

**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**

**DECEMBER 11, 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. [13-16427](#)-A-7 PATRICK/PAULA KREGER MOTION TO AVOID LIEN OF CAPITAL  
HAR-1 ONE BANK (USA) N.A.  
PATRICK KREGER/MV 11-8-13 [[12](#)]  
HILTON RYDER/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.

2. [3-15831](#)-A-7 JAMES/BRENDA WATSON MOTION TO COMPEL ABANDONMENT  
PBB-1 11-12-13 [[13](#)]  
JAMES WATSON/MV

PETER BUNTING/Atty. for dbt.

### **Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Real Property Description:** 6789 N. De Wolf Avenue, Clovis, California

**Personal Property Description:** Smith and Wesson 686-3 357 Magnum

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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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

3. [13-13135](#)-A-7 ESTHER FLORES MOTION TO AVOID LIEN OF ACCLAIM  
JDM-4 CREDIT TECHNOLOGIES  
ESTHER FLORES/MV 11-7-13 [[52](#)]  
JAMES MILLER/Atty. for dbt.  
RESPONSIVE PLEADING

### **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.

4. [08-15141](#)-A-7 LINDA PINSON  
TGM-6  
JAMES SALVEN/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LINDA L. PINSON  
11-6-13 [[227](#)]

THOMAS GILLIS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

#### **Final Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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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.

5. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION TO EMPLOY MICHAEL L.  
RHT-4 INC. WILHELM AS SPECIAL COUNSEL  
ROBERT HAWKINS/MV 10-25-13 [[167](#)]  
KENNETH ALLEN/Atty. for mv.

#### **Final Ruling**

**Motion:** Employ Walter Wilhelm

**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).

A Chapter 7 trustee's application to employ counsel is governed by 11 U.S.C. § 327(a),(c),(e). See also, 11 U.S.C. § 101(10)(A) (defining creditor), § 101(14) (defining disinterested). Walter Wilhelm satisfies the criterion for employment and the motion will be granted.

6. [13-13063](#)-A-7 WILLIAM MANUSZAK CONTINUED OBJECTION TO CLAIM OF  
WILLIAM MANUSZAK/MV ATLAS ACQUISITIONS LLC, CLAIM  
NUMBER 1  
CHERYL JOLLEY-SMITH/Atty. for dbt. 10-14-13 [[35](#)]

*[The hearing on this matter will be concurrent with the hearing on the amended claim objection in this case having docket control no. CJS-1.]*

#### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** Deemed noticed under LBR 3007-1(b)(2) (based on civil minutes from the hearing on November 13, 2013) / continued date of the hearing; no written opposition required

**Disposition:** Overruled as moot given the amended objection

**Order:** Civil minute order

Because an amended objection was filed, the court will overrule this objection as moot.

7. [13-13063](#)-A-7 WILLIAM MANUSZAK  
CJS-1  
WILLIAM MANUSZAK/MV

AMENDED OBJECTION TO CLAIM OF  
ATLAS ACQUISITIONS LLC., CLAIM  
NUMBER 1  
11-25-13 [43]

CHERYL JOLLEY-SMITH/Atty. for dbt.

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2) / continued date of the hearing; no written opposition required

**Disposition:** Continued to January 2, 2014, at 9:00 a.m.

**Order:** Prepared by the objecting party

At the previous hearing, the court raised the issue of whether the debtor had standing to bring this claim objection. The court continued the hearing, permitting the debtor to file a supplemental brief on the question of standing. The debtor then filed an amended objection.

### **NOTICE PROCEDURE**

The original claim objection was noticed incorrectly under LBR 3007-1(b)(1) because it gave only 30 days' notice but required opposition 14 days before the hearing. When opposition is required 14 days before the hearing, then filing and service of the objection must be made 44 days before the hearing. LBR 3007-1(b)(1).

The court deemed the original objection, however, to have been noticed under LBR 3007-1(b)(2). The amended claim objection does not provide 30 days' notice of the objection to the respondent. Rule 3007 and LBR 3007-1(b)(2) requires a claim objection to be mailed or delivered to the claimant at least 30 days prior to the hearing. Fed. R. Bankr. P. 3007(a).

But because the amended objection relates to the original objection sufficiently to be considered the same objection, the court will treat the amended objection as having provided the required 30 days' notice to the respondent.

### **STANDING TO BRING A CLAIM OBJECTION**

Based on the amended objection and supporting papers, the court finds that the debtor has a cognizable prospect of receiving a distribution if the claim of the respondent is disallowed. See *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004). Accordingly, the debtor is injured in fact by the allowance of the claim. See *id.*

Two claims have been filed: (i) the respondents claim in the amount of \$19,585.13, and (ii) a Fresno County Superior Court claim ("Fresno claim") filed in the amount of \$535.00. The gross proceeds of personal property sold by the trustee total \$5,954.00.

Even accounting for whatever amount constitutes the trustee's fees and other administrative costs, it appears to the court that the debtor will receive a surplus from the estate if the objection is sustained. In the unlikely event that administrative costs would prevent the debtor from receiving a distribution if the present objection is

sustained, the court requests that the Chapter 7 trustee notify the court of this fact at the hearing.

## **CLAIM OBJECTION**

### Legal Standards

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

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

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

### Analysis

For the reasons stated below, the court intends to sustain the claim objection if (i) there is no opposition at the hearing on December 11, 2013, and (ii) the supplemental declaration indicating compliance with Rule 9037 (required by the court in the final section of this ruling) has been filed no later than 7 days before the continued hearing date.

The respondent, Atlas Acquisitions, is the claimant who filed Claim No. 1. The respondent asserts that the basis for its claim of \$19,585.13 is a "Credit Card." The attachment to the claim shows that First USA Bank, N.A. was the "Assignor" or "Original Creditor."

The debtor has asserted "he never owned a credit card from the creditor FIRST USA BANK," who is the creditor shown on the proof of claim as the "Assignor/Original Creditor." The debtor has offered evidence that this creditor does not appear on his credit report.

Thus, by inference, the debtor argues that the debtor did not incur and is not liable for the debt that is the basis for the claimant's claim. The claimant has submitted no response or counter evidence.

In addition, the debtor asserts that the respondent cannot provide evidence of an assignment of the claim to the respondent. The court notes that no such assignment is attached to the claim. The respondent has not appeared or offered evidence that the assignment occurred.

For the reasons stated, the court will sustain the objection and

disallow the claim. Because the court will sustain the objection on the grounds discussed, the court will not consider the statute of limitations defense raised by the debtor.

#### **EXHIBITS AND RULE 9037**

The attorney for the debtor failed to comply with Rule 9037 in filing the exhibits to the objection. The attorney shall file an ex parte motion under Rule 9037(c) or (d) no later than December 13, 2013. The court will continue the hearing on this objection until the attorney files a supplemental declaration showing compliance with Rule 9037 for all papers filed in connection with this objection.

#### **RULE 9013**

Rule 9013 requires that the grounds for a motion be stated in the motion itself. The court's local rules treat objections as motions. LBR 9001-1(n). Here, the objection does not contain any grounds for the relief requested or a brief summary of the grounds but instead cross references the declaration and exhibits. The declaration of the attorney contains all of the grounds, including legal authorities, for the relief sought.

In the future, counsel should include the grounds for any relief sought, or a succinct summary of such grounds, in the objection and motion. Further, points and authorities should be included either in the motion or objection, or in a memorandum of points and authorities, rather than in a declaration.

8. [13-15967](#)-A-7 MONIER EL SAKKA AND SONJA MOTION TO EMPLOY GOULD AUCTION  
PFT-2 HERNANDEZ AND APPRAISAL COMPANY AS  
PETER FEAR/MV AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
11-15-13 [27]

PETER FEAR/Atty. for mv.

#### **Final Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1997 Ford Econoline E350

**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).

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.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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.

9. [13-15581](#)-A-7 JULIO/ANGELA MILLAN MOTION TO EMPLOY GOULD AUCTION  
PFT-1 & APPRAISAL COMPANY AS  
PETER FEAR/MV AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
11-15-13 [[18](#)]

DAVID JENKINS/Atty. for dbt.  
PETER FEAR/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Denied without prejudice or continued at the moving party's option to January 8, 2013, at 9:00 a.m.

**Order:** Prepared by moving party

**Property:** 2001 Yamaha R6

**Sale Type:** Public auction

The notice of hearing on an application for compensation or reimbursement of expenses must identify the applicant and the amounts requested. See Fed. R. Bankr. P. 2002(c). Here, the notice of hearing includes the 15% commission and \$100 pickup fee but fails to mention that \$500.00 may be reimbursed for any extraordinary expenses such as for repair. The court will give the trustee the choice of having the motion denied without prejudice as to the \$500.00 expense but will otherwise grant the motion or continuing the motion to allow a notice of hearing to be filed that includes all amounts of compensation and expenses requested.

If the trustee opts to continue the hearing on the motion and resolves the notice problem, then the court will, in the absence of any timely opposition, adopt the following as the tentative ruling:

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.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

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.

10. [13-16498](#)-A-7 JUDITH VERNAL  
JES-1  
JAMES SALVEN/MV  
REYNALDO PULIDO/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
11-13-13 [9]

#### **Final Ruling**

**Motion:** Dismiss Chapter 7

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

**Disposition:** Denied

**Order:** Civil minute order

Chapter 7 trustee James Salven moves to dismiss this Chapter 7 case, citing the debtor's failure to provide pay advices and tax returns. 11 U.S.C. §§ 521(e)(2)(B), 707(a); LBR 1007-1(c)(1). Those documents were due at the Chapter 7 trustee's office 7 days prior to the meeting of creditors; they were hand delivered to the Chapter 7 trustee 6 days prior to the meeting of creditors. Debtor's counsel opposes the motion. Both sides agree that the debtor provided these documents to her attorney in a timely fashion and that it was debtor's counsel who failed to convey them to the trustee.

#### **TAX RETURNS**

A debtor's obligation to provide tax returns to the Chapter 7 trustee is governed by 11 U.S.C. § 521. It provides: "The debtor shall provide--(i) not later than 7 days before the date first set for the

first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed..." 11 U.S.C. § 521(e)(2)(A)(i).

Ordinarily, the remedy for such failure is mandatory dismissal. 11 U.S.C. § 521(e)(2)(B). But in this case both sides agree that the debtor had provided the documents to counsel and that it was counsel who failed to provide them to the trustee. For at least 50 years, it has been well settled that civil litigants are charged with the errors of counsel. See, e.g., *Link v. Wabash R. Co.*, 370 U.S. 626, 634 (1962) (dismissal of adversary proceeding for failure to appear at scheduled status conference); *United States v. Boyle*, 469 U.S. 241 (1985) (taxpayer couldn't avoid interest and penalties caused by mishandling of return by attorney); *Cannon-Stokes v. Potter*, 453 F.3d 446 (7th Cir. 2006) (failure to schedule employment cause of action bankruptcy schedules resulting in judicial estoppel barring claims). Enacted only eight years ago, as a part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, § 521(2)(B) carves out an exception to the rule enunciated in *Link v. Wabash R. Co.*, "If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor. 11 U.S.C. § 521(e)(2)(B). (emphasis added). In this case, the parties do not dispute that the failure was that of counsel, not the debtor. As a result, the motion will be denied on this ground.

#### **PAY ADVICES**

"The debtor shall--(1) file...(B) unless the court orders otherwise-- (iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor..." 11 U.S.C. § 521(a)(1)(B)(iv). (emphasis added).

By local rule, the Eastern District Bankruptcy Court has ordered otherwise: "Copies of employer payment advices or other evidence of payments from an employer required by 11 U.S.C. § 521(a)(1)(B)(iv) shall not be filed with the Court. Instead, the documents shall be provided by the debtor to the assigned case trustee not later than seven (7) days before the date first set for the meeting of creditors." LBR 1007-1(c)(1).

The remedies for violations of local rules lie within the sound discretion of the trial court. Local Bankruptcy Rule 1001(g) provides, "Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions."

The facts of this case do not warrant dismissal. First, the fault lies with counsel, not the debtor. Second, the documents were provided to the Chapter 7 trustee. And third, the untimeliness is minor, only one day.

## SECTION 707(a)

Title 11 of U.S.C. § 707(a) provides, "The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--(1) unreasonable delay by the debtor that is prejudicial to creditors..." In this case, the court does not find delay prejudicial to creditors. The documents were provided to the trustee six days in advance of the meeting of creditors, instead of seven days. Even assuming this necessitated a continuance of the meeting of creditors, the delay is slight, from November 7, to December 20, 2013.

Cause for dismissal not shown, the motion is denied.

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11. [13-17597](#)-A-7 JUAN/ANGEL GALVAN MOTION TO COMPEL ABANDONMENT  
RN-1 12-1-13 [6]  
JUAN GALVAN/MV  
ROSALINA NUNEZ/Atty. for dbt.  
OST 12/2/13

### Tentative Ruling

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

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

**Disposition:** Continued to January 8, 2014, at 9:00 a.m.

**Order:** Civil minute order

**Business Description:** embroidery and silkscreen store described as a sole proprietorship

### LEGAL STANDARDS

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.

### ANALYSIS

The motion cannot be granted. When read together with the motion, the declaration in support creates ambiguity about what assets are exempt. The motion states that the value of the business assets to be abandoned totals \$10,333 and is fully exempt. But the declaration references the attached exhibit for a list of the business assets and specifies that the assets have "the following value, lien amounts and exemptions claimed." The problem is that the list attached as an exhibit does not identify which assets are exempt or subject (or not subject) to a lien.

Furthermore, even though the motion implies that all of the business's assets are exempt, the motion also states that the value of the assets is approximately \$10,333.00. But the value of the assets on the attached list exceeds \$10,333.00, leaving questions about whether some assets are not exempt, whether some assets were erroneously included on the list of assets to be abandoned, or whether the total value of

the business assets shown in the motion is erroneous.

No later than December 18, 2013, the debtor should file a supplemental declaration and an amended list of assets showing which items are claimed exempt and whether any item is subject to a lien (given that the declaration implies that the list will include whether each asset is subject to a lien). In addition, if the total value of the assets (\$10,333) stated in the motion itself is incorrect, the debtor shall file a statement to that effect in the supplemental declaration along with the correct value.

The debtor shall file a continued notice of hearing setting the hearing for January 8, 2014, at 9:00 a.m. and serve the notice on the trustee and any party requesting special notice and on any parties indicated in the order shortening time for this initial hearing. The notice of continued hearing shall not require written opposition and shall permit opposition to be raised at the hearing under LBR 9014-1(f)(2).

12. [13-15592](#)-A-7 DOUGLAS/CYNTHIA MARTIN CONTINUED MOTION TO COMPEL  
PBB-1 ABANDONMENT  
DOUGLAS MARTIN/MV 10-29-13 [[25](#)]  
PETER BUNTING/Atty. for dbt.

#### **Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Real Property Description:** 46319 Veater Ranch Rd., Coarsegold, CA  
93614

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). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The court previously continued the hearing on this motion because of the ambiguity in the description of the lien on the property. The ambiguity has been resolved.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

13. [13-17081](#)-A-7 JUAN/LETICIA DELGADO MOTION TO COMPEL ABANDONMENT  
RA-2 12-4-13 [[16](#)]  
JUAN DELGADO/MV  
RALPH AVILA/Atty. for dbt.  
OST 12/4

**Tentative Ruling**

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

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

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

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

**Business Description:** sole proprietorship consisting of a long haul truck driving 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).

9:15 a.m.

1. [10-61605](#)-A-7 VINCENTE BERNABE CONTINUED STATUS CONFERENCE RE:  
[11-1018](#) AMENDED COMPLAINT  
HALEY V. BERNABE 11-7-12 [[90](#)]  
BENJAMIN SIMINOU/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [10-61605](#)-A-7 VINCENTE BERNABE CONTINUED STATUS CONFERENCE RE:  
[11-1019](#) AMENDED COMPLAINT  
STEVENS V. BERNABE 11-7-12 [[89](#)]  
BENJAMIN SIMINOU/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [12-18810](#)-A-7 JAMES MERCER CONTINUED STATUS CONFERENCE RE:  
[13-1082](#) COMPLAINT  
MANFREDO V. ESTATE OF SUSAN E. 7-23-13 [[1](#)]  
MERCER ET AL  
JAMES MILLER/Atty. for pl.

**Final Ruling**

The matter is continued to January 29, 2014, at 9:15 a.m. If the adversary proceeding has not been dismissed, not later than 14 days prior to the continued status conference, the parties will file a joint status report.

4. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC CONTINUED STATUS CONFERENCE RE:  
[13-1087](#) COMPLAINT  
MANFREDO V. NUT TREE RETAIL, 8-9-13 [[1](#)]  
LLC  
PETER FEAR/Atty. for pl.

**Final Ruling**

The matter is continued to February 13, 2014, at 9:15 a.m., to allow the plaintiff to obtain a default judgment. If judgment has not been entered, not later than 14 days prior to the continued status conference, the plaintiff will file a status report.

5. [13-15740](#)-A-7 DOUGLAS/NANCY WELLS STATUS CONFERENCE RE: COMPLAINT  
[13-1110](#) 10-11-13 [[1](#)]  
WELLS ET AL V. WITTMAN ET AL  
PETER BUNTING/Atty. for pl.  
DISMISSED 11/19/13

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

6. [09-62348](#)-A-7 DAVID/ROSALINA FERRER MOTION FOR COMPENSATION BY THE  
BMO-1 LAW OFFICE OF HORSWILL MEDEROS  
BRANDON ORMONDE/MV & SOARES FOR BRANDON M.  
ORMONDE, TRUSTEE'S ATTORNEY(S),  
FEE: \$12866.25, EXPENSES:  
\$1055.90  
11-12-13 [[74](#)]
- DAVID JENKINS/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Horswill, Mederos & Soares

**Compensation approved:** \$12,866.25

**Costs approved:** \$1,055.90

**Aggregate fees and costs approved:** \$13,922.15

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 a final basis.

7. [11-15768](#)-A-7 DENISE BAILEY STATUS CONFERENCE RE: COMPLAINT  
[13-1106](#)  
BAILEY V. U.S. DEPARTMENT OF  
EDUCATION ET AL  
10-9-13 [[1](#)]

TIMOTHY SPRINGER/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

8. [13-16199](#)-A-7 JON/DONNA HAAS STATUS CONFERENCE RE: COMPLAINT  
[13-1113](#)  
HAAS V. MIDLAND FUNDING, LLC  
TIMOTHY SPRINGER/Atty. for pl.  
10-14-13 [[1](#)]

**Final Ruling**

The matter is continued to February 26, 2013, at 9:15 a.m. to allow the plaintiff to obtain a default judgment against Midland Funding, LLC. If judgment has not been entered, not later than 14 days prior to the continued status conference, the plaintiff will file a status report.

10:00 a.m.

1. [13-15526](#)-A-7 JAMES/VANETTA CUMMINGS MOTION FOR RELIEF FROM  
KAZ-1 AUTOMATIC STAY  
DEUTSCHE BANK NATIONAL TRUST 11-12-13 [[25](#)]  
COMPANY/MV  
BENNY BARCO/Atty. for dbt.  
JENNIFER WONG/Atty. for mv.  
NON-OPPOSITION  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 4615 North Millbrook Avenue, Fresno, California

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

**AS TO THE DEBTOR**

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

**AS TO THE ESTATE**

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

2. [12-11633](#)-A-7 LEE/LISA JENNINGS  
VVF-1  
AMERICAN HONDA FINANCE  
CORPORATION/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-22-13 [[60](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2007 Acura TL

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. [12-15955](#)-A-7 RUDY RIVERA  
RCO-1  
GREEN TREE SERVICING LLC/MV  
KRISTI WELLS/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-5-13 [[32](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 888 Tureaud Lane, Clovis, California

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

**AS TO THE DEBTOR**

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

**AS TO THE ESTATE**

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

10:30 a.m.

1. [13-16026](#)-A-7 CHRISTOPHER/TRACY TRUMBLE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP. 11-15-13 [[13](#)]  
PETER FEAR/Atty. for dbt.  
**No tentative ruling.**
  
2. [13-16943](#)-A-7 BHOGAR AVALOS PRO SE REAFFIRMATION AGREEMENT WITH MERCED SCHOOL EMPLOYEES FCU 11-18-13 [[18](#)]  
DISMISSED  
**Final Ruling**  
The case dismissed, the matter is dropped as moot.
  
3. [13-16251](#)-A-7 MARY ROSARIO PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A. 11-21-13 [[27](#)]  
**No tentative ruling.**
  
4. [13-15166](#)-A-7 CURTIS/HEIDI RODRIGUEZ REAFFIRMATION AGREEMENT WITH HARLEY-DAVIDSON CREDIT CORP. 10-23-13 [[19](#)]  
ERIC ESCAMILLA/Atty. for dbt.  
**No tentative ruling.**
  
5. [13-15391](#)-A-7 DAVID/STEPHENIE GORDEN CONTINUED REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES 10-16-13 [[17](#)]  
DAVID JENKINS/Atty. for dbt.  
**No tentative ruling.**
  
6. [13-16597](#)-A-7 ALEJO/PHONESAVANH SANDOVAL CONTINUED PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA (JBRM) 11-6-13 [[17](#)]  
**No tentative ruling.**

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION FOR COMPENSATION FOR  
MMW-55 PROPERTIES, LLC TERENCE J. LONG, OTHER  
JUSTIN HARRIS/MV PROFESSIONAL(S), FEE:  
\$66472.00, EXPENSES: \$0.00  
10-8-13 [[1049](#)]
- PETER FEAR/Atty. for dbt.  
JUSTIN HARRIS/Atty. for mv.  
ORDER 12/2

**Final Ruling**

The matter is continued to January 29, 2014, at 1:30 p.m.

2. [12-17310](#)-A-11 JOHN/GRACE VISSER CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
9-18-12 [[121](#)]
- RONALD CLIFFORD/Atty. for dbt.

**No tentative ruling.**

3. [12-17310](#)-A-11 JOHN/GRACE VISSER CONTINUED MOTION TO DESIGNATE  
AMT-6 THE VOTE OF PRAXAIR  
WELLS FARGO BANK, N.A./MV 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 /  
continued date of the hearing; 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.

4. [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.**

5. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-14  
WELLS FARGO BANK, N.A./MV  
RONALD CLIFFORD/Atty. for dbt.  
M. MINNICK/Atty. for mv.

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

**Tentative Ruling**

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

**Notice:** LBR 9014-1(f)(2) / continued date of the hearing; 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 not ripe 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 by 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.

6. [10-62315](#)-A-11 BEN ENNIS MOTION FOR COMPENSATION FOR  
MMW-57 TERENCE LONG, OTHER  
JUSTIN HARRIS/MV PROFESSIONAL(S), FEE:  
\$245,295.00, EXPENSES: \$0.00  
10-9-13 [[1274](#)]
- RILEY WALTER/Atty. for dbt.  
ORDER 12/2

**Final Ruling**

The matter is continued to January 29, 2014, at 1:30 p.m.

7. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CHAPTER 11 STATUS CONFERENCE  
LLC 11-7-13 [[11](#)]  
ELAINE NGUYEN/Atty. for dbt.

**No tentative ruling.**

8. [12-17336](#)-A-11 VISSER FARMS CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
9-18-12 [[103](#)]  
SCOTT BLAKELEY/Atty. for dbt.

**No tentative ruling.**

9. [12-17336](#)-A-11 VISSER FARMS CONTINUED MOTION TO DESIGNATE  
AMT-5 THE VOTES OF CERTAIN CREDITORS  
WELLS FARGO BANK, N.A./MV 9-11-13 [[270](#)]  
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) / continued date of the hearing; 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 not ripe 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.

10. [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 /  
continued date of the hearing; 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 and denied for insufficient service

**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 not ripe and denied for  
insufficient service. 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., which  
was a vote 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.

11. [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.**

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

J. IRIGOYEN/Atty. for dbt.

**No tentative ruling.**

13. [13-14037](#)-A-11 GIL/MARIA GILBUENA JMI-11 MOTION TO CONFIRM CHAPTER 11 PLAN AND/OR MOTION FOR APPROVAL OF MOTION/APPLICATION TO CONFIRM CHAPTER 11 PLAN FILED BY DEBTOR GIL RICHARD GILBUENA, JOINT DEBTOR MARIA ELENA GILBUENA 11-13-13 [[182](#)]  
GIL GILBUENA/MV

J. IRIGOYEN/Atty. for dbt.

**Tentative Ruling**

**Motion:** Motion to Approve First Amended Disclosure Statement

**Notice:** Continued date of hearing; written opposition filed

**Disposition:** Denied; disclosure statement not approved

**Order:** Civil minute order

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

**DISCUSSION**

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

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

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

The Debtors' deletion of the sentence "Creditors in these classes may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan (defined in Part 6(c))" does not undo this deficiency. Since Part 6(c) does not expressly exclude creditors in Class 1, Part 6(c), by default, would appear to apply. As a result, the Debtors should include language that expressly excludes the Class 1 claim from Part 6(c), like they have done with Class 4 claims (stating that "Creditors in this class are not subject to material default provision [sic] set forth under the Plan").

Property Taxes and Insurance (Class 1). Further, the Plan does not mention how property taxes and insurance will be paid on the Edison Court property. If the Debtors intend to leave Class 1 unimpaired, then the Plan should provide that the property taxes and insurance will be paid in accordance with the applicable loan documents and then summarize what that procedure will be.

Classification of Secured Claims (Classes 2, 3, 4, and 5). In the prior ruling, the court had provided the following: "The Plan has improperly included multiple secured creditors in the same class when they should be in separate classes. Unless two secured claims are secured by the same collateral and have the same lien priority as one another, the two claims should be classified in separate classes. See *Brady v. Andrew (In re Commercial W. Fin. Corp.)*, 761 F.2d 1329, 1338 (9th Cir. 1985) (citations omitted). Because no two secured claims provided in the Plan secure the same collateral and have the same lien priority, it was improper for the Plan to group (1) the two secured claims in Class 1B together, (2) the four secured claims in Class 1C together, (3) the three secured claims in Class 1D together, and (4) the two secured claims in Class 1E together. Although they may share similar treatment, each of these secured claims should be within their own class."

Again, the Debtors have not complied with the court's instruction. Instead of separately classifying each individual secured claim in its own class (since no two claims secure the same collateral in the same priority), the Debtors have simply relabeled the class names (from 1B to 2, from 1C to 3, from 1D to 4, and from 1E to 5).

Pre-Confirmation Obligation (Class 2). In the prior ruling, the court had provided the following: "On account of Class 1B [now Class 2] (where collateral will be surrendered), the Plan improperly provides, 'Creditors shall have until 14 days prior to the hearing on plan confirmation to amend any proof of claim to assert a deficiency claim against the Debtors.' The Plan would not become effective until

confirmation, but this obligation becomes binding on creditors of Class 1B even before confirmation, which is improper."

The Debtors' amendment still does not comply with the court's instruction. Instead of setting a date that follows the entry of the confirmation order, the Debtors require that any deficiency claims be asserted on the date of the confirmation hearing, which is also improper.

Secured Tax Claim (Class 6). The Plan does not indicate when payments would begin (e.g., starting the 15th day of the first month following the entry of the confirmation order). Also, the reference to "Class 3A" should be removed.

Further, Class 6 appears to be an impaired class since the material default provisions provided in Part 6(c) applies to this class.

Payment on Priority and Secured Tax Claims. To comply with § 1129(a)(9)(C)(ii)'s requirement that payments be "over a period ending not later than 5 years after the date of the order for relief" (absent affirmative consent from the applicable tax creditor), the duration for payments to priority tax claims and secured tax claims would likely have to be less than the proposed 53 months.

Material Default. The cure provision in the paragraph addressing material defaults should be rewritten for clarity. The provision should read something similar to, "Within 30 days after the date of service of the notice of default, the Debtors must (i) cure the default, (ii) obtain from the court an extension of time to cure the default, or (iii) obtain from the court a determination that no default occurred. If, after that 30-day period has passed and the Debtors have not performed one of these three options, then the Debtors are deemed in Material Default under the Plan to all the members of the affected class."

Remedies Upon Material Default. The paragraph addressing the remedies upon material default has been drafted in a confusing and inconsistent manner, requiring further clarification or redrafting.

Entities Entitled to § 1111(b) Election. The Plan has improperly included entities who should not be entitled to an § 1111(b) election in the list of those who are entitled to make such an election. The improper entities are "(1) US Bank National Association as Trustee GMAC Mortgage, LLC" (whose claim in Class 1 is not modified), "(5) US Bank National Association as Trustee GMAC Mortgage, LLC" (which appears to be a duplicate), "(7) U.S. Bank National Association as Trustee to Bank of America" (whose claim in Class 4 is not modified), and "(8) Deutsche Bank National Trust Company serviced by Ocwen Loan Servicing" (whose claim in Class 4 is not modified).

Impaired Classes Entitled and Not Entitled to Vote. To avoid confusion (e.g., it is unclear why the IRS and EDD, on account of their non-priority, unsecured tax claims, are singled out as being entitled to vote when other general unsecured creditors are not specifically mentioned), the Debtors should list only the classes, rather than the specific creditors, who are and are not entitled to vote.

## **CONCLUSION**

For the reasons set forth above, the court will deny approval of the

Disclosure Statement.

14. [13-14037](#)-A-11 GIL/MARIA GILBUENA  
JMI-11  
GIL GILBUENA/MV
- CONTINUED MOTION TO CONFIRM  
CHAPTER 11 PLAN AND/OR MOTION  
FOR APPROVAL OF  
MOTION/APPLICATION TO CONFIRM  
CHAPTER 11 PLAN FILED BY DEBTOR  
GIL RICHARD GILBUENA, JOINT  
DEBTOR MARIA ELENA GILBUENA  
9-18-13 [[162](#)]

J. IRIGOYEN/Atty. for dbt.  
RESPONSIVE PLEADING

*[This matter is a duplicate of matter no. 13.]*

15. [13-11766](#)-A-11 500 WHITE LANE LP
- CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
3-20-13 [[8](#)]

D. GARDNER/Atty. for dbt.

**Final Ruling**

This matter will be continued to January 8, 2014 (at the Fresno courthouse).

16. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-4
- CONTINUED DISCLOSURE STATEMENT  
FILED SEPTEMBER 16, 2013 FILED  
BY DEBTOR 500 WHITE LANE LP  
9-16-13 [[103](#)]

D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter will be continued to January 8, 2014 (at the Fresno courthouse).

The Debtor must file a second amended disclosure statement and plan by December 16, 2013. Any responses to the motion to approve the second amended disclosure statement must be filed by December 30, 2013.

The Debtor must give notice of the continued hearing date and of the time to object to the approval of the second amended disclosure statement.

17. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-5

DISCLOSURE STATEMENT DATED  
NOVEMBER 20, 2013 FILED BY  
DEBTOR 500 WHITE LANE LP  
11-20-13 [[143](#)]

D. GARDNER/Atty. for dbt.

*[This matter is a duplicate of matter no. 16.]*

18. [13-13284](#)-A-11 NICOLETTI OIL INC.  
LNB-1  
DAVID GOLUBCHIK/MV

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LEVENE, NEALE,  
BENDER, YOO AND BRILL L.L.P.  
FOR DAVID B. GOLUBCHIK,  
DEBTOR'S ATTORNEY(S), FEE:  
\$127559.50, EXPENSES: \$5117.24.  
11-27-13 [[220](#)]

DAVID GOLUBCHIK/Atty. for dbt.

### **Final Ruling**

**Application:** Interim Compensation for Attorney David B. Golubchik

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The applicant did not provide a sufficient period of notice of the application. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires not less than 21 days' notice of a hearing on any entity's request for compensation or reimbursement of expenses. In this case, the applicant has only given 14 days notice. As a result, the application will be denied without prejudice.

19. [10-12709](#)-A-11 ENNIS COMMERCIAL  
LRP-3 PROPERTIES, LLC  
DAVID STAPLETON/MV  
PETER FEAR/Atty. for dbt.  
JENNIFER BROOKS/Atty. for mv.

MOTION TO EMPLOY STAPLETON  
GROUP AS PROPERTY MANAGER  
11-27-13 [[1089](#)]

### **Tentative Ruling**

**Motion:** Application to Employ Stapleton Group as Property Manager

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Entity:** The Stapleton Group

**Capacity:** Property manager

**Duties:** Managing and preserve real properties until their liquidation

**Compensation:** \$18,500 per month (beginning October 1, 2013) plus expenses

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

The Plan Administrator has moved to employ the Stapleton Group as property manager in both the Ben Ennis and ECP cases pursuant to the Plan. Specifically, the Plan provides, "The Plan Administrator may, upon the approval of the Bankruptcy Court, after notice and a hearing, retain such law firms, accounting firms, real estate brokers or agents, experts, advisers, agents, consultants, investigators, appraisers, auctioneers, and other professionals as the Plan Administrator may deem necessary, to aid in the performance of the Plan Administrator's responsibilities under this Plan." The Plan further states that a professional may serve in the same capacity in both the Ben Ennis case and the ECP case. Here, the application demonstrates that the employment of the Stapleton Group is proper because its duties will clearly "aid in the performance of the Plan Administrator's responsibilities under this Plan."

Therefore, the court will approve the employment of the Stapleton Group as property manager.

20. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION FOR AN ORDER  
LRP-4 PROPERTIES, LLC ESTABLISHING NOTICE PROCEDURES  
DAVID STAPLETON/MV 11-27-13 [[1085](#)]  
PETER FEAR/Atty. for dbt.  
JENNIFER BROOKS/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Motion for Order Establishing Notice Procedures

**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).

The Plan Administrator has moved for an order establishing certain notice procedures in this case pursuant to the Plan. Bankruptcy Rules 9007 and 2002(m) provides the court with the authority to regulate the scope, form, and manner in which notice must be given. The Plan also provides, "After the Effective Date, except as the Bankruptcy Court may order otherwise, the only parties entitled to notices pertaining to this Plan, including without limitation notices pertaining to employment of professionals and the Plan Administrator, fee and expense approval requests, and distributions, shall be the U.S. Trustee, Ben Ennis, members of the Oversight Committee, all Creditors holding Allowed Claims or Disputed Claims, and any Person that on or after the Confirmation Date files with the Bankruptcy Court and serves on the Plan Administrator a request for notice."

The Plan Administrator has requested that notices for all matters, other than those referred to in Rule 2002(a)(4), (a)(5), and (d), be given only to the following parties: (1) U.S. Trustee, (2) the Oversight Committee members and their counsel; (3) the 20 largest creditors (since there are less than 20 allowed claims in this case);

(4) Ben Ennis and his counsel; (5) any parties requesting special notice; and (6) any party against whom direct relief is sought. These parties have been reproduced in a list attached as Exhibit A. The purpose of the proposed notice procedures is to minimize the administrative costs of providing notice (such as by eliminating entities receiving duplicative notice) without diminishing creditor participation.

Finding good cause, the court will grant the motion and enter an order establishing the proposed notice procedures.

The caption page of the order shall provide that the certificate of service filed in support of a motion so noticed shall in bold faced type clearly and conspicuously state that the notice of the motion is limited by the terms of this order and shall reference the order by name, date filed, and docket control number. The order shall also state that the failure to so designate the certificate of service may result in denial of a motion.

21. [10-62315](#)-A-11 BEN ENNIS  
LRP-4  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

MOTION FOR AN ORDER  
ESTABLISHING NOTICE PROCEDURES  
11-27-13 [[1310](#)]

#### **Tentative Ruling**

**Motion:** Motion for Order Establishing Notice Procedures

**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).

The Plan Administrator has moved for an order establishing certain notice procedures in this case pursuant to the Plan. Bankruptcy Rules 9007 and 2002(m) provides the court with the authority to regulate the scope, form, and manner in which notice must be given. The Plan also provides, "After the Effective Date, the only parties entitled to notices pertaining to this Plan, including without limitation notices pertaining to employment of professionals and the Plan Administrator, fee and expense approval requests, and notices pertaining to distributions, shall be the U.S. Trustee, Ennis, the Oversight Committee, and all Creditors holding Allowed and Disputed Claims in an amount more than \$0.00, except as the Bankruptcy Court may order otherwise."

The Plan Administrator has requested that notices for all matters, other than those referred to in Rule 2002(a)(4), (a)(5), and (d), be given only to the following parties: (1) U.S. Trustee, (2) the Oversight Committee members and their counsel; (3) the 20 largest creditors holding claims more than \$0.00 (since there are less than 20 such allowed claims in this case); (4) Ben Ennis and his counsel;

(5) any parties requesting special notice; and (6) any party against whom direct relief is sought. These parties have been reproduced in a list attached as Exhibit A. The purpose of the proposed notice procedures is to minimize the administrative costs of providing notice (such as by eliminating entities receiving duplicative notice) without diminishing creditor participation.

Finding good cause, the court will grant the motion and enter an order establishing the proposed notice procedures.

The caption page of the order shall provide that the certificate of service filed in support of a motion so noticed shall in bold faced type clearly and conspicuously state that the notice of the motion is limited by the terms of this order and shall reference the order by name, date filed, and docket control number. The order shall also state that the failure to so designate the certificate of service may result in denial of a motion.

22. [10-62315](#)-A-11 BEN ENNIS  
LRP-3  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY STAPLETON  
GROUP AS PROPERTY MANAGER  
11-27-13 [[1314](#)]

#### **Tentative Ruling**

**Motion:** Application to Employ Stapleton Group as Property Manager

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Entity:** The Stapleton Group

**Capacity:** Property manager

**Duties:** Managing and preserve real properties until their liquidation

**Compensation:** \$18,500 per month (beginning October 1, 2013) plus expenses

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

The Plan Administrator has moved to employ the Stapleton Group as property manager in both the Ben Ennis and ECP cases pursuant to the Plan. Specifically, the Plan provides, "The Plan Administrator may, upon the approval of the Bankruptcy Court, after notice and a hearing, retain such law firms, accounting firms, real estate brokers or agents, experts, advisers, agents, consultants, investigators, appraisers, auctioneers, and other professionals as the Plan Administrator may deem necessary, to aid in the performance of the Plan Administrator's responsibilities under this Plan." The Plan further states that a professional may serve in the same capacity in both the Ben Ennis case and the ECP case. Here, the application demonstrates that the employment of the Stapleton Group is proper because its duties will clearly "aid in the performance of the Plan Administrator's responsibilities under this Plan."

Therefore, the court will approve the employment of the Stapleton Group as property manager.

23. [13-13284](#)-A-11 NICOLETTI OIL INC.  
LC-1  
LARRY CLEVELAND/MV

MOTION FOR COMPENSATION FOR  
LARRY CLEVELAND, ACCOUNTANT(S),  
FEE: \$11945.00, EXPENSES:  
\$0.00.  
11-27-13 [[216](#)]

DAVID GOLUBCHIK/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation for Accountant Larry Cleveland

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The applicant did not provide a sufficient period of notice of the application. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires not less than 21 days' notice of a hearing on any entity's request for compensation or reimbursement of expenses. In this case, the applicant has only given 14 days notice. As a result, the application will be denied without prejudice.

1:45 p.m.

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

**Final Ruling**

At the suggestion of the parties, the matter is continued to January 8, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status report. If the matter has not been resolved by January 8, 2014, the court may set deadlines for filing responsive pleadings and for discovery.

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

**Final Ruling**

At the suggestion of the parties, the matter is continued to January 8, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status report. If the matter has not been resolved by January 8, 2014, the court may set deadlines for filing responsive pleadings and for discovery.

3. [10-62315](#)-A-11 BEN ENNIS STATUS CONFERENCE RE: COMPLAINT  
[13-1107](#) STAPLETON ET AL V. WATKINS ET AL 10-10-13 [[1](#)]  
AL  
MICHAEL GOMEZ/Atty. for pl.  
AMENDED COMPLAINT 10/22

**Final Ruling**

At the suggestion of the parties, the matter is continued to January 8, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status report. If the matter has not been resolved by January 8, 2014, the court may set deadlines for filing responsive pleadings and for discovery.

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#)  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL GOMEZ/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
10-10-13 [[1](#)]

**Final Ruling**

At the suggestion of the parties, the matter is continued to January 8, 2014, at 1:45 p.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status report. If the matter has not been resolved by January 8, 2014, the court may set deadlines for filing responsive pleadings and for discovery.

**2:00 p.m.**

1. [10-62315](#)-A-11 BEN ENNIS  
MMW-52  
JUSTIN HARRIS/MV

CONTINUED MOTION FOR  
COMPENSATION FOR TERENCE J.  
LONG, CHAPTER 11 TRUSTEE(S),  
FEE: \$72373.35, EXPENSES:  
\$164.85.  
7-25-13 [[1222](#)]

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

**No tentative ruling.**