

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

JANUARY 29, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [12-19109](#)-A-7 DEAUNNA GRANT
DRJ-1
MONRAE ENGLISH/MV

MOTION TO EMPLOY MONRAE L.
ENGLISH AS SPECIAL COUNSEL
AND/OR MOTION FOR COMPENSATION
BY THE LAW OFFICE OF MONRAE L.
ENGLISH, AND WILD, CARTER &
TIPTON, PC FOR MONRAE L.
ENGLISH, SPECIAL COUNSEL(S),
FEE: \$79724.26, EXPENSES:
\$587.80
1-6-14 [[47](#)]

DAVID JENKINS/Atty. for mv.
ORDER CONTINUING TO 2/26/14

Final Ruling

The court has issued an order continuing this matter to February 26,
2014. No civil minute order is necessary.

2. [12-19109](#)-A-7 DEAUNNA GRANT
RH-3
SHERYL STRAIN/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CATHLEEN GRANT
11-1-13 [[40](#)]

ROBERT HAWKINS/Atty. for mv.
ORDER CONTINUING TO 2/26/14

Final Ruling

The court has issued an order continuing this matter to February 26,
2014. No civil minute order is necessary.

3. [12-16711](#)-A-7 MAXIMO/NOEMI PARAYNO
JES-2
JAMES SALVEN/MV

MOTION TO SELL
12-21-13 [[53](#)]

ERIC ESCAMILLA/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Toyota Corolla

Sale Type: Public auction

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

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

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

4. [13-15912](#)-A-7 EUGENE/MARGARET AFONSO MOTION TO SELL
JES-2 12-3-13 [[26](#)]
JAMES SALVEN/MV

MARK ZIMMERMAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2012 Harley Davidson motorcycle

Sale Type: Public auction

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

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

5. [12-18816](#)-A-7 LORENZO/VALERIE MEJIA MOTION TO AVOID LIEN OF
SDM-5 CITIBANK, N.A.
LORENZO MEJIA/MV 1-6-14 [[42](#)]
SCOTT MITCHELL/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Deemed to be noticed under LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$161,607.69

Property Value: \$124,400.00

Judicial Lien Avoided: \$5,947.69

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

Section 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.

6. [13-16221](#)-A-7 VAHID MAZLOOM AND AFROUZ MOTION TO DISMISS CASE
UST-1 BABAKHANIFAR 12-26-13 [[39](#)]
TRACY DAVIS/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Dismiss under § 707

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

Disposition: Granted

Order: Prepared by moving party

The US Trustee has filed a motion to dismiss the Debtors' case under § 707(b) for cause including "unreasonable delay by the debtor that is prejudicial to creditors." § 707(b)(1). The Debtors have opposed the motion.

Although not enumerated under § 707(b), cause may include failure to comply with a court order. Cf. § 1112(b)(4)(E) (providing that cause for dismissal includes "failure to comply with an order of the court"). Here, when the court granted the Debtors an extension to file schedules and statements, the order also required that the Debtors "give timely notice of the commencement of the case, and of all deadlines, to all creditors not included on the original master address list" and that they "file a proof of service showing that all creditors were served with said notice not later than five (5) court days after the Missing Documents are filed." The Debtors did not provide such notice. As a result, they have failed to comply with a court order, and the US Trustee has established cause for dismissal.

For these reasons, the court will grant the US Trustee's motion, and the Debtors' case will be dismissed.

7. [13-17121](#)-A-7 SHERRIL ROBERTSON MOTION TO DISMISS CASE FOR
TMT-1 FAILURE TO PROVIDE TAX
TRUDI MANFREDO/MV DOCUMENTS
12-17-13 [[13](#)]
SCOTT SAGARIA/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case for Failure to Provide Tax Returns and Pay Advices Timely to the Trustee

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor and by the debtor's attorney

Disposition: Denied subject to the condition that certain deadlines are extended

Order: Prepared by the trustee

Appearances: The court requests a personal or telephonic appearance by the debtor's attorney and the U.S. Trustee at the hearing on this matter

The Chapter 7 trustee moves to dismiss this case because the debtor

did not timely provide the trustee their most recently filed tax returns required by § 521(e)(2)(A)(i) and copies of their pay advices for the 60-day period preceding the petition date from any employer of the debtor. The court will deny the motion conditioned on the extension of certain deadlines.

BACKGROUND

Tax returns are required to be provided to the trustee no later than 7 days before the meeting of creditors. See 11 U.S.C. § 521(e)(2)(A)(i). The court shall dismiss a case if the debtor fails to comply with § 521(e)(2)(A)(i) "unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." See *id.* § 521(e)(2)(B).

The debtor's attorney admits that failure to timely submit tax returns to the trustee was due to circumstances beyond the debtor's control given that the failure was attributable to the debtor's attorney. The debtor's attorney admits fault for such failure and further admits that the debtor did everything she was asked to do.

The first meeting of creditors was set for December 9, 2013. The debtor's attorney admits that the relevant tax return was provided to the trustee on December 10, 2013. But the attorney argues that this was only "one day after the deadline." Mem. P. & A. in Opp'n Tr.'s Mot. Dismiss at 3. The court disagrees. Providing the tax return on December 10, 2013 was 8 days past the deadline. See *id.* § 521(e)(2)(A)(i) (deadline is 7 days before the § 341 meeting).

The court is inclined decide that the case should not be dismissed due to circumstances beyond the debtors' control. See *id.* § 521(e)(2)(B). The statutory provision for dismissal makes an exception for circumstances beyond the debtor's control. Debtors cannot control the errors of their attorneys in meeting the deadline for providing documents to the trustee. Debtors properly expect this deadline will be met if the debtors' have provided such documents to their attorney. Once the deadline is missed by the attorney, the debtors have no way to remedy the mistake.

Further, the debtor's letter states that all paperwork requested by the trustee was provided to her attorney. Thus, the pay advices for the debtor's retirement income appear to have been provided to her attorney as well. This issue is not discussed in the opposition memorandum filed by the debtor's attorney.

TRUSTEE'S NON-OPPOSITION TO DENIAL OF THE MOTION

The trustee's reply indicates that she does not oppose a denial of the motion so long as the § 727 deadlines are extended. The court will deny the motion subject to the condition that certain deadlines be extended. The continued date of the meeting of creditors is February 3, 2014. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

The court's review of the schedules indicate that the only scheduled debts are two mortgages that appear to be purchase money mortgages, and \$652.00 of credit card debt. At the hearing, the court would like the debtor's attorney to provide the reasons for filing this case given the amount of debt involved for which the debtor is personally liable.

- ## Tentative Ruling

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

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a

consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The trustee's attorney states that "it is unlikely that a trial of the claim would result in a higher net recovery to the bankruptcy estate." Mot. Approval of Compromise and Payment of Attorneys' Fees at 4, ECF No. 36. Thus, the probability of success in recovering an amount greater than the net settlement amount is unlikely. Further, the settlement was the product of a judicially supervised mediation. The interest of creditors thus favors immediate payment rather than a delayed recovery of a net amount that is the same or less than the settlement amount.

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.

DEBTOR'S RESPONSE REGARDING EXEMPTIONS

The debtor has filed a response stating she has no objection to the proposed settlement except for the amount of the debtor's exemption in the proceeds recovered in the settlement. The debtor states that the exemption should be \$32,041.65. But the motion asserts that the exemption is only \$9,966.65.

The debtor's originally filed Schedule C shows an exemption of \$22,075.00 and \$16,440.00 under §§ 703.140(b)(11)(D) and 703.140(b)(5) of the California Code of Civil Procedure. The debtor amended Schedule C in response to an objection to exemptions. The debtor's amended Schedule C amended only the amount claimed under § 703.140(b)(5), reducing this amount from \$16,440 to \$9,966.65, but did not amend the amount of \$22,075 claimed under § 703.140(b)(11)(D) on the initially filed Schedule C.

Accordingly, the court finds that the debtor is entitled to a total exemption amount of \$32,041.65 in the proceeds of this settlement.

COMPENSATION AND EXPENSES

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), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The order employing Richard Conway as special counsel employed him on the terms specified in the trustee's application, which included the contingency fee agreement attached as an exhibit to the application, which permits a fee of 33 and 1/3 percent of the gross amount of any proceeds recovered and reimbursement of costs incurred.

The court approves as reasonable the compensation and reimbursement of expenses requested. The court authorizes attorneys' fees of \$38,333.33 and costs of \$5,187.28 for Kahn, Soares & Conway, LLP. The

attorneys' fees are one-third of the settlement amount and are a contingency fee amount that the trustee contends are fair and reasonable. The trustee asserts that "costs are limited to those that are directly related to the actual pursuit of the claim." These fees and costs will be approved.

10. [13-14530](#)-A-7 KATHRYN JONES
PD-1
WELLS FARGO BANK, N.A./MV
RANDY RISNER/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
RESPONSIVE PLEADING

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

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted only to the extent specified in this ruling; no other relief, including retroactive relief, will be awarded

Order: Civil minute order

This hearing was continued to allow certain lien avoidance motions to be filed. The moving party waived time limitations under 11 U.S.C. § 362(e)(1) and (2).

The motion seeks stay relief under § 362(d)(1) and (d)(2). The debtor has filed an opposition to the motion. The opposition disputes only the value of the property and makes only a passing reference to the existence of adequate protection. The opposition does not dispute that the debtor has a history of missed payments both prepetition and postpetition. As a result, the court will decide this motion solely under § 362(d)(1).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

Here, given the history of missed payments both prepetition and postpetition, the court finds cause to grant stay relief. The court considers these missed payments as "cause" for exercising its discretion to grant stay relief to the movant as to the subject real property. The court does not make this ruling on the basis of lack of adequate protection, but on the basis of the history of missed payments in this case.

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.

11. [13-14530](#)-A-7 KATHRYN JONES
RJR-1
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF WELLS
FARGO EQUIPMENT FINANCE, INC.
12-6-13 [[87](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order

EVIDENTIARY HEARING TO DETERMINE FACTUAL ISSUES

The motion seeks to avoid the responding party's lien on the moving party's real property. At the hearing, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the following disputed, material factual issues must be resolved before the court can rule on the relief requested: (i) the property's value, (ii) whether Pascuzzi, Moore & Stoker has a valid deed of trust (consensual lien) that must be factored into the statutory-impairment formula, (iii) whether Kroger Equipment & Supply Co. has a valid judgment lien that must be factored into the statutory-impairment formula; (iv) whether General Electric Capital Corporation has a valid judgment lien that must be factored into the statutory-impairment formula.

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

FURTHER BRIEFING ON LEGAL ISSUES

In addition, the court has identified at least one legal issue that must be briefed and resolved before the granting the relief requested. That issue is whether the court may decide the evidentiary issues numbered (ii) to (iv) in the absence of an adversary proceeding under Rule 7001(2).

12. [13-14530](#)-A-7 KATHRYN JONES
RJR-2
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF KROGER
EQUIPMENT AND SUPPLY CO., INC.
12-6-13 [[92](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Liens Plus Exemption: \$374,985.10 (or \$373,485.10 if Wells Fargo's senior deed of trust has a balance of \$230,485.10 as asserted in Wells Fargo's stay relief motion)

Property Value: \$380,000.00

Judicial Lien Avoided: \$0.00

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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 motion should have indicated the priority of each judicial lien to be avoided. In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

However, the court reviewed Schedule D attached as an exhibit. It appears from Schedule D that the responding party's judicial lien was recorded on August 10, 2011, before any of the other judicial liens on the property. Accordingly, the court will exclude other lower-priority judicial liens from the exemption-impairment calculation since those liens should be avoided before the respondent's lien. The court will, for purposes of analysis only, assume the lower-priority liens would be avoidable and consider only the respondent's lien to determine whether it may be avoided.

The amount of senior liens is somewhat unclear. Wells Fargo Home Mortgage's lien appears to be approximately \$231,985.10. But the motion for stay relief by this creditor indicates that the balance of

its debt is \$230,485.10. But regardless of which amount of debt is used for Wells Fargo Home Mortgage's senior consensual lien, the motion cannot be granted. Pascuzzi, Moore & Stoker's deed of trust secures a balance of approximately \$68,000.00, and the exemption totals \$75,000.00.

The responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens excluding judicial liens lower in priority, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

13. [13-14530](#)-A-7 KATHRYN JONES
RJR-3
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF GENERAL
ELECTRIC CAPITAL CORPORATION
12-6-13 [[97](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

Here, the movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not identify their priority. Although Schedule D does contain information about when each abstract of judgment was recorded, it does not list them in order of priority.

Furthermore, Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor" 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. Here, the motion does not state with particularity the grounds for the relief requested. It does not state specific factual grounds on which relief can be granted. It also does not contain the amounts or priorities of each of the judgment liens against the subject property, or the amounts secured by the consensual liens, or the exemption amount claimed.

More importantly, the lien of General Electric Capital Corporation may not even be a lien against the subject property. The subject property appears to be located in Fresno County, California, based on the interspousal transfer deed attached as an exhibit. However, the proof of claim filed by the respondent indicates that the respondent's lien was recorded in Tulare County, California. The declaration confusingly references an Exhibit E to the motion as being a copy of respondent's abstract of judgment recorded in Fresno County on March 6, 2012. But Exhibit E to the motion is not an abstract of judgment and it is not a document that was recorded.

Any re-filed motion to avoid respondent's lien shall address whether the respondent's lien can be avoided at all given that it does not appear to be a lien against the subject property in Fresno County, California. If the respondent's lien has not been recorded in the proper county so that it is in fact a lien against the subject real property, then the court cannot grant the relief requested.

14. [13-14530](#)-A-7 KATHRYN JONES
RJR-4
KATHRYN JONES/MV
RANDY RISNER/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
12-6-13 [[102](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The movant has not identified the legal standards for avoiding multiple judicial liens on real property nor has the movant applied such legal standards to the relevant facts. The declaration in support lists the encumbrances and liens on the subject real property, but it does not identify their priority. Although Schedule D does contain information about when each abstract of judgment was recorded, it does not list them in order of priority.

Furthermore, Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor" 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. Here, the motion does not state with particularity the grounds for the relief requested. It does not state specific factual grounds on which relief can be granted. As noted in the ruling on the debtor's lien avoidance motion brought against Kroger Equipment & Supply Co., Inc. in this case, the two consensual deeds of trust, plus the exemption amount, do not exceed the asserted value of the real property. Thus, there is some equity to which at least one or more judicial liens may attach. Determining the judicial liens priorities will be important in applying the statutory-impairment formula.

15.	11-18035 -A-7 MADERA MEDICAL DRJ-2 ASSOCIATES, INC. PETER FEAR/MV THOMAS ARMSTRONG/Atty. for dbt. DAVID JENKINS/Atty. for mv.	OBJECTION TO CLAIM OF CINDA STUCKEY, CLAIM NUMBER 17 12-10-13 [57]
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Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained without prejudice to the claimant's refileing an amended claim no later than the date indicated below; the court will disallow the \$16,362.50 priority claim, and allow the \$16,362.50 priority claim as included within the claimant's \$68,502.50 general unsecured claim.

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the

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

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

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or 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.

The claim to which the objection is directed is not regular on its face because it does not "conform substantially to the appropriate Official Form." Fed. R. Bankr. P. 3001(a). On the proof of claim form at section 5, the claimant checked the box indicating the claim is entitled to priority under § 507(a). The box checked is the one designated as "Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4)."

But the claimant described the amount of the claim entitled to priority as \$16,362.50. The claimant checked no other boxes specifying any additional basis for priority. Therefore, the amount claimed as entitled to priority is inconsistent with the box selected.

In addition, the trustee is unable to determine from the attachments to the proof of claim the amount of wages or salary that the claimant earned within the 180-day period preceding the petition or the 180-day period preceding the cessation of the debtor's business, whichever occurred first.

For the reasons stated in the objection and supporting papers, the court will sustain the objection without prejudice to the claimant's re-filing an amended claim no later than 60 days from the date the order sustaining this objection is served on the claimant. Any amended claim shall be deemed filed as of the date the original claim filed by this claimant was filed. The court will disallow the priority claim, and allow the \$16,362.50 priority claim as included within the claimant's \$68,502.50 general unsecured claim.

16. [13-17935](#)-A-7 WILLIAM THOMPSON

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-30-13 [[14](#)]

Tentative Ruling

The filing fee of \$306 not having been paid, the case will be dismissed absent objection by the chapter 7 trustee or other resolution of the problem.

17. [13-17437](#)-A-7 VALERIE ADAMS
SAS-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
12-29-13 [[11](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

The court will conditionally deny the motion in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is February 7, 2014. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

18. [13-17550](#)-A-13 JESUS JIMENEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-31-13 [[18](#)]

DAVID GALE/Atty. for dbt.
\$70.00 INSTALLMENT FEE PAID
ON 1/2/14

Tentative Ruling

The \$70 installment due 12/26/13 was paid on 1/2/14. However, the subsequent \$70 installment payment due January 27, 2014, has not been paid. If that installment payment has not been made by the time of the hearing on the order to show cause, the case will be dismissed without further notice or hearing.

19. [12-11153](#)-A-7 JOSEPH/NANCY WESTCOTT
RHT-1
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOSEPH EMERSON
WESTCOTT AND NANCY ANN WESTCOTT
12-30-13 [[46](#)]

THOMAS ARMSTRONG/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

20. [12-13067](#)-A-7 MICHAEL JOHANNES
THA-3
TRUDI MANFREDO/MV

MOTION TO EMPLOY STEPHEN DANZ
AS SPECIAL COUNSEL AND/OR
MOTION TO EMPLOY JOHN C. FOWLER
AS SPECIAL COUNSEL
12-4-13 [[52](#)]

JERRY LOWE/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

21. [10-61970](#)-A-7 BRIAN ENNIS
RH-7
JAMES SALVEN/MV
RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

CONTINUED MOTION TO ALLOW
INTERIM DISTRIBUTION
12-18-13 [[248](#)]

Tentative Ruling

Motion: Allow Interim Distribution / Approval of Interim Trustee Compensation

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

Disposition: Granted in part (previously 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). 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 court previously denied the motion in part *without prejudice* as to any request for compensation. The court continued the hearing to allow a supplemental declaration on the issue of administrative solvency.

The trustee states in a supplemental declaration that he is presently holding \$3,504,205 after collecting and reducing to cash assets totaling \$3,723,900. Estimated outstanding administrative expenses presently total \$176,000.00 that will be paid in full by the interim distribution.

If the interim distribution occurs, then the trustee represents that the estate will have "remaining funds in excess of \$200,00 [sic]" The court interprets this to mean, based on the context and the subsequent paragraphs in the declaration, that the estate will have \$200,000 of remaining funds after the distribution, which will be available to pay administrative claims going forward. The declaration shows anticipated recoveries of \$235,208 from collections on certain notes receivable, an amount in excess of \$100,000 from the ECP-Florin Road litigation, and \$10,000 from other miscellaneous receipts.

Thus, total recoveries are anticipated to be above \$345,208. Total costs of collection are anticipated to be above \$100,000, though a specific figure is not given. The court will approve the interim distribution.

22. [10-61970](#)-A-7 BRIAN ENNIS MOTION FOR COMPENSATION FOR
RH-8 ROBERT A. HAWKINS, TRUSTEE'S
ROBERT HAWKINS/MV ATTORNEY(S), FEE: \$20160.00,
EXPENSES: \$729.07
1-8-14 [[253](#)]

RILEY WALTER/Atty. for dbt.

Tentative Ruling

Motion: Interim Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Robert A. Hawkins

Compensation approved: \$20,160.00

Costs approved: \$729.07

Aggregate fees and costs approved: \$20,889.07

Retainer held: \$0.00

Amount to be paid as administrative expense: \$20,889.07

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

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

Future applications shall be supported by a declaration from the Chapter 7 trustee making a factual showing of administrative solvency.

23. [13-14771](#)-A-7 NICK/SANDRA KALENDER MOTION TO SELL
JES-1 11-20-13 [[41](#)]
JAMES SALVEN/MV
JANINE ESQUIVEL/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Assets described on Exhibit A to the notice of hearing

Buyer: Debtors

Sale Price: \$9,050 (\$7,425 cash plus \$1,625 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

24. [13-14771](#)-A-7 NICK/SANDRA KALENDER MOTION TO COMPROMISE
JES-2 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH NICK KALENDER
AND SANDRA KAY KALENDER
11-21-13 [[46](#)]

JANINE ESQUIVEL/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

25. [13-17274](#)-A-7 KELLEY/STEPHANIE NELSON MOTION TO DISMISS CASE
SAS-1 12-23-13 [[12](#)]
SHERYL STRAIN/MV
RANDY RISNER/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.
WITHDRAWN

Final Ruling

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

26. [13-10491](#)-A-7 ROBERT/VIRGINIA POMPA MOTION TO COMPROMISE
JES-1 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH DALE WEST
12-3-13 [[25](#)]
RUTH ROWLETTE/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

27. 13-15592 -A-7 DOUGLAS/CYNTHIA MARTIN PBB-2 DOUGLAS MARTIN/MV PETER BUNTING/Atty. for dbt.	MOTION TO AVOID LIEN OF DISCOVER BANK 12-30-13 [45]
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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.

28. [13-15593](#)-A-7 ROBERT/LYNN KELLEY
PBB-2
ROBERT KELLEY/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF EQUABLE
ASCENT FINANCIAL, LLC
12-30-13 [[25](#)]

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.

29. [13-14394](#)-A-7 ADRIAN/ANA ORTEGA
ALG-1
ADRIAN ORTEGA/MV
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO AVOID LIEN OF MIDLAND
FUNDING, LLC
12-26-13 [[17](#)]

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.

30. [3-14394](#)-A-7 ADRIAN/ANA ORTEGA
ALG-2
ADRIAN ORTEGA/MV
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO AVOID LIEN OF CHUR,
LLC
12-26-13 [[22](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

31. [11-12195](#)-A-13 GARY/SABRENA FORD
PLF-3
GARY FORD/MV
PETER FEAR/Atty. for dbt.

CONTINUED MOTION TO REFINANCE
12-10-13 [[50](#)]

Final Ruling

Motion: Authority to Refinance Mortgage

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

Disposition: Granted

Order: Prepared by the moving party

The court continued the hearing to allow a motion under Rule 9037 to be filed that would cause this motion to refinance and its supporting papers to comply with Rule 9037. The court's review of the docket indicates an order was issued on a Rule 9037 motion.

Based on the civil minutes from the hearing on January 9, 2014, the court will grant the motion for the reasons stated in the motion and supporting papers.

32. [13-16196](#)-A-7 JOHN/DEBRA TANACHION MOTION TO SELL
JES-1 12-18-13 [[17](#)]
JAMES SALVEN/MV
SCOTT SAGARIA/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Livestock

Buyer: Debtors

Sale Price: \$11,100 (\$5,100 cash plus \$6,000 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

9:15 a.m.

1. [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

At the suggestion of the Chapter 7 trustee, the matter is continued to March 12, 2014, at 9:15 a.m. Not later than 7 days prior to the continued hearing, the Chapter 7 trustee shall file a status report.

2. [13-12112](#)-A-7 GLEN/MELISSA MCCLARAN AMENDED MOTION TO QUASH ,
[13-1073](#) WW-1 AMENDED MOTION FOR PROTECTIVE
KARRAKER ET AL V. MCCLARAN ORDER
12-23-13 [[28](#)]

TRACY BLAIR/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Quash Subpoena

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

Disposition: Granted in part (as to allowing protective order); denied in part

Order: Prepared by moving party

The debtor-defendant Glen McClaran (the "Defendant") has filed a motion to quash subpoena after the plaintiffs Rusty Karraker, Cynthia Karraker, Rachel Hagenzieker, and Roberta Karraker (the "Plaintiffs") subpoenaed Wells Fargo Bank for financial records from January 1, 2012 through the present regarding Glen McClaran, Bio Fuels Enterprises, LLC, and Account Number 121042882. The Plaintiffs have opposed the motion, and the remaining plaintiffs Eric and Ronda Kozlowski have also filed an opposition.

For the reasons set forth below, the court will grant in part and deny in part the Defendant's motion. The court will not quash the subpoena. However, any subpoenaed documents obtained by the Plaintiffs will be subject to the same, applicable protective order provisions found in the order granting the motion to compel (ECF No. 55).

DISCUSSION

Service of Subpoena

The Defendant first argues that California Code of Civil Procedure § 1985.3 applies in this proceeding and that the Plaintiffs did not comply with that statute by failing to serve the defendant-debtor Glen McClaran and debtor Melissa McClaran. However, this court concludes that the statute does not apply to subpoenas issued in federal proceedings.

Section 1983.3 requires that a subpoenaing party, who is seeking records of a consumer by subpoenaing a third party, give notice to the

consumer of the subpoena. See Cal. Civ. Proc. Code § 1985.3(b), (e). However, the plain language of the statute shows that this is a procedural rule, rather than a substantive one. The notice requirement is imposed only on a "subpoenaing party," who is specifically defined as "the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code." *Id.* § 1985(a)(3) (emphasis added). It follows that § 1985.3's notice requirements apply only to subpoenas issued pursuant to the California Code of Civil Procedure, rather than those issued pursuant to Civil Rule 45. See *RBS Secs. Inc. v. Plaza Home Mortg., Inc.*, No. 12CV2132-JM (MDD), 2012 WL 3957894, at *1 (S.D. Cal. Sept. 10, 2012). Since the Plaintiffs were not issuing a subpoena under the California Code of Civil Procedure, they did not have to comply with § 1985.3.

The Defendant also argues that Bankruptcy Rule 7004 require that both debtors be served personally with the subpoena, rather than serving their attorney. However, the Defendant has not indicated which provision of Bankruptcy Rule 7004 applies in this case. Furthermore, the court believes that the service rules of Civil Rule 5, as incorporated by Bankruptcy Rule 7005, apply here instead. Civil Rule 5 is applicable to a "discovery paper required to be served on a party." Fed. R. Civ. P. 5(a)(1)(C). This would include a subpoena issued under Civil Rule 45. See Fed. R. Civ. P. 45(a)(4) (stating that "a notice and a copy of the subpoena must be served on each party"). If a party is represented by an attorney, all that Civil Rule 5 requires is that service "be made on the attorney unless the court orders service on the party." Fed. R. Civ. P. 5(b)(1). Here, the court did not order service to be made on the party, rather than his attorney, so service on only the Defendant's attorney was sufficient.

Overbroad / Irrelevant

Next, the Defendant argues that the subpoena is overbroad as to the time frame (for bank statements from January 1, 2010 to present) and that the subpoena seeks records that are not relevant to the Plaintiffs' claims. As the court had previously ruled on the motion to compel, the Plaintiffs' request for bank records from January 1, 2010 to the present is relevant and is not overbroad as to time. The Plaintiffs allege that the Defendant misappropriated the investment funds after receiving them, so his bank records, both before and after receipt of the funds, would show what was deposited or withdrawn from his account and whether such actions were out of the ordinary from how he usually used his account.

As to the time frame, the Defendant believes that December 30, 2012, rather than the present date, would be a more proper end date. However, that proposed date is before the Defendant even filed his bankruptcy petition, which was on March 27, 2013. Thus, setting the end date less than a year from the petition date is not inappropriate. Further, setting the present date as the end date is not unusually burdensome or overbroad in this case when considering that the Plaintiffs are seeking records for only the past four years and that a protective order will be in place.

Lastly, the Defendant argues that the subpoena violates his right to privacy. Given the relevance of the Defendant's financial records to the Plaintiffs' case, the Plaintiffs clearly have a right to seek his records. However, in order to protect the Defendant's privacy rights, a protective order is most appropriate in this case. See *Doran v. Cameron Park Inn*, No. Civ.S 02 0267 GEB PA, 2003 WL 242059118, at *1 (E.D. Cal. Aug. 25, 2003) ("The prescribed vehicle for preserving litigants' privacy interests in the discovery context is a protective order pursuant to [Civil Rule] 26(c)."); see also *RBS Secs.*, 2012 WL 3957894, at *1 (finding that protective order sufficiently protected any privacy interest that borrower had in his loan documents).

For the reasons set forth above, the court will grant in part and deny in part the Defendant's motion. The court will not quash the subpoena. However, any subpoenaed documents obtained by the Plaintiffs will be subject to the same, applicable protective order provisions found in the order granting the motion to compel (ECF No. 55).

- ## Final Ruling

The adversary proceeding dismissed, the status/pre-trial conference is concluded.

- ## Final Ruling

The matter is continued to April 2, 2014, at 9:15 a.m. to allow the plaintiff to enter and prove up the default of the defendants. If a judgment is not in the file or the case dismissed, not later than 7 days prior to the continued hearing, the plaintiff shall file a state report.

5. [13-14196](#)-A-7 MICHAEL BRANDON
[13-1101](#)
U.S. TRUSTEE V. BRANDON
GREGORY POWELL/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-17-13 [[1](#)]

Tentative Ruling

Given the court's ruling on the U.S. Trustee's motion for entry of default, the court may conclude the status conference or may continue it to February 26, 2014, at 9:15 a.m.

6. [13-14196](#)-A-7 MICHAEL BRANDON
[13-1101](#)
U.S. TRUSTEE V. BRANDON
GREGORY POWELL/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
12-17-13 [[10](#)]

Tentative Ruling

Motion: Entry of Default Judgment

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

Disposition: Pending

Order: Prepared by moving party

SERVICE OF THE MOTION

No proof of service appears on the docket for this motion. If the motion has been served in accordance with Federal Rule of Bankruptcy Procedure 7005, the court requests that the U.S. Trustee inform the court of this fact and file a proof of service no later than the time an order is submitted on this motion.

If the motion has not been served, the court will continue the hearing on this matter to February 26, 2014, at 9:15 a.m. to allow for service to be made.

MERITS OF THE MOTION

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment. Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment in this case.

The court has the authority to preclude serial, abusive bankruptcy filings. A number of remedies exist to redress such abuses: (1) dismissal with prejudice that bars the subsequent discharge of existing, dischargeable debt in the case to be dismissed, 11 U.S.C. § 349(a); (2) dismissal with prejudice that bars future petitions from being filed or an injunction against future filings, 11 U.S.C. §§ 105(a), 349(a); *see also Kistler v. Johnson*, No. 07-2257, 2008 WL 483605 (Bankr. E.D. Cal. Feb. 15, 2008) (McManus, J.) (unpublished decision). These provisions and remedies complement each other and are cumulative. *See In re Casse*, 198 F.3d. 327, 337-41 (2d Cir. 1999).

In cases where cause is found under § 349(a), a filing bar may exceed the 180-day limit described in § 109(g). See, e.g., *id.* at 341; *In re Tomlin*, 105 F.3d 933 (4th Cir. 1997). But see *In re Frieouf*, 938 F.2d 1099, 1103-04 (10th Cir. 1991). In *Leavitt*, the Ninth Circuit B.A.P. noted that § 349 was intended to authorize courts to control abusive filings, notwithstanding the limits of § 109(g). See *In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997).

Section 349(a) invokes a "cause" standard. In *Leavitt*, the panel held that "egregious" conduct must be present to find "cause" under § 349, but "a finding of bad faith constitutes such egregiousness." *Id.* at 939 (upholding the bankruptcy court's decision that debtors' inequitable proposal of Chapter 13 plan merely to avoid an adverse state court judgment was an unfair manipulation of the Code). In this circuit, a finding of bad faith is sufficient "cause" for barring future filings pursuant to § 349(a). *Id.* at 939. The overall test used to determine bad faith is to consider the totality of the circumstances. See, e.g., *In re Leavitt*, 209 B.R. at 939; *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). In determining whether bad faith exists, "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed [a plan] in an inequitable manner." *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The court concludes that a filing bar may be ordered pursuant to § 349 if the appropriate objective factors are found. The court may find cause to bar a debtor from re-filing if the debtor: (1) acted inequitably in filing a case or proposing a plan, (2) misrepresented the facts, (3) unfairly manipulated the Code, or (4) proposed a plan in an inequitable manner. These factors are disjunctive.

Based on the undisputed facts, the court finds cause to impose a filing bar exceeding the 180-day limit in § 109(g). The facts show debtor has unfairly manipulated the Code without genuine intent to prosecute the debtor's cases to discharge or reorganization.

The defendant has failed to appear at the meeting of creditors in multiple cases. The defendant has failed to disclosed other names used in the prior 8 years on multiple petitions in multiple cases. In multiple cases, the defendant has failed to disclose prior bankruptcy cases he had filed.

The related underlying bankruptcy case has already been dismissed. Because the court cannot grant effective relief on the plaintiff's claim for dismissal with prejudice, the doctrine of mootness prevents the court from entering judgment on this claim.

However, the court finds that relief is warranted on plaintiff's second claim for an injunction barring the debtor from filings without leave of court. The debtor will be enjoined from filing another bankruptcy petition in the Eastern District of California without leave of court for a two-year period commencing on the entry of the order dismissing the debtor's bankruptcy case. During such time, leave of court will not be granted to file a petition unless the following conditions have been met: (1) the request for leave of court to file a petition is accompanied by a cashier's check made payable to the Clerk of Court for the full amount of the filing fee and documents that include the completed schedules and statements prepared and ready to be filed, (2) reasonable assurances are provided that debtor will appear at the § 341 meeting, and (3) the debtor shows a material

change in circumstances that warrant the filing of a subsequent petition.

10:00 a.m.

1.	13-16208 -A-7	MELESIO RAMOS	MOTION FOR RELIEF FROM
	JHW-1		AUTOMATIC STAY
	TD AUTO FINANCE LLC/MV		12-31-13 [15]
	RABIN POURNAZARIAN/Atty. for dbt.		
	JENNIFER WANG/Atty. for mv.		
	RESPONSIVE PLEADING		

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Chevrolet Tahoe

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. [13-17218](#)-A-7 ROBERTO/MARIA OLVERA MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
WELLS FARGO BANK, NA/MV 12-19-13 [[24](#)]
KRISTIN ZILBERSTEIN/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: 943 North Howland Court, Porterville, CA

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.

3. [13-10129](#)-A-7 HENRY OLCESE AND NANCY MOTION FOR RELIEF FROM
PD-1 RED AUTOMATIC STAY
CITIMORTGAGE, INC./MV 12-13-13 [[52](#)]
THOMAS ARMSTRONG/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1607 Magnolia Ct., Chowchilla, CA

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.

4. [13-16738](#)-A-7 FERNANDO/PATRICIA ADAME MOTION FOR RELIEF FROM
SRS-1 AUTOMATIC STAY
GREEN TREE SERVICING LLC/MV 12-30-13 [[22](#)]
SARA SMITH/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: 1039 2nd Street, Clovis, CA

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.

5. [13-17538](#)-A-7 JUAN MARTINEZ
RMD-1
EVERBANK/MV
THOMAS GILLIS/Atty. for dbt.
RYAN DAVIES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-20-13 [[10](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1031 South Archie Avenue, Fresno, CA

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.

6. [13-13848](#)-A-7 PARDEEP DHESI AND
APN-1 SUMANJIT KAUR
SANTANDER CONSUMER USA INC./MV
RAYMOND ISLEIB/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DEBTOR DISMISSED - JOINT
DEBTOR DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-19-13 [[22](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Dodge Journey

AS TO JOINT DEBTOR SUMANJIT KAUR

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

AS TO THE ESTATE OF JOINT DEBTOR SUMANJIT KAUR

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.

AS TO JOINT DEBTOR PARDEEP SINGH DHESI AND THIS JOINT DEBTOR'S ESTATE

An order has been entered dismissing joint-debtor Pardeep Singh Dhesi. The stay has terminated as to this joint debtor due to the dismissal of this joint debtor's case. See 11 U.S.C. § 362(c)(2)(B). To the extent that joint debtor Pardeep Singh Dhesi's property is not included within property of Sumanjit Kaur's bankruptcy estate under § 541(a)(2), then this joint debtor's property is no longer property of the estate. See *id.* § 349(b)(3) (dismissal revests property of the estate in the entity in which such property was vested before the petition was filed).

7. [13-10152](#)-A-7 LEEANN SHAEFFER
PD-1
CITIMORTGAGE, INC./MV
JULIE JONES/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-26-13 [[32](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3518 Garfield Street, Selma, CA

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

8. [13-17352](#)-A-7 ARNOLDO/JULIA GONZALEZ MOTION FOR RELIEF FROM
DJD-1 AUTOMATIC STAY
SETERUS, INC./MV 1-10-14 [[16](#)]
GREG BLEVINS/Atty. for dbt.
DARREN DEVLIN/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: 12933 School Avenue #1 and 2, Cutler, CA

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.

9. [13-16661](#)-A-7 JOSE/MARIA MUNGUIA
KAZ-1
M&T BANK/MV
GEORGE ALONSO/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-17-13 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 162 Locust Ave., Hollister, CA

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

Based on the motion's well-pleaded facts, the court concludes that stay relief is warranted. The movant is not receiving regular monthly payments. Twenty-three pre-petition payments and 1 postpetition payment are delinquent and past due. 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.

10. [13-11488](#)-A-7 JOSE LOPEZ
CJO-1
EVERBANK/MV
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-7-14 [[32](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 436 Fresno St., Fresno, CA

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.

11. [13-17696](#)-A-7 RENE NELUM
LEA-1
LEON CAI/MV
KARNEY MEKHITARIAN/Atty. for dbt.
LANCE ARMO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-27-13 [[18](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Prepared by moving party

Subject: Unlawful Detainer Action-residential real property lease of premises located at 4685 N. 4th Street, Fresno, CA

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).

Under § 362(b)(22), the filing of a petition does not operate as a stay under § 362(a)(3) "of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor." 11 U.S.C. § 362(b)(22).

According to the declaration filed in support of the motion, the property is residential property, and debtor occupies the property under a lease, which is asserted to be in default. The petition was filed December 4, 2013. Before the petition, the movant commenced an unlawful detainer proceeding in state court and a default judgment was entered on November 21, 2013. A copy of this judgment, attached as an exhibit, indicates that the judgment is for possession of the premises. A writ of possession was issued on November 22, 2013.

Subsection (b)(22) of § 362 is subject to § 362(1), but the debtor has not filed an opposition asserting to the court that subsection (1) should apply to this case because the debtor served the required certification under such subsection. See *id.* § 362(1). The movant represents to the court, moreover, that the debtor did not file with the petition nor serve on the movant the certification required under subsection (1). Mot. at 2, ECF No. 18.

The motion will be denied as moot because the stay is not applicable to the subject unlawful detainer proceeding in state court.

12. [13-15999](#)-A-7 JULIE LEIGHTY
PD-1
NATIONSTAR MORTGAGE, LLC/MV
RICHARD BAMBL/Atty. for dbt.
JOSEPH DELMOTTE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-13-13 [[21](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1039 E San Joaquin Ave., Tulare, CA

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

Based on the motion's well-pleaded facts, the court concludes that stay relief is warranted. The movant alleges that the debtor has failed to make payments. Specifically, 2 postpetition payments are past due. 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.

10:30 a.m.

- | | | | |
|----|-------------------------------|------------------------------|--|
| 1. | 13-17002 -A-7 | RAFAEL MENDOZA | PRO SE REAFFIRMATION AGREEMENT
WITH TD AUTO FINANCE LLC
12-23-13 [18] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 2. | 13-17002 -A-7 | RAFAEL MENDOZA | PRO SE REAFFIRMATION AGREEMENT
WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
12-27-13 [21] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 3. | 13-17002 -A-7 | RAFAEL MENDOZA | CONTINUED PRO SE REAFFIRMATION
AGREEMENT WITH BANK OF THE WEST
12-19-13 [15] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 4. | 13-17440 -A-7 | ABEL/ALLYSON PEREZ | PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
1-2-14 [11] |
| | | | |
| | | No tentative ruling. | |
| 5. | 13-16844 -A-7 | ROBERT/LISA GARTIN | REAFFIRMATION AGREEMENT WITH
CAPITAL ONE AUTO FINANCE
12-16-13 [15] |
| | | JAMES MILLER/Atty. for dbt. | |
| | | No tentative ruling. | |

6. [13-17061](#)-A-7 RONALD/MARCELLA SILVA

REAFFIRMATION AGREEMENT WITH
ALLY FINANCIAL (2011 CHEVROLET
TAHOE)
1-2-14 [[15](#)]

THOMAS ARMSTRONG/Atty. for dbt.

No tentative ruling.

7. [13-17061](#)-A-7 RONALD/MARCELLA SILVA

REAFFIRMATION AGREEMENT WITH
ALLY FINANCIAL (2011 CHEVROLET
SILVERADO)
1-2-14 [[16](#)]

THOMAS ARMSTRONG/Atty. for dbt.

No tentative ruling.

8. [13-16763](#)-A-7 DAVID/AMY POLZIEN

PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION
12-24-13 [[17](#)]

No tentative ruling.

9. [13-17374](#)-A-7 TERESA ORTEGA

PRO SE REAFFIRMATION AGREEMENT
WITH MERCO CREDIT UNION
1-2-14 [[17](#)]

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED MOTION FOR
MMW-55 PROPERTIES, LLC COMPENSATION FOR TERENCE J.
JUSTIN HARRIS/MV FEE: \$66,472.00, EXPENSES:
\$0.00
10-8-13 [[1049](#)]

PETER FEAR/Atty. for dbt.
JUSTIN HARRIS/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [12-17310](#)-A-11 JOHN/GRACE VISSER MOTION FOR COMPENSATION BY THE
RAC-35 LAW OFFICE OF BLAKELEY AND
RONALD CLIFFORD/MV BLAKELEY LLP FOR RONALD A.
CLIFFORD, DEBTOR'S ATTORNEY(S),
FEE: \$352005.00, EXPENSES:
\$7560.78
12-31-13 [[962](#)]

RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Reimbursement of Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Blakeley & Blakeley LLP

John and Grace Visser (Case No. 12-17310)

Amount

1. **Previously Approved Fees:** \$135,809.78 (80% of requested interim fees)
2. **Previously Approved Expenses:** \$1,989.51
3. **Previously Held Back Fees:** \$33,952.46 (20% of requested interim fees)
4. **Newly Requested Fees:** \$251,731.50
5. **Newly Requested Expenses:** \$3,939.33
6. **Total Fees:** \$421,493.74 (sum of lines 1, 3, and 4)
7. **Total Expenses:** \$5,928.84 (sum of lines 2 and 5)
8. **Total Fees and Expenses Approved on Final Basis:** \$427,422.58 (sum of lines 6 and 7)

Payment

Amount to be paid from retainer: \$25,000

Amount to be paid from carve outs: \$40,943

Amount to be paid as administrative expense pursuant to plan:
\$361,479.58

Visser Farms (Case No. 12-17336)

1. Previously Approved Fees: \$49,129.38 (80% of requested interim fees)

2. Previously Approved Expenses: \$1,818.94

3. Previously Held Back Fees: \$12,282.36 (20% of requested interim fees)

4. Newly Requested Fees: \$100,273.50

5. Newly Requested Expenses: \$3,621.44

6. Total Fees: \$161,685.24 (sum of lines 1, 3, and 4)

7. Total Expenses: \$5,440.38 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$167,125.62 (sum of lines 6 and 7)

Payment

Amount to be paid from retainer: \$25,000

Amount to be paid from carve outs: \$0

Amount to be paid as administrative expense pursuant to plan:
\$142,125.62

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 final compensation and expenses sought are reasonable, and the court will approve the application as to both amount and payment.

3. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-36
RONALD CLIFFORD/MV

MOTION FOR COMPENSATION FOR
GLASSRATNER ADVISORY AND
CAPITAL GROUP, LLC, FINANCIAL
ADVISOR(S), FEE: \$3060.00,
EXPENSES: \$17.50
12-31-13 [[968](#)]

RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Reimbursement of Expenses

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

Disposition: Approved as to amount; denied as to payment

Order: Prepared by applicant

Applicant: GlassRatner Advisory & Capital Group, LLC

John Visser Dairy, Inc. (Case No. 12-17311; dismissed May 30, 2013)

Amount

1. Previously Approved Fees: \$15,422 (80% of requested interim fees)

2. Previously Approved Expenses: \$121.50

3. Previously Held Back Fees: \$3,855.50 (20% of requested interim fees)

4. Newly Requested Fees: \$2,610

5. Newly Requested Expenses: \$17.50

6. Total Fees: \$21,887.50 (sum of lines 1, 3, and 4)

7. Total Expenses: \$139 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$22,026.50 (sum of lines 6 and 7)

Payment

The court cannot order payment of the allowed fees and expenses for the reasons set forth below.

Visser Ranch Transport, Inc. (Case No. 12-17312; dismissed May 30, 2013)

Amount

1. Previously Approved Fees: \$4,232 (80% of requested interim fees)

2. Previously Approved Expenses: \$32.70

3. Previously Held Back Fees: \$1,058 (20% of requested interim fees)

4. Newly Requested Fees: \$112.50

5. Newly Requested Expenses: \$0

6. Total Fees: \$5,402.50 (sum of lines 1, 3, and 4)

7. Total Expenses: \$32.70 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$5,435.20 (sum of lines 6 and 7)

Payment

The court cannot order payment of the allowed fees and expenses for the reasons set forth below.

Dairyman's Calf Ranch, Inc. (Case No. 12-17313; dismissed May 30, 2013)

Amount

1. **Previously Approved Fees:** \$10,008 (80% of requested interim fees)
2. **Previously Approved Expenses:** \$70.56
3. **Previously Held Back Fees:** \$2,502 (20% of requested interim fees)
4. **Newly Requested Fees:** \$112.50
5. **Newly Requested Expenses:** \$0
6. **Total Fees:** \$12,622.50 (sum of lines 1, 3, and 4)
7. **Total Expenses:** \$70.56 (sum of lines 2 and 5)
8. **Total Fees and Expenses Approved on Final Basis:** \$12,693.06 (sum of lines 6 and 7)

Payment

The court cannot order payment of the allowed fees and expenses for the reasons set forth below.

Graceland Dairy, Inc. (Case No. 12-17315; dismissed May 30, 2013)

Amount

1. **Previously Approved Fees:** \$11,936 (80% of requested interim fees)
2. **Previously Approved Expenses:** \$95.53
3. **Previously Held Back Fees:** \$2,984 (20% of requested interim fees)
4. **Newly Requested Fees:** \$112.50
5. **Newly Requested Expenses:** \$0
6. **Total Fees:** \$15,032.50 (sum of lines 1, 3, and 4)
7. **Total Expenses:** \$95.53 (sum of lines 2 and 5)
8. **Total Fees and Expenses Approved on Final Basis:** \$15,128.03 (sum of lines 6 and 7)

Payment

The court cannot order payment of the allowed fees and expenses for the reasons set forth below.

Visser Ranch, Inc. (Case No. 12-17316; dismissed May 31, 2013)

Amount

1. **Previously Approved Fees:** \$11,344 (80% of requested interim fees)
2. **Previously Approved Expenses:** \$80.24
3. **Previously Held Back Fees:** \$2,836 (20% of requested interim fees)

4. Newly Requested Fees: \$112.50

5. Newly Requested Expenses: \$0

6. Total Fees: \$14,292.50 (sum of lines 1, 3, and 4)

7. Total Expenses: \$80.24 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$14,372.74 (sum of lines 6 and 7)

Payment

The court cannot order payment of the allowed fees and expenses for the reasons set forth below.

DISCUSSION

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).

Amount

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 final compensation and expenses sought are reasonable, and the court will approve the requested amounts.

Payment

The applicant seeks payment of its allowed fees and expenses from five debtors. However, those five debtors' cases were dismissed in May 2013, so the court has no jurisdiction to order the former debtors to pay the applicant. Under § 349(b)(3), the "dismissal of a case . . . revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." Since payment would be coming from a source that is not property of the estate, it is questionable whether the court has the authority to enter such an order.

CONCLUSION

The court will approve the amount of the requested fees and expenses but denies the request for payment of these fees and expenses.

4. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-37
RONALD CLIFFORD/MV

MOTION FOR COMPENSATION FOR
GLASSRATNER ADVISORY AND
CAPITAL GROUP, LLC, FINANCIAL
ADVISOR(S), FEE: \$4320.50,
EXPENSES: \$17.50
12-31-13 [[973](#)]

RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Reimbursement of Expenses

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

Disposition: Approved as to amount (as to fees related to all three debtors); denied as to payment (only as to fees related to Lariat Dairy)

Order: Prepared by applicant

Applicant: GlassRatner Advisory & Capital Group, LLC

John and Grace Visser (Case No. 12-17310)

Amount

1. **Previously Approved Fees:** \$14,682 (80% of requested interim fees)

2. **Previously Approved Expenses:** \$70.56

3. **Previously Held Back Fees:** \$3,670.50 (20% of requested interim fees)

4. **Newly Requested Fees:** \$1,552.50

5. **Newly Requested Expenses:** \$17.50

6. **Total Fees:** \$19,905 (sum of lines 1, 3, and 4)

7. **Total Expenses:** \$88.06 (sum of lines 2 and 5)

8. **Total Fees and Expenses Approved on Final Basis:** \$19,993.06 (sum of lines 6 and 7)

Payment

Amount to be paid from retainer: \$6,500

Amount to be paid from carve outs: \$0

Amount to be paid as administrative expense pursuant to plan:
\$13,493.06

Visser Farms (Case No. 12-17336)

Amount

1. **Previously Approved Fees:** \$6,810 (80% of requested interim fees)

2. **Previously Approved Expenses:** \$40.44

3. **Previously Held Back Fees:** \$1,702.50 (20% of requested interim fees)

4. **Newly Requested Fees:** \$2,767.50

5. **Newly Requested Expenses:** \$0

6. **Total Fees:** \$11,280 (sum of lines 1, 3, and 4)

7. **Total Expenses:** \$40.44 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$11,320.44 (sum of lines 6 and 7)

Payment

Amount to be paid from retainer: \$0

Amount to be paid from carve outs: \$0

Amount to be paid as administrative expense pursuant to plan:
\$11,320.44

Lariat Dairy, Inc. (Case No. 12-17314; dismissed May 30, 2013)

Amount

1. Previously Approved Fees: \$14,224 (80% of requested interim fees)

2. Previously Approved Expenses: \$102.75

3. Previously Held Back Fees: \$3,556 (20% of requested interim fees)

4. Newly Requested Fees: \$0

5. Newly Requested Expenses: \$0

6. Total Fees: \$17,780 (sum of lines 1, 3, and 4)

7. Total Expenses: \$102.75 (sum of lines 2 and 5)

8. Total Fees and Expenses Approved on Final Basis: \$17,882.75 (sum of lines 6 and 7)

Payment

The applicant seeks payment of its allowed fees and expenses from Lariat Dairy. However, this debtor's case was dismissed in May 2013, so the court has no jurisdiction to order the former debtor to pay the applicant. Under § 349(b)(3), the "dismissal of a case . . . revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." Since payment would be coming from a source that is not property of the estate, it is questionable whether the court has the authority to enter such an order.

CONCLUSION

As to the fees related to the John and Grace Visser and the Visser Farms cases, the court will approve the amount and payment of the requested fees and expenses. As to the fees related to the Lariat Dairy, the court will approve the amount of the requested fees and expenses but denies the request for payment of these fees and expenses.

5. [10-62315](#)-A-11 BEN ENNIS
MMW-57
JUSTIN HARRIS/MV

CONTINUED MOTION FOR
COMPENSATION FOR TERENCE LONG,
OTHER PROFESSIONAL(S), FEE:
\$245,295.00, EXPENSES: \$0.00
10-9-13 [[1274](#)]

RILEY WALTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [13-17928](#)-A-11 RALPH FZSE

RALPH FZSE/Atty. for mv.
DISMISSED 1/17/14

CHAPTER 11 STATUS CONFERENCE
12-26-13 [[17](#)]

Final Ruling

The case dismissed, the status conference is concluded.

7. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,
EVN-1 LLC
BHAVIKA'S PROPERTIES, LLC/MV
ELAINE NGUYEN/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO EMPLOY
ELAINE V. NGUYEN AS ATTORNEY(S)
11-20-13 [[16](#)]

Final Ruling

Application: Employ Weintraub & Selth, APC

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

Disposition: Approved

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).

Chapter 11 debtor in possession may employ counsel to advise and assist them in the discharge of their statutory duties. 11 U.S.C. § 327(a). Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a).

The applicant neither holds nor represents an interest adverse to the estate and is disinterested. As a result, the motion will be granted.

8. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,
EVN-2 LLC
BHAVIKA'S PROPERTIES, LLC/MV
ELAINE NGUYEN/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO EMPLOY
HIRAMATSU & ASSOCIATES, INC. AS
FINANCIAL ADVISER(S)
11-21-13 [[22](#)]

Final Ruling

Application: Employ Bette Hiramatsu
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
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).

Chapter 11 debtor in possession may employ counsel to advise and assist them in the discharge of their statutory duties. 11 U.S.C. § 327(a). Employment is authorized if the applicant neither holds nor represents an interest adverse to the estate and is disinterested. 11 U.S.C. §§ 101(14), 327(a).

The applicant neither holds nor represents an interest adverse to the estate and is disinterested. As a result, the motion will be granted.

9. [13-17744](#)-A-11 SREP V, LLC
THOMAS ARMSTRONG/Atty. for dbt.
- CHAPTER 11 STATUS CONFERENCE
12-13-13 [[8](#)]

No tentative ruling.

10. [13-13284](#)-A-11 NICOLETTI OIL INC.
AIC-1
SOUTHERN COUNTIES OIL CO./MV
DAVID GOLUBCHIK/Atty. for dbt.
ROBERT BOLLAR/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR ADMINISTRATIVE
EXPENSES
12-19-13 [[237](#)]

Final Ruling

Pursuant to the parties' stipulation, the hearing on this matter will be continued to February 12, 2014 at 1:30 p.m.

11. [13-13284](#)-A-11 NICOLETTI OIL INC.
DB-1
IDEMITSU APOLLO CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
JAMIE DREHER/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR ADMINISTRATIVE
EXPENSES
12-16-13 [[226](#)]

Final Ruling

Pursuant to the parties' stipulation, the hearing on this matter will be continued to February 12, 2014 at 1:30 p.m.

12. [13-13284](#)-A-11 NICOLETTI OIL INC.
DRJ-1
ROBERT V. JENSEN, INC./MV
DAVID GOLUBCHIK/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR ADMINISTRATIVE
EXPENSES
12-30-13 [[243](#)]

Final Ruling

Pursuant to the parties' stipulation, the hearing on this matter will be continued to February 12, 2014 at 1:30 p.m.

13. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA
KDG-5
ANTHONY DA COSTA/MV
- MOTION TO EXTEND CERTAIN
DEADLINES IN SCHEDULING ORDER
REGARDING WELLS FARGO BANK'S
MOTION FOR STAY RELIEF AND FOR
CLARIFICATION REGARDING EXPERT
DISCLOSURES
1-15-14 [[120](#)]
- CHRISTIAN JINKERSON/Atty. for dbt.

No tentative ruling.

14. [12-12998](#)-A-11 FARSHAD TAFTI
- CONTINUED CHAPTER 11 STATUS
CONFERENCE
4-5-12 [[15](#)]
- PETER FEAR/Atty. for dbt.

No tentative ruling.

15. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-6
FARSHAD TAFTI/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
1-8-14 [[239](#)]

No Tentative Ruling

16. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-7

CONTINUED HEARING RE: CHAPTER
11 PLAN
9-4-13 [[194](#)]

PETER FEAR/Atty. for dbt.

No Tentative Ruling

17. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-8

OBJECTION TO CLAIM OF DISCOVER
AND AFFILIATE DB SERVICING
CORPORATION,
12-4-13 [[225](#)]

FARSHAD TAFTI/MV

PETER FEAR/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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

The objection's well-pleaded facts assert that the claim of creditor Discover Bank was extinguished by an agreement to settle in full the credit account forming the basis of this claim by a partial payment of \$2,500.00. A copy of a letter from an authorized agent of Discover Bank's affiliate is attached as an exhibit and confirms this agreement. The objection asserts that the payment of \$2,500 was made to the authorized agent of Discover Bank's affiliate.

This agreement to settle the account and the partial payment that was made constituted an accord and satisfaction. Cal. Civ. Code §§

1521-1524. The court will disallow the claim.

18. [13-17744](#)-A-11 SREP V, LLC
THA-1
SREP V, LLC/MV
THOMAS ARMSTRONG/Atty. for dbt.
OST

MOTION TO EMPLOY THOMAS H.
ARMSTRONG AS ATTORNEY(S)
1-7-14 [[17](#)]

No tentative ruling.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
[12-1033](#) PROPERTIES, LLC
ENNIS COMMERCIAL PROPERTIES,
LLC V. NICHOLSON ET AL
MICHAEL GOMEZ/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-5-12 [[6](#)]

No tentative ruling.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL
[12-1050](#) PROPERTIES, LLC
ENNIS COMMERCIAL PROPERTIES,
LLC ET AL V. HA DEVCO, INC. ET
MICHAEL GOMEZ/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
1-14-14 [[56](#)]

No tentative ruling.

3. [10-62315](#)-A-11 BEN ENNIS
[13-1107](#)
STAPLETON ET AL V. WATKINS ET
AL
MICHAEL GOMEZ/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
1-14-14 [[21](#)]

No tentative ruling.

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

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

No tentative ruling.

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.
RESPONSIVE PLEADING

No tentative ruling.