

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 13, 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. [12-18516](#)-A-7 JACKLYN FRONK
TGM-1

MOTION BY TRUDI G. MANFREDO TO
WITHDRAW AS ATTORNEY
10-10-13 [[25](#)]

TRUDI MANFREDO/Atty. for dbt.

Final Ruling

Motion: Withdraw from Representation

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

Disposition: Granted subject to conditions below

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).

Pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1)(d), the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. The motion and declaration properly mention the effort made to notify the client of the motion to withdraw. The declaration also has a letter sent to the client attached as an exhibit, and this letter shows the client's address.

The declaration, however, should specifically state current or last known address of the client as required by the Local Bankruptcy Rule 2017-1(e). The court will grant the motion, but the order must contain language stating the current or last known address of the client (the debtor) in this case.

2. [13-10721](#)-A-13 RALPH/ELVA AGUERO

ORDER TO SHOW CAUSE RE:
SANCTIONS FOR FAILURE TO OBEY A
COURT ORDER
10-2-13 [[73](#)]

NELLIE AGUILAR/Atty. for dbt.
CASE DISMISSED

No tentative ruling.

3. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN CONTINUED OBJECTION TO DEBTOR'S
LDM-1 CLAIM OF EXEMPTIONS
BETTY EGAN/MV 8-9-13 [[20](#)]
HAGOP BEDOYAN/Atty. for dbt.
LARRY MILLER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [10-61725](#)-A-7 PAMELA ENNIS MOTION FOR COMPENSATION FOR
THA-6 THOMAS H. ARMSTRONG, TRUSTEE'S
THOMAS ARMSTRONG/MV ATTORNEY(S), FEE: \$9941.36,
EXPENSES: \$735.94
10-14-13 [[146](#)]
RILEY WALTER/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Thomas H. Armstrong

Compensation approved: \$9,941.36

Costs approved: \$735.94

Aggregate fees and costs approved: \$10,677.30

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

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

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

5. [13-14530](#)-A-7 KATHRYN JONES
JES-1
JAMES SALVEN/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
9-30-13 [[58](#)]

RANDY RISNER/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Extend Deadline for Objecting to Discharge and Filing
Nondischargeability Complaint

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

Disposition: Granted

Order: Civil minute order which shall be noticed to all creditors on
the court's matrix. Rule 2002(f).

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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

Based on the motion and supporting papers, the court finds that cause
exists to extend the deadline for objecting to discharge under §
727(a) for the trustee, U.S. Trustee and any creditor to a date no
later than December 31, 2013.

EXTENSION OF DEADLINE FOR FILING COMPLAINT UNDER SECTION 523(c)

A party in interest may bring a motion for an extension of the
deadline to file a complaint to determine the dischargeability of a
debt under § 523(c), but the motion must be filed before the original
time to object to discharge has expired. Fed. R. Bankr. P. 4007(c).
The deadline may be extended for "cause." *Id.*

The motion is unclear about whether the trustee is seeking extension
of the deadline for determining the nondischargeability of a debt.
The title of the motion refers to extending a deadline for a
determination of nondischargeability of a debt and for objecting to
discharge, but the prayer for relief only refers to an extension of
the deadline for objecting to discharge. The first paragraph includes
a reference to both forms of relief. The trustee should state the
relief requested unequivocally in the motion. See Fed. R. Bankr. P.
9013.

Nevertheless, the court finds that without completion of the creditors
meeting and the information that may be obtained from such meeting,
without all the amendments to the schedules, and without the trustee's

receipt of all of the documents requested, creditors may not have all the information necessary to determine whether to file a § 523(c) complaint. The deadline will be extended.

6. [13-15634](#)-A-7 SUREN MARKARIAN MOTION TO DISMISS CASE
BEW-1 9-25-13 [[14](#)]
SUREN MARKARIAN/MV
BARRY WEBER/Atty. for dbt.
WITHDRAWN

Final Ruling

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

7. [11-16049](#)-A-7 DENNIS/KARI STANLEY MOTION TO COMPROMISE
CWC-2 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH DWS ENTERPRISES,
INC., CARY W. STANLEY, CONNIE
F. STANLEY, AND THE CARY W.
STANLEY AND CONNIE F. STANLEY
2002 TRUST
10-16-13 [[47](#)]

HAGOP BEDOYAN/Atty. for dbt.
CARL COLLINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

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.

8. [13-15659](#)-A-7 MICHAEL/MANDY MCGRATH MOTION TO COMPEL ABANDONMENT
JMA-1 9-27-13 [[21](#)]
MICHAEL MCGRATH/MV
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); 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: Mike's Service & Repairs (Automotive and Ag repair business)

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).

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

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

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

9. [13-13063](#)-A-7 WILLIAM MANUSZAK

OBJECTION TO CLAIM OF ATLAS
ACQUISITIONS LLC, CLAIM NUMBER

WILLIAM MANUSZAK/MV

1

10-14-13 [[35](#)]

CHERYL JOLLEY-SMITH/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: Deemed noticed under LBR 3007-1(b)(2) for the reasons stated below; no written opposition required

Disposition: Overruled

Order: Prepared by objecting party

DEBTOR LACKS STANDING

The debtor objects to the allowance of Claim No. 1 filed by the responding party. The debtor asserts he has standing to bring the objection. The basis given for such standing is that the debtor "will be financially prejudiced by the payment of the claim" and that "there will be and [sic] excess of assets remaining after payment to this one creditor."

STANDING

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

The court takes judicial notice of the debtor's schedules and the statements in them. Schedule C shows that \$137,300 of real and personal property has been claimed exempt.

The real property listed on Schedule C has a value of \$120,000, which has been claimed exempt in part (\$65,000) and is subject to an encumbrance (\$55,559 mortgage). Thus, no non-exempt equity exists in the real property.

Based on the latest versions of Schedules B and C filed in the case, there is only \$1,500 of nonexempt equity in personal property. Unsecured priority claims total \$535 and unsecured claims total \$29,789.00. Total unsecured claims total \$30,234.

The amount of the responding party's proof of claim is \$19,585.13. Even if the debtor were to succeed in bringing this objection, the debtor would not have a cognizable prospect of a distribution. More specifically, if the responding party's \$19,585.13 were disallowed, the amount of remaining unsecured (priority and nonpriority) claims would be \$10,738.87. Because the estate has only \$1,500 of non-exempt equity available for unsecured creditors, unsecured claims would certainly not be paid in full after payment of administrative expenses even if the responding claim were disallowed.

NONCOMPLIANCE WITH LOCAL BANKRUPTCY RULES

The debtor has not complied with Local Bankruptcy Rule 9014-1(c), which requires docket control numbers on all papers filed. LBR 9014-1(c); see also LBR 9001-1(n) (defining motions to include objections and other requests for orders or judicial activity).

The debtor also did not comply with the notice requirements for a motion noticed under Local Bankruptcy Rule 3007-1(b)(2). The notice for the motion required written opposition no later than 14 days before the hearing but was filed and served on 30 days' notice rather than 44 days' notice. Accordingly, the motion will be deemed to have been noticed under Local Bankruptcy Rule 3007-1(b)(2).

Lastly, the exhibits do not comply with the Revised Guidelines for the Preparation of Documents, paragraph (6). The exhibit document title and the page numbering (or lack of page numbering) does not meet the requirements of these guidelines.

10. [10-12080](#)-A-7 HORTENCIA RUIZ MOTION TO AVOID LIEN OF
ALG-3 CALIFORNIA BUSINESS BUREAU,
HORTENCIA RUIZ/MV INC.
10-30-13 [[35](#)]
JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$100,847.02

Property Value: \$94,000.00

Judicial Lien Avoided: \$6,847.02

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is

statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

11. [13-16391](#)-A-7 JOSHUA/SOMMER RITTER MOTION TO CONVERT CASE FROM
JDW-2 CHAPTER 7 TO CHAPTER 13
JOSHUA RITTER/MV 10-23-13 [[20](#)]
JOEL WINTER/Atty. for dbt.

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Prepared by moving party

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

Because less than 28 days' notice of the hearing was given to all creditors and parties in interest, the court will deem the motion as having been noticed under Local Bankruptcy Rule 9014-1(f)(2). See LBR 9014-1(f)(1) (when written opposition is required no later than 14 days before the hearing, then at least 28 days' notice of the motion must be given), (f)(2) (when fewer than 28 days' notice is required, no written opposition shall be required and the motion must be noticed at least 14 days before the hearing).

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

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

12. [13-15876](#)-A-7 ERIC LANE

CONTINUED MOTION TO COMPEL
ABANDONMENT
9-27-13 [[16](#)]

ERIC LANE/MV
MICHAEL GONG/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Unspecified sole proprietorship 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).

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

CONTINUED 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: 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 an auto parts dealership

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

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

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

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

14. [12-13067](#)-A-7 MICHAEL JOHANNES
THA-2
TRUDI MANFREDO/MV
JERRY LOWE/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

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

No tentative ruling.

9:15 a.m.

1. [13-14196](#)-A-7 MICHAEL BRANDON STATUS CONFERENCE RE: COMPLAINT
[13-1101](#) 9-17-13 [[1](#)]
U.S. TRUSTEE V. BRANDON
GREGORY POWELL/Atty. for pl.

Final Ruling

This matter is continued to January 8, 2014, to allow the plaintiff to enter and prove up the default.

10:00 a.m.

1. [12-15365](#)-A-7 DAVID/LAURRA MARTINEZ MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
SETERUS, INC./MV 10-16-13 [[22](#)]
PETER BUNTING/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2383 East Saint Andrew Drive, 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 cause. The equity in the property is \$30,711.11, which is 14.25% of the value of the property. The Chapter 7 trustee has not opposed motion. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-16877](#)-A-7 DENNIS/PHYLLIS BALL MOTION FOR RELIEF FROM
RWR-1 AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 10-30-13 [[9](#)]
ASSOCIATION/MV
PETER BUNTING/Atty. for dbt.
RUSSELL REYNOLDS/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: 2920 East Nees 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

3. [13-15592](#)-A-7 DOUGLAS/CYNTHIA MARTIN MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
SETERUS, INC./MV 10-10-13 [[17](#)]
PETER BUNTING/Atty. for dbt.
NICHOLE GLOWIN/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: 102 Trotter Court, Coalinga, California

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

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

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

10:30 a.m.

1. [13-16319](#)-A-7 KATHRYN AVILA PRO SE REAFFIRMATION AGREEMENT WITH UNITED AUTO CREDIT CORPORATION
10-25-13 [[14](#)]

No tentative ruling.

2. [13-14788](#)-A-7 CANDY SANDOVAL PRO SE REAFFIRMATION AGREEMENT WITH GE CAPITAL RETAIL BANK/GREEN TREE
10-23-13 [[18](#)]

No tentative ruling.

3. [13-15391](#)-A-7 DAVID/STEPHENIE GORDEN CONTINUED REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES (CJIM)
10-16-13 [[17](#)]

DAVID JENKINS/Atty. for dbt.

No tentative ruling.

1:30 p.m.

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

CONTINUED CHAPTER 11 STATUS
CONFERENCE

9-18-12 [[121](#)]

RONALD CLIFFORD/Atty. for dbt.

No tentative ruling.

2. [12-17310](#)-A-11 JOHN/GRACE VISSER
AMT-6
WELLS FARGO BANK, N.A./MV

CONTINUED MOTION TO DESIGNATE
THE VOTE OF PRAXAIR

DISTRIBUTION
9-23-13 [[838](#)]

RONALD CLIFFORD/Atty. for dbt.

M. MINNICK/Atty. for mv.

Tentative Ruling

Motion: Designate the Vote of Praxair Distribution

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

Disposition: (1) If the motion is withdrawn on account of the
settlement agreement between the parties, the motion will be denied as
moot; or (2) If the motion is not withdrawn, the motion will be denied
without prejudice for insufficient service

Order: Civil minute order

If the motion is withdrawn by the moving party because the settlement
agreement between the Debtors and the moving party remains effective,
then the court will deny the motion as moot.

If the motion is not withdrawn by the moving party because the
settlement agreement between the Debtors and the moving party fails,
then the motion will be denied without prejudice. The motion to
designate the vote of Praxair Distribution Inc. ("Praxair") was not
served on the responding creditor. Because the motion is directed at
Praxair's rights, specifically, its right to have its vote counted,
the court considers the motion as initiating a contested matter
pursuant to Rule 9014(a). Under Rule 9014(b), a contested matter must
be served pursuant to Rule 7004. No officer or authorized agent for
Praxair appears on the proof of service.

3. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-14

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

RONALD CLIFFORD/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

4. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-14

CONTINUED MOTION TO DESIGNATE
THE VOTES OF CERTAIN CREDITORS
9-11-13 [[826](#)]

WELLS FARGO BANK, N.A./MV
RONALD CLIFFORD/Atty. for dbt.
M. MINNICK/Atty. for mv.

Tentative Ruling

Motion: Designate the Votes of Certain Creditors

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

Disposition: (1) If the motion is withdrawn, the motion will be denied as moot; or (2) If the motion is not withdrawn, then the motion will be denied as not ripe as to non-voting respondents and denied without prejudice as to the voting respondent

Order: Civil minute order

The court will rule on the motion in one of two ways depending on whether the motion is withdrawn or not on account of the parties' settlement agreement. Each alternative is set forth below.

(1) If the motion is withdrawn on account of the settlement agreement between the parties, the motion will be denied as moot.

(2) If the motion is not withdrawn on account of the parties' settlement, then the motion will be denied as moot as to non-voting respondents, and will be denied without prejudice as to the voting respondents due to insufficient service.

As to the non-voting creditor-respondents, the motion is not ripe for resolution given the lack of votes. Under § 1126(e), only an entity's vote—an acceptance or rejection of the plan—may be designated, which means it is disallowed. Without a ballot reflecting a vote, the court has nothing to designate, so the motion is not ripe as to non-voting creditors.

As to one the voting creditor-respondent, American Express, the motion was not properly served pursuant to Rule 7004(b) or 7004(h) (if the entity served is an FDIC-insured institution). The law firm served is the law firm designated as the name and address for notice in the creditor's proofs of claim, which does not appear to designate the firm as the agent for service of process pursuant to Rule 7004. Absent some evidence that allows the court to conclude the firm is also the agent for service of process on the respondent, the court finds service to be insufficient on American Express.

5. [12-17336](#)-A-11 VISSER FARMS

CONTINUED CHAPTER 11 STATUS
CONFERENCE
9-18-12 [[103](#)]

SCOTT BLAKELEY/Atty. for dbt.

No tentative ruling.

6. [12-17336](#)-A-11 VISSER FARMS

CONTINUED MOTION TO DESIGNATE
THE VOTES OF CERTAIN CREDITORS
9-11-13 [[270](#)]

AMT-5

WELLS FARGO BANK, N.A./MV

SCOTT BLAKELEY/Atty. for dbt.

ANDREW TROOP/Atty. for mv.

Tentative Ruling

Motion: Designate the Votes of Certain Creditors

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

Disposition: (1) If the motion is withdrawn, the motion will be denied as moot; or (2) If the motion is not withdrawn, then the motion will be denied as not ripe

Order: Civil minute order

The court will rule on the motion in one of two ways depending on whether the motion is withdrawn or not on account of the parties' settlement agreement. Each alternative is set forth below.

(1) If the motion is withdrawn on account of the settlement agreement between the parties, the motion will be denied as moot.

(2) If the motion is not withdrawn on account of the parties' settlement, then the motion will be denied as moot as to the non-voting respondent Circle M Hay Company. The motion is not ripe for resolution given the lack of a vote by this creditor. Under § 1126(e), only an entity's vote—an acceptance or rejection of the plan—may be designated, which means it is disallowed. Without a ballot reflecting a vote, the court has nothing to designate, so the motion is not ripe as to a non-voting creditor.

7. [12-17336](#)-A-11 VISSER FARMS
AMT-6
WELLS FARGO BANK, N.A./MV

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

SCOTT BLAKELEY/Atty. for dbt.
ANDREW TROOP/Atty. for mv.

Tentative Ruling

Motion: Designate the Vote of Praxair Distribution

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

Disposition: Denied as not ripe and denied for insufficient service

Order: Civil minute order

This motion appears to have been filed in the Visser Farms case erroneously. The motion filed in the Visser Farms case seeks to designate the vote of Praxair Distribution Inc. to accept the plan in the John L and Grace A. Visser case.

The analysis of ballots filed by the debtor, moreover, confirms that Praxair has not voted in this case. The motion is not ripe for resolution given the lack of a vote by this creditor. Under § 1126(e), only an entity's vote—an acceptance or rejection of the plan—may be designated, which means it is disallowed. Without a ballot reflecting a vote, the court has nothing to designate, so the motion is not ripe as to a non-voting creditor.

Alternatively, the court will deny the motion for insufficient service. No certificate of service for this motion appears on the Visser Farms' docket.

8. [12-17336](#)-A-11 VISSER FARMS
RAC-15

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

SCOTT BLAKELEY/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

9. [13-14037](#)-A-11 GIL/MARIA GILBUENA CONTINUED CHAPTER 11 STATUS
CONFERENCE
6-13-13 [[12](#)]

J. IRIGOYEN/Atty. for dbt.

Final Ruling

This matter is continued to December 11, 2013, at 1:30 p.m.

10. [13-13284](#)-A-11 NICOLETTI OIL INC. MOTION TO EXTEND TIME TO FILE
LRP-3 PROOFS OF CLAIM
EXXONMOBIL OIL CORPORATION/MV 10-31-13 [[202](#)]
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Motion: Extend Bar Date to File Proofs of Claim

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

Disposition: Granted

Order: Prepared by moving party

The moving party seeks a further extension of the bar date for filing proofs of claim. For the reasons stated in the motion and supporting papers, the bar date will be extended to February 28, 2013, to allow the "contamination litigation" between the parties to continue in the district court. Cause has been shown for such an extension. Fed. R. Bankr. P. 3003(c)(3), 9006(b)(1).

11. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA MOTION FOR RELIEF FROM
TJD-1 AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 10-16-13 [[35](#)]
ASSOCIATION/MV
CHRISTIAN JINKERSON/Atty. for dbt.
TODD DRESSEL/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Relief from Automatic Stay

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

Disposition: Continued to December 11, 2013, at 1:30 p.m.

Order: Civil minute order

The moving party admits that 2 of the 20 largest unsecured creditors, Creditors Neopost USA, Inc. and Chase, were omitted inadvertently from the proof of service filed with the court. The motion is continued to the date set forth above to allow a supplemental proof of service to be filed. But the moving party also contends that they were properly

served.

This court requires Rule 7004 service on the entities required by Rule 4001. The moving party shall file a supplemental proof of service no later than November 13, 2013. No later than such date, a continued notice of hearing must also be filed and transmitted appropriately.

No later than December 4, 2013, the moving party shall file a joint status report addressing the issues set forth in the immediately following paragraph.

At the continued date of the hearing on this 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 disputed factual issues: (1) whether a post-petition decline in the moving party's collateral has occurred; (2) whether the value of the moving party's interest in its collateral is adequately protected during the pendency of this case, (2) whether there is a reasonable possibility of an effective reorganization, and (3) whether such reorganization can be accomplished within a reasonable time.

The debtors in possession state that they do not dispute the moving party's contention that they do not have equity in the property. Additionally, the moving party apparently does not dispute whether the property is *necessary* to any reorganization that may be shown to be in prospect.

Before the continued hearing date, the parties shall meet and confer to determine the following: (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. [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.

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: Wells Fargo Bank

Expiration: December 31, 2013

Adeq. Protection: To be determined

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

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

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