

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
Bakersfield, California

PLEASE TAKE NOTICE THAT ALL HEARINGS WILL BE HELD AT THE

BAKERSFIELD FEDERAL COURTHOUSE

510 19TH STREET, SECOND FLOOR

BAKERSFIELD, CALIFORNIA

THURSDAY

NOVEMBER 21, 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. [13-13007](#)-A-13 JOSE/MARIA MAUN
JMF-3
JOSE MAUN/MV
JOEL FEINSTEIN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
9-27-13 [[53](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Amended Chapter 13 Plan, filed September 27, 2013, ECF No. 52

Disposition: Denied

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

The debtor moves to confirm the First Amended Chapter 13 Plan, filed September 27, 2013, ECF No. 52. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

NOTICING PROBLEMS

All creditors must be given notice of a motion to confirm a Chapter 13 Plan. Fed. R. Bankr. P. 2002(a)(5); LBR 3015-1. In this case, the following creditors were not served with the motion or plan: Jennifer Pfiesser, Franchise Tax Board, and Wells Fargo Bank. Certificate of Service, September 27, 2013, ECF No. 60.

INADEQUATE INSTRUCTIONS TO THE CHAPTER 13 TRUSTEE

Debtors in the Eastern District of California must utilize Form EDC 3-080 standard form Chapter 13 plan. LBR 3015-1(a). Under the terms of that the form plan, § 2.07 should state the monthly dividend due the debtor's lawyer. This plan does not so state.

LACK OF RESOLUTION OF PRIORITY DOMESTIC SUPPORT OBLIGATION

In most cases, a Chapter 13 plan must pay, in full, priority claims. 11 U.S.C. § 1322(a). An exception exists for domestic support obligations. 11 U.S.C. § 1322(a)(4). The plan makes reference in the additional provisions to a domestic support obligation. First Amended Chapter 13 Plan, Additional Provisions, filed September 27, 2013, ECF No. 52. But neither Schedule E, nor the applicable portion of the plan, list such an obligation. As a result, Schedule E and the plan must be modified to resolve this debt and the plan is not confirmable.

UNRESOLVED IRS PRIORITY CLAIM

The Internal Revenue Service/EDD Claim have filed a priority claims of \$74,187.14 and \$3,747.14. For the plan to fund, monthly payments from the debtor of \$3,795.51 would be required. The plan payment is \$2,256.00.

SECTION 1325(a)(6): NOT FEASIBLE

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. Based on the debtor most recently filed Schedules I and J, the debtor can not make the required payment of \$3,795.51 per month.

SECTION 1322(d): THE PLAN EXCEEDS 60 MONTHS

A Chapter 13 plan may not exceed 60 months. 11 U.S.C. § 1322(d). It will take 277 months to fund this plan.

For each of these reasons, confirmation is denied.

2. [13-13007](#)-A-13 JOSE/MARIA MAUN
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
9-19-13 [[47](#)]

JOEL FEINSTEIN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Chapter 13

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

Disposition: Granted

Order: Civil minute order

A Chapter 13 case may be dismissed for unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The trustee has moved to dismiss for failure to confirm a plan. This case was filed April 13, 2013. No plan has ever been confirmed. On July 24, 2013, the court ordered the debtor to confirm a plan not more than 75 days hence. Civil Minutes, July 24, 2013, ECF NO.42. That time has expired and no plan has been confirmed.

The court will retain jurisdiction over the reasonableness of debtors' counsel's fees. 11 U.S.C. § 329(b).

3. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO
LKW-4
LEONARD WELSH/MV

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTOR'S
ATTORNEY(S), FEE: \$1302.50,
EXPENSES: \$32.40.
10-17-13 [[82](#)]

LEONARD WELSH/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: Leonard K. Welsh

Compensation approved: \$1,302.50

Costs approved: \$32.40

Aggregate fees and costs approved: \$1,334.90

Retainer held: \$0.00

Amount to be paid as administrative expense: \$1,334.90

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

4. [13-16129](#)-A-13 MARIO/CANDELARIA CHAVEZ
WDO-1
MARIO CHAVEZ/MV
9-17-13 [[10](#)]
WILLIAM OLCOTT/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
OLD REPUBLIC INSURANCE COMPANY

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by responding party

Disposition: Continued to December 17, 2013, at 9:00 a.m. in Fresno, CA

Order: Civil Minute Order

The court will first address an administrative matter regarding the location of the hearing. The address shown for the hearing location in the notice of hearing has changed. The hearing will be held at 510 19th Street, Bakersfield, California, and not at the court's prior address at 1300 18th Street.

The motion seeks to value real property collateral that is the moving party's principal residence. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

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

5. [13-11431](#)-A-13 HELEN TUHIN
PWG-1
PHILLIP GILLET/MV

MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$5302.50,
EXPENSES: \$40.92
9-29-13 [[32](#)]

PHILLIP GILLET/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: Phillip Gillet, Jr.
Compensation approved: \$5,302.50
Costs approved: \$40.92
Aggregate fees and costs approved: \$5,343.42
Retainer held: \$0.00
Amount to be paid as administrative expense: \$5,343.42

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

6. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER
PK-8
PATRICK KAVANAGH/MV

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S), FEE: \$10442.50,
EXPENSES: \$321.19.
10-31-13 [[200](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Patrick Kavanagh
Compensation approved: \$10,442.50
Costs approved: \$321.19
Aggregate fees and costs approved: \$10,763.69
Retainer held: \$0.00
Amount to be paid as administrative expense: \$10,763.69

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

7. [13-11432](#)-A-13 HUBERT/JANET RABANAL
PWG-1
PHILLIP GILLET/MV
MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$5407.50,
EXPENSES: \$65.92.
11-1-13 [[36](#)]
- PHILLIP GILLET/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Continued to December 17, 2013, at 9:00 a.m. in Fresno
Order: Civil minute order

Applicant: Phillip Gillet, Jr.
Compensation approved: \$5,407.50
Costs approved: \$65.92
Aggregate fees and costs approved: \$5,473.42
Retainer held: \$0.00
Amount to be paid as administrative expense: \$5,473.42

The notice of motion shall state the location of the courthouse at which the hearing on the motion is to be held. LBR 9014-1(d)(2). In this case, the notice indicates a hearing at 1300 18th Street, Suite A, Bakersfield, California. Notice, filed November 1, 2013, ECF No. 37. But since September 2013, the court address for hearings, at least through December 31, 2013, is 510 19th Street, Suite 200, Bakersfield, California. Since the motion was noticed under Local Bankruptcy Rule 9014-1(f)(2), allowing opposition at the hearing, the error is particularly problematic and may mislead parties in interest as to where opposition should be given.

The matter will be continued to December 17, 2013, at 9:00 a.m. in Fresno. Not later than Tuesday, November 26, 2013, the applicant shall file and serve on all creditors notice of continued hearing, including an indication that opposition may be presented at the hearing at the Fresno address for the bankruptcy court, and shall file a Certificate of Service so indicating.

8. [13-13640](#)-A-13 DAVID/MARGARET SANCHEZ
PWG-2
PHILLIP GILLET/MV
MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$5,260.00,
EXPENSES: \$27.56.
11-1-13 [[28](#)]
- PHILLIP GILLET/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Continued to December 17, 2013, at 9:00 a.m. in Fresno
Order: Civil minute order
Applicant: Phillip Gillet, Jr.

Compensation approved: \$5,260.00
Costs approved: \$27.56
Aggregate fees and costs approved: \$5,287.56
Retainer held: \$0.00
Amount to be paid as administrative expense: \$5,287.56

The notice of motion shall state the location of the courthouse at which the hearing on the motion is to be held. LBR 9014-1(d)(2). In this case, the notice indicates a hearing at 1300 18th Street, Suite A, Bakersfield, California. Notice, filed November 1, 2013, ECF No. 37. But since September 2013, the court address for hearings, at least through December 31, 2013, is 510 19th Street, Suite 200, Bakersfield, California. Since the motion was noticed under Local Bankruptcy Rule 9014-1(f)(2), allowing opposition at the hearing, the error is particularly problematic and may mislead parties in interest as to where opposition should be given.

The matter will be continued to December 17, 2013, at 9:00 a.m. in Fresno. Not later than Tuesday, November 26, 2013, the applicant shall file and serve on all creditors notice of continued hearing, including an indication that opposition may be presented at the hearing at the Fresno address for the bankruptcy court, and shall file a Certificate of Service so indicating.

9. [13-14441](#)-A-13 STEPHEN/TERESA GALVAN CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY MICHAEL
H. MEYER
8-22-13 [[16](#)]

ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING,
OBJECTION WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

10. [13-14252](#)-A-13 JAIME VENTURA AND MARIA MOTION TO VALUE COLLATERAL OF
RSW-1 AGUILAR OCWEN LOAN SERVICING, LLC
JAIME VENTURA/MV 11-1-13 [[29](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Collateral Value: \$143,867.00
Senior Liens: \$236,554.20

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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

11. [13-14252](#)-A-13 JAIME VENTURA AND MARIA MOTION TO APPROVE LOAN
RSW-2 AGUILAR MODIFICATION
JAIME VENTURA/MV 11-6-13 [[33](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Loan Modification Approval

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

Disposition: Granted in part, denied without prejudice in part

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).

LOAN MODIFICATION APPROVAL

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the

confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

COUNSEL'S PROPOSED COST RECOVERY

Counsel for the debtors requests additional cost recovery outside the plan. First, debtors' counsel elected to be compensated pursuant to the fixed fee under Rule 2016-1(c) both in the proposed plan on file and in the *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* executed by counsel. Further, debtors' counsel has not shown that the services for which cost recovery is sought were substantial and unanticipated and performed post-confirmation. Second, the court will not approve fees or costs in the absence of a properly filed application under § 330 and Rule 2016(a).

12. [11-15455](#)-A-13 SHANNON EZELL
RSW-4
SHANNON EZELL/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO ALLOW
SUBMISSION OF CORRECTED ORDER
CONFIRMING PLAN
9-11-13 [[41](#)]

Final Ruling

The trustee's opposition withdrawn, the motion is granted.

13. [08-17558](#)-A-13 VICTOR/KARLA MOORE
PK-9
VICTOR MOORE/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN
10-14-13 [[118](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Third Modified Chapter 13 Plan, filed October 14, 2013, ECF No. 124

Disposition: Denied

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

The debtor moves to confirm the Third Modified Chapter 13 Plan, filed October 14, 2013, ECF No. 124. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C),

arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

The problem is that the debtor seeks to move a Class 6 creditor (ECMC), who has been paid 72.18% of its claim into Class 7 (general unsecured creditors), who are to be paid 100% of their claims. But without an increase in payments the plan will not fund at 100%, leaving most general unsecured creditors paid 100% but ECMC less than that amount. 11 U.S.C. § 1322(b).

14. [09-62859](#)-A-13 NEIL/JENNIFER WEITING MOTION TO SELL
RSW-3 10-18-13 [[79](#)]
NEIL WEITING/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Sell Real Property [Short Sale]

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

Disposition: Continued in part (sale) to December 17, 2013, at 9:00 a.m., and denied without prejudice in part (cost recovery)

Order: Civil minute order

CONTENT OF THE NOTICE OF HEARING

Previously, the debtors' motion to short sell the subject property was denied without prejudice given notice deficiencies. See Civ. Mins. Hr'g on Sale Mot., Sept. 25, 2013, ECF No. 76. This motion also contains deficiencies in notice.

First, the notice does not state that the sale is subject to higher and better bid at the hearing. In denying the prior motion to sell the subject property, the court stated that the notice of hearing for a sale motion should include such language, along with other additional language. Fed. R. Bankr. P. 2002(c)(1).

Here, the notice of hearing contains none of the required information under Rule 2002(c)(1). Although the motion and declaration contain much of the information required under this rule, and were transmitted to the entities on the court's matrix, such information should have been included in the notice of hearing in light of the court's prior ruling on the sale motion for the same subject property.

The court will continue the hearing on this motion to December 17, 2013, at 9:00 a.m. No later than November 19, 2013, a notice of continued hearing may be filed that complies with Rule 2002(c)(1) and this ruling. The notice shall provide the address for the Fresno location of the bankruptcy court.

COUNSEL'S PROPOSED COST RECOVERY

Counsel for the debtors requests cost recovery outside the plan. No showing has been made of that the confirmed plan in this case provides for such costs to be paid. In addition, pursuant to the *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* executed by counsel, counsel elected to be compensated pursuant to the opt-in fee under LBR 2016-1(c). Counsel has not shown that such compensation is for post-confirmation work that was necessary and substantial and unanticipated. Finally, fees and costs are only recoverable by separate application. See Fed. R. Bankr. P. 2016(a).

15. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE MOTION FOR COMPENSATION FOR
LKW-3 LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$2215.00,
EXPENSES: \$457.53
10-17-13 [[38](#)]
- LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Leonard K. Welsh

Compensation approved: \$2,215.00

Costs approved: \$457.53

Aggregate fees and costs approved: \$2,672.53

Retainer held: \$0.00

Amount to be paid as administrative expense: \$2,672.53

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

retainer held.

16. [09-18363](#)-A-13 DOUGLAS/AMY BURDICK MOTION TO APPROVE LOAN
MDE-1 MODIFICATION
BAYVIEW LOAN SERVICING, LLC/MV 9-26-13 [[37](#)]
ROBERT WILLIAMS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Tentative Ruling

Motion: Loan Modification Approval
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Pending
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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c).

The loan modification agreement attached to the motion is unclear regarding whether the principal is being reduced. Paragraph 1(a) of the "Loan Adjustment Agreement" provides that the unpaid principal balance of \$304,002.57 "shall be decreased by \$45,600.41 the amount of the unpaid installments, interest, late charges, fees and costs, and, if applicable, any advances for unpaid property taxes and/or insurance premiums ('Unpaid Sums Due'), for a total unpaid principal balance due of \$258,402.16 ('New Balance')." The second to last sentence of this paragraph then states, "Borrower agrees to pay the Unpaid Sums Due to Service and that he/she has no defenses, claims, or offsets with respect thereto."

Based on the court's reading of this paragraph, the first sentence reduces the unpaid principal balance by \$45,600.41 and defines this amount as the "Unpaid Sums Due." The same paragraph, however, makes the debtors liable for "Unpaid Sums Due" and removes any defenses to payment of such amount. Thus, whether the loan modification agreement contains provisions that appear inconsistent and ambiguous about whether the principal is being reduced by \$45,600.41 or whether this amount remains due and owing, and when such amount should be paid.

The parties may review this provision and be prepared to clarify its meaning to the court at the hearing. If the parties are satisfied that the debtors are benefitted by this change, the court may grant the motion.

Further, the interest rate appears the same (7.375%) both in the loan

modification agreement and the original note attached as an exhibit. So it does not appear that the interest rate is being reduced.

If the court decides to grant the motion at the hearing, then the court will only authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

17. [12-18363](#)-A-13 VICTORIANO ROJAS
MHM-1
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- OBJECTION TO DEBTOR'S 11 U.S.C.
SEC. 1328 CERTIFICATION
9-23-13 [[42](#)]

Tentative Ruling

Objection: § 1328 Certificate
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Moot
Order: Civil minute order

The Chapter 13 trustee having withdrawn the objection, the matter is dropped as moot.

18. [13-12265](#)-A-13 LETICIA GUTIERREZ
TGF-3
LETICIA GUTIERREZ/MV
VINCENT GORSKI/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL, INC.
10-31-13 [[52](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Collateral Value: \$55,000.00
Senior Liens: \$67,305.00 (declaration's asserted amount) or \$80,170.00 (motion's asserted amount)

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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

19. [11-17572](#)-A-13 STANLEY/KATHY BOYCE MOTION FOR COMPENSATION FOR
LKW-3 LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$5237.00,
EXPENSES: \$0.00.
10-18-13 [67]

LEONARD WELSH/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: Leonard K. Welsh
Compensation approved: \$1,346.00
Costs approved: \$80.80
Aggregate fees and costs approved: \$1,426.80
Retainer held: \$0.00
Amount to be paid as administrative expense: \$1,426.80

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

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

20. [13-16977](#)-A-13 JOHNNY/PATRICIA MOTION TO EXTEND AUTOMATIC STAY
NES-1 VILLALOVOS 11-8-13 [9]
JOHNNY VILLALOVOS/MV
NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without notice of the motion

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed and that the automatic stay should be extended. The motion will be granted except as to any creditor without notice of the motion.

21. [13-16578](#)-A-13 JUAN PANTOJA
FJA-1
JUAN PANTOJA/MV

MOTION TO VALUE COLLATERAL OF
CONSUMER PORTFOLIO SERVICES
INC.
10-18-13 [12]

FRANK ALVARADO/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$10,000.00

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

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

22. [11-61180](#)-A-13 JOHNNY/MONALISA MARAN MOTION TO APPROVE LOAN
LKW-3 MODIFICATION
JOHNNY MARAN/MV 10-22-13 [[61](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Motion: Loan Modification Approval

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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

23. [10-16681](#)-A-13 TORINO JACKSON MOTION TO MODIFY PLAN
RSW-2 9-27-13 [[38](#)]
TORINO JACKSON/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(2), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir.

1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

24. [10-63881](#)-A-13 MICKEY/KATHRYN HOWELL CONTINUED MOTION TO AVOID LIEN
RSW-4 OF AMERICAN EXPRESS CENTURION
MICKEY HOWELL/MV BANK
10-1-13 [[60](#)]
- ROBERT WILLIAMS/Atty. for dbt.
STIPULATION & ORDER

Final Ruling

The matter resolved by stipulation and order, the matter is dropped as moot.

25. [13-13383](#)-A-13 BOBBY MAXWELL CONTINUED OBJECTION TO
JFS-1 CONFIRMATION OF PLAN BY GERALD
GERALD MAXWELL/MV MAXWELL
6-19-13 [[20](#)]
- PATRICK KAVANAGH/Atty. for dbt.
JOSEPH SOARES/Atty. for mv.
CONSOLIDATED WITH MHM-1
RESPONSIVE PLEADING

No tentative ruling.

26. [13-13383](#)-A-13 BOBBY MAXWELL CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY MICHAEL
MICHAEL MEYER/MV H. MEYER
8-22-13 [[41](#)]
- PATRICK KAVANAGH/Atty. for dbt.
CONSOLIDATED WITH JFS-1
RESPONSIVE PLEADING

No tentative ruling.

27. [13-14583](#)-A-13 DIXIE JOHNSON
SL-1
DIXIE JOHNSON/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-23-13 [[26](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

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 3015-1(d)(1), 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).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

28. [13-14289](#)-A-13 PHILLIP RUSSELL
LKW-1
LEONARD WELSH/MV

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTOR'S
ATTORNEY(S), FEE: \$2647.50,
EXPENSES: \$10.00
10-10-13 [[24](#)]

LEONARD WELSH/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: Leonard K. Welsh

Compensation approved: \$2,647.50

Costs approved: \$10.00

Aggregate fees and costs approved: \$2,657.50

Retainer held: \$239.00

Amount to be paid as administrative expense: \$2,418.50

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

29. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER CONTINUED OBJECTION TO
VORTEX CONSTRUCTION/MV CONFIRMATION OF PLAN BY VORTEX
CONSTRUCTION
9-19-13 [[38](#)]
PATRICK KAVANAGH/Atty. for dbt.
RAY MULLEN/Atty. for mv.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Denied as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan, and the motion will be denied as moot.

30. [13-17292](#)-B-13 DEWAYNE MORRIS MOTION TO EXTEND AUTOMATIC STAY
PLG-1 11-14-13 [[8](#)]
DEWAYNE MORRIS/MV
RABIN POURNAZARIAN/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

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).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed and that the automatic stay should be extended. The motion will be granted except as to any creditor without proper notice of this motion.

USE OF COURT'S MATRIX

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list (or matrix), accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest.

Further, the copy of the master address list should indicate a date near in time to the date of service of the notice. Here, although the court's matrix was used by counsel, the computer-generated date, time and case number was omitted. In the future, the court requests that counsel not remove the information in the upper-left hand corner of the matrix showing date, time, case number and other such information.

9:15 a.m.

- | | | |
|----|---|--|
| 1. | 13-13007 -A-13 JOSE/MARIA MAUN MHM-2 MICHAEL MEYER/MV JOEL FEINSTEIN/Atty. for dbt. WITHDRAWN | MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 10-31-13 [69] |
|----|---|--|

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-15115](#)-A-13 REYMUNDO PACAS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-22-13 [[19](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

3. [09-15421](#)-A-13 JOHN LEX
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS
10-8-13 [[43](#)]

PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [13-15521](#)-A-13 ROSA CARRILLO
MHM-1
MICHAEL MEYER/MV
YELENA GUREVICH/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-31-13 [[29](#)]

No tentative ruling.

5. [13-14638](#)-A-13 STEPHEN/LAURA MANN
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-1-13 [[23](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [13-14252](#)-A-13 JAIME VENTURA AND MARIA
MHM-1 AGUILAR
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-21-13 [[25](#)]
- ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
- No tentative ruling.**
7. [13-14156](#)-A-13 DAVID DIAZ VALADEZ AND
MHM-1 CONSUELO DIAZ
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-21-13 [[30](#)]
- CLAUDIA OSUNA/Atty. for dbt.
RESPONSIVE PLEADING
- No tentative ruling.**
8. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE
MHM-1
MICHAEL MEYER/MV
LEONARD WELSH/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-31-13 [[54](#)]
- No tentative ruling.**
9. [13-12265](#)-A-13 LETICIA GUTIERREZ
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-22-13 [[48](#)]
- VINCENT GORSKI/Atty. for dbt.
RESPONSIVE PLEADING
- No tentative ruling.**

10. [13-11681](#)-A-13 FIDEL/ELVIRA GONZALEZ
MHM-1
MICHAEL MEYER/MV

WILLIAM OLCOTT/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-25-13 [[24](#)]

11. [13-15386](#)-A-13 COREY CAROTHERS
MHM-1
MICHAEL MEYER/MV
TYSON TAKEUCHI/Atty. for dbt.
WITHDRAWN

Final Ruling

MOTION TO DISMISS CASE
10-7-13 [[20](#)]

The motion withdrawn, the matter is dropped as moot.

12. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER
MHM-2
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-1-13 [[60](#)]

9:30 a.m.

1. [12-10827](#)-A-13 JAMES HOOVER
[12-1025](#)
HOOVER V. BASSET ET AL

PHILLIP GILLET/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

PRETRIAL CONFERENCE RE: FIRST
AMENDED COMPLAINT (FOR TRIAL
SETTING)
11-21-12 [[74](#)]

10:30 a.m.

1. [13-16045](#)-A-7 SUSIE MIRANDA PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
10-31-13 [[17](#)]

No tentative ruling.

2. [13-15654](#)-A-7 CARLO ACEVEDO AND MYRIAM DE ACEVEDO PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
10-18-13 [[17](#)]

No tentative ruling.

1:00 p.m.

1. [13-10814](#)-A-7 FL.INVEST.USA INC. MOTION FOR COMPENSATION BY THE
BH-2 LAW OFFICE OF BRUMFIELD &
ROBERT BRUMFIELD/MV HAGAN, LLP FOR ROBERT H.
BRUMFIELD III, DEBTOR'S
ATTORNEY(S), FEE: \$3662.50,
EXPENSES: \$200.88.
10-22-13 [[209](#)]

RYAN ERNST/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Continued to December 17, 2013, at 1:00 p.m. (Fresno)

Order: Civil minute order

Brumfield & Hagan, LLP pray approval on a first and final basis for Chapter 11 fees of \$3,662.50 and costs of \$200.88. The matter will be continued to December 17, 2013, at 1:00 p.m. in Fresno to allow the applicant to address the problems identified herein.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable

compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). This motion presents several problems. First, not all creditors were noticed. Fees are requested by application. The debtor, the trustee and all creditors must be given not less than 21 days notice of the application. Fed. R. Bankr. P. 2002(a)(6). In this case not all creditors were noticed with the motion. Compare, Proof of Service, October 22, 2013, ECF No. 213, with Proof of Service, October 24, 2013, ECF No. 216. Not less than 21 days prior to the continued hearing date, the applicant shall file and serve on those parties entitled under Federal Rule of Bankruptcy Procedure 2002(a)(6): (1) the First and Final Application for Fees and Expenses and all supporting documents thereto; (2) Notice of the Continued Hearing in Fresno, which shall include that opposition may be presented at the hearing, LBR 9014-1(d)(3), (f)(2)(C); and (3) a Certificate of Service so indicating. No additional compensation or expenses shall be sought for these tasks.

Second, the application violates Federal Rule of Bankruptcy Procedure 9013, which requires that each motion specify, "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The moving papers are internally inconsistent. For example, the motion prays fees of \$3,662.50 and costs of \$200.88. First and Final Application for Compensation ¶¶ 9, 11, October 22, 2013, ECF No. 209. In contrast, the notice specifies fees of \$3,863.38. The Notice of Continued Hearing shall clearly and unequivocally state the amount of fees sought, the amount of costs sought and the aggregate amount of fees and costs.

Third, the applicant has violated Local Bankruptcy Rule 9014-1(c)(3), which requires sequential docket control numbers. This motion is applicant's second use of docket control number BH-2. The first occasion that number was used was in O'Kelly Ernst & Bielli's motion for compensation. Motion for Compensation, September 9, 2013, ECF No. 160. It was used again in this motion. First and Final Application for Compensation, October 22, 2013, ECF No. 209. In the future, the failure to comply with local rules may result in summary denial of the motions or sanctions against counsel.

2. [13-10814-A-7](#) FL.INVEST.USA INC.
DMG-4
ALDO NEMNI/MV
RYAN ERNST/Atty. for dbt.
DONNA HARRIS/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
10-9-13 [[191](#)]

No tentative ruling.

3. [13-10814](#)-A-7 FL.INVEST.USA INC.
KDG-2
VINCENT GORSKI/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARIA ROSA
NEMNI, ALDO NEMNI, AND MIRO'
AMERICA LLC
10-2-13 [[182](#)]

RYAN ERNST/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [13-11922](#)-A-7 JOHN/TERRI ALEXANDER
VG-1
VINCENT GORSKI/MV

AMENDED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOSLIN D.
ALEXANDER .
10-31-13 [[66](#)]

ROBERT BRUMFIELD/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2) / Continued date of the hearing; written
opposition required

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: The trustee and Joslin Alexander, the
transferee of an alleged fraudulent transfer

Dispute Compromised: Alleged fraudulent transfer of an automobile in
which the debtors traded in a certain vehicle in exchange for another
vehicle that was titled in a relative's name

Summary of Material Terms: The alleged transferee of the fraudulent
transfer will pay the trustee of the estate \$2,000.00 in exchange for
the trustee's release of all claims by the estate against the
transferee

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.*

The trustee seeks approval of a compromise of his claim against a transferee of an alleged fraudulent transfer of an automobile by the debtors. 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.

5. [13-15722](#)-A-7 SCOTT THOMAS MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
AUGUST LANDIS/MV 10-11-13 [[25](#)]
NEIL SCHWARTZ/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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).

The debtors have filed a non-opposition to the motion. The motion will be granted, and the case will be dismissed.

6. [13-13740](#)-A-7 JAZMIN ZAMORA
RSW-1
JAZMIN ZAMORA/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF
ASHLAND, INC.
9-9-13 [[14](#)]

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: \$97,613.70

Property Value: \$86,700.00

Judicial Lien Avoided: \$10,913.70

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.

7. [13-15454](#)-A-7 DON MCKAY TRUCKING, INC. MOTION TO SELL
JMV-2 10-23-13 [[18](#)]
JEFFREY VETTER/MV
JACOB EATON/Atty. for dbt.
JEFFREY VETTER/Atty. for mv.

Final Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Several 3-axle truck tractors with sleepers as described in the notice of hearing

Sale Type: Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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).

PUBLIC SALE UNDER § 363(b)

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

COMPENSATION

The auctioneer was employed by an order of the court. 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.

Rule 2002(c)(2) requires that the notice of hearing contain the identity of the applicant and the amount of compensation requested. The court notes that the notice of hearing nearly complies with this rule. The notice identifies in detail the amounts of compensation requested for the auctioneer. But the notice does not identify the auctioneer by name but does refer generally to "Auctioneer." The notice of hearing should identify the applicant by name in the future.

8. [12-10057](#)-A-7 GLORIA AGUILAR
CRS-2
GLORIA AGUILAR/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
SERVICES, INC.
10-23-13 [[22](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

9. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, ORDER TO APPEAR AND SHOW CAUSE
A MEDICAL CORPORATION WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
10-23-13 [4]

CYNTHIA SCULLY/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: OSC re: why patient care ombudsman should not be appointed

Notice: Court's notice; no written response required

Disposition: OSC withdrawn

Order: Civil minute order

The court issued an order for the Debtor and the Trustee to appear and show cause why it should not appoint a patient care ombudsman pursuant to § 333(a)(1). The Debtor has filed a written response, arguing that an ombudsman is not necessary in this case.

For the reasons set forth below, the court will withdraw the order to show cause. A patient care ombudsman will not be appointed in this case.

DISCUSSION

Under § 333(a)(1), if the debtor is a "health care business" as defined in § 101(27A), the "court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case." § 333(a)(1).

The § 333(a)(1) inquiry is only necessary in a "health care business" case. Here, the Debtor indicated on its petition that it is a "health care business." Because of this, Bankruptcy Rule 1021(a) requires the Debtor's case to "proceed as a case in which the debtor is a health care business." However, it appears that the Debtor does not meet the qualifications of a health care business and as a result, a patient care ombudsman is not necessary in this case.

A "health care business" is generally defined by the statute as "any public or private entity . . . that *is primarily engaged* in offering to the general public facilities and services" for medical care and treatment. § 101(27A)(A) (emphasis added). "Congress chose to write this statutory definition in the present tense, indicating that it was concerned with appointing patient care ombudsmen in cases where health care businesses seeking bankruptcy protection are currently engaged in the ongoing care of patients." *In re Banes*, 355 B.R. 532, 535 (Bankr. M.D.N.C. 2006).

Yet, that is not the case here. As stated in the Debtor's response to the OSC, the Debtor is no longer operating and was closed as of October 7, 2013. The Debtor has no remaining patients, who have either been transferred to a new practice or have been notified of the Debtor's closure, and all that the Debtor possesses at this point are patient records. However, patient records can be dealt with by the Trustee without the need for an ombudsman. See § 351; see also *Bane*, 355 B.R. at 536 ("Duties that arise when a health care business is ceasing operations, such as proper destruction or retention of patient records and attending to the costs of closing a health care business,

are covered under §§ 351 and 503(b)(8) of the Bankruptcy Code, respectively, and allow the Trustee to carry out such functions."). Because the Debtor has ceased patient care, there is no need to appoint an ombudsman whose duties are "to monitor the quality of patient care and to represent the interests of the patients," given that there are no longer any more active patients involved. § 333(a)(1).

CONCLUSION

For the reasons set forth above, the court will withdraw the order to show cause. A patient care ombudsman will not be appointed in this case.

10. [13-14464](#)-A-7 JOSE/MARIA DIAZ MOTION TO AVOID LIEN OF CACH, LLC
FPS-1
JOSE DIAZ/MV 10-7-13 [[16](#)]
FRANK SAMPLES/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount

greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

11. [13-13967](#)-A-7 MOTEL IOSHPE MOTION TO SELL
VG-1 10-31-13 [[14](#)]
VINCENT GORSKI/MV
BARRY BOROWITZ/Atty. for dbt.
VINCENT GORSKI/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: Various items of personal property listed as: (i) an LED Sign which includes a LED Digital Billboard and all brackets, electronics, computers, hardware, software, equipment, attachments, supports, and all items related to the billboard, and (ii) a 1/3 membership interest in Maytal, LLC, a California limited liability company

Buyer: Sebouh Hamassian

Sale Price: \$5,000.00

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.

12. [13-14881](#)-A-7 JOSE/TERESA OLMEDO
UST-1
AUGUST LANDIS/MV
OSCAR SWINTON/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR REVIEW OF FEES
10-18-13 [[23](#)]

Tentative Ruling

Motion: Review of Fees

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 disputed, material factual issue: whether the amount of fees the attorney received from the debtors exceeds the reasonable value of services rendered by the debtors' attorney.

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.

13. [10-12395](#)-A-7 CLAYTON WALSH
RP-1
RANDELL PARKER/MV
PATRICK KAVANAGH/Atty. for dbt.
RANDELL PARKER/Atty. for mv.

MOTION TO SELL
10-22-13 [[108](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Laundromat equipment and supplies located at 550 Tucker Road, Suite B, Tehachapi, CA, as more fully described and itemized in Exhibit A to the motion

Buyer: Richard Henry

Sale Price: \$6,100.00

Sale Type: Private sale subject to overbid opportunity

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

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

1:15 p.m.

1. [13-11347](#)-A-7 CHRISTOPHER BURGONI STATUS CONFERENCE RE: COMPLAINT
[13-1099](#) BOARD OF TRUSTEES OF THE KERN 9-11-13 [[1](#)]
COUNTY ELECTRICAL PE V.
KERRY FENNELLY/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-13952](#)-A-7 BRENT/KISH SCHWEBEL STATUS CONFERENCE RE: COMPLAINT
[13-1094](#) CARPENTERS SOUTHWEST 8-30-13 [[1](#)]
ADMINISTRATIVE CORPORATION ET
JODI SIEGNER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

1:30 p.m.

1. [13-15996](#)-A-7 LAURA PIRKL
NATIONSTAR MORTGAGE, LLC/MV
NEIL SCHWARTZ/Atty. for dbt.
JOSH HARRISON/Atty. for mv.
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-15-13 [9]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 35795 SW Snuffin Road, Estacada, Oregon

ON THE MERITS

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

Section 362(d)(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 RULES

Motions filed in the Bankruptcy Court for the Eastern District of California must be identified by a "docket control number" ("DCN"). LBR 9014-1(c). Docket controls numbers consist of the three initials of the filer followed by a "dash" and by a sequential number. In this case, the motion is simply identified as "9." This is not in compliance with local rules. In the future, failure to comply with local rules may result in summary denial of the motion or sanctions against counsel.

1:45 p.m.

1. [13-15801](#)-A-11 VALLEY AND MOUNTAIN, LLC CHAPTER 11 STATUS CONFERENCE
9-9-13 [[9](#)]
JAMES PAGANO/Atty. for dbt.
DISMISSED 9/30/13

Final Ruling

The case having been dismissed, the court concludes the status conference.

2. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION FOR COMPENSATION FOR
LKW-6 INC. LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$20117.50,
EXPENSES: \$149.25
10-15-13 [[97](#)]
LEONARD WELSH/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: Leonard K. Welsh
Compensation approved: \$20,117.50
Costs approved: \$149.25
Aggregate fees and costs approved: \$20,266.75
Retainer held: \$14,039.50
Amount to be paid as administrative expense: \$6,227.25

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

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

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

3. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, STIPULATION FOR RELIEF FROM

LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Matter: Stipulation for Adequate Protection and Relief from Automatic Stay

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

Disposition: Denied without prejudice

Order: Civil minute order

PROCEDURE FOR APPROVAL OF STIPULATION

Rule 4001(d) of the Federal Rules of Bankruptcy Procedure requires that a motion be filed for approval of an agreement to provide adequate protection or a motion for approval of an agreement to modify or terminate the stay. Fed. R. Bankr. P. 4001(d)(1)(A). Further, Rule 4001(d)(1)(B) specifies that the motion "begin with a concise statement of the relief requested." Rule 9013 also provides that a written motion is the procedural mechanism for making a "request for an order," and this rule requires the motion "set forth the relief requested or order sought." Fed. R. Bankr. P. 9013.

Secured Creditor Hitachi Capital America Corp. ("Hitachi") has filed a stipulation of the type described in Rule 4001(d). Although the notice of hearing refers to a motion, no motion appears on the court's docket in this matter. Hitachi or the Debtor must file a motion in accordance with Rule 4001(d) to obtain relief such as approval of this stipulation.

INSUFFICIENT SERVICE OF PROCESS

A motion requesting relief of the type described in Rule 4001(d) must be served on any committee appointed under § 1102, or its authorized agent, or if the case is a chapter 11 case and no committee has been appointed, the motion must be served on the 20 largest creditors included on the list filed under Rule 1007(d). Fed. R. Bankr. P. 4001(d)(1)(C).

In this case, the U.S. Trustee has appointed a committee of unsecured creditors under § 1102. Service is insufficient for two reasons. First, no motion was filed, so the court presumes that Hitachi could not comply with Rule 4001(d)(1)(C)'s requirement that the motion be served on specified entities.

Second, even if the court were to treat the stipulation as a motion, the stipulation was not served on the authorized agent of the Official Committee of Unsecured Creditors ("UCC") appointed under § 1102. The authorized agent for the UCC is Brian T. Harvey, who has indicated he is the authorized attorney for the UCC in a request for special noticed filed on the court's docket on May 30, 2013.