

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

NOVEMBER 6, 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. [12-18816](#)-A-7 LORENZO/VALERIE MEJIA MOTION TO AVOID LIEN OF BANK OF
SDM-2 AMERICA, N.A.
LORENZO MEJIA/MV 10-21-13 [[22](#)]
SCOTT MITCHELL/Atty. for dbt.
RENOTICED FOR 12/3/13

Final Ruling

An amended notice of hearing was filed changing the hearing date on this matter. The matter is dropped from calendar and will be reset for the December 3, 2013 calendar.

2. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN MOTION TO AVOID LIEN OF BETTY
KDG-1 EGAN
BOGHOS KRIKORIAN/MV 10-15-13 [[43](#)]
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted to the extent specified in this ruling

Order: Prepared by moving party

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

LEGAL STANDARDS

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).

REAL PROPERTY

The motion seeks to avoid the responding party's lien on 9648 N. 10th Street, Fresno, California. The debtors assert that the property's fair market value is \$150,000.00.

The motion states that the exemption in the property is "up to \$150,000." Schedule C attached as an exhibit indicates the exemption claimed is \$30,126.00. The court will use the figure from the debtors' most recently amended Schedule C. Based on these figures, 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.

PERSONAL PROPERTY

Duration of the Lien

The motion alleges that an order to appear for examination was issued as to joint debtor Boghos Krikorian. Under section 708.110(a) of the California Code of Civil Procedure, a judgment creditor may apply for an order "requiring the judgment debtor to appear before the court . . . to furnish information to aid in enforcement of the money judgment."

The motion also alleges that the order to appear for examination was served on the debtor more than 1 year ago. "Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court." Cal. Civ. Proc. Code § 708.110(d).

The duration of the lien under section 708.110(d) begins from the date of the order (not from service of the order). The 1-year duration of the lien may be extended (or terminated) by the court under section 708.110(d).

Here, the order was issued more than 1 year ago on July 26, 2013. Outside of bankruptcy, the lien would have expired on July 26, 2013, one year after the order was issued. But the debtors filed bankruptcy on June 3, 2013. Because the debtors could not extend the lien after the case was filed to prevent the lien from expiring, the duration of the lien under § 108(c) did not expire and was extended until 30 days after expiration of the automatic stay. See 11 U.S.C. § 108(c); see also *Sirtos v. Moreno (In re Sirtos)*, 221 F.3d 1079, 1080-82 (9th Cir. 2000) (holding that § 108(c) was applicable to the statutory renewal period during which a 10-year judgment lien against debtor could be renewed and that such period did not expire until 30 days after the expiration of the automatic stay).

The stay continues as to property of the estate until the property is no longer property of the estate. 11 U.S.C. § 362(c)(1). No evidence has been offered that the property has been abandoned, so the stay of an act against property of the estate in this case, assuming the property is scheduled, will continue until the case is closed. See 11 U.S.C. § 554. Accordingly, the responding party's lien exists at this time and for 30 days after case closure. Because the lien still exists, the court may rule on the motion to avoid the lien.

Avoidance of the Lien

The debtors have made a prima facie case for partial avoidance of the lien against the personal property. The lien will only be avoided to the extent of the exemption claimed in each item of personal property. The lien is not avoided at all against the debtors' insurance policy with American General in the amount of \$5,000.00 as no exemption has been claimed against such property.

3. [13-15825](#)-A-7 JOHN VERTSON OBJECTION TO DEBTOR'S CLAIM OF
RH-1 EXEMPTIONS
ROBERT HAWKINS/MV 10-1-13 [[11](#)]
BENNY BARCO/Atty. for dbt.
NON-OPPOSITION

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Overruled as moot

Order: Civil minute order

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

The debtor originally claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. Robert Hawkins, the trustee of a different Chapter 7 case, the case filed by the debtor's estranged spouse Gina Vertson, has objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under applicable provisions of section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor has filed a non-opposition to the sustaining of the objection. The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b).

However, the debtor has filed an amended Schedule C claiming exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). Therefore, the objection will be overruled as moot.

4. [13-13135](#)-A-7 ESTHER FLORES
JDM-2
ESTHER FLORES/MV

CONTINUED 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

Notice: Continued hearing date; originally noticed under LBR 9014-1(f)(1)

Disposition: Denied without prejudice

Order: Civil minute order

The court continued the hearing on this matter to allow supplemental service on the agent of a dissolved corporation named as one of the responding parties. The notice of continued hearing and supplemental documents attached to the notice reveal that a new assignee, Acclaim Credit Technologies ("Acclaim"), now holds the judgment by an assignment from International Credit Recovery, Inc. ("ICR").

The new assignee that now holds the judgment as the debtor asserts is not identified in the motion as one of the responding parties. The motion names two responding parties: Central Valley Community Bank and ICR.

Under Rule 9013, the motion must state with particularity the grounds for the motion and it must set forth the relief sought. Here, the motion sets forth the relief sought against ICR and Central Valley Community Bank. The motion does not request relief against Acclaim.

The party against whom relief is sought is an essential component of the relief requested. Rule 9013 requires the relief requested to be included in the motion. Therefore, the supplemental service on Acclaim is an ineffective way to add additional relief against a party not identified in the motion.

Reasonable notice under Rule 9014 has also not been provided to Acclaim. The notice of continued hearing attempts to join and serve Acclaim, a party that is not named in the motion as a party against whom relief is sought. See Fed. R. Bankr. P. 9014(a) (requiring reasonable notice and opportunity for hearing to be afforded to the party against whom relief is sought). Because the motion and the grounds for the motion do not show that Acclaim is a party against whom relief is sought, Acclaim does not have sufficient notice of what relief is sought against it.

5. [13-13037](#)-A-7 ARISTEO PEDRAZA AND ANA MOTION TO SELL
PFT-1 AMBRIZ 10-3-13 [[19](#)]
PETER FEAR/MV
SCOTT MITCHELL/Atty. for dbt.
PETER FEAR/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: Non-exempt equity in 1040 W. 8th Street, Merced, CA

Buyer: Joint Debtor Ana Ambriz

Sale Price: \$5,000.00 (exemption credit included in price and property sold subject to deed of trust held by Bank of America, N.A. as shown on Schedule D)

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. [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.
NOTICE OF CASE SETTLEMENT
FILED 10/29/13

Final Ruling

The matter is continued to January 8, 2014, at 9:15 a.m., to allow the parties to conclude settlement.

7. [13-14957](#)-A-7 DORALINDA RANGEL
SAS-1
SHERYL STRAIN/MV
PETER BUNTING/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-25-13 [[16](#)]

Tentative Ruling

Objection: Debtor's Claim of Exemptions

Notice: LBR 9014-1(f)(1) / Continued date of hearing; written
opposition filed

Disposition: Sustained

Order: Prepared by objecting party

BACKGROUND FACTS

The debtor claimed household goods and furniture exempt on the debtor's initial Schedule C. Before the petition was filed, however, these items were destroyed by fire. The debtor amended Schedule C on August 26, 2013, to claim exempt \$19,463.05 in proceeds paid under an insurance policy covering the destroyed property. This amount is claimed under two different exemption provisions, sections 703.140(b)(5) and 703.140(b)(3) of the California Code of Civil Procedure. Cal. Civ. Proc. Code § 703.140(b)(3), (5).

The Chapter 7 trustee objects to the debtor's claim of exemptions in \$12,614.00 of insurance proceeds under California Code of Civil Procedure section 730.140(b)(3). The objection does not dispute the debtor's exemption of \$6,849.05 of insurance proceeds under section 703.140(b)(5). The debtor has opposed the sustaining of the objection. For the reasons discussed, the court will sustain the objection.

LEGAL STANDARDS

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konhoff (In re Konhoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3), (d). "California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199; accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

"Under the so-called 'snapshot' rule, bankruptcy exemptions are fixed at the time of the bankruptcy petition." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) (citing *White v. Stump*, 266 U.S. 310, 313, 45 S.Ct. 103 (1924)). In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the petition date. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199.

ANALYSIS

Characterization of Property Claimed Exempt

The court must first consider what property is being claimed exempt. Because exemptions are fixed as of the petition date, *Wolfe*, 676 F.3d at 1199, the court considers what property the debtor had on the petition date.

The debtor originally had household goods and furniture, but this property was destroyed and essentially changed its form *before* the petition was filed. The property which is being claimed exempt is not household goods and furniture that was destroyed but insurance proceeds.

This distinction is important because it clarifies the issue to be decided. The issue is not whether the debtor may exempt insurance proceeds paid for destroyed exempt property, i.e., the household goods that were claimed exempt at the commencement of the case. Because the household goods were destroyed before the petition date, the debtor could not properly claim the destroyed goods as exempt.

The only property the debtor had as of the petition date was insurance proceeds or a contractual right to those proceeds under the policy of insurance. Therefore, the issue presented is whether the insurance proceeds may be claimed exempt under the relevant statutory provision.

Exemption of Insurance Proceeds under Section 703.140(b)(3)

Section 703.140(b)(3) of the California Code of Civil Procedure allows an exemption in "[t]he debtor's interest, not to exceed six hundred dollars (\$600) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor." Cal. Civ. Proc. Code § 703.140(b)(3).

Even under a liberal construction of section 703.140(b)(3), proceeds of the items listed cannot be claimed exempt. This statutory subsection does not mention insurance proceeds or any other proceeds of items specifically enumerated. Types or categories of property not expressed in the list in § 703.140(b)(3) are excluded. For example, no argument could be made that real property would be exempt under section 703.140(b)(3) even if held primarily for personal, family, or household use of the debtor. Thus, the court interprets the types of household property enumerated to be exhaustive of the types of property that may be exempt under this subsection.

Moreover, in other exemption provisions within Chapter 4 (Exemptions) of Part 2, Title 9, Division 2, the term *proceeds* appears. For example, section 704.010 provides a limited exemption for insurance or execution sale proceeds of a motor vehicle for 90 days after receipt of such proceeds. See *id.* § 704.010(a)(2)-(3), (b), (d). Proceeds

of a homestead, including proceeds of sale, insurance or other indemnification, are exempt for a limited time under certain circumstances. See *id.* § 704.720. Section 704.020(c) allows an exemption in a portion of the proceeds of certain types of household property having extraordinary value as compared to the value of items of the same type, and such proceeds are exempt for a specified period of time after an execution sale in an amount determined by the court. See *id.* § 704.020(c).

Thus, when the California Legislature intends to exempt proceeds of exempt property, it has done so expressly. If exempt property specified in Chapter 4 of Part 2, Title 9, Division 2 were intended to encompass proceeds of such exempt property as well, then the statutory provisions exempting proceeds of exempt property would be rendered meaningless surplusage. See *id.* §§ 704.010(a)(2)-(3), (b), 704.720. Thus, to give meaning and effect to all statutory exemption provisions, the court interprets section 703.140(b)(3) to exclude proceeds of the types of exempt property enumerated.

The debtor cites *Langley v. Finnall*, 2 Cal. App. 231, 232-33, 83 P. 291 (Cal. Dist. Ct. App. 1905) for the proposition that insurance proceeds of exempt property are exempt. *Langley* held that, under the exemption law then in effect, money received on a policy of insurance covering exempt household property was likewise exempt, and that such a transformation of property into proceeds does not affect its exempt status. See *Langley*, 2 Cal. App. at 232-33.

The court will not apply the principle in *Langley* for two reasons. First, it does not interpret the applicable exemption provision, section 703.140(b)(3) of the California Code of Civil Procedure, and the case does not provide the text of exemption statute applicable in *Langley*. Nor has the debtor offered the text of such statute. Second, the holding in *Langley* is inconsistent with the court's interpretation of the applicable exemption provision.

CONCLUSION

Proceeds of the types of household property listed in section 703.140(b)(3) are not exempt. When the legislature intended an exemption in proceeds of exempt property, the legislature expressly provided for such an exemption. Accordingly, the debtor may not claim insurance proceeds of the household property destroyed by fire exempt under section 703.140(b)(3) of the California Code of Civil Procedure. The trustee's objection will be sustained.

8. [13-15162](#)-A-7 PAUL LIMEBROOK AND VICKIE MOTION FOR CONTEMPT AND/OR
SAS-1 DEANE MOTION FOR SANCTIONS
SHERYL STRAIN/MV 9-18-13 [[26](#)]
GARY HUSS/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

9. [13-15665](#)-A-7 SHAWN/SHELLEY PHEBUS MOTION TO SELL
TMT-1 10-8-13 [[14](#)]
TRUDI MANFREDO/MV
GARY HUSS/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 described in the notice of hearing

Buyer: Debtor

Sale Price: Prices for each vehicle described in the notice of hearing; the aggregate net to the estate is \$3,200.00; the debtors are using an exemption credit as part of the price of the 2001 Chevrolet Silverado

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.

10. [13-12766](#)-A-7 ADELINA JAIMES
TMT-1
TRUDI MANFREDO/MV
THOMAS GILLIS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
9-27-13 [[16](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Vehicles

Buyer: Debtor

Sale Price:

-2001 Ford F150: \$3,325.00 (\$600.00 cash plus \$2,725.00 exemption credit)

-1997 Infinity J30: \$1,644.00 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.

11. [12-13067](#)-A-7 MICHAEL JOHANNES
THA-2
TRUDI MANFREDO/MV
JULIE JONES/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-3-13 [[31](#)]

Tentative Ruling

Motion: Objection to Claim of Exemptions

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

Disposition: Overruled in part as moot; continued for evidentiary hearing

Order: Civil minute order

The debtor Michael Johannes filed his First Amended Schedule C to claim exemptions in three previously undisclosed employment discrimination-related suits or claims. Specifically, he claimed (1) a \$21,739.88 exemption under C.C.P. § 703.140(b)(5) and a \$28,260.12 exemption under C.C.P. § 703.140(b)(11) for an "employment discrimination lawsuit," (2) a \$8,697 exemption under C.C.P. § 703.140(b)(10)(C) for a "workers' compensation claim," and (3) a \$1,800 exemption under C.C.P. § 703.140(b)(11)(E) for a "Labor Code 132a Discrimination" claim. The Trustee has objected to these exemptions, arguing that they have been claimed in bad faith.

BAD FAITH

Rule 1009(a) allows a debtor to amend schedules as a matter of course at any time. This includes the right to amend the list of property claimed as exempt. *In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). However, "the fact that a debtor . . . can amend his or her exemption schedule does not mean that the debtor has an absolute right to have the amended exemption allowed." *In re Goswami*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003). An amended claim of exemption may be disallowed on a showing of bad faith by the debtor or of prejudice to creditors or to other third parties, including the trustee. *In re Arnold*, 252 B.R. 778, 785, 789 (B.A.P. 9th Cir. 2000). Whether the debtor has claimed an exemption in bad faith is determined by examining the totality of the circumstances. *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622, 634 (B.A.P. 9th Cir. 2010).

\$1,800 Exemption

The Debtor has since filed a Second Amended Schedule C, eliminating the \$1,800 exemption for the "Labor Code 132a Discrimination" claim, so the Trustee's objection as to that exemption will be overruled as moot.

Remaining Exemptions

As for the remaining objections, at the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: (1) whether the Debtor acted in bad faith under the totality of the circumstances in amending his exemptions to exempt previously undisclosed assets.

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.

12. [12-16369](#)-A-7 LEWIS SATLOFF
TGM-4
SHERYL STRAIN/MV

OBJECTION TO CLAIM OF ADAM
MICHAEL SACKS, ATTORNEY AT LAW,
CLAIM NUMBER 10
9-20-13 [[57](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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

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

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

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

On the proof of claim form at section 5, the claimant checked the box indicating the claim is entitled to priority under § 507(a). The box checked is the one designated as "Other," which requires the claimant to specify an applicable paragraph under § 507(a). The claimant specified § 507(a)(2), which is for administrative expenses allowed under § 503(b). The claimant is owed attorneys' fees for legal work, but such a claim does not constitute an administrative claim under § 503(b).

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

13. [10-61970](#)-A-7 BRIAN ENNIS
RH-5
JAMES SALVEN/MV

CONTINUED OBJECTION TO CLAIM OF
ROBERT W. HENRY, JR., CLAIM
NUMBER 5
8-8-13 [[217](#)]

RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Continued Objection to Claim No. 5

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

Disposition: Sustained

Order: Prepared by objecting party

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

Section 502(e)(1)(B) permits the court to disallow a claim for reimbursement or contribution of an entity that is liable with the debtor on a creditor to the extent that such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim. If a claim for reimbursement or contribution is not fixed, i.e., if the codebtor, surety, or guarantor has not paid the underlying debt giving rise to the claim for reimbursement or contribution, then such claim will not be allowed. See Kathleen P. March et al., *California Practice Guide: Bankruptcy* ¶ 17:883 (rev. 2013) ("A codebtor's claim for reimbursement or contribution is contingent, and will not be allowed (i.e., unenforceable against the estate), if the codebtor has not paid the debt.").

Here, in Proof of Claim No. 5, the attachment provides that the claim is for "unliquidated obligations for contribution as co-guarantor of loans." The attachment does not provide whether any payment by the codebtor Robert W. Henry Jr. has been made. Thus, the attachment to Proof of Claim No. 5 is sufficient to show that the codebtor Robert W. Henry Jr.'s claim for contribution is still contingent.

As a result, the Trustee's objection to Proof of Claim No. 5 will be sustained.

14. [10-61970](#)-A-7 BRIAN ENNIS
RH-6
JAMES SALVEN/MV
RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

CONTINUED OBJECTION TO CLAIM OF
JOHN HENRY, CLAIM NUMBER 6
8-8-13 [[221](#)]

Final Ruling

Motion: Continued Objection to Claim No. 6

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

Disposition: Sustained

Order: Prepared by objecting party

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

Section 502(e)(1)(B) permits the court to disallow a claim for reimbursement or contribution of an entity that is liable with the debtor on a creditor to the extent that such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim. If a claim for reimbursement or contribution is not fixed, i.e., if the codebtor, surety, or guarantor has not paid the underlying debt giving rise to the claim for reimbursement or contribution, then such claim will not be allowed. See Kathleen P. March et al., *California Practice Guide: Bankruptcy* ¶ 17:883 (rev. 2013) ("A codebtor's claim for reimbursement or contribution is contingent, and will not be allowed (i.e., unenforceable against the estate), if the codebtor has not paid the debt.").

Here, in Proof of Claim No. 6, the attachment provides that the claim is for "unliquidated obligations for contribution as co-guarantor of loans." The attachment does not provide whether any payment by the codebtor John Henry has been made. Thus, the attachment to Proof of Claim No. 6 is sufficient to show that the codebtor John Henry's claim for contribution is still contingent.

As a result, the Trustee's objection to Proof of Claim No. 6 will be sustained.

15. [11-63576](#)-A-7 GARY/FOSTINE STERN CONTINUED MOTION TO AVOID LIEN
PDP-45 OF CONSOLIDATED ELECTRICAL
GARY STERN/MV DISTRIBUTORS, INC.
6-29-13 [[283](#)]

PERRY POPOVICH/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

16. [13-15380](#)-A-7 JOE MAYDON MOTION FOR ORDER REQUIRING
TMT-1 DEBTOR TO SHUT DOWN BUSINESS
TRUDI MANFREDO/MV 9-23-13 [[10](#)]
JEFF REICH/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

17. [13-15483](#)-A-7 WILLIE/GARYALYNN WILHELM MOTION TO SELL
RHT-1 10-4-13 [[11](#)]
ROBERT HAWKINS/MV
SCOTT LYONS/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: 2 Vehicles (2006 Honda CRV LX and 1997 Ford Ranger)

Buyer: Debtors

Sale Price: \$6,900.00 for both vehicles (\$4,000.00 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.

18. [12-14385](#)-A-7 VERONICA AKONDO
RH-3
SHERYL STRAIN/MV
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
10-10-13 [[47](#)]

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 324 Fawn Hill Drive, Fort Worth, Texas

Buyer: American Residential Leasing Company LLC

Sale Price: \$85,000.00

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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

19. [13-10287](#)-A-7 RUBEN RODRIGUEZ AND MARIA MOTION TO SELL
TMT-1 CABRERA 10-7-13 [[31](#)]
TRUDI MANFREDO/MV
THOMAS GILLIS/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: 2005 GMC Sierra

Buyer: Debtors

Sale Price: \$6,150.00 (\$3,600.00 cash plus \$2,550.00 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.

20. [13-15087](#)-A-7 MICKEL/AMY WORSHAM
TMT-1
TRUDI MANFREDO/MV
ADRIAN WILLIAMS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
10-8-13 [[13](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Vehicles, vehicle shell and trailer described in motion

Buyer: Debtors

Sale Price: \$10,300.00 for all property being sold (\$7,400.00 cash plus \$2,900.00 exemption credit) prices for each item individually specified in the notice of hearing

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.

21. [13-16696](#)-A-7 TRACY HAWKINS
PLF-1
TRACY HAWKINS/MV
PETER FEAR/Atty. for dbt.
NON-OPPOSITION

MOTION TO COMPEL ABANDONMENT
10-17-13 [7]

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 consisting of a massage business

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).

ERIC LANE/MV
MICHAEL GONG/Atty. for dbt.
OST 10/26
NON-OPPOSITION

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: Continued to November 13, 2013, at 9:00 a.m., and a notice of continued hearing and proof of service for such notice will be filed by debtor pursuant to instructions below

Order: Civil minute order

Business Description: Unspecified sole proprietorship business

The order shortening time required notice to all parties on or before October 24, 2013, with any party being able to object to the motion at the hearing. The proof of service shows that only the Chapter 7 trustee received the motion. In addition, no notice of hearing was filed. A notice of hearing is required by the Local Bankruptcy Rules. LBR 9014-1(d)(2) ("Every motion shall be accompanied by a separate notice of hearing"). Further, a notice of hearing must state whether and when written opposition is required. LBR 9014-1(d)(3), (f)(3).

Because the debtor has not complied with the order shortening time for notice, the motion will be continued.

Additionally, no docket control number was used for the motion. Docket control numbers are required for papers filed in this court. The court may deny motions (and all related papers) that fail to contain docket control numbers in accordance with Local Bankruptcy Rule 9014-1(c).

The debtor will file a notice of hearing for the continued hearing date and will transmit such notice by mail to all parties in interest no later than November 7, 2013, at 5:00 p.m. The notice of continued hearing will permit opposition, if any, to be raised at the continued hearing date. A proof of service showing that such notice was mailed to all creditors and parties in interest shall also be filed no later than November 7, 2013, at 5:00 p.m.

To notice all creditors and parties in interest in compliance with the order shortening time for this matter, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice.

23. [13-16963](#)-A-7 WALTER ALBRIGHT
MAZ-2
WALTER ALBRIGHT/MV
MARK ZIMMERMAN/Atty. for dbt.
OST 10/28

MOTION TO COMPEL ABANDONMENT
10-30-13 [[13](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Ameritech Pest Control

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).

24. [13-16665](#)-A-7 LORENA TAPIA
JMI-1
LORENA TAPIA/MV
J. IRIGOYEN/Atty. for dbt.
OST 10/28

MOTION TO COMPEL ABANDONMENT
10-29-13 [[15](#)]

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 consisting of a home day care named Rayito De Sol Day Care

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).

25. [13-16993](#)-A-7 RANDOLPH ALVARADO
RN-1
RANDOLPH ALVARADO/MV
ROSALINA NUNEZ/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-30-13 [[10](#)]

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: Continued to November 13, 2013, at 9:00 a.m., and a notice of continued hearing and proof of service for such notice will be filed by debtor pursuant to instructions below

Order: Civil minute order

Business Description: auto parts dealership

The order shortening time required notice to be mailed to all parties and the trustee on or before October 30, 2013. The proof of service indicates that (i) the trustee did not receive notice, (ii) notice was not mailed until November 1, 2013, and (ii) Citibank received notice at an incorrect address (although this creditor received notice at the address shown in the schedules, this address is not the address shown for such creditor on the court's master mailing matrix).

Because the debtor has not complied with the order shortening time for notice, the motion will be continued.

The debtor will file a notice of hearing for the continued hearing date and will transmit such notice by mail to all parties in interest no later than November 7, 2013, at 5:00 p.m. The notice of continued hearing will permit opposition, if any, to be raised at the continued hearing date. A proof of service showing that such notice was mailed to all creditors and parties in interest shall also be filed no later than November 7, 2013, at 5:00 p.m.

To notice all creditors and parties in interest in compliance with the order shortening time for this matter, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice.

26. [13-17106](#)-A-13 DAVID/ROSE MURRAY
BCS-1
DAVID MURRAY/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO USE CASH COLLATERAL
11-1-13 [[7](#)]

No tentative ruling.

9:15 a.m.

1. [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.
JUDGMENT ENTERED 10/4/13

Final Ruling

A judgment has been entered on the U.S. Trustee's claims for relief against the debtor in this adversary proceeding. The underlying bankruptcy case has been dismissed with prejudice. The adversary proceeding has been closed. The status conference is concluded.

2. [08-15141](#)-A-7 LINDA PINSON CONTINUED STATUS CONFERENCE RE:
[13-1077](#) COMPLAINT
SALVEN V. PINSON 7-9-13 [[1](#)]
TRUDI MANFREDO/Atty. for pl.
NOTICE OF CASE SETTLEMENT
FILED 10/29/13

Final Ruling

The matter is continued to January 8, 2014, at 9:15 a.m., to allow the parties to conclude settlement.

3. [08-15141](#)-A-7 LINDA PINSON CONTINUED STATUS CONFERENCE RE:
[13-1078](#) COMPLAINT
SALVEN V. PINSON 7-9-13 [[1](#)]
TRUDI MANFREDO/Atty. for pl.
NOTICE OF CASE SETTLEMENT
FILED 10/29/13

Final Ruling

The matter is continued to January 8, 2014, at 9:15 a.m., to allow the parties to conclude settlement.

4. [13-14682](#)-A-7 THERESA PIERRO STATUS CONFERENCE RE: COMPLAINT
[13-1095](#) 9-2-13 [[1](#)]
MANFREDO V. PIERRO
DAVID JENKINS/Atty. for pl.

Final Ruling

The matter is continued to January 8, 2014, at 9:15 a.m., to allow the plaintiff to enter and prove up the default in this matter.

5. [12-14790](#)-A-7 RANDALL/DIANA COX PRETRIAL CONFERENCE RE:
[12-1145](#) COMPLAINT
GEORGE V. COX 9-4-12 [[1](#)]
RUSSELL REYNOLDS/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

6. [13-11394](#)-A-7 MICHAEL/JANET CULLEN PRE-TRIAL CONFERENCE RE:
[13-1058](#) COMPLAINT
USAA FEDERAL SAVINGS BANK V. 5-28-13 [[1](#)]
CULLEN
JOSH HARRISON/Atty. for pl.
RESPONSIVE PLEADING,
JUDGMENT 10/1/13

Final Ruling

A judgment has been entered and the adversary proceeding closed. The status conference is concluded.

10:00 a.m.

1. [13-16417](#)-A-7 LONALD ALBRECHT MOTION FOR RELIEF FROM
NMB-1 AUTOMATIC STAY
SAFE CREDIT UNION/MV 10-21-13 [[9](#)]
JEFFREY ROWE/Atty. for dbt.
NATHAN BRODNAX/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: 5080 Congressional Street, Chowchilla, California

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

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. [13-15721](#)-A-7 JOSE/SUSANA DAVILA MOTION FOR RELIEF FROM
JEB-1 AUTOMATIC STAY
SAFE 1 CREDIT UNION/MV 9-30-13 [9]
NEIL SCHWARTZ/Atty. for dbt.
JAMES BURBOTT/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: 2010 GMC Terrain SLT Sport Utility 4D and 2007 BMW 5 Series 525i Sedan 4D

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).

ON THE MERITS

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.

VIOLATION OF LOCAL BANKRUPTCY RULES

Local Bankruptcy Rule 9014-1(e)(3) requires that the Certificate of Service be filed as a separate document. In this case, the Certificate of Service was attached to the notice of hearing. See, Notice of Hearing, September 30, 2013, ECF No. 10. This does not comply. In the future, violations of local rules may result in summary denial of the motion or sanctions against counsel.

3. [13-14530](#)-A-7 KATHRYN JONES
PD-1
WELLS FARGO BANK, N.A./MV
RANDY RISNER/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-20-13 [[50](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1408 S. Alta Avenue, Reedley, California

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: (1) cause under 11 U.S.C. § 362(d)(1); (2) equity under 11 U.S.C. § 362(d)(2); and (3) the impact, if any, of judgment liens that have not been avoided on the analysis of 11 U.S.C. § 362(d)(2).

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.

4. [13-16336](#)-A-7 LISA SALDANA
SW-1
WELLS FARGO BANK, N.A./MV
MARIO LANGONE/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-14-13 [[10](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2007 Dodge Charger

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.

5. [13-14939](#)-A-7 MONICA HERNANDEZ
PD-1
U.S. BANK, NATIONAL
ASSOCIATION/MV
GARY SAUNDERS/Atty. for dbt.
BRYAN FAIRMAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-19-13 [[22](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part as moot

Order: Prepared by moving party

Subject: 5439 W. Pico Avenue, 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).

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)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The moving party may take such actions as are

authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages), to obtain possession of the subject property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [13-15340](#)-A-7 CAROLINE MIRELES-SAILOR CONTINUED MOTION FOR RELIEF
VVF-1 FROM 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: Granted

Order: Prepared by moving party

Subject: 2008 Honda Civic

Title 11 U.S.C. § 362 authorizes the court to grant stay relief for cause shown. The debtor has surrendered the vehicle, and the trustee has not opposed the motion. The court finds cause and grants the motion. Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief will be awarded.

7. [13-10152](#)-A-7 LEEANN SHAEFFER MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 9-27-13 [[24](#)]
JULIE JONES/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part as moot

Order: Prepared by moving party

Subject: 2007 Chevrolet Silverado

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.

8.	13-14365 -A-7 FLOYD/CYNTHIA GIBSON NLG-1 FEDERAL NATIONAL MORTGAGE ASSOCIATION/MV DAVID JENKINS/Atty. for dbt. NICHOLE GLOWIN/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-18-13 [13]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part as moot

Order: Prepared by moving party

Subject: 320 Demaree Road, Visalia, California

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

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.

9. [13-15365](#)-A-7 GENICE PRICE MOTION FOR RELIEF FROM
AUTOMATIC STAY
WILLIAM WOODMANSEE/MV 10-4-13 [[27](#)]
RYAN SULLIVAN/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: Fresno County Superior Court Case No. 10CECG03284

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).

ON THE MERITS

Section 362(d)(1) authorizes stay relief cause. Cause includes pursuing state court litigation the recovery of which is limited to insurance proceeds. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded. The order shall specifically state that any recovery shall be paid from applicable insurance proceeds and that absent further order of this court the moving party shall undertake no action to collect said judgment from the debtor, except by filing a claim in the instant bankruptcy.

VIOLATIONS OF LOCAL RULES

Court observes at least two violation of local rules. First, the moving party has not used a docket control number. LBR 9014-1(c). Second, the Certificate of Service was attached to the notice of hearing. LBR 9014-1(e)(3)1. Future failure to comply with local rules may result in summary denial of the motion or sanctions against counsel.

10. [13-15676](#)-A-7 VIRGINIA/MICHAEL CRISCO MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
U.S. BANK NATIONAL 9-20-13 [[10](#)]
ASSOCIATION/MV
MICHAEL SHEMTOUB/Atty. for dbt.
GINA KIM/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: 1435 North Adoline Avenue, 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.

11. [13-15981](#)-A-7 EDWARD/LORETTA ROCKHOLT MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
JP MORGAN CHASE BANK, NATIONAL 10-8-13 [[12](#)]
ASSOCIATION/MV
JOSEPH HORSWILL/Atty. for dbt.
KRISTI WELLS/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 688 Parkwest Drive, 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).

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.

12. [13-15086](#)-A-7 GREGORIO MORALES MOTION FOR RELIEF FROM
JFL-1 AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 10-9-13 [[11](#)]
ASSOCIATION/MV
ADRIAN WILLIAMS/Atty. for dbt.
JAMES LEWIN/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: 28625 Cholla Avenue, Madera, California

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

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

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.

13. [13-15295](#)-A-7 CHARLES/SUSAN JOHNSON MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
JP MORGAN CHASE BANK, NATIONAL 9-27-13 [[20](#)]
ASSOCIATION/MV
BENNY BARCO/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10:30 a.m.

1. [13-16200](#)-A-7 NORRIS/ASHLEIGH WAGNER PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
10-2-13 [[11](#)]

No tentative ruling.

2. [13-14701](#)-A-7 VERA CARREIRO REAFFIRMATION AGREEMENT WITH
MAZDA AMERICAN CREDIT
10-2-13 [[13](#)]

ROSALINA NUNEZ/Atty. for dbt.
DISCHARGED

No tentative ruling.

3. [13-15602](#)-A-7 ELISEO/PATRICIA ABUNDIZ REAFFIRMATION AGREEMENT WITH ALLY BANK
10-1-13 [[11](#)]
CYNTHIA ARROYO/Atty. for dbt.
No tentative ruling.
4. [13-14519](#)-A-7 ROBERT/DEBRA SANCHEZ PRO SE REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
10-2-13 [[13](#)]
No tentative ruling.
5. [13-16251](#)-A-7 MARY ROSARIO PRO SE REAFFIRMATION AGREEMENT WITH WEBBANK-FINGERHUT
10-1-13 [[15](#)]
No tentative ruling.
6. [13-15460](#)-A-7 MAE TUCKER CONTINUED PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN STATE BUILDINGS
9-9-13 [[17](#)]
WITHDRAWN
Final Ruling
The reaffirmation agreement withdrawn, the matter is dropped as moot.
7. [13-16066](#)-A-7 KAYLA HENDERSON PRO SE REAFFIRMATION AGREEMENT WITH CALIFORNIA AUTO FINANCE
10-15-13 [[11](#)]
No tentative ruling.

8. [13-14767](#)-A-7 VICKIE CERVANTES

CONTINUED REAFFIRMATION
AGREEMENT WITH WELLS FARGO
DEALER SERVICES
8-30-13 [[17](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling.

9. [13-15381](#)-A-7 ANTHONY/FRANCISCA
VERDUZCO

PRO SE REAFFIRMATION AGREEMENT
WITH WESTAMERICA BANK
10-1-13 [[11](#)]

JEFF REICH/Atty. for dbt.

No tentative ruling.

10. [13-15391](#)-A-7 DAVID/STEPHENIE GORDEN

REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
10-16-13 [[17](#)]

DAVID JENKINS/Atty. for dbt.

No tentative ruling.

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-34
JOHN VISSER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO
BANK, N.A.
10-9-13 [[882](#)]

RONALD CLIFFORD/Atty. for dbt.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

2. [12-17336](#)-A-11 VISSER FARMS
RAC-34
VISSER FARMS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO
BANK, N.A.
10-10-13 [[299](#)]

SCOTT BLAKELEY/Atty. for dbt.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

3. [13-11766](#)-A-11 500 WHITE LANE LP

RESCHEDULED CHAPTER 11 STATUS
CONFERENCE
3-20-13 [[8](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.

4. [13-11766](#)-A-11 500 WHITE LANE LP
DMG-4

DISCLOSURE STATEMENT FILED BY
DEBTOR 500 WHITE LANE LP
9-16-13 [[103](#)]

D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Approve Disclosure Statement

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

Disposition: Continued to allow filing of amended disclosure statement

Order: Civil minute order

The debtor 500 White Lane LP (the "Debtor") has filed a disclosure statement (the "Disclosure Statement") and plan (the "Plan") and now request court approval of the Disclosure Statement. The creditor Alden Halpern has filed an opposition. On October 30, the Debtor filed a pre-confirmation proposed modification that amends paragraph 4.04 of the Plan, relating to the treatment of Class 5 claims under the Plan. For the reasons set forth below, the court will continue the hearing on approval of the Disclosure Statement to allow the Debtor to make changes.

The Debtor is to file an amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, November 20, 2013, along with redlined versions. The 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 14 days before the hearing.

DISCUSSION

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

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

Proposed Financing. Since the Debtor has indicated in its status conference statement that a financing deal is imminent, the material details about that financing should be incorporated into the Disclosure Statement.

Class 4: Secured Tax Claims (Plan p. 15). The Plan does not identify whether the Class 4 claims are impaired or unimpaired.

Class 5: General Unsecured Claims (D/S p. 11). Consistent with the Debtor's proposed modification, the Disclosure Statement should

incorporate the modification under the section dealing with the treatment of Class 5 claims.

Class 6: Interest Holders (Plan p. 17). Consistent with the Debtor's proposed modification, the Disclosure Statement and Plan should also address the interest holder's capital contribution obligation under the section dealing with the treatment of Class 6 interests.

Additionally, as Alden Halpern has pointed out, the Disclosure Statement should disclose the identity of the interest holder(s).

Valuation of Collateral. If the Debtor intends to value collateral through the Plan, the Plan and Disclosure Statement should make clear that the Debtor will seek to value collateral through the Plan, rather than by motion. As such, the evidence supporting the valuation should be incorporated into the Disclosure Statement.

Impaired Classes (D/S p. 15). The Disclosure Statement incorrectly states that Class 1 claims are the only impaired claims under the Plan.

Exhibit A. Exhibit A appears to be incomplete since it only has one line of text.

Exhibit B. Exhibit B should incorporate the projected payments that must be made on the effective date (e.g., administrative expense claims, secured tax claims, etc.), as well as the source of the funds used to make such payments (e.g., cash on hand, new financing, etc.).

CONCLUSION

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

The Debtor is to file an amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, November 20, 2013, along with redlined versions. The 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 14 days before the hearing.

5. [13-14894](#)-A-11 JORENE MIZE
MCG-3
LESTIE FRY/MV
ROSEANN FRAZEE/Atty. for dbt.
SNEZHANA MCGOLDRICK/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
10-2-13 [[72](#)]

Tentative Ruling

Motion: Motion to Convert Chapter 11 Case to Chapter 7

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

Disposition: Continued to allow creditor to properly notice all creditors

Order: Civil minute order

For a motion to convert a chapter 11 case, 21 days' notice of the hearing is required on "the debtor, the trustee, *all creditors*, and indenture trustees." Fed. R. Bankr. P. 2002(a)(4). Here, the Creditor has either failed to notice certain creditors entirely or failed to notice certain creditors in accordance with Rule 2002(g).

The court notes the following errors: (1) notice to Discover at the improper address (Proof of Claim Nos. 3 and 4), (2) no notice to the IRS (Proof of Claim No. 5), (3) no notice to JPMorgan Chase Bank, N.A. (Proof of Claim No. 6), and (4) no notice to Wells Fargo Bank, N.A., Wells Fargo Card Services (Proof of Claim No. 1).

Therefore, the court will continue the hearing on this motion until Wednesday, December 4, 2013, at 1:30 p.m. to allow the Creditor to properly notice these creditors. Additionally, the Creditor is to serve notice on the two additional creditors who filed proofs of claim after the filing of the motion (see Proofs of Claim Nos. 10 and 11).

6. [13-14894](#)-A-11 JORENE MIZE
MCG-3
LESTIE FRY/MV
ROSEANN FRAZEE/Atty. for dbt.
SNEZHANA MCGOLDRICK/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-13 [[72](#)]

Tentative Ruling

Motion: Motion for Relief from Stay

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

Disposition: Continued for evidentiary hearing

Order: Civil minute order

At the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: (1) whether cause exists under § 362(d)(1),

in the form of (a) lack of adequate protection, (b) financial hardship on the creditor, and (c) bad faith filing by the debtor; and (2) whether the debtor does not have equity in the property and such property is not necessary to an effective reorganization under § 362(d)(2).

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.

The court also notes that § 362(e) applies and requires a final hearing within 30 days of the preliminary hearing, unless the parties consent to an extension of that 30-day period. At the hearing, the court will inquire into whether the parties will consent to such an extension.

Lastly, the court notes that service was improper under Rule 4001(a)(1), which requires that the motion be served on the creditors included in the List of 20 Largest Creditors in accordance with Rule 7004 (applicable in a chapter 11 case where no committee has been appointed). Since the court is continuing the matter for an evidentiary hearing, the motion will not be denied for insufficient service at this time. The moving party will therefore be required to serve the motion and file a proof of service by Wednesday, November 20, 2013. The moving party will also be required to give notice of the next hearing (whether it will be a continued scheduling conference or the evidentiary hearing). If the next hearing is the evidentiary hearing, then the moving party must also serve the court's scheduling order on the creditors.

7. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA CONTINUED MOTION TO USE CASH
KDG-1 COLLATERAL AND/OR MOTION FOR
ANTHONY DA COSTA/MV ADEQUATE PROTECTION
10-8-13 [[4](#)]

CHRISTIAN JINKERSON/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Use Cash Collateral

Notice: Continued date of the hearing; written response filed

Disposition: Continued to November 13, 2013, at 1:30 p.m.

Order: Civil minute order if appropriate

Pursuant to Wells Fargo Bank's agreement to continue the motion to November 13, 2013, the matter is continued to such date and time.

8. [13-14894](#)-A-11 JORENE MIZE MOTION TO USE CASH COLLATERAL
RAF-5 10-23-13 [[98](#)]
JORENE MIZE/MV
ROSEANN FRAZEE/Atty. for dbt.

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: Denied

Order: Civil minute order

Creditor: Wells Fargo Bank and Lestie Fry

Expiration: Not specified

Adeq. Protection: Wells Fargo Bank \$2,641.62/mo (1st trust deed) and \$308.57/mo (2nd trust deed) and Lestie Fry \$1,929.38/mo.

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).

In this case, the debtor in possession has not effected proper service. Motions to use cash collateral must be served in accordance with Federal Rule of Bankruptcy Procedure 7004(b),(h). See, Fed. R. Bankr. P. 4001(b)(1)(A). Service must be accomplished on the entity with an interest in the cash collateral and on either the unsecured creditors committee or the 20 largest unsecured creditors. Fed. R. Bankr. P. 4001(b)(1)(C). No committee has been appointed in this case. The Amended Certificate of Service, October 23, 2013, ECF No. 102 is the operative document. It reflects proper service on Lestie Fry. But neither the 20 largest unsecured creditors, nor Wells Fargo Bank has been properly served.

20 LARGEST UNSECURED CREDITORS

Under Rule 7004, service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

WELLS FARGO BANK

Service on Wells Fargo Bank, the impacted creditor requires similar service under Rule 7004. Service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). It must also be sent certified mail return receipt requested. Fed. R. Civ. P. 7004(h).

In this case, the debtor in possession served "Todd M. Boothroyd, Senior Counsel, Real Estate Division of Wells Fargo Bank." Amended Certificate of Service, October 23, 2013, ECF No. 102. And it was sent certified mail return receipt requested. But the existence of an attorney-client relationship, even as in house counsel, does not imply agency to receive service of process. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (representation in a previous case). No evidence has been presented in the proof of service that the attorney served has been authorized to accept service of process on the responding party in this bankruptcy case.

1:45 p.m.

- | | | |
|----|---|---------------------------------|
| 1. | 10-12709 -A-11 ENNIS COMMERCIAL | CONTINUED STATUS CONFERENCE RE: |
| | 12-1033 PROPERTIES, LLC | AMENDED COMPLAINT |
| | ENNIS COMMERCIAL PROPERTIES, | 3-5-12 [6] |
| | LLC V. NICHOLSON ET AL | |
| | PETER FEAR/Atty. for pl. | |
| | RESPONSIVE PLEADING | |

Final Ruling

At joint request of the parties, the status conference is continued to December 11, 2013, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status statement. At that time, the case should be settled or the parties ready to establish a schedule for the further handling of the case.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:
[12-1050](#) PROPERTIES, LLC COMPLAINT
ENNIS COMMERCIAL PROPERTIES, 3-16-12 [[1](#)]
LLC V. HA DEVCO, INC. ET AL
PETER FEAR/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

At joint request of the parties, the status conference is continued to December 11, 2013, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status statement. At that time, the case should be settled or the parties ready to establish a schedule for the further handling of the case.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:
[12-1209](#) PROPERTIES, LLC COMPLAINT
ENNIS COMMERCIAL PROPERTIES, 12-16-12 [[1](#)]
LLC V. ENNIS
PETER FEAR/Atty. for pl.

No tentative ruling.

4. [10-61725](#)-A-7 PAMELA ENNIS CONTINUED STATUS CONFERENCE RE:
[12-1160](#) AMENDED COMPLAINT
STRAIN V. ENNIS ET AL 10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

At suggestion of the parties, the status conference is continued to February 26, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status statement. At that time, the case should be settled or the parties ready to establish a schedule for the further handling of the case.

5. [10-61970](#)-A-7 BRIAN ENNIS CONTINUED STATUS CONFERENCE RE:
[12-1161](#) AMENDED COMPLAINT
SALVEN V. ENNIS ET AL 10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

At suggestion of the parties, the status conference is continued to February 26, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status statement. At that time, the case should be settled or the parties ready to establish a schedule for the further handling of the case.