

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: MONDAY**  
**DATE: FEBRUARY 14, 2022**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**RULINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

**ERRORS IN RULINGS**

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-23051](#)-A-7     **IN RE: NICHOLAS/JENNIFER WILLIAMS**  
[DEF-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO ABANDON  
10-20-2021    [\[48\]](#)

DAVID FOYIL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/11/2022

**No Ruling**

2. [21-24160](#)-A-7     **IN RE: GLEN TYRFINGSSON**  
[DVD-1](#)

MOTION TO AVOID LIEN OF TAYLOR, BEAN & WHITAKER MORTGAGE  
CORP.  
1-6-2022    [\[13\]](#)

DAVID VAN DYKE/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$151,564.52 Taylor, Bean & Whitaker Mortgage Corp.

**All Other Liens:**

- Consensual Lien (Deed of Trust) \$167,397.00 PennyMac Loan Services, LLC

**Exemption:** \$152,603.00

**Value of Property:** \$320,000.00

**Subject Property:** 475 Peerless Way, Unit 4, Tracy, California

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

The debtor seeks an order avoiding the judicial lien of Taylor, Bean & Whitaker Mortgage Corp. under 11 U.S.C. § 522(f).

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

3. [21-23172](#)-A-7     **IN RE: ELENA NUNES**  
[BLF-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH ELENA MARIA NUNES  
1-12-2022    [\[32\]](#)

MICHAEL MOORE/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

**Final Ruling**

**Motion:** Approve Settlement

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

**Disposition:** Granted

**Order:** Civil minute order

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

Chapter 7 trustee Gary Farrar seeks an order approving a settlement agreement with Elena Maria Nunes, the debtor. The debtor liquidated her shares in Genesis stock and Dogecoin and has transmitted those proceeds to the trustee. The debtor and trustee have further agreed that the debtor shall purchase her non-exempt interest in a 2012 Honda Accord for \$4,000.00. The debtor has already transmitted the \$4,000.00 to the trustee who currently holds \$11,816.94.

## **APPROVAL OF COMPROMISE**

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 movant requests approval of a compromise. The compromise is reflected in the settlement agreement filed concurrently with the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

## **CIVIL MINUTE ORDER**

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

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

The trustee's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as Exhibit A and filed at docket no. 35.

4. [21-23172](#)-A-7     **IN RE: ELENA NUNES**  
[BLF-6](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S  
ATTORNEY  
1-12-2022    [\[37\]](#)

MICHAEL MOORE/ATTY. FOR DBT.

### **Final Ruling**

**Application:** Allowance of First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:**    \$2,310.00

**Reimbursement of Expenses:**    \$59.34

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Loris L. Bakken, attorney for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,310.00 and reimbursement of expenses in the amount of \$59.34.

The motion is supported by the declaration of the chapter 7 trustee, Gary Farrar who states he anticipates no further recoveries of funds in this case, ECF No. 40.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,310.00 and reimbursement of expenses in the amount of \$59.34.

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

5. [21-22887](#)-A-7     **IN RE: WANDA BARNARD**  
[BLF-3](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S  
ATTORNEY  
1-18-2022    [\[37\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 11/22/2021

**Tentative Ruling**

**Application:** Allowance of First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:** 2,905.00

**Reimbursement of Expenses:** \$51.27

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

**COMPENSATION AND EXPENSES**

In this Chapter 7 case, Loris L. Bakken, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,905.00 and reimbursement of expenses in the amount of \$51.27.

The motion is supported by the declaration of the chapter 7 trustee, Kimberly Husted who states she anticipates no further recoveries of funds in this case, ECF No. 40.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,905.00 and reimbursement of expenses in the amount of \$51.27.

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

6. [20-25590](#)-A-7     **IN RE: ZENAIDA DAOS**  
[GMR-1](#)

MOTION FOR TURNOVER OF PROPERTY  
1-10-2022    [\[20\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
GEOFFREY RICHARDS/ATTY. FOR MV.  
DEBTORS DISCHARGED: 03/29/2021  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate  
**Notice:** LBR 9014-1(f)(1); written opposition filed by debtor  
**Disposition:** Granted  
**Order:** Civil minute order

Geoffrey Richards, Chapter 7 Trustee, seeks an order requiring the turnover of the debtor's 2020 state and federal tax refunds. The debtor failed to list or claim as exempt any tax refunds for the 2020 tax year in her schedules, ECF No. 1. The debtor has failed to turnover of the 2020 state and federal tax returns and any refund due thereunder to the trustee.

### **BACKGROUND**

"On January 19, 2021, the debtor, through counsel, signed a stipulation agreeing to provide the trustee with copies of her 2020 Federal and State Tax returns, and to turn over all refunds that were received." Declaration of Trustee Geoffrey Richards in Support of Motion for Turnover of Property of the Estate, ECF No. 22, 2:2-5.

The trustee has submitted a copy of the signed stipulation as Exhibit A, ECF No. 27.

The trustee received the tax returns pursuant to the stipulation. "On March 4, 2021, the debtors counsel provided a copy of the debtors 2020 Federal and State Tax returns. These returns reflected that the debtor was entitled to a refund from the IRS in the amount of \$3,769.00 and from the FTB for \$2,679.00." Declaration of Trustee Geoffrey Richards in Support of Motion for Turnover of Property of the Estate, ECF No. 22, 2:5-9. See, redacted copies of 2020 tax returns, Exhibit B, ECF No. 27.

Between August 2021 and December 2021, the trustee corresponded numerous times via email with debtor's counsel and demanded turnover of the tax refunds, or alternatively, documentation from the debtor indicating that the refunds were subject to offset by either of the taxing agencies. The trustee received several replies from the debtor's counsel but has never received the tax refunds or any documentation that the refunds were subject to offset. Declaration of Trustee Geoffrey Richards in Support of Motion for Turnover of Property of the Estate, ECF No. 22, 2:8-26; 3:1-5. See, Exhibit C, ECF No. 27.



## DEBTOR'S OPPOSITION

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. *Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c).*

LBR 9014-1(f) (B) (emphasis added).

The debtor has failed to comply with LBR 9014-1(f) (B). The debtor filed a one-page opposition to the motion, which states only that:

[d]ebtor opposes the trustee's motion for turnover of property of the estate. Debtor requests an evidentiary hearing on this matter.

ECF No. 24.

The opposition is signed by debtor's counsel. There is no accompanying declaration from the debtor, and the opposition fails to state any legal or factual basis for opposing the motion. There is no reason given for requesting an evidentiary hearing.

As such, the debtor has consented to resolution of the motion and all disputed material factual issues pursuant to LBR 9014-1(f) (B).

## TAX REFUNDS

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is

of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

Section 541 of Title 11 defines property of the bankruptcy estate. 11 U.S.C. § 541. Property of the estate includes all "legal or equitable interests of the debtor in property" as of the petition date. *Id.* § 541(a)(1). "[T]he right to receive a tax refund constitutes an interest in property. The nature and extent of the debtor's interest in the tax refund is determined by nonbankruptcy law." *In re Newman*, 487 B.R. 193, 198 (B.A.P. 9th Cir. 2013) (alteration in original) (citation omitted).

The pre-petition portion of a tax refund for a tax year in which a petition was filed is property of the estate. See *In re Orndoff*, 100 B.R. 516, 517 (Bankr. E.D. Cal. 1989). "Tax refunds attributed to income tax payments withheld from the [debtor] prior to the bankruptcy filing and based on pre-petition earnings, are property of the estate." *In re Zingale*, 451 B.R. 412, 415 (B.A.P. 6th Cir. 2011) (citing *Kokoszka v. Belford*, 417 U.S. 642, 647-48 (1974)).

Courts have followed the corollary that portions of tax refunds attributable to post-petition earnings are not property of the estate. See, e.g., *In re Trickett*, 391 B.R. 657, 660-61 (Bankr. D. Mass. 2008), *invalidated on other grounds by Hundley v. Marsh*, 944 N.E.2d 127 (Mass. 2011). "The most generally used method of calculating the proration is to look to the percentage of days before and after the date of filing." *In re Orndoff*, 100 B.R. at 518; *In re Trickett*, 391 B.R. at 661. This method "may not yield a perfect result in every situation, but it is better than any other available approach." *In re Trickett*, 391 B.R. at 661.

This case was filed on December 17, 2020. As the debtor filed bankruptcy prior to the conclusion of the tax year only that portion of the refund arising prior to the filing date is property of the estate. Here, 50 weeks, or 96%, of the 2020 tax year had passed prior to the date the debtor filed her chapter 7 petition. Consequently, the estate is only entitled to 96% of the 2020 state and federal tax refunds.

Accordingly, the trustee's motion for turnover of 96% of the 2020 federal and state tax refunds will be granted. The court will order turnover of the prorated portion of the tax refunds identified in the motion to the extent received by the debtor.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's motion to compel turnover of the tax refunds, tax records, and tax returns, has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that, no later than 7 days after the date of service of this order, the debtor shall turn over to the trustee 96% of any 2020 federal and state tax refunds that the debtor has received or that the debtor has in the debtor's possession, custody, or control.

7. [21-23798](#)-A-7      **IN RE: ONYEMA NWOSU**  
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE  
WITHOUT ENTRY OF DISCHARGE  
1-10-2022    [\[37\]](#)

TIEN DUONG/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Chapter 7 Case

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

The United States trustee seeks dismissal of this chapter 7 case pursuant to the terms of a stipulation with the debtor. The U.S. Trustee is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumed abuse) and/or 707(b)(3) (i.e., bad faith and/or totality of the circumstances abuse). The debtor has stipulated to dismissal of this chapter 7 bankruptcy case without discharge, ECF No. 36. The parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the debtor's right to dismiss the case.

### **CASE DISMISSAL**

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court,

after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal . . . ." 11 U.S.C. § 305(a)(1); see, e.g., *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The court finds that cause exists to dismiss the case and that the dismissal poses no prejudice to creditors. The court approves the stipulation and dismisses the case.

8. [22-20198](#)-A-7      **IN RE: RACHEL WILDER**  
[MOH-1](#)

MOTION TO COMPEL ABANDONMENT  
1-28-2022    [\[8\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

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

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

**Business Description:** Cosmetology Sole Proprietorship

**Property:** Cosmetology Tools valued at \$1,000.00; Business License; Business Goodwill

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 debtor seeks an order compelling the chapter 7 trustee's abandonment of property of the estate. The debtor is a beautician who rents a space in a barbershop. The debtor has listed in her schedules, and claimed fully exempt, cosmetology tools valued at \$1,000.00.

### **RULE 9013**

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. *The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought...*

Fed. R. Bankr. P. 9013 (emphasis added).

The court presumes, although the debtor has not specifically requested it, that the debtor desires an order which compels the trustee's abandonment of the business goodwill and license in addition to the cosmetology tools which have been scheduled.

Future *argument and prayer* in status reports, objections, motions, oppositions, and replies should clearly state the party's position and the specific relief requested. Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A). Failure to plead with specificity in the future will result in denial of the relief requested.

#### **ABANDONMENT**

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets as follows: cosmetology tools valued at \$1,000.00; business goodwill; business license.