

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JANUARY 7, 2015

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. [14-15902](#)-A-13 BUFORD LAND MOTION TO EXTEND AUTOMATIC STAY
RSW-2 12-24-14 [[12](#)]
BUFORD LAND/MV
ROBERT WILLIAMS/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 pursuant to the instructions below

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. *Id.* (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, and the extension of the stay may be made subject to conditions or limitations the court may impose. *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. The motion will be granted except as to any creditor without proper notice of this motion.

2. [11-17508](#)-A-13 AGUSTIN/VERONICA OCHOA MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-7-14 [[56](#)]
PHILLIP GILLET/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$410.

3. [14-14909](#)-A-13 EFREN RIVERA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
12-5-14 [[32](#)]

BATKHAND ZOLJARGAL/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to appear at both the initial § 341 meeting of creditors and at the continued § 341 meeting of creditors. Further, the debtor has failed to provide the trustee with documentation requested by the trustee including a copy of the debtor's 2013 state tax return, proof of all income received for the full six months prior to filing, and a Class 1 Checklist with most recent mortgage statement. See 11 U.S.C. § 521(a)(3)-(4).

4. [14-13718](#)-A-13 DOUGALL BOYD
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
11-12-14 [[41](#)]

ERIC BENSAMOCHAN/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to appear at two continued § 341 meetings of creditors. The debtor has also failed to provide the trustee with required and/or requested documents including a business case questionnaire for Child Enterprises, LLC, and a rental income and expense statement for the six months prior to filing. See 11 U.S.C. § 521(a)(3)-(4).

5. [13-14819](#)-A-13 TONI DUNN
SJS-2
TONI DUNN/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC., CLAIM NUMBER
11
12-3-14 [[30](#)]

SUSAN SALEHI/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

PROCEDURAL MATTERS

The court will treat this objection as having been noticed under LBR 3007-1(b)(2) because it was not timely filed or mailed to respondents by the 44-day deadline required by LBR 3007-1(b)(2). The date that is 44 days before the hearing date is November 24, 2014. The objection was filed on December 3, 2014, and it was transmitted to respondents on December 3, 2014.

CLAIM OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed October 7, 2014, after the deadline for filing proofs of claim for creditors other than governmental units, and also after the deadline for filing proofs of claim for a governmental unit, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

DISCHARGEABILITY UNAFFECTED

This ruling disallowing the claim, however, does not affect the dischargeability of the claim if the claim falls within the scope of § 523(a)(8). See 11 U.S.C. § 1328(a), (a)(2) (providing that a discharge covers all debts provided for by the plan or disallowed under section 502 except for debts of the kind specified in § 523(a)(8) and other subsections of such section).

6. [12-14922](#)-A-13 RONALD/SANDRA CHRISTY MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-14-14 [[57](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [09-19128](#)-A-13 MICHAEL/TAMMY BORNSCHEIN OBJECTION TO CLAIM OF VERIZON
MHM-2 WIRELESS, CLAIM NUMBER 27
MICHAEL MEYER/MV 11-21-14 [[112](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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

The claimant's initial claim, Claim No. 27-1, was filed in the amount of \$557.29. The trustee had disbursed \$130.62 to the claimant as of May 31, 2012. The claimant returned funds to the trustee of \$8.01 and then later amended its claim to \$122.61. The claimant then returned an additional \$1.55. Later, the claimant amended its claim again to \$97.83, which caused an overpayment by the trustee.

By sending the trustee a letter stating the account has been paid in full, the claimant has admitted that it is received a full recovery on its claim. Further, the trustee should not have to expend resources attempting to recover an overpayment of \$23.23. For the reasons stated in the objection, the court will treat the claimant's claim as allowed in the amount of \$121.06, which is the amount that the trustee has paid to date to the claimant, and its claim will be disallowed for any other amounts.

8. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE
MHM-4
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-4-14 [[121](#)]

Tentative Ruling

Motion / Objection: Claim of Exemptions

Disposition: Continued for an evidentiary hearing

Order: Scheduling Order

The court will hold a scheduling conference for the purpose of setting 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. Preliminarily, the court identifies the following disputed, material factual issues: (i) Whether debtors IRA is exempt, (ii) the amount of the exemption applicable to the IRA; and (iii) whether the sale proceeds of 15505 Facilidad Street, Hacienda Heights, California are exempt; and (iv) the amount of the exemption applicable to the 15505 Facilidad Street, Hacienda Heights, California, property.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

9. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE MOTION TO CONFIRM PLAN
PK-5 11-26-14 [[127](#)]
ERIC LAFORTUNE/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The court intends to continue the confirmation hearing until the hearing on the Objection to Claim of Exemption, MHM-4 is resolved.

10. [10-63832](#)-A-13 YAKDAN AL QAISI AND SARWA MOTION TO DISMISS CASE FOR
MHM-2 ALDOORI FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-7-14 [[73](#)]
SHANE REICH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [14-13433](#)-A-13 ROBERT WHITEZELL MOTION TO DISMISS CASE FOR
MHM-1 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-29-14 [[28](#)]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Dismiss Chapter 13

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

Disposition: Granted

Order: Civil minute order

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).

DISCUSSION

The court may dismiss a Chapter 13 case for failure to make plan payments under the terms of an unconfirmed plan. 11 U.S.C. § 1307(c)(4). As of October 29, 2014, debtor was delinquent \$20,118.00. Two additional plan payments have come due since the motion was filed. The debtor has not presented opposition. Nor had the debtor filed a modified plan. The motion will be granted.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by Michael H. Meyer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and the case is dismissed.

12. [14-13433](#)-A-13 ROBERT WHITEZELL
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-13-14 [[35](#)]

Final Ruling

The case dismissed, the objection is overruled as moot.

13. [14-10134](#)-A-13 LEAH JONES
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-18-14 [[43](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [14-12747](#)-A-13 CHRYSTAL ABBOTT
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE
11-4-14 [[54](#)]

NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted assuming the conditions below are not satisfied
as of the hearing date

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).

This chapter 13 case was filed May 27, 2014. The court's previous order dismissing the case was vacated on October 23, 2014. ECF No. 51. The order vacating the case was issued October 23, 2014, and was based on a mistake resulting from the debtor's employer's failing to comply with a wage withholding order. The motion to vacate indicates that debtor's Chapter 13 payments were deducted from her paychecks in July and August of 2014, but the employer did not send payments to the trustee's office.

The present motion was filed on November 4, 2014, only 12 days after the order dismissing the case for mistake was vacated. Thus, little time has elapsed for the debtor to resolve the mistake by her employer and make payments since the order dismissing her case was vacated.

However, in the motion to vacate the dismissal, the debtor represented to the court that she would "have ready any and all plan payments that have come due since the dismissal of the case to tender to the Chapter 13 Trustee immediately upon reinstatement." Mot. Vacate at 3, ECF No. 45.

As of January 7, 2015, the hearing date on this matter, the court will dismiss this case if the debtor has not yet either (1) tendered to the Chapter 13 trustee all plan payments that have come due since the dismissal of the case, or (2) filed a modified chapter 13 plan that resolves the arrearages owed under the initial plan.

15.	12-16853 -A-13 PEDRO/ZENAIDA NAVEIRAS NES-4 PEDRO NAVEIRAS/MV NEIL SCHWARTZ/Atty. for dbt. DISMISSED	MOTION TO REFINANCE 12-1-14 [134]
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Final Ruling

The case dismissed, the motion is denied as moot.

16. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS MOTION TO MODIFY PLAN
PK-7 11-18-14 [[115](#)]
DAVID STEBBINS/MV
PATRICK KAVANAGH/Atty. for dbt.

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.

17. [12-10955](#)-A-13 JEFFERY BAILEY MOTION TO DISMISS CASE FOR
MHM-3 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 11-7-14 [[103](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [10-12257](#)-A-13 FRANK/VIRGINIA AGUIRRE MOTION TO SELL
RSW-2 12-24-14 [[44](#)]
FRANK AGUIRRE/MV
VINCENT GORSKI/Atty. for dbt.

Final Ruling

Motion: Sell Property

Disposition: Denied without prejudice

Order: Civil minute order

The property of the debtors under the plan does not revert in debtors until a discharge is granted. See Ch. 13 Plan filed May 9, 2010 at § 6.01, ECF No. 18. Therefore, the property to be sold is property of the estate subject to the notice requirement for sales under Rule

2002(a)(2). The debtors did not provide a sufficient period of notice of the proposed sale. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires not less than 21 days' notice of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the court shortens the time for notice for cause. Here, only 14 days' notice of the hearing on the sale was provided.

19. [10-62657](#)-A-13 RICK/SHAWN LOPEZ
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-7-14 [[81](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [14-12360](#)-A-13 SERGIO BUENO
RSW-2
SERGIO BUENO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TECHNICAL WORKS
CALIFORNIA, LLC
12-24-14 [[60](#)]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Approve Settlement Agreement

Disposition: Denied without prejudice

Order: Civil minute order

NOTICE PERIOD INSUFFICIENT

The movant did not provide a sufficient period of notice of the hearing on the approval of the compromise or settlement agreement. Federal Rules of Bankruptcy Procedure 2002(a)(3) and 9019 require no less than 21 days' notice of the hearing on approval of the compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d) (agreements relating to stay relief, adequate protection, cash collateral use, obtaining credit, prohibiting or conditioning the use, sale or lease of property). Fed. R. Bankr. P. 2002(a)(3). The court for cause may direct that notice not be sent. The certificate of notice shows that notice was given on December 24, 2014, only 14 days before the hearing date.

FACTUAL GROUNDS INSUFFICIENT

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. From the motion, the court cannot determine the

factual basis for either party's claims against the levied funds. The motion makes conclusory statements about both parties believing they have a right to the funds. No specific factual detail is given for why each party believes it should prevail. The *A & C Properties* factors, which apply to this sort of motion, should have been addressed as well. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). In short, the court has insufficient factual and legal grounds to evaluate the settlement agreement.

21. [14-13669](#)-A-13 TIMOTHY DAVIS AND CAITLYN CONTINUED OBJECTION TO
BHT-1 KENEFSKY CONFIRMATION OF PLAN BY OCWEN
OCWEN LOAN SERVICING, LLC/MV LOAN SERVICING, LLC
9-8-14 [[25](#)]

ROBERT WILLIAMS/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

No tentative ruling.

22. [11-63273](#)-A-13 DARRIN/ERIN WEDEKING OBJECTION TO CLAIM OF SALLIE
SJS-2 MAE, INC., CLAIM NUMBER 7
DARRIN WEDEKING/MV 12-2-14 [[45](#)]
SUSAN SALEHI/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim No. 7-1 of Sallie Mae, Inc. / Navient Solutions, Inc.

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

DISCHARGEABILITY ISSUE

The court is uncertain whether the debtors are attempting to discharge their student loans or merely disallow the claim for a student loan. The objection contains statements indicating the possibility that the debtors are seeking to discharge the student loans represented by the claimant's claim. For example, the debtors describe their present and future lack of income to make payments on the student loans. They describe the financial hardship it would be for Erin Wedeking to hold or job or earn the money to pay the student loans. Decl. Darrin Wedeking ¶ 9; Decl. Erin Wedeking, ¶ 9.

The only way the court will discharge a student loan under § 1328(a) and (a)(2) is for an adversary proceeding to be brought to show that repayment of the loans constitutes an undue hardship, *see* Fed. R. Bankr. P. 7001(6). Section 1328(a)(2) specifically incorporates § 523(a)(8), so even claims that are disallowed cannot be discharged under § 1328(a) if they are excepted from discharge under § 1328(a)(1), (2), (3) or (4),. *See* 11 U.S.C. §§ 1328(a), (a)(1)-(4), 523(a)(8); *see also In re Pardee*, 218 B.R. 916, 921-22 (B.A.P. 9th Cir. 1998) (even though § 502(b)(2) clearly disallows recovery of unmatured interest, student loan debts are excepted from discharge so postpetition interest is also excepted from discharge).

If dischargeability is not sought by the debtors, but only claim disallowance, then the court will disregard this issue and treat the matter solely as a claim objection. If dischargeability is sought, an adversary proceeding needs to be filed in compliance with the Federal Rules of Bankruptcy Procedure to determine whether the debt is dischargeable under § 523(a)(8).

EVIDENTIARY HEARING ON CLAIM OBJECTION

The court will hold a scheduling conference for the purpose of setting 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. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether Darrin Wedeking was a co-borrower and signed loan applications for student loans received by Erin Wedeking and further whether he was aware of or consented to such loan applications and to student loans being made to his wife, (ii) whether Erin Wedeking was competent or had mental capacity to enter into the contracts for student loans, and (iii) even if grounds for disallowing the claim exist, whether the claim should be allowed in part to the extent the trustee has paid funds to the claimant to avoid prejudice to the trustee given the time passage between the filing of the claim and the claim objection.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

23. [14-11379](#)-A-13 ROBERTA CUMBERLAND
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-18-14 [[31](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [14-14480](#)-A-13 MANUEL LAZO
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
11-12-14 [[37](#)]

FRANCISCO ALDANA/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to appear at the scheduled 341 meeting of creditors. The trustee has also sent a request for documents ("Trustee Packet") and the deadline for receiving this packet was September 24, 2014. The present motion was filed November 12, 2014, and it contends that the debtor failed to provide the Trustee Packet. No opposition was filed. The court presumes that the debtor failed to provide the documents requested that are described in the motion (which includes the 2013 state and federal tax returns, proof of all income, i.e. pay advices, and a Class 1 Mortgage Checklist with payment coupon or last statement). See 11 U.S.C. § 521(a)(3)-(4).

25. [10-63881](#)-A-13 MICKEY/KATHRYN HOWELL
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-7-14 [[91](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [14-13981](#)-A-13 RICKY/TAMERA RICE
JM-1
SPRINGLEAF FINANCIAL SERVICES,
INC./MV
PHILLIP GILLET/Atty. for dbt.
JAMES MACLEOD/Atty. for mv.
OBJECTION TO CONFIRMATION OF
PLAN BY SPRINGLEAF FINANCIAL
SERVICES, INC.
12-11-14 [[30](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The secured creditor objects because its claim has not been provided for in the plan. It essentially argues that the debtors' plan must be amended to require provision for its secured claim or surrender of the collateral to the creditor.

The secured creditor states that it has filed a secured claim for \$3,431.06 which does not include interest, costs and attorneys' fees. The court has reviewed its claims register and Claim No. 5 appears to have been filed by secured creditor for the same amount, \$3431.06, and asserts it is secured by a 2002 Chevy Silverado, the same vehicle described in the objection as security.

Section 2.04 of the plan provides that the proof of claim, not the plan or the schedules, controls the amount and classification of a claim unless the court disposes of a claim objection, valuation motion, or lien avoidance motion, that affects the amount or classification of a claim. Accordingly, the creditor's objection is moot—the plan is deemed to provide for its secured claim in the amount provided for by the proof of claim. The claim is deemed to be classified in the applicable class for secured claims covering the type of claim held by the secured creditor.

27. [14-13981](#)-A-13 RICKY/TAMERA RICE
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
12-9-14 [[27](#)]

PHILLIP GILLET/Atty. for dbt.

No tentative ruling.

28. [14-13981](#)-A-13 RICKY/TAMERA RICE
SW-1
CALIFORNIA REPUBLIC BANK/MV
PHILLIP GILLET/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-2-14 [[21](#)]

Tentative Ruling

Motion: Stay Relief

Notice: Deemed LBR 9014-1(f)(2); written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Dodge Ram 2500

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).

PROCEDURAL MATTERS

The original notice of hearing informs the respondents that the hearing is on January 7, 2014, rather than January 7, 2015. The amended notice indicates that January 7, 2015, is the correct hearing date but then also contains January 7, 2014 as the hearing date shown in the caption.

The amended notice of hearing that appears to correct the location of the hearing. The original notice required opposition 14 days prior to the noticed (or continued) hearing date. But the amended notice does not state whether or when opposition is due.

Because the amended notice does not mention opposition, the deadline for opposition is ambiguous when considering the initial and amended notices. And the original notice did not contain the correct hearing date, though the correct hearing date might have been reasonably inferred as a 2015 rather than a 2014 date.

As a result, the court will treat the hearing on this matter as having been set pursuant to LBR 9014-1(f)(2), and opposition, if any, may be presented at the hearing.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The movant has a security interest in the above-described personal property that secures a loan made for the purchase of the property.

Movant alleges that the debtors' insurance coverage has been terminated or canceled. The movant asserts that the debtor's failure to maintain adequate and acceptable insurance coverage is a default under the terms of its contract with the debtors.

If no opposition is presented at the hearing, then the court will find that cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

29. [13-11784](#)-A-13 HAYES/MEREDITH MCKNIGHT OBJECTION TO CLAIM OF FEDLOAN
MHM-2 SERVICING, CLAIM NUMBER 19
MICHAEL MEYER/MV 11-4-14 [[45](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Objection: Objection to Claim No. 19 as Duplicate Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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

The objection asserts that Claim No. 19 is a duplicate claim of Claim No. 16. Based on representations given in the claim objection, the court finds that the basis for both claims is for student loans, that Claim No. 19 does not amend any previously filed claim, and that both claims show an account number ending in 7042. Further, the trustee has paid \$2,831.24 to the claimant on Claim No. 19.

The court will sustain the objection and disallow the duplicate claim. The duplicate claim will be disallowed and expunged in its entirety. The claimant shall retain only one claim incorporating the entire obligation owed to the claimant. However, funds paid to the claimant on Claim No. 19, in the amount of \$2,831.24, shall be applied to the amount owed under the plan to claimant's Claim No. 16.

30. [10-19989](#)-A-13 JILL SCHWARTZ
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-14 [[28](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [11-10599](#)-A-13 KRAIG/MELANIE GRADOWITZ
MHM-3
MICHAEL MEYER/MV
LEONARD WELSH/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-7-14 [[72](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10:00 a.m.

1. [14-15099](#)-A-13 ADRIENNE COLBERT
[14-1134](#)
COLBERT V. OCWEN LOAN
SERVICING ET AL
- STATUS CONFERENCE RE: COMPLAINT
10-31-14 [[1](#)]

ADRIENNE COLBERT/Atty. for pl.

No tentative ruling.

2. [14-15099](#)-A-13 ADRIENNE COLBERT
[14-1134](#) SW-1
COLBERT V. OCWEN LOAN
SERVICING ET AL
- MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
12-8-14 [[7](#)]

ADAM BARASCH/Atty. for mv.

No tentative ruling.

10:30 a.m.

1. [14-14003](#)-A-7 MARIA FLORES
FPS-1
MARIA FLORES/MV
12-3-14 [[21](#)]
FRANK SAMPLES/Atty. for dbt.

MOTION TO AVOID LIEN OF
RESURGENCE CAPITAL, LLC

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. [12-18004](#)-A-7 LA BONITA, INC., A MOTION FOR COMPENSATION FOR
JMV-1 CALIFORNIA CORPORATION JEFFREY M. VETTER, CHAPTER 7
JEFFREY VETTER/MV TRUSTEE(S)
12-9-14 [[191](#)]

D. GARDNER/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

This matter is continued to February 4, 2015, at 9:00 a.m. Not later than January 21, 2015, the Chapter 7 trustee shall file the Trustees Final Report (proposed or final). In the event that the Trustees Final Report, proposed or final, has not yet been prepared the trustee shall file a declaration that estimates and summarizes the information contained in the Trustees Final Report. Without regard to whether the Trustees Final Report is filed or summarized, the amount of the carve-out, as opposed to all other funds collected, shall be clearly specified.

3. [12-18004](#)-A-7 LA BONITA, INC., A MOTION FOR COMPENSATION FOR
JTW-2 CALIFORNIA CORPORATION JANZEN, TAMBERI AND WONG,
JANZEN, TAMBERI AND WONG/MV ACCOUNTANT(S), FEE: \$1890.00,
EXPENSES: \$0.00
1-13-14 [[173](#)]

D. GARDNER/Atty. for dbt.

Final Ruling

This matter is continued to February 4, 2015, at 9:00 a.m.

4. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR SANCTIONS
HTK-2 11-19-14 [[146](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

5. [12-11008](#)-A-7 RAFAEL ALONSO MOTION TO ABANDON
HTK-3 11-26-14 [[163](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

6. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR PROTECTIVE ORDER
HTK-4 12-18-14 [[183](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [12-11008](#)-A-7 RAFAEL ALONSO MOTION TO COMPROMISE
VG-6 CONTROVERSY/APPROVE SETTLEMENT
VINCENT GORSKI/MV AGREEMENT WITH RAFAEL ALONSO
12-17-14 [[176](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
NON-OPPOSITION

No tentative ruling.

8. [11-60914](#)-A-7 WADE/CARRIE MOOR MOTION FOR COMPENSATION FOR
JMV-2 JEFFREY M. VETTER, CHAPTER 7
JEFFREY VETTER/MV TRUSTEE(S)
12-3-14 [[86](#)]
D. GARDNER/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

This matter is continued to February 4, 2015, at 9:00 a.m. Not later than January 21, 2015, the Chapter 7 trustee shall file the Trustees Final Report (proposed or final). In the event that the Trustees Final Report, proposed or final, has not yet been prepared the trustee shall file a declaration that estimates and summarizes the information contained in the Trustees Final Report. Without regard to whether the Trustees Final Report is filed or summarized, the amount of each carve-out, as opposed to all other funds collected, shall be clearly specified.

9. [14-15014](#)-A-7 LESLEE DUNNIGAN MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 11-19-14 [[10](#)]
D. GARDNER/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2013 Fiat 500 Cabrio

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

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

10. [12-16817](#)-A-7 GREGORY STURGES MOTION FOR COMPENSATION FOR
TGF-5 VINCENT A. GORSKI, TRUSTEE'S
ATTORNEY(S)
12-17-14 [[268](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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).

COMPENSATION AND EXPENSES

Future Applications for Compensation

Future applications for compensation shall comply with the United States Trustee Program Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed Under 11 USC § 330. As summarized by March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Employment and Compensation of Professionals § 4:1366 (The Rutter Group 2013), those are, "Each project category should contain a narrative summary of the following information: [1] a description of the project, its necessity and benefit to the estate, and the status of the project, including all pending litigation for which compensation and reimbursement are requested; [2] identification of each person providing services on the project; and [3] a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project. [USTP

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iii)]. Time and service entries are to be reported in chronological order under the appropriate project category. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. [USTP Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iv) & (v)]." The application submitted does not comply with the project category billing guidelines.

This Application for Compensation and Expense Reimbursement

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 "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Gorski Firm, APC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$8917.50 and reimbursement of expenses in the amount of \$129.96.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

11. [14-15319](#)-A-7 ALEJANDRO RODRIGUEZ MOTION FOR RELIEF FROM
JHW-1 CATALAN AND MARIA RIOS AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 11-19-14 [[9](#)]
FRANK SAMPLES/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Nissan Sentra

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

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

12. [14-15032](#)-A-7 CASIMIRO/CECILIA MOTION FOR RELIEF FROM
VVF-1 GUTIERREZ AUTOMATIC STAY
AMERICAN HONDA FINANCE 12-16-14 [[13](#)]
CORPORATION/MV
NEIL SCHWARTZ/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Acura TSX

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.

13. [14-14442](#)-A-7 MARK MIRAMONTES
MDE-1
THE BANK OF NEW YORK MELLON/MV
PATRICK KAVANAGH/Atty. for dbt.
MARK ESTLE/Atty. for mv.
DISCHARGED, NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-24-14 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 410 Decatur Street, Bakersfield, 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.

14. [14-14160](#)-A-7 CHERYL LINEGAR
KAZ-1
NATIONSTAR MORTGAGE LLC/MV
PATRICK KAVANAGH/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED, NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-6-14 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 9714 Battersea Park Drive, Bakersfield, 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.

15. [12-17166](#)-A-7 BILLY JOHNSON
[12-1150](#)
U.S. TRUSTEE V. JOHNSON
GREGORY POWELL/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-7-12 [[1](#)]

Tentative Ruling

The status conference will be continued to February 4, 2015, to allow the U.S. Trustee time to dismiss the action pursuant to Rule 41 of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041.

16. [12-17166](#)-A-7 BILLY JOHNSON CONTINUED MOTION FOR SUMMARY
[12-1150](#) UST-1 JUDGMENT
U.S. TRUSTEE V. JOHNSON 1-23-13 [[17](#)]
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The U.S. Trustee's motion for summary judgment will be denied as moot based on the ruling on the U.S. Trustee's motion to dismiss filed in the debtor's bankruptcy case and because the U.S. Trustee now has requested dismissal of the underlying bankruptcy case only under § 707(a) for cause. See U.S. Tr.'s Mot. Dismiss Case Pursuant to 11 U.S.C. § 707(a) at 2, Case. No. 12-17166 (Bankr. E.D. Cal. Nov. 7, 2014), ECF No. 86. The court will issue a civil minute order.

17. [12-17166](#)-A-7 BILLY JOHNSON MOTION TO DISMISS CASE
UST-2 11-7-14 [[86](#)]
TRACY DAVIS/MV
GREGORY POWELL/Atty. for mv.

Final Ruling

Motion: Motion to Dismiss Case Pursuant to 11 U.S.C. § 707(a)

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).

DISMISSAL FOR CAUSE UNDER § 707(a)

In his two prior cases, the debtor failed to participate in the bankruptcy process and to fulfill his obligations under the Bankruptcy Code. The debtor failed to appear for three continued creditors' meetings in his first case filed on December 15, 2011. The debtor refused to answer any of the case trustee's questions about his financial circumstances in the second case filed on April 10, 2012, and further, the debtor failed to appear at a continued meeting of creditors on June 29, 2012, in that second case. Each of the debtor's two prior cases were dismissed for failure to appear at a § 341 meeting of creditors.

In the current case, the trustee has alleged the fact that the debtor failed to provide the chapter 7 trustee with required tax returns. Based on a declaration filed in support of the U.S. Trustee's motion for summary judgment, and a copy of a portion of a transcript from the § 341 meeting of creditors on October 19, 2012, the debtor admitted that he had filed tax returns. Powell Decl. ¶ 3, Adv. No. 12-1150,

Further, in the current case the debtor failed to appear at his continued meeting of creditors set for November 2, 2012. The U.S. Trustee asserts that the chapter 7 trustee advised the debtor of the continued meeting date and time. The declaration filed in support of the U.S. Trustee's motion for summary judgment also contains a portion of the transcript from the October 19, 2012, meeting of creditors at which the debtor was present. Powell Decl. ¶ 3, Adv. No. 12-1150, ECF No. 19. The chapter 7 trustee, who by inference is the person asking the questions, referenced the continued meeting of creditors date on November 2, at 2:30, two times while telling the debtor when to provide tax returns and Social Security benefit statements. See *id.*

For the reasons stated in the motion, the court will grant the motion and dismiss the case for cause under § 707(a). The debtor did not comply with his duties under the Code in his three bankruptcy cases, including the current case, which failure constitutes cause to dismiss the current case. See 11 U.S.C. §§ 343, 521(a)(3), 707(a).

COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than January 28, 2015. A redacted copy of any restricted, sealed documents will be filed to replace the documents restricted and sealed.

The court also requests that the U.S. Trustee include in its ex parte application a further request to seal and restrict public access to the letter and attachment at ECF No. 53 in the related adversary proceeding.

18. [13-13866](#)-A-7 SCOTT MONROE
TGF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE GORSKI FIRM,
APC FOR VINCENT A. GORSKI,
TRUSTEE'S ATTORNEY(S)
12-10-14 [[37](#)]

ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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).

COMPENSATION AND EXPENSES

Future Applications for Compensation

Future applications for compensation shall comply with the United States Trustee Program Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed Under 11 USC § 330. As summarized by March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Employment and Compensation of Professionals § 4:1366 (The Rutter Group 2013), those are, "Each project category should contain a narrative summary of the following information: [1] a description of the project, its necessity and benefit to the estate, and the status of the project, including all pending litigation for which compensation and reimbursement are requested; [2] identification of each person providing services on the project; and [3] a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project. [USTP Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iii)]. Time and service entries are to be reported in chronological order under the appropriate project category. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. [USTP Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iv) & (v)]." The application submitted does not comply with the project category billing guidelines.

This Application for Compensation and Expense Reimbursement

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 "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Gorski Firm, APC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2375 and reimbursement of expenses in the amount of \$87.54.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

19. [13-13967](#)-A-7 MOTEL IOSHPE
VG-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE GORSKI FIRM,
APC FOR VINCENT A. GORSKI,
TRUSTEES ATTORNEY(S)
12-17-14 [[90](#)]

BARRY BOROWITZ/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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).

COMPENSATION AND EXPENSES

Future Applications for Compensation

Future applications for compensation shall comply with the United States Trustee Program Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed Under 11 USC § 330. As summarized by March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Employment and Compensation of Professionals § 4:1366 (The Rutter Group 2013), those are, "Each project category should contain a narrative summary of the following information: [1] a description of the project, its necessity and benefit to the estate, and the status of the project, including all pending litigation for which compensation and reimbursement are requested; [2] identification of each person providing services on the project; and [3] a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project. [USTP Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iii)]. Time and service entries are to be reported in chronological order under the appropriate project category. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. [USTP Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330, Guideline (b)(4)(iv) & (v)]." The application submitted does not comply with the project category billing guidelines.

This Application for Compensation and Expense Reimbursement

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 "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Gorski Firm, APC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$7965 and reimbursement of expenses in the amount of \$197.40.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

20. [14-14376](#)-A-7 JOE PEREZ
KDG-1
MONICA TRIANO/MV

FURTHER STATUS CONFERENCE RE:
MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-8-14 [[19](#)]

ASHTON DUNN/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING
DEBTOR'S DISCHARGE ENTERED 12/30/14

No tentative ruling.

21. [14-15476](#)-A-7 JOHN/LEE TOON
MET-1
BANK OF THE WEST/MV
LAUREN RODE/Atty. for dbt.
MARY TANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-23-14 [[12](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Jayco M-31 RKS Travel Trailer

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.

22. [14-13684](#)-A-7 RAMON/REBECCA RODRIGUEZ
CJO-1
THE BANK OF NEW YORK MELLON/MV
SUSAN SALEHI/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-25-14 [[31](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1907 South Eye Street, Bakersfield, California

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in

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

23. [13-16295](#)-A-7 MARY ZAMUDIO
VG-1
VINCENT GORSKI/MV
LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO SELL
12-12-14 [[26](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Toyota Tundra Truck

Buyer: Debtor

Sale Price: \$6427 (\$3,527.00 cash plus \$2,900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

SALE

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.

BIDDING PROCEDURES

If another bidder appears at the hearing, the court may alter the bidding procedures. The bidding procedures are somewhat onerous and likely to chill bidding. The first overbid appears to be approximately 15.6% with the same percentage increase in each bid thereafter. Additionally, the buyer must have a "deposit" consisting of certified funds for \$6,427 at the hearing with additional days to garner such funds. Given that the purchase price could be only \$1000 higher than \$6427, the court finds the deposit requirement too chilling. But these issues will only be addressed if bidders appear at the hearing.

24. [12-11899](#)-A-7 CRAIG/SANDRA SCHARPENBERG MOTION FOR COMPENSATION FOR
VG-4 VINCENT A. GORSKI, CHAPTER 7
VINCENT GORSKI/MV TRUSTEE(S)
12-17-14 [[96](#)]

LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

Application for Compensation by Chapter 7 trustee Vincent Gorski

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

Disposition: Granted

Order: Civil minute order

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).

DISCUSSION

Absent extraordinary circumstances, a Chapter 7 trustee's compensation is the commission specified in 11 U.S.C. § 326(a). 11 U.S.C. § 330(a)(7); *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012). The Chapter 7 trustee may also be reimbursed for expenses. Extraordinary expenses exist if: (1) the estate includes an operating business; (2) the trustee has participated in a carve-out; (3) the Chapter 7 trustee's exceed one-half the total recovery; or (4) trustee's fees exceed \$10,000. *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014). Because fees sought in this case are \$29,087.59, extraordinary circumstances in this case. While there is not yet consensus as to the proper method for computation of the trustee's fee when extraordinary circumstances exist, the court finds the trustee's request in this case reasonable and grants the motion as prayed.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Vincent A. Gorski, Chapter 7 trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and Chapter 7 trustee Vincent A. Gorski is awarded (1) compensation of \$29,087.59, and (2) costs of \$38.06.

11:00 a.m.

1. [14-12906](#)-A-7 GAIL RUMBO CONTINUED STATUS CONFERENCE RE:
[14-1071](#) AMENDED COMPLAINT
 U.S. TRUSTEE V. RUMBO 10-17-14 [[22](#)]
 ROBIN TUBESING/Atty. for pl.

Final Ruling

The motion for entry of default judgment granted, the status conference is concluded.

2. [14-12906](#)-A-7 GAIL RUMBO MOTION FOR ENTRY OF DEFAULT
 [14-1071](#) UST-2 JUDGMENT
 U.S. TRUSTEE V. RUMBO 12-9-14 [[31](#)]
 ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Dismissal of Chapter 7 and Injunctive Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted in part, denied 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). 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).

DISMISSAL

Debtor's Chapter 7 dismissed on November 24, 2014, the request for dismissal under U.S.C. § 349(a), 707(b)(3)(A) is denied as moot.

INJUNCTIVE RELIEF

The U.S. Trustee also prays a 2 year filing bar. Fed. R. Civ. P. 65, incorporated by Fed. R. Bankr. P. 7065. This is the debtor's third pro se bankruptcy petition in a three month period of time. Each was dismissed for failure to file documents. The motion will be granted.

3. [14-13041](#)-A-7 EVARISTO OLMOS MOTION FOR ENTRY OF DEFAULT
[14-1114](#) PK-1 JUDGMENT
OLMOS V. UNION ADJUSTMENT 12-11-14 [[20](#)]
COMPANY, INC.
PATRICK KAVANAGH/Atty. for mv.

Final Ruling

The adversary proceeding dismissed, the motion is denied as moot.

4. [14-10279](#)-A-7 DONNIE PRICE CONTINUED STATUS CONFERENCE RE:
[14-1044](#) AMENDED COMPLAINT
EXPRESS SERVICES, INC. V. 10-24-14 [[56](#)]
PRICE
RICHARD MONAHAN/Atty. for pl.
FOURTH AMENDED COMPLAINT
FILED 12/18/14, ECF NO. 75

[This matter will be called subsequent to defendant's motion to dismiss, BH-3.]

Tentative Ruling

The court intends to continue the status conference to the court's February 4, 2015, calendar.

5. [14-10279](#)-A-7 DONNIE PRICE MOTION TO DISMISS ADVERSARY
[14-1044](#) BH-3 PROCEEDING/NOTICE OF REMOVAL
EXPRESS SERVICES, INC. V. 11-25-14 [[71](#)]
PRICE
ROBERT BRUMFIELD/Atty. for mv.

Tentative Ruling

Motion: Dismiss Adversary Proceeding

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

Disposition: Denied

Order: Civil minute order

Defendant Donnie Kay Price moves under Rule 12(b)(6) to dismiss plaintiff Express Services, Inc.'s Third Amended Complaint, filed October 24, 2014, ECF #56. Plaintiff Express Services, Inc. filed no opposition but responded by filing a Fourth Amended Complaint, filed December 18, 2014, ECF #75.

DISCUSSION

Fourth Amended Complaint

The Fourth Amended Complaint, filed December 18, 2014, ECF #75 was not filed of right, nor with leave of court. Civil Minutes, filed November 5, 2014, ECF #61. As a consequence it is void and of no effect. Where an amended pleading cannot be made as of right and is filed without leave of court or consent of the opposing party, it is

without legal effect. *Gengler v. U.S. ex rel. Dep't of Def. & Navy*, 463 F. Supp. 2d 1085, 1093 (E.D. Cal. 2006) (citing *U.S. ex rel. Mathews v. Healthsouth Corp.*, 332 F.3d 293, 295 (5th Cir.2003)).

Third Amended Complaint

Legal Standards

The law applicable to Rule 12(b)(6) motions is well settled. Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

Similarly, the law applicable to adversary proceedings under 11 U.S.C. § 523(a)(2)(A) is also well settled. One commentator described the elements thusly, "To except a debt from discharge under § 523(a)(2)(A), the creditor must show: [1] the debtor made representations that at the time the debtor knew to be false; [2] the debtor made those representations *with the intention and purpose* of deceiving the creditor (scienter); [3] the creditor *justifiably relied* on those representations; and [4] the creditor *sustained losses* as a proximate result of the debtor's representations. [*In re Mbunda* (9th Cir. B.A.P. 2012) 484 BR 344, 350; *In re Sabban* (9th Cir. 2010) 600 F3d 1219, 1222; *In re Eashai* (9th Cir. 1996) 87 F3d 1082, 1086]" March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Nondischargeable debts § 22:452 (The Rutter Group).

Applied

Though less than artfully pled, taken both as a whole and with regard to the specific allegations the Third Amended Complaint does state a cause of action under 11 U.S.C. § 523(a)(2)(A). For example, facts and reasonable inference therefrom that support a finding of false representations are pled in the Third Amended Complaint ¶¶ 17, 25, 40. Similarly facts and inference therefrom that support a finding of

CIVIL MINUTE ORDER

It is hereby ordered that: (1) the motion is denied; (2) the Fourth Amended Complaint is stricken; (3) defendant Donnie Kay Price shall file an answer to the Third Amended Complaint not later than 14 days after entry of the civil minute order denying motion; (4) absent leave of court the parties may not enlarge time for defendant Donnie Kay Price to answer; and (5) in the event that defendant Donnie Kay Price fails to file an answer in a timely fashion, plaintiff shall forth with seek the entry of defendant Donnie Kay Price's default.

No tentative ruling.

3. [14-14245](#)-A-7 ANTONIO/MARIA URQUIZO PRO SE REAFFIRMATION AGREEMENT
WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
12-8-14 [[18](#)]

WILLIAM OLCOTT/Atty. for dbt.

No tentative ruling.
4. [14-13959](#)-A-7 CHRISTIAN/KATHY OVERTURF PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
11-17-14 [[15](#)]

STEVEN ALPERT/Atty. for dbt.

No tentative ruling.
5. [14-13959](#)-A-7 CHRISTIAN/KATHY OVERTURF PRO SE REAFFIRMATION AGREEMENT
WITH EXETER FINANCE CORP.
11-18-14 [[17](#)]

STEVEN ALPERT/Atty. for dbt.

No tentative ruling.
6. [14-13986](#)-A-7 JUAN/AURORA QUIROZ PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
11-26-14 [[12](#)]

JOSEPH PEARL/Atty. for dbt.

No tentative ruling.

1:15 p.m.

1. [14-13325](#)-A-7 JESUS BARAJAS STATUS CONFERENCE RE: COMPLAINT
[14-1121](#)
BARAJAS V. SEQUOIA CONCEPTS,
INC. ET AL
PATRICK KAVANAGH/Atty. for pl.
10-9-14 [[1](#)]

Final Ruling

This matter is continued to March 4, 2015, at 11:00 a.m. to allow the plaintiff to seek entry of default and a default judgment against the defendants. Not later than February 25, 2015, the plaintiff shall file a status report if the adversary proceeding has not been dismissed or a judgment entered.