

**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 16, 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. [12-11501](#)-A-7 MAUDETTE BLASE THA-3  
THOMAS ARMSTRONG/MV  
MOTION FOR COMPENSATION FOR THOMAS H. ARMSTRONG, TRUSTEE'S ATTORNEY(S), FEE: \$6638.50, EXPENSES: \$237.43.  
9-6-13 [[40](#)]

THOMAS ARMSTRONG/Atty. for mv.

**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:** Thomas H. Armstrong

**Compensation approved:** \$6,638.50

**Costs approved:** \$237.43

**Aggregate fees and costs approved:** \$6,875.93

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

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

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

2. [10-17007](#)-A-7 MAIYIA XIONG DRJ-2  
TRUDI MANFREDO/MV  
MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MAIYIA XIONG  
8-13-13 [[75](#)]

PETER FEAR/Atty. for dbt.

DAVID JENKINS/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.

3. [13-15309](#)-A-7 PABLO CASTANEDA AND ROCIO MOTION TO DISMISS CASE  
JES-1 SATURINO 9-18-13 [[27](#)]  
JAMES SALVEN/MV

THOMAS GILLIS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case for Failure to Provide the Trustee with Tax Returns and Pay Advices by the Deadline

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

**Disposition:** Denied

**Order:** Civil minute order

### **BACKGROUND FACTS**

Chapter 7 trustee James Salven moves to dismiss the debtors' case because they did not timely provide him with their most recently filed tax returns required by § 521(e)(2)(A)(i) and copies of their pay advices for the 60-day period preceding the petition date from any employer of the debtors. The trustee does not assert that the documents provided were incomplete—the trustee seeks dismissal only on the basis of the *tardy delivery* of the documents.

The trustee argues that the *tardy delivery* to the trustee of such materials in advance of the creditors' meeting prejudices the trustee because it causes the trustee to duplicate file review and investigation in preparation for the meeting of creditors. The

trustee further asserts that the creditors' meeting was continued because of the debtors' tardy delivery of documents, and that creditors are prejudiced by this delay and by having to attend a second creditors' meeting.

The trustee concedes that the debtors' testified at the creditors' meeting that they had provided tax returns to their attorney 6 months prior to the creditors' meeting. The debtors' attorney admits that the reason for untimely delivery of the tax returns to the trustee was a clerical error in his office, asserting the oversight was unintentional and has not inconvenienced any creditor.

#### **FAILURE TO PROVIDE TAX RETURNS TIMELY TO THE TRUSTEE**

Tax returns are required to be provided to the trustee no later than 7 days before the meeting of creditors. See 11 U.S.C. § 521(e)(2)(A)(i). The court may dismiss a case if the debtor fails to comply with § 521(e)(2)(A)(i) "unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." See *id.* § 521(e)(2)(B).

The court finds that the case should not be dismissed due to circumstances beyond the debtors' control. See *id.* § 521(e)(2)(B). The statutory provision for dismissal makes an exception for circumstances beyond the debtor's control. The debtors cannot control the errors of their attorneys in meeting the deadline for providing documents to the trustee. The debtors properly expect this deadline be met if the debtors' have provided such documents to their attorney. Once the deadline is missed by the attorney, the debtors have no way to remedy the mistake.

#### **FAILURE TO PROVIDE PAY ADVICES TIMELY TO THE TRUSTEE**

No later than 7 days before the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. The court has required debtors under Local Bankruptcy Rule 1007-1(c)(1) not to file payment advices or other evidence of payment. Section 521(i), by contrast, is premised on the requirement that a debtor file such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, but a very different deadline is imposed for providing documents to the

trustee under Local Bankruptcy Rule 1001-1(g). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules.

Here, the court finds that the debtors attempted in good faith to comply with their duties under Local Bankruptcy Rule 1007-1(c)(1) by providing the pay advices to their attorney. The trustee's motion concedes that debtors testified that they provided such documents to their attorney at least 6 months before the creditors' meeting.

The creditors, moreover, would be well served by continued administration of the case rather than dismissal. The trustee will be able to determine on behalf of unsecured creditors whether there are any non-exempt assets available for distribution. When creditors obtain information about assets after the trustee's investigation, creditors either (i) discover that assets exist and receive a distribution, or (ii) avoid wasting resources to collect from the debtor where no assets are available.

Accordingly, the court will not dismiss the case for noncompliance with the deadline under LBR 1007-1(c)(1).

#### **REQUEST FOR DISMISSAL UNDER § 707(a)(1)**

Further, the court will not dismiss the case under § 707(a)(1) because creditors have not been unreasonably delayed *by the debtor* if the delay could be properly characterized as unreasonable. While the court sympathizes with the trustee's predicament of having to prepare for multiple creditors' meetings, and recognizes that the trustee has been delayed, the court does not find that the delay imposed on *creditors* is unreasonable or prejudicial as a result of one continuance of the creditors' meeting. *See id.* § 707(a)(1).

U.S. BANK, NATIONAL  
ASSOCIATION/MV  
JOSH HARRISON/Atty. for mv.

### **Tentative Ruling**

**Motion:** Relief from Automatic Stay  
**Notice:** Unclear; no written opposition filed  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The court will deny the motion without prejudice given that no declaration has been filed in support of the motion. LBR 9014-1(d)(6). This rule provides that "[e]very motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)." *Id.*

The court will also deny the motion for a number of procedural deficiencies. The notice of hearing on the motion does not comply with the court's local rules because it does not inform potential respondents "whether and when written opposition must be filed" and "the deadline for filing and serving it." LBR 9014-1(d)(3). The notice of hearing states that "failure to file timely written opposition, or appear at the hearing may result in the motion being resolved without oral argument and the striking of untimely written opposition." The notice of hearing also states that "[W]ritten opposition must be served on the following persons or entities ...."

This language does not inform parties whether and when written opposition is required or whether a respondent may present opposition at the hearing. See LBR 9014-1(f)(1)-(2). It appears to give respondents the option of filing written opposition or appearing at the hearing and presenting opposition at that time. This language is also ambiguous about whether written opposition is required as it could be read either to require written opposition or to require merely that any written opposition be served on the parties listed.

The notice of hearing further incorrectly references authority in support. It identifies Local Bankruptcy Rule 4001-1(c) as a rule on which it is based. This subsection of the rule governs cash collateral and post-petition financing agreements. Subsection (a) of Local Bankruptcy Rule 4001-1 should have been referenced. It also identifies Federal Rule of Bankruptcy Procedure 4001-1(a), which does not exist.

Additionally, the motion does not contain a docket control number that complies with the court's local rules. The docket control number for the motion is merely "18" while the docket control number for the notice of hearing is "26." The court refers the moving party's counsel to Local Bankruptcy Rule 9014-1(c) for guidance on proper use of docket control numbers. Further, once a proper docket control number has been assigned, the notice of hearing, declarations and exhibits and other papers filed in support should include the same number. LBR 9014-1(c)(4).

The motion was also set for hearing at an incorrect time. For Fresno hearings, the court's self-set calendar procedures indicate that motions in Chapter 7 for relief from stay are to be set for hearing at

10:00 a.m. on the court's October 16, 2013 calendar. This information is available on the court's website at <http://www.caeb.uscourts.gov/documents/Judges/SelfSetCalendars/amended-Sept-Oct.pdf>.

Lastly, the exhibits do not comply with the court's guidelines for the preparation of exhibits. The court refers counsel to Local Bankruptcy Rule 9004-1(a), which requires that "[a]ll pleadings and documents shall conform with the Court's *Revised Guidelines for the Preparation of Documents*, Form EDC 2-901." These guidelines control the format for exhibits and are available on the court's website ([www.caeb.uscourts.gov](http://www.caeb.uscourts.gov)). The exhibits do not comply with paragraph (6)(a)-(c), (e) and (f) of the *Revised Guidelines for the Preparation of Documents*.

5. [13-15215](#)-A-7      NARAYANAN/DEVI      MOTION TO SELL  
RHT-1              PONDICHERRY              9-13-13 [[12](#)]  
ROBERT HAWKINS/MV  
PETER FEAR/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2003 Mercedes-Benz M-Class ML350

**Buyer:** Debtors

**Sale Price:** \$6,500.00 (\$3,600.00 cash plus \$2,900.00 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). 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.

6. [12-16028](#)-A-7 SCOTT/KATHERINE MCAVOY  
TMT-2  
TRUDI MANFREDO/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH SCOTT WAYNE  
MCAVOY, SR. AND KATHERINE ALICE  
MCAVOY  
9-4-13 [[48](#)]

PETER FEAR/Atty. for dbt.  
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.

7. [13-14939](#)-A-7 MONICA HERNANDEZ  
JES-1  
JAMES SALVEN/MV

MOTION TO DISMISS CASE  
9-18-13 [[17](#)]

GARY SAUNDERS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Dismiss Case for Failure to Provide Tax Returns and Pay Advices Timely to the Trustee

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

**Disposition:** Denied

**Order:** Civil minute order

### **BACKGROUND FACTS**

Trustee James Salven's motion requests dismissal of this case under § 521(e)(2)(B) and § 707(a)(1). Tax returns and pay advices were not provided to the trustee 7 days in advance of the creditors' meeting under § 341, which was first scheduled for August 19, 2013. This meeting has been continued to September 12, 2013, and then further continued to October 24, 2013.

It is unclear from the motion whether the trustee has yet received the required documents. One portion of the motion mentions "tardy delivery" of the documents, which suggests that the trustee seeks dismissal on the grounds that the documents were late rather than not delivered. But the motion is not clear on this point.

The trustee does admit that the debtor testified at the meeting of creditors that the § 521 documents (presumably both the tax returns and payment advices) had been timely provided to her counsel *twice*. See Salven Decl. ¶ 4-5, ECF No. 19. The trustee also states that debtor's out-of-town counsel used appearance counsel who had no explanation for the failure to timely deliver such documents to the trustee.

Finally, the trustee admits that the debtor has been "extremely cooperative" with the trustee. From the trustee's motion, the fault for failure to timely deliver the required documents to the trustee is properly attributed to debtor's counsel, not the debtor.

### **FAILURE TO PROVIDE TAX RETURNS TIMELY TO THE TRUSTEE**

Tax returns are required to be provided to the trustee no later than 7 days before the meeting of creditors. See 11 U.S.C. § 521(e)(2)(A)(i). The court may dismiss a case if the debtor fails to comply with § 521(e)(2)(A)(i) "unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." See *id.* § 521(e)(2)(B).

The court finds that the case should not be dismissed due to circumstances beyond the debtors' control. See *id.* § 521(e)(2)(B). Based on the facts asserted by the trustee, the debtor provided the required § 521 documents, which presumably included the tax returns, to her counsel twice. It appears these were provided both before and after the first meeting of creditors to her counsel. Salven Decl. ¶ 4-5. Appearance counsel had no explanation for debtor's counsel's failure to provide the trustee with the documents.

Debtor's counsel appears not to have provided the documents to the trustee. The inaction of the debtor's attorney in meeting the deadline for providing documents to the trustee is not within her control. Debtor can only control whether she provides the documents timely to her attorney. Although she can terminate the representation, such a remedy would not likely allow her to control whether documents were timely provided to the trustee: any such termination would not allow a new attorney sufficient time to meet a deadline for delivery of documents that her current attorney had already been missed and that should have met.

#### **FAILURE TO PROVIDE PAY ADVICES TIMELY TO THE TRUSTEE**

No later than 7 days before the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. The court has required debtors under Local Bankruptcy Rule 1007-1(c)(1) not to file payment advices or other evidence of payment. Section 521(i), by contrast, is premised on the requirement that a debtor file such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, but a very different deadline is imposed for providing documents to the trustee under Local Bankruptcy Rule 1007-1(c)(1). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules.

Here, the debtor provided the required § 521 documents, which presumably included the payment advices, to her attorney twice. It appears she made a good faith effort to comply with the rule that such materials be provided to the trustee. Further, the court finds that creditors would be well served by further administration of the case. *Id.* The case appears to be a no-asset case based on the schedules. But the trustee will be able to determine on behalf of unsecured creditors whether there are any non-exempt assets available for

distribution. When creditors obtain information about assets after the trustee's investigation, creditors either (i) discover that assets exist and receive a distribution, or (ii) avoid wasting resources to collect from the debtor where no assets are available.

Accordingly, the court will not dismiss the case for noncompliance with the deadline under LBR 1007-1(c)(1).

#### **REQUEST FOR DISMISSAL UNDER § 707(a)(1)**

Further, the court will not dismiss the case under § 707(a)(1) because creditors have not been unreasonably delayed *by the debtor* if the delay could be properly described as unreasonable. While the court sympathizes with the trustee's predicament in having to prepare for multiple creditors' meetings, and recognizes that the trustee has been delayed, the court does not find that the delay imposed on *creditors* is unreasonable or prejudicial as a result of two continuances of the creditors' meeting. See *id.* § 707(a)(1).

8. [13-11144](#)-A-7 WESLEY/KATHY MARTIN MOTION TO SELL  
TMT-1 9-18-13 [[27](#)]  
TRUDI MANFREDO/MV  
DAVID LANGE/Atty. for dbt.  
TRUDI MANFREDO/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:** 1956 Chevrolet 210

**Buyer:** Debtors

**Sale Price:** \$6,800.00 (\$2,000.00 cash plus \$4,800.00 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.

9. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, CONTINUED MOTION TO SELL  
KDG-8 INC. 9-4-13 [[86](#)]  
JEFFREY VETTER/MV  
LEONARD WELSH/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**No Tentative Ruling**

**Motion:** Sell Aircraft Hangars and Compensate Real Estate Broker  
**Notice:** LBR 9014-1(f)(2); no written opposition presented at the initial hearing  
**Disposition:** Pending  
**Order:** Prepared by moving party

**Property:** Two aircraft hangars as described below:  
-Hangar 68 located at 1224 Flight Line, Mojave Air & Space Port with ancillary offices and outbuildings ("Hangar 68")  
-Hangar 100 located at 1031 Mobley, Mojave Air & Space Port with ancillary offices and outbuildings ("Hangar 100")  
**Buyer:** Flight Test Aerospace, LLC

**Sale Price:**

-Hangar 68: \$868,000.00  
-Hangar 100: \$600,000.00

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

**Additional Term of Sale:** Buyer's purchase of either hangar is contingent on its purchase of the other hangar, so the Buyer listed above must win both hangars or will not take either hangar

**Sale Free and Clear of IRS and EDD's Lien:** If the court grants the motion at the continued date of the hearing, the court will grant free and clear relief under § 363(f) only as to the liens held by the IRS and the EDD for the reasons stated in the civil minutes from the hearing on September 25, 2013.

The court continued this matter at the request of the parties. The parties will inform the court of the status of the matter at the hearing. If the court grants the motion on the same terms as found in the motion, the court will do so based on the court's previous tentative ruling on this matter found in the civil minutes from the hearing on September 25, 2013. Civ. Mins. Hr'g on Mot. Sell, Sept. 25, 2013, ECF No. 94.

If the motion is granted, the order shall be drafted pursuant to the instructions in the last paragraph of the previous tentative ruling on this matter found in the civil minutes from the hearing on September 25, 2013. Civ. Mins. Hr'g on Mot. Sell, Sept. 25, 2013, ECF No. 94.

10. [13-11947](#)-A-7 ROBERT/AMY BADILLA  
JES-1  
JAMES SALVEN/MV  
HENRY NUNEZ/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
9-18-13 [[104](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case for Failure to Provide Tax Returns and Pay Advices Timely to the Trustee  
**Notice:** LBR 9014-1(f)(1) / LBR 9014-1(f)(2); written opposition filed by debtors  
**Disposition:** Denied  
**Order:** Civil minute order

### **BACKGROUND FACTS**

The Chapter 7 trustee moves to dismiss this case because the debtor did not timely provide the trustee their most recently filed tax returns required by § 521(e)(2)(A)(i) and copies of their pay advices for the 60-day period preceding the petition date from any employer of the debtor. The trustee does not assert that the documents provided were incomplete—the trustee seeks dismissal only on the basis of the *untimely delivery* of the documents.

### **FAILURE TO PROVIDE TAX RETURNS TIMELY TO THE TRUSTEE**

Tax returns are required to be provided to the trustee no later than 7 days before the meeting of creditors. See 11 U.S.C. § 521(e)(2)(A)(i). The court may dismiss a case if the debtor fails to comply with § 521(e)(2)(A)(i) "unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." See *id.* § 521(e)(2)(B).

The meeting of creditors after the debtors' case was converted was scheduled for September 12, 2013. Thus, the tax returns were to be provided to the trustee no later than September 5, 2013. See 11 U.S.C. § 521(e)(2)(A)(i); Fed. R. Bankr. P. 4002(b)(3).

The debtors by declaration offer evidence that they mailed documents including their tax returns to the trustee on August 29, 2013. While stating that he received the required documents after September 5, 2013, the trustee admits that the required documents were received by metered mail that had no postmark to indicate when they were actually mailed.

Here, the debtors mailed their tax returns 7 days before the September 5, 2013, deadline. The court finds that the debtors "provided" the required documents to the trustee by the deadline by mailing them by August 29, 2013. Although Rule 9006(e) may not apply in this instance given that Rule 4002(b)(3) and § 521(e)(2)(A)(i) require the debtors to "provide" tax returns by the deadline indicated, the court finds that Rule 9006(e) applies by analogy so that if the debtors mail the trustee the tax returns by the deadline, they have met the requirement of Rule 4002(b)(3).

If the required documents were delayed by the mail system, that would also constitute a circumstance beyond the debtors' control. See § 521(e)(2)(B). The trustee has offered no evidence to the contrary.

## FAILURE TO PROVIDE PAY ADVICES TIMELY TO THE TRUSTEE

No later than 7 days before the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. The court has required debtors under Local Bankruptcy Rule 1007-1(c)(1) not to file payment advices or other evidence of payment. Section 521(i), by contrast, is premised on the requirement that a debtor file such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, but a very different deadline is imposed for providing documents to the trustee under Local Bankruptcy Rule 1007-1(c)(1). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules.

Here, the debtors mailed their pay advices 7 days before the September 5, 2013, deadline. The court finds that the debtors "provided" the required documents to the trustee by the deadline by mailing them by August 29, 2013. Although Rule 9006(e) may not apply in this instance given that LBR 1007-1(c)(1) requires the debtors to "provide" pay advices by the deadline indicated rather than to serve them or send notice of them, the court finds that Rule 9006(e) applies by analogy so that if the debtors mail the trustee the advices by the deadline, they have satisfied LBR 1007-1(c)(1)'s requirement.

Even if LBR 1007-1(c) requires the trustee to receive the pay advices by the deadline, the debtors have made a good faith attempt to provide them to the trustee and creditors' interests would be well served by further administering the case rather than dismissing it. The debtor's attorney states that this case is a no-asset case. The trustee will be able to determine on behalf of unsecured creditors whether there are any non-exempt assets available for distribution. When creditors obtain information about assets after the trustee's

investigation, creditors either (i) discover that assets exist and receive a distribution, or (ii) avoid wasting resources to collect from the debtor where no assets are available.

Accordingly, the court declines to dismiss the case as a sanction for noncompliance with LBR 1007-1(c)(1).

#### **REQUEST FOR DISMISSAL UNDER § 707(a)(1)**

Because the debtors have timely provided their tax returns and payment advices to the trustee, creditors have not been unreasonably delayed *by the debtor*. § 707(a)(1). The court declines to dismiss on this ground as well.

11. [10-15055](#)-A-7    PETRA VELA  
GH-2  
PETRA VELA/MV  
GARY HUSS/Atty. for dbt.

MOTION TO AVOID LIEN OF THE  
GOLDEN 1 CREDIT UNION  
9-3-13 [[25](#)]

#### **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.

12. [13-13160](#)-A-7 TONJA KING  
JES-2  
JAMES SALVEN/MV  
BRET ADAMS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

MOTION TO SELL  
9-17-13 [[34](#)]

**Final Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2007 Nissan Maxima

**Sale Type:** Public auction

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.

13. [13-15162](#)-A-7 PAUL LIMEBROOK AND VICKIE MOTION TO COMPEL ABANDONMENT  
GH-2 DEANE 9-17-13 [[18](#)]  
PAUL LIMEBROOK/MV  
GARY HUSS/Atty. for dbt.

**Tentative Ruling**

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

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

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

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

**Business Description:** automotive repair shop and thrift store

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

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

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

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

14. [13-13063](#)-A-7 WILLIAM MANUSZAK MOTION TO SELL  
TMT-1 9-18-13 [[29](#)]  
TRUDI MANFREDO/MV  
CHERYL JOLLEY-SMITH/Atty. for dbt.  
TRUDI MANFREDO/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:** Vehicles, trailer, boat and firearms

**Buyer:** Debtor

**Sale Price:**

-1968 Chevrolet Camaro: \$2,975.00 cash

-2003 Harley Davidson: \$6,375.00 (\$1,109.00 cash plus \$2,900 exemption credit and accounting for a lien held by Police Department Credit Union in the amount of \$2,366.00)

-1990 Toyota Tacoma: \$850.00 cash

-1981 Shoreland'r Trailer and Mirro Aluminum Fishing Boat: \$637.50 cash

-Remington rifle Model 7400: \$127.50 cash

-22 Rifle: \$127.50 cash

-Mossberg 12 gauge pump shotgun: \$127.50 cash

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

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

**SALE UNDER § 363(b)**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). 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.

**REQUIREMENTS FOR NOTICE OF HEARING**

The notice does not state that the sale is subject to overbid at the hearing (although the motion does state this). 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.").

The notice does refer to prospective bidders and requirements for bidding, but does not specifically make clear that the sale is subject to overbid at the hearing. 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.

15. [12-19566](#)-A-7 BRAD/GLENDA BUTTREY MOTION TO SELL  
TMT-1 9-18-13 [[31](#)]  
TRUDI MANFREDO/MV  
J. IRIGOYEN/Atty. for dbt.  
TRUDI MANFREDO/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:** Horse tack, homemade water truck, tractor and trailer

**Buyer:** Debtors

**Sale Price:**

-Horse tack (various items): \$2,262.46 (\$1,500.00 cash plus \$762.46 exemption credit)

-Homemade Mack water truck: \$1,500.00 cash

-Massey Ferguson tractor Model 383: \$1,500.00 cash

-2005 C&B trailer: \$2,000.00 cash

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

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

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

16. [13-15072](#)-A-7 TAHIRA EDWARD OPPOSITION RE: TRUSTEE'S MOTION  
TMT-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
9-9-13 [[16](#)]

**Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

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

**Order:** Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion, although the space provided on the notice of hearing and opposition form has been left blank. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors.

Certain deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is October 28, 2013, at 8:30 a.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

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

17. [12-17098](#)-A-7 JOSEPH/LAURIE HARLESS MOTION TO SELL  
SAS-1 9-12-13 [[32](#)]  
SHERYL STRAIN/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
SHERYL STRAIN/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:** 2002 Dodge Ram 1500

**Buyer:** Debtors

**Sale Price:** \$5,525.00 (\$2,800.00 cash plus \$2,725.00 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.

18. [13-14453](#)-A-7 KENNETH/DYAN BIGGS  
DRJ-1  
SHERYL STRAIN/MV

STIPULATION/MOTION TO EXTEND  
DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGE OF THE  
DEBTOR  
10-1-13 [[11](#)]

DAVID JENKINS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Stipulation and Motion Extend Trustee's Deadline for Objecting to Discharge under § 727(a)

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

**Disposition:** Granted

**Order:** Prepared by moving party

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the stipulation, which the court will treat as a motion as requested by the parties, and based on the supporting papers, the court finds that cause exists to extend the trustee's deadline for objecting to discharge under § 727(a). The deadline for the trustee to object to discharge will be extended for an additional 60 days through December 4, 2013.

19. [13-15634](#)-A-7 SUREN MARKARIAN  
JES-2  
JAMES SALVEN/MV  
BARRY WEBER/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
OST 10/8

MOTION TO SELL  
10-10-13 [[25](#)]

### **Tentative Ruling**

**Motion:** Sell and Abandon Property

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted in part as to sale and denied in part as to abandonment

**Order:** Prepared by moving party

**Property:** The motion and notice are somewhat unclear about the property being sold: the court will assume both the non-exempt equity in business known as Super Shine Auto Detailing (as stated in the notice) and the assets of such business (as stated in the motion) are being sold

**Buyer:** Debtor

**Sale Price:** \$22,288.00 (\$6,000.00 plus \$16,288.00 in various exemption credits)

**Sale Type:** Private sale subject to overbid opportunity; first overbid must be at least \$23,000.00

### **SALE OF PROPERTY**

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

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

### **ABANDONMENT OF PROPERTY**

The trustee also requests abandonment of the business and its assets that are being sold above. However, only *property of the estate* may be abandoned under § 554 of the Bankruptcy Code. *See* 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The court will not authorize the abandonment of the property described above. If the court grants the motion to sell the property, the property will have been transferred from the estate back to the debtor. The property will no longer be property of the estate.

Further, the motion does not make a sufficient showing that the business described above is either burdensome to the estate or of inconsequential value to the estate. The best evidence that the

property is not burdensome or of inconsequential value is that the trustee is receiving value as a result of the sale of such business and its assets as evidenced by the sale price that is being paid to the estate by the buyer, the debtor. An order authorizing abandonment of such business is not warranted.

20. [13-16611](#)-A-7 SCOTT DECKER AND MARIA MOTION TO COMPEL ABANDONMENT  
SL-1 ESTRADA 10-11-13 [[12](#)]  
SCOTT DECKER/MV  
STEPHEN LABIAK/Atty. for dbt.  
OST 10/11

### **Tentative Ruling**

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

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

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

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

**Business Description:** sole proprietorship business called Decker Construction and its assets

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

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

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

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

21. [13-15037](#)-A-7     MANUEL MURCIA AND     MOTION TO SELL AND/OR MOTION TO  
JES-2                     MARISELA ARTEAGA     ABANDON  
JAMES SALVEN/MV     10-11-13 [[27](#)]  
THOMAS GILLIS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
OST 10/8

### **Tentative Ruling**

**Motion:** Sell and Abandon Property

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted in part as to sale and denied in part as to abandonment (and sale not approved to debtor's undisclosed nominee)

**Order:** Prepared by moving party

**Property:** 2000 Kenworth tractor and 2001 Grayden Flatbed trailer

**Buyer:** Debtor but not debtor's undisclosed nominee

**Sale Price:** \$42,240.00 (\$11,000.00 cash plus \$31,240.00 in exemption credits)

**Sale Type:** Private sale subject to overbid opportunity; first overbid must be at least \$43,000.00

### **SALE OF PROPERTY**

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

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

### **ABANDONMENT OF PROPERTY**

The trustee also requests abandonment of the business and its assets that are being sold above. However, only *property of the estate* may be abandoned under § 554 of the Bankruptcy Code. *See* 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The court will not authorize the abandonment of the property described above. If the court grants the motion to sell the property, the property will have been transferred from the estate back to the debtor. The property will no longer be property of the estate.

Further, the motion does not make a sufficient showing that the business described above is either burdensome to the estate or of inconsequential value to the estate. The best evidence that the property is not burdensome or of inconsequential value is that the trustee is receiving value as a result of the sale of such business and its assets as evidenced by the sale price that is being paid to

the estate by the buyer, the debtor. An order authorizing abandonment of such business is not warranted.

**NOTICE OF HEARING IMPROPER**

The court notes that the notice of hearing on the motion requires written opposition not later than 14 days prior to the hearing date. This uses the notice procedure under LBR 9014-(1)(f)(1), which is not the proper procedure when a motion is noticed and filed less than 14 days prior to the hearing date. LBR 9014-1(f)(1)-(3). Here, creditors and parties in interest received less than 7 days' notice of the hearing, and will be permitted to present opposition at the hearing.

**9:15 a.m.**

1. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC STATUS CONFERENCE RE: COMPLAINT  
[13-1087](#) MANFREDO V. NUT TREE RETAIL, 8-9-13 [[1](#)]  
LLC  
PETER FEAR/Atty. for pl.

**Final Ruling**

The matter is continued to December 11, 2013, to allow the plaintiff to obtain a default judgment.

2. [11-61079](#)-A-7 JOSEPH/MARICELA DE LOS JOINT MOTION TO COMPROMISE  
DRJ-1 SANTOS CONTROVERSY/APPROVE SETTLEMENT  
JOSEPH DE LOS SANTOS/MV AGREEMENT WITH JOSEPH RENTERIA  
AND SUSAN PORTILLO AND/OR  
MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
8-27-13 [[34](#)]  
  
PATRICIA CARRILLO/Atty. for dbt.

**Final Ruling**

**Motion:** Joint Motion by Plaintiffs & Defendants for Order Dismissing Complaint Objecting to Discharge

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

**Disposition:** Granted

**Order:** Prepared by moving party



10:00 a.m.

1. [12-17205](#)-A-7 NATHANIEL/TERRI NEWTON MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 9-20-13 [[23](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.  
DISCHARGED

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2009 Ford Fusion

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

**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.

2. [13-15413](#)-A-7 SASCHA WILLIAMS  
MRG-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
JEFF REICH/Atty. for dbt.  
MICHAEL GONZALES/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-5-13 [[19](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 6486 North Fruit Avenue, Fresno, California 93711

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. [13-14231](#)-A-7 MIKELL HERNANDEZ  
KAZ-1  
JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
GARY HUSS/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-11-13 [[23](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 3863 E Sussex Way, Fresno, CA 93726

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

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

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

4. [13-14358](#)-A-7 BETTY-ANN GREEN MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
TD AUTO FINANCE LLC/MV 9-11-13 [[21](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2010 Mercedes GLK-Class

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

**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.

5. [13-14970](#)-A-7 BELEN ROBLES  
RVP-1  
BANK OF AMERICA, N.A./MV  
TIMOTHY SPRINGER/Atty. for dbt.  
JENNIFER WONG/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-19-13 [[17](#)]

**Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required; debtor's non-opposition filed

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2568 North Vernal Avenue, Fresno, CA

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

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. [13-15798](#)-A-7 ODILON CABRERA  
RCO-1  
GREEN TREE SERVICING, LLC/MV  
GEORGE ALONSO/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-16-13 [[11](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 924 Garden Street, Los Banos, CA

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

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

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. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION FOR RELIEF FROM  
HTP-1 INC. AUTOMATIC STAY  
BANK OF THE SIERRA/MV 10-2-13 [[95](#)]  
LEONARD WELSH/Atty. for dbt.  
HANNO POWELL/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:** 1224 Flight Line-Hangar 68, Mojave, CA

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

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

10:30 a.m.

1. [13-15026](#)-A-7 EDWIN/MICHELLE JAEGER REAFFIRMATION AGREEMENT WITH  
KIA MOTORS FINANCE  
9-30-13 [[15](#)]  
  
HAGOP BEDOYAN/Atty. for dbt.  
  
**No tentative ruling.**
  
2. [13-14532](#)-A-7 MARIA BAUTISTA PRO SE REAFFIRMATION AGREEMENT  
WITH LOBEL FINANCIAL CORP  
9-20-13 [[17](#)]  
  
**No tentative ruling.**
  
3. [13-15460](#)-A-7 MAE TUCKER PRO SE REAFFIRMATION AGREEMENT  
WITH GOLDEN 1 CREDIT UNION  
9-23-13 [[20](#)]  
  
**No tentative ruling.**
  
4. [13-14991](#)-A-7 SERVANDO/OFELIA ANAYA PRO SE REAFFIRMATION AGREEMENT  
WITH WELLS FARGO DEALER  
SERVICES  
9-20-13 [[13](#)]  
  
**No tentative ruling.**

1:30 p.m.

1. [13-14037](#)-A-11 GIL/MARIA GILBUENA  
JMI-11  
GIL GILBUENA/MV

MOTION TO CONFIRM CHAPTER 11  
PLAN AND/OR MOTION FOR APPROVAL  
OF DISCLOSURE STATEMENT DATED  
SEPTEMBER 9, 2013 FILED BY  
DEBTOR GIL RICHARD GILBUENA,  
JOINT DEBTOR MARIA ELENA  
GILBUENA  
9-18-13 [[162](#)]

J. IRIGOYEN/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Motion to Approve Disclosure Statement

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

**Disposition:** Continued to allow Debtors to file their first amended disclosure statement and plan by November 13, 2013, with continued hearing on December 11, 2013

**Order:** Civil minute order

The debtors Gil and Maria Gilbuena (the "Debtors") have filed a combined disclosure statement and plan (alternatively, the "Disclosure Statement" or "Plan"), and now requests court approval of the Disclosure Statement. Various creditors have filed objections raising a number of issues. For the reasons set forth below, the court will continue the matter to allow the Debtors to file another disclosure statement.

The Debtors are to file an amended disclosure statement and plan (combined or separate), which must address the issues raised by the court in this ruling, by Wednesday, November 11, 2013, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, December 11, 2013, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

### **DISCUSSION**

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

The court now turns to its own issues with the Disclosure Statement and Plan, incorporating the objecting creditors' pertinent objections. All other issues raised by the objecting creditors and not addressed in this ruling are better left for the confirmation hearing.

Classification of Secured Claims (Classes 1B, 1C, 1D, 1E). The Plan has improperly included multiple secured creditors in the same class when they should be in separate classes. Unless two secured claims are secured by the same collateral and have the same lien priority as one another, the two claims should be classified in separate classes. See *Brady v. Andrew (In re Commercial W. Fin. Corp.)*, 761 F.2d 1329, 1338 (9th Cir. 1985) (citations omitted). Because no two secured claims provided in the Plan secure the same collateral and have the same lien priority, it was improper for the Plan to group (1) the two secured claims in Class 1B together, (2) the four secured claims in Class 1C together, (3) the three secured claims in Class 1D together, and (4) the two secured claims in Class 1E together. Although they may share similar treatment, each of these secured claims should be within their own class.

Class 1A: Identity of Creditor (p. 3). It is unclear who the appropriate secured creditor in Class 1A is. The Debtors have identified the creditor as both "U.S. Bank National Association" and "GMAC Mortgage." Proof of Claim No. 6 shows only U.S. Bank as the named creditor (and Ocwen Loan Servicing as the servicer); there is no reference to GMAC Mortgage in the proof of claim.

Class 1A: Anti-Modification / Impairment (p. 3). The property located at 1726 Edison Court appears to be the Debtors' principal residence. As such, the secured claim in Class 1A (the first deed of trust on the principal residence) cannot be modified by the Plan. See § 1123(b)(5). However, the creditor's rights upon a default under the loan documents are modified by the Plan since the Plan's provision regarding material default controls in Class 1A's case. This is inconsistent with § 1123(b)(5).

Additionally, since the Plan cannot modify the rights of a holder of a claim secured by a principal residence, Class 1A should ultimately be unimpaired and not entitled to vote. See § 1124.

Class 1B: Pre-Confirmation Obligation (p. 4). On account of Class 1B (where collateral will be surrendered), the Plan improperly provides, "Creditors shall have until 14 days prior to the hearing on plan confirmation to amend any proof of claim to assert a deficiency claim against the Debtors." The Plan would not become effective until confirmation, but this obligation becomes binding on creditors of Class 1B even before confirmation, which is improper.

Class 1C: Beginning Date of Payments (p. 5). Under the Plan, payments for Class 1C are to begin on the "1st day of the first month, following the entry of the confirmation order," but the Plan also provides that payments are set to begin from the "Effective Date of the Plan." These are two different dates, so it is unclear when payments are to begin under the Plan.

Class 1D (p. 6). It is unclear whether the Plan's material default provisions will apply to the claims in Class 1D. If so, then it does not appear that the claims are unimpaired. If not, then the Plan should expressly state so.

Modification of Secured Claims. Although the Plan has indicated certain modifications of secured claims, it has not expressly included language that states that the secured creditors' rights and remedies left unmodified by the Plan are still binding on the parties. Thus, the objecting creditors are unclear about some of their rights (e.g.,

how the Debtors will handle the property taxes and insurance obligations).

Property Taxes and Insurance. As the objecting secured creditors have pointed out, the Plan needs to more clearly address the payment of property taxes and insurance for each of the properties. For instance, it is ambiguous whether the Debtors intend to incorporate the escrow process outlined in the applicable loan documents. Additionally, if the Debtors intend to pay taxes and insurance themselves, the Plan does not discuss the consequences for failing to pay the taxes and insurance.

Part 3: Priority and Administrative Claims (pp. 10-12). Part 3 of the Plan should not include any classified claims since Part 3 is intended to address non-classified claims. Classified claims should be included in Part 1 or Part 2, wherever appropriate.

Class 3A: Secured Tax Claims (p. 12). The secured tax claim in Class 3A is not a priority tax claim since it is secured. For the sake of eliminating confusion, Class 3A should be moved from Part 3 (titled "Treatment of Priority and Administrative Claims") to Part 1 (titled "Treatment of Secured Creditors").

Additionally, the Plan should state whether Class 3A is impaired or unimpaired.

Class 3B: Unsecured Non-Priority Tax Claims (p. 10). It is unclear why unsecured non-priority tax claims has been separately classified in Class 3B, when such claims are being treated with other general unsecured claims in Class 2A (under Part 2). The claims in Class 3B should just be listed in Class 2A.

Class 2A: General Unsecured Claims (p. 10). It is unclear when payments to Class 2A creditors will begin and what the frequency will be (e.g., monthly, at the end of the Plan, etc.). The Plan only mentions that the Debtors will make monthly payments into a fund, but it does not mention when those funds will go to Class 2A creditors. This is significant as it will determine when there has been a material default under the Plan.

Reference to "Class 2" and "Part 2" (various pages). The Plan references "Class 2" multiple times, but there is no Class 2 under the Plan. There is only a Class 2A. Therefore, all references to "Class 2" should be removed.

Additionally, the Debtors use "Part 2" in various parts when they should be referencing a class, rather than a section of the Plan.

Class of Equity Interest Holders. The Plan does not provide for a class of equity interest holders (i.e., the Debtors). This class should be included in the Plan. Additionally, the Plan should state whether this class of interest holders are impaired.

Absolute Priority Rule. The Disclosure Statement does not discuss the possibility that the absolute priority rule may apply in this individual debtor's case.

Discharge (various pages). The multiple provisions discussing the discharge are inconsistent with the Bankruptcy Code, which allows discharge only upon "completion of all payments under the plan."

§ 1141(d)(5)(A). These provisions should be made consistent with this Code provision.

Reference to "50 Payments" (p. 14). In the section entitled "Equity Interest Holders," it is unclear what the "50 payments" is a reference to. This should be deleted.

Material Default (p. 15). The three options for what constitutes a material default should be listed with an "or" before "(iii) to obtain . . . ," rather than an "and."

Remedies Upon Material Default (pp. 15-16). The remedies upon material default should not be limited to the two remedies that the Plan allows. Either the Plan should state that the listed remedies are nonexhaustive or the Plan should list out all of the remedies that creditors will be entitled to (e.g., requesting the bankruptcy court to compel compliance).

Retention of Jurisdiction (p. 16). The reference to "Part 7(f)" in the Retention of Jurisdiction section is incorrect.

Disbursing Agent. The Plan makes no mention of who will act as the disbursing agent of the Plan distributions (though it is likely to be the Debtors).

Exhibit 5. It is unclear what Exhibit 5 is intended to represent (i.e., whether it shows post-confirmation projections or shows historical figures). This should be clarified.

Additionally, the bottom of the last page of Exhibit 5 states, "Debtors anticipate 3838 E. Four Creeks will be occupied commencing 10/01/2013." The fact that this property is currently vacant and does not have a tenant at the time should be disclosed into the main body of the Plan and Disclosure Statement (e.g., in the feasibility section), rather than at the bottom of the past page of an exhibit.

Exhibit 6. The format of Exhibit 6 is confusing and should be revised. Exhibit 6 contains seven different charts. Each chart should be separate and appear on its own page, rather than appearing on the same page as another chart. Further, each chart should be contained within a single page, rather than being cut off and continuing onto a second page.

Additionally, it is unclear what the difference between the sixth and seventh charts are on Exhibit 6. And the information on these charts for the Four Creek property appears to be missing the expenses associated with the property.

## **CONCLUSION**

For the reasons set forth above, the court will continue the matter to allow the Debtors to file another disclosure statement.

The Debtors are to file an amended disclosure statement and plan (combined or separate), which must address the issues raised by the court in this ruling, by Wednesday, November 11, 2013, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, December 11, 2013, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

2. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
11-28-12 [[29](#)]  
RILEY WALTER/Atty. for dbt.

**No tentative ruling**

3. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS MOTION FOR COMPENSATION BY THE  
WW-28 LAW OFFICE OF WALTER AND  
RILEY WALTER/MV WILHELM FOR RILEY C. WALTER,  
DEBTOR'S ATTORNEY(S), FEE:  
\$3408.00, EXPENSES: \$1175.27.  
9-25-13 [[362](#)]  
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 Law Group

**Compensation approved:** \$3,408.00

**Costs approved:** \$1,175.27

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

**Retainer held:** \$0.00

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

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

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

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

final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

4. [12-12998](#)-A-11 FARSHAD TAFTI

CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
4-5-12 [[15](#)]

PETER FEAR/Atty. for dbt.

*[This matter will be called subsequent to the hearing on the Disclosure Statement, PLF-7, Item 5.]*

**No tentative ruling**

5. [12-12998](#)-A-11 FARSHAD TAFTI  
PLF-7

DISCLOSURE STATEMENT FILED BY  
DEBTOR FARSHAD AGHAI TAFTI  
9-4-13 [[194](#)]

PETER FEAR/Atty. for dbt.

**Tentative Ruling**

**Matter:** Approval of Disclosure Statement

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

**Disposition:** Approved

**Order:** Prepared by the court

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

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1).

The court will approve the disclosure statement. At the hearing on this matter, the court will set procedural deadlines for taking action relating to the Disclosure Statement, balloting, and Plan confirmation.

6. [13-13284](#)-A-11 NICOLETTI OIL INC.

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

DAVID GOLUBCHIK/Atty. for dbt.

**No tentative ruling.**

7. [12-19661](#)-A-11 JORGE/MARY LOU SANTOS  
WW-29  
JORGE SANTOS/MV  
STAY

MOTION TO APPROVE STIPULATION  
FOR RELIEF FROM THE AUTOMATIC

10-4-13 [[389](#)]

RILEY WALTER/Atty. for dbt.  
OST 10/7

**Tentative Ruling**

**Motion:** Approval of an Agreement Relating to Relief from the Automatic Stay

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

**Disposition:** Continued to allow supplemental service on the 20 largest creditors

**Order:** Civil minute order

The motion has not been sufficiently served on the unsecured creditors' committee pursuant to Rule 7004. See Fed. R. Bankr. P. 4001(d). Although the motion was mailed to each member of the unsecured creditors' committee to the attention of a named individual shown on the document by which the U.S. Trustee's appointed the members of the official committee, there is no indication of each named individual's capacity as an officer or authorized agent.

The court will continue the hearing on the motion to November 6, 2013, to allow supplemental service, which may be made no later than October 23, 2013. By October 23, 2013, the debtor should also file and transmit notice of the continued date of the hearing that allows the unsecured creditors committee or any creditor such committee represents, to present opposition, if any, at the continued hearing date.

8. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION FOR ORDER AUTHORIZING  
KDG-3 DEBTORS TO PAY PRE-PETITION  
ANTHONY DA COSTA/MV WAGES  
10-11-13 [[25](#)]  
CHRISTIAN JINKERSON/Atty. for dbt.  
OST 10/11

### **Tentative Ruling**

**Motion:** Order Authorizing Debtors to Pay Prepetition Wages

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

**Disposition:** Granted consistent with the terms stated in this ruling

**Order:** Prepared by the moving party

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

The court will grant the motion and authorize the debtors to pay prepetition wages in the amounts specified in the motion subject to the following limitations. Such amounts may not exceed the amounts described in § 507(a)(4). Further, these amounts may be paid from cash collateral only to the extent authorized by the cash collateral stipulation and order in this case. No amounts may be paid to the debtors. The order is without prejudice to any party in interest's right to recover such amounts in the event the case is administratively insolvent.

1:45 p.m.

1. [13-12551](#)-A-11 WIDE WEST SERVICES, LLC  
[13-1041](#)  
WIDE WEST SERVICES, LLC V.  
HODEDA  
JAMES PAGANO/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT FOR TURNOVER; FOR AN  
ACCOUNTING  
4-18-13 [[1](#)]

**No tentative ruling.**

2:00 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**