER/Atty. for dbt.

MOTION TO AVOID LIEN OF ALLIED  
ACCEPTANCE CORPORATION  
8-5-13 [[20](#)]

### **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.

13. [13-13135](#)-A-7 ESTHER FLORES  
JDM-2  
ESTHER FLORES/MV

MOTION TO AVOID LIEN OF CENTRAL  
VALLEY COMMUNITY BANK AND/OR  
MOTION TO AVOID LIEN OF  
INTERNATIONAL CREDIT RECOVERY,  
INC.  
8-7-13 [[25](#)]

JAMES MILLER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted or, at the moving party's option, continued to November 6, 2013, at 9:00 a.m. to allow supplemental service

**Order:** Prepared by moving party

### **SERVICE QUESTIONS**

Whether the proper party has been named and served is questionable. The debtor asserts that the lien was assigned to ICR by the other respondent, Central Valley Community Bank. Attached to the certificate of service is a copy of information from the California Secretary of State's website showing that one of the respondents, International Credit Recovery, Inc. ("ICR") has been dissolved. Who the proper party is depends on who holds the judicial lien after dissolution and distribution of the dissolved corporation's assets. In the absence of evidence otherwise, the court finds that it is possible that the dissolved corporation still holds the asset. See

Cal. Corp. Code § 2010(c) ("Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.").

However, assuming that ICR holds the lien may not resolve the question of whether a dissolved corporation may be served under Rule 7004(b)(3) by serving the registered agent for service of process shown on the secretary of state's website. Rule 7004(b)(3) allows service to be made by first class mail addressed to the attention of "any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). The issue that concerns the court is whether a corporation's registered agent remains authorized to receive service of process after dissolution. See, e.g., Cal. Corp. Code § 2011(b). If a registered agent does not remain authorized, then service on such registered agent under Rule 7004(b)(3) is not effective.

The moving party will address this issue at the hearing. If the moving party is satisfied that service has been effective on the responding party, then the moving party may accept the court's ruling on the merits below. If the moving party believes that further investigation as to proper service is warranted, then the moving party may opt to have the matter continued to allow supplemental service no later than 14 days before the continued hearing date.

#### **MERITS OF THE MOTION**

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.

14. [13-13135](#)-A-7 ESTHER FLORES  
JDM-3  
ESTHER FLORES/MV  
JAMES MILLER/Atty. for dbt.

MOTION TO AVOID LIEN OF MADERA  
COUNTY REVENUE SERVICE  
8-7-13 [[29](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004).

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), *incorporated by* Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Service of the motion appears insufficient. Service of the motion was addressed to the county's counsel, Douglas Nelson. However, subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a) (emphasis added). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other

political subdivision or public corporation in this state." *Id.* § 416.50(b).

Service appears insufficient because the motion was sent to county counsel rather than to the clerk, secretary, president, presiding officer, or other head of the governing body of the responding party. If the moving party believes that service is sufficient because it was made "by following state law requirements for serving process on such a defendant" under a different state law not cited in this ruling, the moving party may make such argument at the hearing.

15. [08-15141](#)-A-7 LINDA PINSON CONTINUED MOTION TO SURCHARGE  
TGM-4 DEBTOR'S EXEMPTION  
JAMES SALVEN/MV 3-13-13 [[140](#)]  
THOMAS GILLIS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

**Final Ruling**

The matter is continued to November 6, 2013, at 9:00 a.m. Not later than 7 days prior to the continued hearing date, Trudi Manfredo, counsel for Chapter 7 trustee James Salven shall file a status report.

16. [13-13654](#)-A-7 BETTY GALLAGHER MOTION TO SELL  
JES-1 8-15-13 [[17](#)]  
JAMES SALVEN/MV  
HAGOP BEDOYAN/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1970 Alpha Gold travel trailer and 2000 Ford F150

**Buyer:** Debtor

**Sale Price:**

-1970 Alpha Gold travel trailer: \$1,000.00 cash

-2000 Ford F150: \$3,717.00 (\$1,500.00 cash plus \$2,217.00 exemption credit)

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

17. [13-15162](#)-A-7 PAUL LIMEBROOK AND VICKIE MOTION TO CONVERT CASE FROM  
GH-1 DEANE CHAPTER 7 TO CHAPTER 13  
PAUL LIMEBROOK/MV 8-20-13 [[14](#)]  
GARY HUSS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [10-61970](#)-A-7 BRIAN ENNIS OBJECTION TO CLAIM OF ROBERT W.  
RH-5 HENRY, JR., CLAIM NUMBER 5  
JAMES SALVEN/MV 8-8-13 [[217](#)]  
RILEY WALTER/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.  
ORDER CONTINUING TO 11/6/13  
AT 9 A.M.

**Final Ruling**

The matter is continued to November 6, 2013, at 9:00 a.m.

19. [10-61970](#)-A-7 BRIAN ENNIS OBJECTION TO CLAIM OF JOHN  
RH-6 HENRY, CLAIM NUMBER 6  
JAMES SALVEN/MV 8-8-13 [[221](#)]  
RILEY WALTER/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**Final Ruling**

The matter is continued to November 6, 2013, at 9:00 a.m.

20. [10-11582](#)-A-7 PEDRO RODRIGUEZ AND MARIA OBJECTION TO TRUSTEE'S FINAL  
RR-1 LOPEZ REPORT (TFR), MOTION FOR REFUND  
RANDY RISNER/MV OF TAXES PAID BY TRUSTEE TO IRS  
AND CALIFORNIA FRANCHISE TAX  
BOARD , MOTION FOR SANCTIONS ,  
MOTION FOR COMPENSATION FOR  
RANDY J. RISNER, DEBTOR'S  
ATTY(S), FEE: \$3475.00,  
EXPENSES: \$0.00.  
8-12-13 [[71](#)]
- RANDY RISNER/Atty. for dbt.  
RESPONSIVE PLEADING,  
OBJECTION WITHDRAWN

**Final Ruling**

The Debtors have withdrawn their objection. Therefore, this matter is taken off calendar.

21. [13-14795](#)-A-7 MICHAEL KACHADOORIAN MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
MICHAEL KACHADOORIAN/MV FEE  
7-11-13 [[5](#)]
- MICHAEL KACHADOORIAN/Atty. for mv.  
RESPONSIVE PLEADING

*[The hearing on this matter will be concurrent with the hearing on the Motion for Waiver of the Amendment Filing Fee in this case filed at ECF No. 22.]*

**Tentative Ruling**

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

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

## BACKGROUND

The debtor has applied for a waiver of the filing fee on July 11, 2013. His first application states that his income from Line 16 of Schedule I is \$0.00.

He filed a second application for waiver of an "amendment fee" charged for amending Schedule F. (The amendment fee for amending any of these schedules is \$30.00.) This second application is unresponsive to Question 2 regarding net income, but elsewhere the application refers to the attachment, which includes Schedules A, B, I and J. The attached Schedule I from Line 16 of Schedule I is \$837.15. He has no other family members.

The trustee opposes the application on the grounds that the debtor's Statement of Financial Affairs (the "SOFA"), at Question 1, states that the debtor had "gross income" of \$21,166.59 through June 7, 2013. The SOFA also shows "income" of \$48,276.00 in 2012. The trustee also points out that the debtor's Schedule I does not disclose such gross income.

## LEGAL STANDARD

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).

## DISCUSSION

### Whether Debtor Has Income of Less Than 150% of the Income Official Poverty Line

Based on the DHHS Poverty Guidelines for 2013, the debtors' income must be less than \$1,436.25 on a monthly basis (\$17,235.00 on an annual basis) to be less than 150% of the income official poverty line. This court uses the debtor's net income from Schedule I to determine whether the debtor's income is below the applicable figure.

The debtor has filed an amended Schedule I showing \$837.15 as the debtor's monthly net income. This amount is below the DHHS Poverty Guidelines for 2013 for a family with only 1 person in the family unit.

The court takes judicial notice of the debtor's SOFA filed in this case. However, the court only takes judicial notice that the SOFA contains such information. The SOFA does not necessarily prove that the debtor's income *currently* is the levels indicated for 2012 and 2013. The debtor stated on the SOFA, moreover, that the income was "[g]ross income earned through 6/7/13." This statement *may* be entirely consistent with the debtor's *current* monthly income shown on amended Schedule I. The debtor's income may have been reduced for any number of reasons.

In addition, the amount shown on the SOFA for 2013 is a gross income figure, and this court uses a net income figure from Line 16 of Schedule I to determine whether the debtor's income qualifies for a fee waiver.

### Whether Debtor Is Unable to Pay the Filing Fee In Installments

Even if the debtor's income is below 150% of the applicable poverty figure, the court must resolve another issue under 28 U.S.C. §1930(f)(1), which is the second element of the standard for waiver of the filing fee: whether the debtor is unable to pay the filing fee in installments. The debtor's Schedules A and B do not reveal sufficient liquid value for the court to conclude that the debtor is able to pay the filing fee in installments.

#### **ISSUES FOR RESOLUTION**

The court will resolve this matter at the hearing based on the statements of the debtor and the trustee at the hearing. The issue for resolution by the court is whether the debtor's current net income from Line 16 of Schedule I is below \$1,436.25 per month.

22. [13-14795](#)-A-7      MICHAEL KACHADOORIAN      MOTION FOR WAIVER OF THE  
AMENDMENT FILING FEE  
MICHAEL KACHADOORIAN/MV      9-4-13 [[21](#)]  
MICHAEL KACHADOORIAN/Atty. for mv.

#### **No Tentative Ruling**

**Application:** Waiver of Amendment Filing Fee

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

**Disposition:** Pending

**Order:** Civil minute order

The debtor has filed an application for waiver of an amendment fee charged by the court for filing an amendment to Schedule F. The amendment fee is \$30.00. The court will resolve this matter at the hearing concurrently with the debtor's application for waiver of the chapter 7 filing fee.

23. [12-19899](#)-A-7 MAGNUM AXEL, INC  
JDM-1  
MAGNUM AXEL, INC/MV  
JAMES MILLER/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
KEITH BUSH, CLAIM NUMBER 1  
5-21-13 [[17](#)]

### **Tentative Ruling**

**Objection:** Claim of Keith Bush

**Notice:** LBR 3007-1(b)(1)/continued date of the hearing; written opposition and briefs filed

**Disposition:** Overruled

**Order:** Civil minute order

At the initial hearing, the court continued the hearing to allow briefs on the issue of debtor's standing to be filed. The court is not persuaded by the debtor's brief that the debtor has standing. In the Ninth Circuit, the standing of a chapter 7 debtor to object to a claim is based on solvency.

Here, 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).

"If, as is typical in chapter 7 cases, the debtor has no economic interest—direct or indirect—in whether a claim is allowed or disallowed, then the debtor may lack constitutional standing for want of: (1) an injury in fact; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressed by a favorable decision." *Dellamarggio*, 306 B.R. at 346 (citing *United Food & Commercial Workers Union Local 751 v. Brown*, 517 U.S. 544, 551, 116 S.Ct. 1529 (1996); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1108-09 (9th Cir.2003)).

In fact, the claims appear higher than the court originally stated. *Excluding Claim No. 1-1 to which the debtor has objected*, the total filed claims against the estate are approximately \$477,128.51. The total claims listed in the schedules, excluding Claim No. 1-1 are approximately \$349,048.00. Schedule F, ECF No. 1. The total value of the scheduled assets is \$190,007.00. Schedule B, ECF No. 1.

Thus, even if the debtor succeeded in its objection, there would be no likelihood that the debtor's injury (the allegedly improper claim) would be redressed by a favorable court decision. In other words, the debtor would not receive a distribution from the estate even if the court ruled in favor of the debtor on the claim objection.

For these reasons and the other reasons stated in the civil minutes from the hearing on July 10, 2013, the court finds that the debtor does not have standing to object to the responding party's claim. The court will not entertain the debtor's request to estimate this claim because only the trustee has standing to make such a request.

24. [13-16307](#)-A-7 SARA HANSEN AND JEREMY MOTION TO DISMISS CASE  
SAH-1 WITT 9-24-13 [[8](#)]  
SARA HANSEN/MV  
SUSAN HEMB/Atty. for dbt.  
ORDER DISMISSING DUPLICATE  
CASE DTD 9/26/13

**Final Ruling**

The case dismissed on an ex parte basis as a duplicate filing, this matter is dropped as moot.

**9:15**

1. [13-12901](#)-A-7 ROBERT HERNANDEZ STATUS CONFERENCE RE: COMPLAINT  
[13-1085](#) 7-30-13 [[1](#)]  
HERNANDEZ, JR. V. COLLECTIBLES  
MANAGEMENT RESOURCES  
PETER BUNTING/Atty. for pl.  
DISMISSED 8/13/13, CLOSED  
9/3/13

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

2. [12-18810](#)-A-7 JAMES MERCER STATUS CONFERENCE RE: COMPLAINT  
[13-1082](#) 7-23-13 [[1](#)]  
MANFREDO V. ESTATE OF SUSAN E.  
MERCER ET AL  
JAMES MILLER/Atty. for pl.

**No tentative ruling.**

3. [13-14027](#)-A-7 ADRIAN VELASQUEZ CONTINUED STATUS CONFERENCE RE:  
[13-1071](#) COMPLAINT  
U.S. TRUSTEE V. VELASQUEZ 6-18-13 [[1](#)]  
MARK POPE/Atty. for pl.

**Final Ruling**

The Status Conference is continued to November 6, 2013, to allow the U.S. Trustee to submit a judgment.

4. [13-14027](#)-A-7 ADRIAN VELASQUEZ MOTION FOR ENTRY OF DEFAULT  
[13-1071](#) UST-1 JUDGMENT  
U.S. TRUSTEE V. VELASQUEZ 9-3-13 [[11](#)]  
MARK POPE/Atty. for mv.

**Final Ruling**

**Motion:** Entry of Default

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

**Disposition:** Granted

**Judgment:** Prepared by moving party

**MOTION FOR DEFAULT JUDGMENT**

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).

Dismissal with Prejudice

Title 11 U.S.C. § 349 authorizes the court to dismiss cases with prejudice as to existing debt. Well-pleaded facts support such a dismissal in this case. As a result, the motion will be granted.

With Prejudice/Two Year Filing Bar

The court may enjoin debtors from future filings. 11 U.S.C. § 105; *see also*, Fed. R. Civ. P. 65, *incorporated by reference* Fed. R. Bankr. P. 7065. Well-pleaded facts support a two-year filing bar. As a result, the motion will be granted.

**PROCEDURE**

The Entry of Default and Order Re: Default Judgment Procedures, August 15, 2013, ECF No. 9, provided for prove-up without a noticed hearing. Future prove-up motions need not be set for hearing.

5. [08-15141](#)-A-7 LINDA PINSON RESCHEDULED STATUS CONFERENCE  
[13-1077](#) RE: COMPLAINT  
SALVEN V. PINSON 7-9-13 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.

**No tentative ruling.**

6. [08-15141](#)-A-7 LINDA PINSON RESCHEDULED STATUS CONFERENCE  
[13-1078](#)  
SALVEN V. PINSON RE: COMPLAINT  
TRUDI MANFREDO/Atty. for pl. 7-9-13 [[1](#)]

**No tentative ruling.**

7. [12-10855](#)-A-7 MICHAEL WALKER PRE-TRIAL CONFERENCE ( FOR  
[12-1084](#) TRIAL-SETTING ) RE: COMPLAINT  
WESTAMERICA BANK V. WALKER 5-14-12 [[1](#)]  
CHARLES DOERKSEN/Atty. for pl.  
BAKERSFIELD CASE

**No tentative ruling.**

**10:00 a.m.**

1. [13-15301](#)-A-7 PAUL HERNANDEZ MOTION FOR RELIEF FROM  
DWE-1 AUTOMATIC STAY  
GREEN TREE SERVICING LLC/MV 9-6-13 [[15](#)]  
GARY HUSS/Atty. for dbt.  
DANE EXNOWSKI/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:** 1740 West San Bruno Avenue, Fresno, California

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

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. [13-13812](#)-A-7 CHARLES COX AND BARBARA MOTION FOR RELIEF FROM  
PD-1 WILLIAMS-COX AUTOMATIC STAY  
US BANK NATIONAL 8-19-13 [[14](#)]  
ASSOCIATION/MV  
JOEL WINTER/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2507 Hampton Lane, Antioch, 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.

3. [13-15215](#)-A-7 NARAYANAN/DEVI MOTION FOR RELIEF FROM  
HSM-1 PONDICHERRY AUTOMATIC STAY  
EH NATIONAL BANK/MV 9-17-13 [[17](#)]  
PETER FEAR/Atty. for dbt.  
HOWARD NEVINS/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:** 7505 N. Willow, Fresno, California

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

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. [13-15340](#)-A-7 CAROLINE MIRELES-SAILOR MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE CORPORATION/MV 8-27-13 [[10](#)]  
SCOTT MITCHELL/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** 2008 Honda Civic

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).

**CAUSE**

Section 362(d)(1) authorizes stay relief for cause shown. As of the date of the motion the debtor was delinquent one payment of \$363.84. This does not support a finding of cause.

**LACK OF EQUITY**

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 vehicle is worth \$8,500.00 and aggregate liens total \$5,344.02. A prima facie case has not been made.

**CONCLUSION**

As a result, the motion will be denied.

5. [13-13743](#)-A-7 LISA ROBITAILLE MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON/MV 8-22-13 [[15](#)]  
PETER BUNTING/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.  
NON-OPPOSITION, DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1127 West Orange Avenue, Porterville, California

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

**AS TO THE DEBTOR**

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

**AS TO THE ESTATE**

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

6. [13-11947](#)-A-7 ROBERT/AMY BADILLA  
JLH-2  
VALLEY OAK CREDIT UNION/MV  
HENRY NUNEZ/Atty. for dbt.  
JOSEPH SOARES/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-3-13 [[96](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2005 Chevrolet Truck 1500 Crew Cab

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.

7. [13-15552](#)-A-7 CAROL ANDERSON  
PKB-1  
GREEN TREE SERVICING LLC/MV  
GEOFFREY ADALIAN/Atty. for dbt.  
PATRICK BRUSO/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-4-13 [[13](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2002 14 x 40 Fleetwood Springhill Mfg. Home

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.

8. [13-14771](#)-A-7 NICK/SANDRA KALENDER MOTION FOR RELIEF FROM  
JCT-1 AUTOMATIC STAY  
MJ CONSTRUCTION CO., INC./MV 8-20-13 [[17](#)]  
JANINE ESQUIVEL/Atty. for dbt.  
JONATHAN TERRY/Atty. for mv.

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** *Avalos v. Mission Homes*, No. 13CECG02572KCK (Fresno County Superior Court 2013); *Basurto v. Mission Homes*, No. 12CECG03735 (Fresno County Superior Court 2012); *Holland v. Mission Homes*, No. 11CECG04318DSB; *Negrete v. Mission Homes*, No. 09CECG01744 (Fresno County Superior Court 2009); *Rios v. Mission Development 5179, LP*, No. 12CECG0558 (Fresno County Superior Court 2012).

### ON THE MERITS

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)(1) authorizes stay relief for cause. Cause includes litigation for pre-petition causes of action the source of payment for which is the debtor's liability carrier. The movant may pursue through judgment, including post-judgment litigation and appeals, state court actions against the debtor provided that: (1) no enforcement against the debtor occur; and (2) collection of the judgment be limited to the debtor's insurance carriers. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### VIOLATION OF LOCAL RULES

The movant has failed to file the Relief from Stay Summary Sheet, EDC 3-468, mandated by Local Bankruptcy Rule 4001-1(a)(3). Future violations of the local rules may result in denial of the motion or monetary or other sanctions against counsel.

9. [13-14679](#)-A-7 GERALD/MARTHA SANTEMA  
JMW-1  
THE GOLDEN 1 CREDIT UNION/MV  
ANDREW MAGWOOD/Atty. for dbt.  
JOSEPH WELCH/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-20-13 [[12](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2571 South 9th Street, Fresno, 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. [13-14517](#)-A-7 JOHN/BRANDY CASTILLO PRO SE REAFFIRMATION AGREEMENT  
WITH NUVELL CREDIT COMPANY  
9-3-13 [[23](#)]

**No tentative ruling**

2. [13-15237](#)-A-7 JESSE CAZARES PRO SE REAFFIRMATION AGREEMENT  
WITH FORD MOTOR CREDIT COMPANY  
8-29-13 [[13](#)]

**No tentative ruling**

3. [13-14039](#)-A-7 DEBRA BOLDING REAFFIRMATION AGREEMENT WITH  
TOYOTA MOTOR CREDIT CORPORATION  
8-27-13 [[16](#)]  
TERRI MCCRACKEN/Atty. for dbt.

**No tentative ruling**

4. [13-15460](#)-A-7 MAE TUCKER PRO SE REAFFIRMATION AGREEMENT  
WITH GOLDEN STATE BUILDINGS  
9-9-13 [[17](#)]

**No tentative ruling**

5. [13-14767](#)-A-7 VICKIE CERVANTES REAFFIRMATION AGREEMENT WITH  
WELLS FARGO DEALER SERVICES  
8-30-13 [[17](#)]  
SCOTT LYONS/Atty. for dbt.

**No tentative ruling**

6. [13-13973](#)-A-7 TERRY NIECE  
CONTINUED REAFFIRMATION  
AGREEMENT WITH BANK OF THE WEST  
8-12-13 [[28](#)]  
  
TAMIE CUMMINS/Atty. for dbt.  
  
**No tentative ruling**
7. [13-14976](#)-A-7 SHELLEY DONALDSON  
PRO SE REAFFIRMATION AGREEMENT  
WITH ALLY FINANCIAL  
9-12-13 [[12](#)]  
  
PETER FEAR/Atty. for dbt.  
  
**No tentative ruling**
8. [13-14396](#)-A-7 ANNA ALVARADO  
PRO SE REAFFIRMATION AGREEMENT  
WITH WESTAMERICA BANK  
9-3-13 [[16](#)]  
  
**No tentative ruling**
9. [13-15296](#)-A-7 KEVIN/MARY HAYES  
AMENDED PRO SE REAFFIRMATION  
AGREEMENT WITH BRUCE GIBBINGS  
8-26-13 [[22](#)]  
  
**No tentative ruling**

1:30 p.m.

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

**Final Ruling**

At the request of the parties, the matter is continued to December 3, 2013, at 1:30 p.m. Not less than 14 days prior to that hearing, Citizens Business Bank will file a status report.

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

**Final Ruling**

At the request of the parties, the matter is continued to December 3, 2013, at 1:30 p.m. Not less than 14 days prior to that hearing, Citizens Business Bank will file a status report.

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

**Final Ruling**

At the request of the parties, the matter is continued to December 3, 2013, at 1:30 p.m. Not less than 14 days prior to that hearing, Citizens Business Bank will file a status report.

4. [10-12709](#)-A-11 ENNIS COMMERCIAL  
PLF-52 PROPERTIES, LLC  
PETER FEAR/MV

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF PETER L. FEAR FOR  
PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$12,837.00,  
EXPENSES: \$353.95  
8-29-13 [[1018](#)]

PETER FEAR/Atty. for dbt.

### Final Ruling

**Motion:** Final Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Offices of Peter L. Fear

**Additional compensation approved:** \$12,837.00

**Additional costs approved:** \$353.95

**Aggregate additional fees and costs approved:** \$13,190.95

**Retainer held:** \$0.00

**Additional amount to be paid as administrative expense:** \$13,190.95

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 debtor in possession's attorney in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the additional compensation and expenses sought are reasonable, and the court will approve the application. The court also finalizes all prior awards of fees and costs, finding those amounts actual, reasonable and necessary.

5. [12-17310](#)-A-11 JOHN/GRACE VISSER

CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
9-18-12 [[121](#)]

RONALD CLIFFORD/Atty. for dbt.

*[The Status Conference will be called subsequent to the motion to designate votes, RAC-14, hearing on confirmation of second amended chapter 11 plan, RAC-14, and motion to use cash collateral, KDG-2.]*

**No tentative ruling**

6. [12-17310](#)-A-11 JOHN/GRACE VISSER  
KDG-2  
JOHN VISSER/MV  
RONALD CLIFFORD/Atty. for dbt.  
ORDER 7/23/13

RESCHEDULED HEARING RE: MOTION  
TO USE CASH COLLATERAL  
8-27-12 [[9](#)]

*[The motion to use cash collateral will be called subsequent to the motion to designate votes, RAC-14, and hearing on confirmation of second amended chapter 11 plan, RAC-14.]*

#### **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

**Expiration:** November 30, 2013

**Adeq. Protection:** Replacement liens

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.

7. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-14

CONFIRMATION OF DEBTORS' SECOND  
AMENDED CHAPTER 11 PLAN  
8-14-13 [[784](#)]

RONALD CLIFFORD/Atty. for dbt.  
RESPONSIVE PLEADINGS

*[The hearing on this matter will be concurrent with the hearing on Wells Fargo Bank, N.A.'s Motion to Designate the Votes of Certain Creditors in this case having docket control no. RAC-14.]*

#### **Tentative Ruling**

**Matter:** Hearing on Confirmation of Debtors' Second Amended Chapter 11 Plan

**Notice:** LBR 9014-1(f)(1) / order approving disclosure statement / approved disclosure statement; written objections required

**Disposition:** Initial hearing will be a status conference; confirmation hearing continued to a date determined by the court and the parties

**Order:** Prepared by debtors

The court will grant the Joint Request of Debtors and Wells Fargo Bank, N.A. to Convert the Confirmation-Related Hearings Scheduled for October 2, 2013, to a Status Conference. As stated in such joint request, the initial hearing will be a status conference at which the court will allow the parties to (i) report on the details of the proposed resolution of the confirmation-related matters, (ii) describe the contingencies to resolution and the amount of time required to determine if the contingencies can be resolved, and (iii) determine a schedule and process to resolve the disputes between the debtors and Wells Fargo Bank, including setting a new date for the confirmation hearing and new hearing date for the motions to designate certain votes. The court will also determine whether evidentiary hearings must be set on the objections to confirmation of the debtors' plan and the motions to designate certain votes.

8. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-14  
WELLS FARGO BANK, N.A./MV

MOTION BY WELLS FARGO BANK TO  
DESIGNATE THE VOTES OF CERTAIN  
CREDITORS  
9-11-13 [[826](#)]

RONALD CLIFFORD/Atty. for dbt.  
ANDREW TROOP/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Designate the Votes of Certain Creditors

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

**Disposition:** Initial hearing will be a status conference; hearing continued to a date on or before the confirmation hearing

**Order:** Prepared by debtors

The court will grant the Joint Request of Debtors and Wells Fargo Bank, N.A. to Convert the Confirmation-Related Hearings Scheduled for October 2, 2013, to a Status Conference. As stated in such joint

request, the initial hearing will be a status conference at which the court will allow the parties to (i) report on the details of the proposed resolution of the confirmation-related matters, (ii) describe the contingencies to resolution and the amount of time required to determine if the contingencies can be resolved, and (iii) determine a schedule and process to resolve the disputes between the debtors and Wells Fargo Bank, including setting a new date for the confirmation hearing and a new hearing date for the motions to designate certain votes. The court will also determine whether evidentiary hearings must be set on the objections to confirmation of the debtors' plan and the motions to designate certain votes.

9. [13-13531](#)-A-11 DANIEL'S MEXICAN GRILL, MOTION FOR COMPENSATION FOR MPA  
SL-4 LLC AND ASSOCIATES, ACCOUNTANT(S),  
MPA AND ASSOCIATES/MV FEE: \$1,422.20, EXPENSES: \$0.00  
8-29-13 [[81](#)]
- STEPHEN LABIAK/Atty. for dbt.  
CASE DISMISSED

#### **Final Ruling**

**Motion:** Interim Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Hilda Zacarias, MPA and Associates

**Compensation approved:** \$1,422.20

**Costs approved:** \$0.00

**Aggregate fees and costs approved:** \$1,422.20

**Period:** May 17, 2013-July 31, 2013

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$1,422.00

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).

Notwithstanding the dismissal of this case on September 16, 2013, this court retains jurisdiction over professional fees. *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1533 (9th Cir. 1994); *In re Lawson*, 156 B.R. 43, 47 (9th Cir. B.A.P. 1993).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by professionals to the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that 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.

10. [13-13531](#)-A-11 DANIEL'S MEXICAN GRILL, MOTION FOR COMPENSATION FOR  
SL-5 LLC STEPHEN L. LABIAK, DEBTOR'S  
STEPHEN LABIAK/MV ATTORNEY(S), FEE: \$8,360.00,  
EXPENSES: \$0.00.  
8-29-13 [[87](#)]

STEPHEN LABIAK/Atty. for dbt.  
CASE DISMISSED

### **Final Ruling**

**Motion:** Interim Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Stephen Labiak

**Compensation approved:** \$8,360.00

**Costs approved:** \$0.00

**Aggregate fees and costs approved:** \$8,360.00

**Period:** May 15, 2013-August 21, 2013

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$8,360.00

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).

Notwithstanding the dismissal of this case on September 16, 2013, this court retains jurisdiction over professional fees. *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1533 (9th Cir. 1994); *In re Lawson*, 156 B.R. 43, 47 (9th Cir. B.A.P. 1993).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by professionals to the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). Compensation is approved for the applicant's work in *In re Daniel's Mexican Grill*, No. 13-13531 (Bankr. E.D. Cal. 2013); compensation sought for work performed in *J and J Sports Productions, Inc. v. Daniel De La Cerda*, No. CV11-01896-LJO-SKO) must be made by separate application.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a

final application for compensation and expenses, which shall be filed prior to case closure.

11. [12-17336](#)-A-11 VISSER FARMS CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
9-18-12 [[103](#)]

SCOTT BLAKELEY/Atty. for dbt.

*[The Status Conference will be called subsequent to the motion to designate votes, AMT-5, hearing on confirmation of second amended chapter 11 plan, RAC-15, and motion to use cash collateral, KDG-2.]*

**No tentative ruling**

12. [12-17336](#)-A-11 VISSER FARMS MOTION TO DESIGNATE THE VOTES  
AMT-5 OF CERTAIN CREDITORS  
WELLS FARGO BANK, N.A./MV 9-11-13 [[270](#)]  
SCOTT BLAKELEY/Atty. for dbt.  
ANDREW TROOP/Atty. for mv.

*[The hearing on this matter will be concurrent with the confirmation hearing in this case having docket control no. RAC-15.]*

**Tentative Ruling**

**Motion:** Designate the Votes of Certain Creditors

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

**Disposition:** Initial hearing will be a status conference; hearing continued to a date on or before the confirmation hearing in this case

**Order:** Prepared by debtors

The court will grant the Joint Request of Debtors and Wells Fargo Bank, N.A. to Convert the Confirmation-Related Hearings Scheduled for October 2, 2013, to a Status Conference. As stated in such joint request, the initial hearing will be a status conference at which the court will allow the parties to (i) report on the details of the proposed resolution of the confirmation-related matters, (ii) describe the contingencies to resolution and the amount of time required to determine if the contingencies can be resolved, and (iii) determine a schedule and process to resolve the disputes between the debtors and Wells Fargo Bank, including setting a new date for the confirmation hearing and a new hearing date for the motions to designate certain votes. The court will also determine whether evidentiary hearings must be set on the objections to confirmation of the debtors' plan and the motions to designate certain votes.

13. [12-17336](#)-A-11 VISSER FARMS RESCHEDULED HEARING RE: MOTION  
KDG-2 TO USE CASH COLLATERAL

*[The motion to use cash collateral will be called subsequent to the motion to designate votes, AMT-5, and hearing on confirmation of second amended chapter 11 plan, RAC-15.]*

**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

**Expiration:** November 30, 2013

**Adeq. Protection:** Replacement liens

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.

14. [12-17336](#)-A-11 VISSER FARMS  
RAC-15

CONFIRMATION OF SECOND AMENDED  
CHAPTER 11 PLAN OF  
REORGANIZATION  
8-14-13 [[261](#)]

SCOTT BLAKELEY/Atty. for dbt.  
RESPONSIVE PLEADINGS

### **Tentative Ruling**

**Matter:** Hearing on Confirmation of Debtors' Second Amended Chapter 11 Plan

**Notice:** LBR 9014-1(f)(1) / order approving disclosure statement / approved disclosure statement; written objections required

**Disposition:** Initial hearing will be a status conference; confirmation hearing continued to a date determined by the court and the parties

**Order:** Prepared by debtors

The court will grant the Joint Request of Debtors and Wells Fargo Bank, N.A. to Convert the Confirmation-Related Hearings Scheduled for October 2, 2013, to a Status Conference. As stated in such joint request, the initial hearing will be a status conference at which the court will allow the parties to (i) report on the details of the proposed resolution of the confirmation-related matters, (ii) describe the contingencies to resolution and the amount of time required to determine if the contingencies can be resolved, and (iii) determine a schedule and process to resolve the disputes between the debtors and Wells Fargo Bank, including setting a new date for the confirmation hearing and new hearing date for the motions to designate certain votes. The court will also determine whether evidentiary hearings must be set on the objections to confirmation of the debtors' plan and the motions to designate certain votes.

15. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS  
PKB-1  
GREEN TREE SERVICING LLC/MV  
RILEY WALTER/Atty. for dbt.  
PATRICK BRUSO/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-29-13 [[305](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Prepared by moving party

**Subject:** 1997 66x27 Fleetwood Lenwood Mobilehome

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).

At any hearing on a motion for stay relief, the moving party has the burden of proof on equity and the respondent bears the burden of proof on all other issues. 11 U.S.C. § 362(g).

**SECTION 362(d)(1): CAUSE**

Section 362(d)(1) authorizes stay relief for cause. The debtors' failure to make post-petition payments may constitute cause. *In re Delaney-Morin*, 304 B.R. 356, 369-70 (9th Cir. 2003); *In re Avila*, 311 B.R. 81 (Bankr. N.D. Cal. 2004). When the creditor is protected by an equity cushion, where the debtor would suffer substantial loss as a result, and where no economic hard to the creditor would result from denial of the motion, post-petition default should not automatically result in a finding of cause.

Here, the movant concedes the debtor in possession is only delinquent two payments totaling \$1,331.76. This alone is insufficient to establish cause.

**SECTION 362(d)(2): NO EQUITY AND NOT NECESSARY FOR AN EFFECTIVE REORGANIZATION**

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 amount of the secured debt is \$56,136.88. But the movant offers no evidence of value. As a result, the movant has not carried its burden of proof.

As a result, the motion will be denied.

16. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS AMENDED MOTION TO SELL  
WW-23 8-29-13 [[303](#)]  
JORGE SANTOS/MV  
RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Sell Real Property

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

**Disposition:** Granted in part and denied in part

**Order:** Prepared by moving party, approved by the U.S. Trustee

**Property:** 2007 John Deere Tractor, model 7730  
**Buyer:** Bre Ella Farms  
**Sale Price:** \$20,000  
**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). Except for the U.S. Trustee as to the carve-out no opposition has been filed. The default of all other responding parties 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) SALE**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

#### **SECTION 363(f) FREE AND CLEAR**

Subject to the condition that Farm Credit West consents, the sale will be free and clear of Farm Credit West's lien on the personal property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f)(2). Evidence of such consent must be given at or before the hearing on this motion or by signature on the order granting this motion. The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph. The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale on the property sold.

#### **CARVE OUT FOR DIP COUNSEL**

The court will approve a carve out for administrative expenses, including all professional fees, but will disapprove a carve out earmarked for one particular professional. The motion seeks a carve out for the debtor in possession's counsel. Professional fees and other administrative expenses arise under 11 U.S.C. § 507(a)(2). All § 507(a)(2) claims are of equal dignity and priority. *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1356 & fn. 22 (9th Cir. 1983); *In re Lazar*, 83 F.3d 306, 308-309 (9th Cir. 1996). Where there are insufficient funds to pay all administrative claims in full, administrative claimants share pro-rata. *In re Barron*, 73 B.R. 812, 815 (Bankr. SD Cal. 1987); *In re Lazar*, 83 F.3d 306, 308-309 (9th Cir. 1996). The request to carve out fees in favor of a particular professional, debtor in possession's counsel, suggests administrative insolvency and, at least for the purposes of a carve out, triggers the pro-rata payment scheme required by *Lazar*, and by *Barron*. The carve out will be approved but only in favor of all administrative expenses.

17. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS MOTION TO SELL  
WW-24 8-28-13 [[297](#)]  
JORGE SANTOS/MV  
RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2011 Kubota Tractor, Model 7040

**Buyer:** Dirt Road Farms, LLC-buyer is owned by Erica Santos, who is the Debtors' daughter-in-law

**Sale Price:** \$10,000.00 (consisting of buyer's assumption of \$8,000.00 loan owed to Kubota Finance and payment of \$2,000.00 cash, which amount will be paid to Farm Credit West)

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

**Free and Clear Relief:** No free and clear relief has been requested; Farm Credit West will consent to the sale being free and clear conditioned on its receipt of the net sale proceeds over and above the loan assumption amount

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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) ("When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being

requested and set for the essential facts necessary for a party to determine whether to oppose the motion." ).

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, counsel should ensure that the notice of hearing contains all material terms and conditions of the sale.

18. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS MOTION FOR COMPENSATION BY THE  
WW-25 LAW OFFICE OF WALTER & WILHELM  
RILEY WALTER/MV FOR RILEY C. WALTER, DEBTOR'S  
ATTORNEY(S), FEE: \$18615.00,  
EXPENSES: \$3733.92.  
9-11-13 [[320](#)]
- RILEY WALTER/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Walter Wilhelm

**Compensation approved:** \$18,615.00

**Costs approved:** \$3,733.92

**Aggregate fees and costs approved:** \$22,348.92

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$22,348.92

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 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a professional employed by the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that 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.

19. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS  
WW-26  
MARTIN C. GARCIA ACCOUNTANCY  
CORPORATION/MV

MOTION FOR COMPENSATION FOR  
MARTIN C. GARCIA ACCOUNTANCY  
CORPORATION, ACCOUNTANT(S),  
FEE: \$7914.00, EXPENSES: \$8.55.  
9-11-13 [[326](#)]

RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Motion:** Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Martin C. Garcia Accountancy Corporation

**Compensation approved:** \$7,914.00

**Costs approved:** \$8.55

**Aggregate fees and costs approved:** \$7,922.55

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$7,922.55

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 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a professional employed by the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that 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.

20. [13-13284](#)-A-11 NICOLETTI OIL INC.

CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
5-15-13 [[16](#)]

DAVID GOLUBCHIK/Atty. for dbt.

**No tentative ruling**

21. [13-11288](#)-A-11 ABEL/STACY LUNA

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

PETER FEAR/Atty. for dbt.

**Tentative Ruling**

At the debtor's suggestion, the court intends to convert this case to Chapter 7.

22. [13-11288](#)-A-11 ABEL/STACY LUNA  
PLF-4

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

PETER FEAR/Atty. for dbt.

*[This matter will be called after status conference (item no. 21).]*

**Tentative Ruling**

**Motion:** Continued Motion to Approve Disclosure Statement

**Notice:** Continued date of hearing

**Disposition:** Denied

**Order:** Civil minute order

Pursuant to the prior civil minute order (ECF No. 57), the hearing on approval of the disclosure statement was continued to allow the Debtors to file an amended disclosure statement and plan by September 4, 2013 that addressed the issues raised by the court. However, no filing was made (since the Debtors wish to convert their case to chapter 7). Therefore, the court will deny the motion to approve the disclosure statement.

23. [13-14894](#)-A-11 JORENE MIZE

CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
7-24-13 [[21](#)]

ROSEANN FRAZEE/Atty. for dbt.

*[The Status Conference will be called subsequent to the motion to employ, RAF-1; motion to use cash collateral, RAF-2; and motion to value collateral, RAF-3.]*

No tentative ruling

24. [13-14894](#)-A-11 JORENE MIZE  
JORENE MIZE/MV  
ROSEANN FRAZEE/Atty. for dbt.

CONTINUED MOTION TO EMPLOY  
ROSEANN FRAZEE AS ATTORNEY(S)  
8-13-13 [[26](#)]

**Tentative Ruling**

**Motion:** Employ Counsel (RoseAnn Frazee)

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Employment applications are governed by 11 U.S.C. § 327. The applicant having made a prima facie showing of qualification, the court will grant the motion.

25. [13-14894](#)-A-11 JORENE MIZE  
RAF-2  
JORENE MIZE/MV  
ROSEANN FRAZEE/Atty. for dbt.

CONTINUED MOTION TO USE CASH  
COLLATERAL  
8-20-13 [[31](#)]

**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.

26. [13-14894](#)-A-11 JORENE MIZE  
RAF-3  
JORENE MIZE/MV  
ROSEANN FRAZEE/Atty. for dbt.

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

#### **Tentative Ruling**

At the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: value of 40807 Highway 41, Oakhurst, California

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

27. [12-17310](#)-A-11 JOHN/GRACE VISSER  
AMT-6  
WELLS FARGO BANK, N.A./MV  
RONALD CLIFFORD/Atty. for dbt.  
M. MINNICK/Atty. for mv.

MOTION TO DESIGNATE THE VOTE OF  
PRAXAIR DISTRIBUTION  
9-23-13 [[838](#)]

**Tentative Ruling**

**Motion:** Designate the Vote of Praxair Distribution

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

**Disposition:** Denied without prejudice

**Order:** Prepared by debtors

This motion to designate the vote of Praxair Distribution Inc. ("Praxair") was not served on the responding creditor. Because the motion is directed at Praxair's rights, specifically, its right to have its vote counted, the court considers the motion as initiating a contested matter pursuant to Rule 9014(a). Under Rule 9014(b), a contested matter must be served pursuant to Rule 7004. No officer or authorized agent for Praxair appears on the proof of service.

28. [12-17336](#)-A-11 VISSER FARMS  
AMT-6  
WELLS FARGO BANK, N.A./MV  
SCOTT BLAKELEY/Atty. for dbt.  
ANDREW TROOP/Atty. for mv.

MOTION TO DESIGNATE THE VOTE OF  
PRAXAIR DISTRIBUTION  
9-23-13 [[282](#)]

**Tentative Ruling**

**Motion:** Designate the Vote of Praxair Distribution

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

**Disposition:** Denied as moot

**Order:** Prepared by debtors

This motion appears to have been filed in the Visser Farms case erroneously. The motion filed in the Visser Farms case seeks to designate the vote of Praxair Distribution Inc. to accept the plan in *the John L and Grace A. Visser case*. The analysis of ballots filed by the debtor, moreover, confirms that Praxair has not voted in this case, so there is no vote to "designate." No certificate of service for this motion, moreover, appears on the Visser Farms docket. The court will deny the motion as moot.

29. [12-17310](#)-A-11 JOHN/GRACE VISSER  
AMT-8  
WELLS FARGO BANK, N.A./MV  
RONALD CLIFFORD/Atty. for dbt.  
M. MINNICK/Atty. for mv.
- OBJECTION TO CLAIM OF PRAXAIR  
DISTRIBUTION, CLAIM NUMBER 23  
9-25-13 [[844](#)]

**Final Ruling**

No order shortening time was granted, and therefore the objection is denied without prejudice.

30. [12-17310](#)-A-11 JOHN/GRACE VISSER  
AMT-10  
WELLS FARGO BANK, N.A./MV  
RONALD CLIFFORD/Atty. for dbt.  
M. MINNICK/Atty. for mv.
- OBJECTION TO CLAIM OF AMERICAN  
EXPRESS, CLAIM NUMBER 8 AND 10  
9-25-13 [[853](#)]

**Final Ruling**

No order shortening time was granted, and therefore the objection is denied without prejudice.

1:45 p.m.

1. [10-62315](#)-A-11 BEN ENNIS  
[13-1074](#)  
STAPLETON V. HA DEVCO, INC. ET  
AL
- CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-28-13 [[1](#)]

**Final Ruling**

A Stipulation for Entry of Judgment received, the status conference is concluded.

3:00 p.m.

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

RILEY WALTER/Atty. for dbt.  
JUSTIN HARRIS/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling**