

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**WEDNESDAY**

**MARCH 4, 2015**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

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

**ERRORS IN FINAL RULINGS**

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

9:00 a.m.

1. [14-15400](#)-A-13 VENUS LONG CONTINUED MOTION TO INCUR DEBT  
PK-1 2-11-15 [[31](#)]  
VENUS LONG/MV  
PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

2. [12-19602](#)-A-13 JEFFERY/ANDEE JOHNSON MOTION TO DISMISS CASE FOR  
MHM-2 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-15-15 [[102](#)]  
PHILLIP GILLET/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). No opposition has been filed, and a non-opposition has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8327.

3. [14-15902](#)-A-13 BUFORD LAND OBJECTION TO CONFIRMATION OF  
BF-5 PLAN BY FINANCIAL FREEDOM  
FINANCIAL FREEDOM/MV 2-11-15 [[32](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
BRANDYE FOREMAN/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

4. [14-15902](#)-A-13 BUFORD LAND  
CJO-1  
ONE WEST BANK N.A./MV  
ROBERT WILLIAMS/Atty. for dbt.  
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-18-15 [[35](#)]

### **Tentative Ruling**

**Motion:** Stay Relief [Both Automatic Stay and Co-Debtor Stay]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 9616 Mendiburu Rd., California City, 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).

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).

In this case, the moving creditor holds a note secured by a deed of trust on the real property described above. The deed of trust is structured as a "reverse mortgage."

The creditor's agent or employee has testified that, pursuant to the Note, a maturity event has occurred when the creditor received notification that neither borrower resides at the property. Lara Decl. ¶ 5.

The creditor has also asserted that debtor has stated his intention to surrender the property. The creditor has attached a stipulation for relief from the stay as to the property signed by the debtor's counsel. Lara Decl. Ex. 5, ECF Nos. 37-38. In this stipulation, the debtor agrees that there is no equity in the property and that the property is not necessary for an effective reorganization. The debtor also agrees to surrender his interest in the property.

Accordingly, relief from the stay as to the debtor and the property described above is warranted. Additionally, relief from the co-debtor stay is appropriate as the plan filed by the debtor proposes not to pay any amounts on the claim held by the moving creditor. § 1301(c)(2). The plan shows OneWest Bank N.A.'s claim in Class 4 of the plan with a monthly contract installment of \$0.00. In addition, the debtor's stipulation for relief from stay and for surrender of the property evidences the debtor's intent not to pay this claim through the plan.

The motion for relief from stay and from the co-debtor stay of § 1301 will be granted. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief will be awarded.

5. [14-15516](#)-A-13 FERNANDO/GABRIELA RUIZ  
MHM-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-5-15 [[40](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

6. [10-62118](#)-A-13 BRIAN REESE  
MHM-1  
MOTION TO DISMISS CASE  
1-9-15 [[28](#)]  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [14-15722](#)-A-13 LIBERATO HERNANDEZ  
PLG-1  
MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
1-15-15 [[22](#)]  
LIBERATO HERNANDEZ/MV  
RABIN POURNAZARIAN/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**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 respondent 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).

**VALUATION OF COLLATERAL**

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

value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1301 Hadar Rd., Bakersfield, CA.

The court values the collateral at \$175,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **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 debtor's motion to value real property collateral 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 real property collateral located at 1301 Hadar Rd., Bakersfield, CA, has a value of \$175,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

8. [14-12326](#)-A-13 GARY WRIGHT AND KIM  
MHM-2 GRIFFIN-WRIGHT  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
AND/OR MOTION TO DISMISS CASE  
1-15-15 [[48](#)]

ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

9. [14-15526](#)-A-13 DALE CURTEN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-17-15 [[42](#)]

**Tentative Ruling**

The debtor owes \$49.00 from the February 12, 2015, installment payment. Order to Show Cause re Dismissal, filed February 17, 2015, ECF # 42. If that amount is not paid by the date of the hearing, the court will dismiss the case.

10. [14-15526](#)-A-13 DALE CURTEN  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS, MOTION TO DISMISS  
CASE  
1-15-15 [[32](#)]

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

11. [11-16727](#)-A-13 DONNA TINDER  
RSW-1  
DONNA TINDER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
2-5-15 [[43](#)]

**Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record,

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

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

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

12. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO MOTION FOR COMPENSATION FOR  
LKW-6 LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
2-10-15 [[118](#)]

LEONARD WELSH/Atty. for dbt.

## Tentative Ruling

**Application:** Allowance of Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

## COMPENSATION AND EXPENSES

Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,167.50 and reimbursement of expenses in the amount of \$280.42.

Section 330(a) of the Bankruptcy Code authorizes “reasonable compensation for actual, necessary services” rendered by a debtor’s attorney in a Chapter 13 case and “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.

#### **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.

Leonard K. Welsh's application for allowance of interim 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 an interim basis. The court allows interim compensation in the amount of \$2,167.50 and reimbursement of expenses in the amount of \$280.42. The aggregate allowed amount equals \$2,447.92. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,447.92 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

13. [14-16029](#)-A-13 DAGMAR VAUGHAN  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-5-15 [[18](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**



14. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE CONTINUED OBJECTION TO DEBTOR'S  
MHM-4 CLAIM OF EXEMPTIONS  
MICHAEL MEYER/MV 11-4-14 [[121](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Tentative Ruling**

The court intends to set the matter for an evidentiary hearing. The parties are asked to review the Civil Minutes, filed January 7, 2015, ECF #144, prior to March 4, 2015. Particular issues to be considered are (1) whether the issues set forth in the Civil Minutes ¶ 1 full and fairly set for the issues to be resolved; (2) the time necessary to complete discovery; and (3) date for the evidentiary hearing.

15. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE CONTINUED MOTION TO CONFIRM  
PK-5 PLAN  
ERIC LAFORTUNE/MV 11-26-14 [[127](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

The court intends to continue the motion to confirm to the date and time of the evidentiary hearing on the objection to the debtors' claim of exemptions.

16. [14-15036](#)-A-13 DWAYNE/SHEILA WILSON OBJECTION TO CONFIRMATION OF  
MHM-1 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-6-15 [[21](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

17. [09-18846](#)-A-13 LONNIE/CAROLE COX MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-5-15 [[60](#)]  
HEATHER CANNING/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [10-63754](#)-A-13 DAVID/ANA VIGIL  
MHM-2  
MICHAEL MEYER/MV  
GEOFFREY ADALIAN/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-9-15 [[51](#)]

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

19. [11-11059](#)-A-13 ADRIAN VASQUEZ AND MILLIE  
PWG-3 GARCIA  
ADRIAN VASQUEZ/MV  
PHILLIP GILLET/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
2-18-15 [[57](#)]

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The prayer for relief, as the trustee points out, is inconsistent with the motion's title and the first paragraph of the motion. The prayer requests relief consistent with a valuation motion. Because no factual grounds or evidence is offered in support of such relief, see Fed. R. Bankr. P. 9013, the court denies such relief.

The motion also seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The motion states that the agreement provides for a lower interest rate, capitalization of arrears into the principal balance, and deferred principal balance.

The trustee opposes the motion because the debtors have not provided evidence of their financial situation. The trustee argues that no evidence has been offered to explain why the debtors' seek to enter into this loan modification or to reduce the mortgage payment.

In the face of such opposition, the court finds that the motion lacks sufficient evidence in support. Every motion must be accompanied by factual grounds stated with particularity, Fed. R. Bankr. P. 9013, and evidence establishing such factual grounds and demonstrating that the movant is entitled to the relief sought, LBR 9014-1(d)(6). A motion for authorization to enter into a loan modification should contain factual detail explaining how the loan modification will benefit the debtors, the estate, and unsecured creditors—essentially whether the modification will affect the feasibility of the plan. If the loan modification reduces the total loan payment or makes the loan payment more affordable, the motion should contain information allowing the court to draw this conclusion independently (without having to review filed documents for facts not contained in the motion and supporting papers) to find pertinent information such as the plan payment amount, the prior loan payment (including any amounts for taxes and insurance) and the modified loan payment (also including any amounts for taxes and insurance).

In addition, the trustee contends that whether debtors can afford the lower mortgage payment is unknown. When a loan modification reduces the monthly loan payment for a Class 4 claim in a confirmed chapter 13 plan, such a change would not harm creditors and possibly benefit creditors even if the debtors' income or expenses had changed in a way that causes the reduced mortgage payment to be unaffordable. If the reduced payment were shown to be unaffordable, then the existing, higher payment would be even less affordable. As a result, in a situation in which both the lower modified mortgage payment and the higher, existing mortgage payments are unaffordable due to a change in the debtors' financial circumstances, a loan modification lowering the mortgage payment would either make a plan default less likely, as more funds are available to make plan payments, or at worst, it would cause no detriment to creditors receiving plan payments beyond what was caused by any changed financial circumstances. Thus, the court does not believe a dispute about the affordability of a lower mortgage payment is appropriate in the context of a plan modification.

Lastly, the trustee argues that any increased net income of the debtors that results from the modification should be available to pay creditors. This argument is premature. It is properly raised by a plan modification motion or an opposition to a modification of the plan proposed by the debtors once the loan modification has been approved and if the trustee believes that the debtors have additional net income not being devoted to unsecured creditors.

20. [14-15359](#)-A-13 NICHOLAS JOHNSON  
RSW-1  
NICHOLAS JOHNSON/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
1-27-15 [[24](#)]

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the respondent 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).

### **VALUATION OF COLLATERAL**

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

debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 9516 Kabara Court, Bakersfield, CA.

The court values the collateral at \$210,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **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 debtor's motion to value real property collateral 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 real property collateral located at 9516 Kabara Court, Bakersfield, CA, has a value of \$210,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

21. [14-11760](#)-A-13 JUSTIN/DESIREE LAY  
MHM-3  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-15-15 [[93](#)]

#### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Pending

**Order:** Pending

The trustee asserts that cause exists under § 1307(c)(1) and (6) to dismiss the case as the debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$5200.

The debtors' response to the motion asserts that debtors expect to become current with their plan payments before March 4, 2015. The debtors imply that tax refunds received before the hearing date will

be applied to the delinquency.

On or before the hearing date, the debtors should file a supplemental declaration with an attachment evidencing payment of any alleged delinquency. At the hearing, the court may dismiss the case if insufficient proof has been provided that the delinquency has been cured.

22. [14-12360](#)-A-13 SERGIO BUENO  
RSW-3  
SERGIO BUENO/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH TECHNICAL WORKS  
CALIFORNIA, LLC  
1-30-15 [[71](#)]

ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

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

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

**Disposition:** Denied

**Order:** Civil minute order

Debtor Sergio Bueno seeks approval of a compromise with Technical Works California, LLC. Under a prejudgment writ of attachment, the Kern County Sheriff is holding \$19,958.32. The debtor seeks approval of a Settlement Stipulation, filed January 30, 2015, ECF # 73, which provides that Technical Works California, LLC will retain 75% of the funds held by the Sheriff and debtor Bueno will retain 25% of those funds. Debtor Bueno admits that the funds held belong to his estate but (1) denies owing creditor Technical Works California, LLC any monies; and (2) argues that he has no money to litigate the matter with Technical Works California, LLC.

### **DISCUSSION**

#### Legal Standards

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.*

To show that a compromise is fair and equitable, the movant must provide specific factual information about the claims being compromised. Analysis of a compromise under the fair and equitable

standard and its concomitant factors under *In re A & C Properties* "is inherently fact-intensive, relative, and contextual." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 290 (B.A.P. 9th Cir. 2005). The court need only find that the settlement is in the range of reasonable to grant the motion.

### Analysis

Bueno has not sustained his burden. Weighing against approval is a likelihood of success. Declaration of Bueno ¶ 1, filed January 30, 2015, ECF # 74. The creditor does not directly controvert this suggestion. And a settlement that retains only 25% of the funds in dispute too small. Since the funds are in the hands of the Kern County Sheriff, there are no difficulties in collection. The litigation is not complex, and the expense and delay are minimal. Bueno's argument that he cannot afford counsel is undercut by the fact that his attorney, whether Robert Williams or special counsel, can be paid as an administrative expense through the plan. 11 U.S.C. § 330(a)(4)(B). Finally, the Chapter 13 trustee, who speaks on behalf of holders of unsecured claims, opposes the motion. 11 U.S.C. 103(b)(4).

### **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.

Debtor Sergio Bueno's motion to approve compromise with Technical Works California, LLC is denied.

23.	<a href="#">15-10369</a> -A-13 HELO KAHIR	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-17-15 [ <a href="#">18</a> ]
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### **Final Ruling**

The case dismissed, the order to show cause is discharged.

24.	<a href="#">14-15778</a> -A-13 KARLA ROGERS	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-5-15 [ <a href="#">35</a> ]
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\$80.00 INSTALLMENT FEE PAID

### **Tentative Ruling**

On the date the Order to Show Cause issued, debtor Karla Rogers owed \$77.00. Order to Show Cause, filed February 5, 2015, ECF # 35. Later the debtor paid \$80.00, satisfying that amount.

But the Order to Show Cause specifically states that the case may be dismissed if the original amount remains unpaid or if "any subsequent installment payment which may have come due and remains unpaid at the

time of the hearing [on the Order to Show Cause]. Order to Show Cause at ¶ 6. As of March 2, 2015, another \$77.00 will be due. Unless that amount is also paid by the date of the hearing, the case will be dismissed.

25. [14-15778](#)-A-13 KARLA ROGERS  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS  
1-15-15 [[31](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor has also filed an incomplete plan that did not provide a percentage dividend to be paid to unsecured creditors. See Ch. 13 Plan (Amended) § 2.15, ECF No. 22. The debtor has scheduled unsecured claims totaling \$4459, moreover, so the failure to provide a percentage for unsecured creditors is not immaterial. See Schedule F, ECF No. 17.

26. [14-15581](#)-A-13 SARAH MCKAY-WITT  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
1-15-15 [[19](#)]

### **Final Ruling**

The case dismissed, the matter is dropped as moot.

10:30 a.m.

1. [13-15401](#)-A-7 SOOK KIM MOTION FOR RELIEF FROM  
BHT-1 AUTOMATIC STAY  
DEUTSCHE BANK NATIONAL 2-5-15 [[41](#)]  
TRUST/MV  
STEFON JONES/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 4211 Crystal Lake Drive, Bakersfield, 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 DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

**AS TO 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.



2. [14-15201](#)-A-7 VICTOR CERVANTES  
ASW-1  
BANK OF AMERICA, N.A./MV  
SUSAN SALEHI/Atty. for dbt.  
JOELY BUI/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-14-15 [[16](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 3905 Pontiac Street, Bakersfield, 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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. In addition, the movant's equity cushion is approximately 16.86% of the property's value, which does not constitute adequate protection when payments are not being made. These facts constitute cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [14-15707](#)-A-7 SUSAN MARTIN  
PD-1  
WELLS FARGO BANK, N.A./MV  
WILLIAM OLCOTT/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-6-15 [[13](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2302 Sunset St., Wasco, 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [12-11008](#)-A-7 RAFAEL ALONSO  
PWG-14  
MARKO ZUBCIC/MV

MOTION FOR A NEW TRIAL, TO  
RECONSIDER , AND/OR FOR OTHER  
RELIEF FROM THE COURT'S ORDER  
DENYING EX PARTE APPLICATION TO  
FILE ADDITIONAL DOCUMENTS AND  
DENYING THE MOTION TO COMPEL  
2-3-15 [[280](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
PHILLIP GILLET/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** New Trial, Alter or Amend Order and/or Relief from Order

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

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

Creditor Marko Zubcic moves under Fed. R. Civ. P. 59 and 60, *incorporated by* Fed. R. Bankr. P. 9023 and 9024, for a new trial or to clarify the Order Denying Ex Parte Application to File Additional Documents, filed December 31, 2014, ECF # 215, and Order Regarding

Motion to Compel Amendment of Petition, Schedules and Statements, filed January 21, 2015, ECF # 251. The motion is opposed by debtor Rafael Alonso. The motion will be granted in part and denied in part.

## **DISCUSSION**

### Motion to Compel Amendment of Schedules and Statements

The primary problem with this motion is the evidentiary record on which it is based. At a minimum, it is confused; at the maximum, it asks the court to search its own files for documents that support for Zubcic's argument. Lest this observation be thought an unfair characterization, consider the following example. The gist of Zubcic's argument is that the court failed to consider evidence before it at the time it denied the underlying motion. It states, "The relevant motion record cited in the chart (ECF no. 209) consisted [of] documents requested by judicial notice (ECF no. 120) ECF numbers 1, 46, 109." Memorandum of Points and Authorities, p. 13, lines 7-9, filed February 3, 2015, ECF # 282. The motion then recites 28 misrepresentations and the evidence that purportedly proves that each fact was untrue or was true but omitted from the schedules and statements. Each of the 28 misrepresentations is purportedly supported by docket no. 109 (which was not filed in support of this motion but only referred to in the request for judicial notice) and, Zubcic argues, docket no. 109 itself refers to up to 11 other documents (also not filed in support of the motion) that the court should locate within its own records and consider when deciding this motion.

The court's difficulty in following Zubcic's line of reasoning is exacerbated by the fact that the more than 350 pages of exhibits filed in support of the motion have not been marked consistent with the Preparation of Documents (Revised January 17, 2014) ¶ 9 (EDC Form EDC 2-901) or in a similar fashion that allows the court to navigate these documents.

Zubcic offers five arguments for revisiting these orders.

#### *Failure to Consider Documents Submitted/Judicially Noticed*

Zubcic's motion to compel amendment of the petition, schedules and statements was denied except as to items 25 and 29 of Creditor's Exhibit in Support of Motion, filed December 24, 2014, ECF #209, because the documentation supporting the motion was outside the record. Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements ¶ 2(A), filed January 21, 2015, ECF # 251.

Zubcic argues evidentiary support for his contentions was a part of the record and, as a consequence, the ruling is erroneous. This court disagrees. The key is understanding the scope and limitations of Zubcic's Request for Judicial Notice, filed October 15, 2014, ECF #120, filed in support of the motion to compel amendment. This one page document prays judicial notice of: (1) ECF No. 1 (Voluntary Petition, Schedules and Statements; (2) ECF No. 46 (Rafael Alonso's Opposition to Motion to Compel, filed July 16, 2014, VG-5); (3) ECF no. 109 (Deposition of Rafael Alonso filed in support of a Zubcic's motion for contempt, PWG-6); and (4) Proof of Claim No. 1. None of these documents are attached to the Request for Judicial Notice and, except for Proof of Claim No. 1, none of these documents were filed in support of the motion. Rather, the court is asked to locate these documents within the record. But from this reference Zubcic argues

the existence of an adequate evidentiary record.

Motion practice in the Bankruptcy Court for the Eastern District of California does not recognize incorporation by reference as a means of evidentiary support for a motion. Local Bankruptcy Rule 9014-1(c) provides, "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice, shall include the same number..." Zubcic's motion to compel amendment was assigned docket control number "PWG-7." The documents to which Zubcic refers in his motion for new trial, pp. 13-14, are docket numbers 109 and 143. Those documents were filed in support of PWG-6 and PWG-8. The court declines Zubcic's invitation to review documents filed in support of other motions to find evidence that supports this motion.

In the court's view, the ruling that denied the requested relief as unsupported by evidence in the record before the court is precisely correct. Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements ¶ 2(A), filed January 21, 2015, ECF # 251.

As a result, Zubcic's argument to the contrary is not well-taken.

#### *Failure to Grant Take Notice*

Zubcic argues that the use of the phrase "request for judicial notice" coupled with citations to documents within the Clerk's records is sufficient to trigger an obligation on the part of the court to review its own records.

The court disagrees. A mere request for judicial notice is an insufficient basis for the court to do so. Judicially noticed documents must be authenticated. *Madeja v. Olympic Packers, LLC*, 310 F.3d 628, 639 (9th Cir. 2002). Proof of Claim No. 1 was properly authenticated. Compare Request for Judicial Notice ¶ 4, October 15, 2014, ECF #120, with Declaration of Gillet ¶ 3, filed October 15, 2014, ECF # 119. Other documents offered in support of the motion were not authenticated, nor were certified copies provided. See Rafael Alonso's Opposition to Motion to Compel, filed July 16, 2014, ECF # 46. Beyond that, movant has not appended to the Request for Judicial Notice copies of the documents of which request is taken. Schwarzer, Tashima & Wagstaffe, *Federal Civil Procedure Before Trial: California and Ninth Circuit Edition*, Preparing and Filing Motions § 12:56 (Rutter Group). This argument is also not well-founded.

#### *Premature Closing of the Evidentiary Record*

Zubcic argues that closing the evidentiary hearing prior to date his reply brief was due denied him due process.

This court disagrees. While it is true that the court closed the evidentiary record prior to the date specified in LBR 9014-1(f)(1)(C), doing so does not amount to a denial of due process. It is the moving party's obligation to proffer admissible evidence that would justify relief. LBR 9014-1(d)(6). *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). And it would be improper for Zubcic's reply to offer new facts or different arguments not presented in the moving papers. *Lujan v. National Wildlife Federation*, 497 U.S. 871, 894-95 (1990). Since the decision to deny relief was based on the movant's failure in the motion to establish a prima facie case for relief, the court's decision to waive the reply and cut short the augmentation of the evidentiary record did not amount to a denial of due process.

Further, though LBR 9014-1(1)(C) ordinarily closes the evidentiary record, the rules specifically contemplate a change in the dates and deadlines when ordered by the court. LBR 1001-1(f). Finally, the movant's ex parte application to augment the record (which was denied for cause, including a lack of explanation of the need to augment the record and an untimely request) adequately cure any defect. This argument also fails.

#### *Necessary to Prevent Manifest Injustice*

Zubcic argues that reconsideration is necessary to prevent manifest injustice because "it is conceded that the schedules are inaccurate." Motion for New Trial p. 17, lines 9-13, filed February 3, 2015, ECF # 282.

The court disagrees. The primary problem is that it assumes facts not yet fully established. The extent to which the petition, schedules and statements are erroneous has not yet been determined. The underlying motion could - and should - have proffered admissible evidence to that fact. And it is because the motion did not do so that it was denied. To suggest (without further evidence) the inaccuracy begs the question.

#### *Mistake, Inadvertence, Surprise and/or Excusable Neglect by Counsel*

Finally, Zubcic makes a non-specific argument of mistake, inadvertence or excusable neglect on the part of his counsel.

The moving party bears the burden of proof. *FOC Financial Ltd Partnership v. National City Comm'l Capital Corp.*, 612 F.Supp.2d 1080, 19083 (D. Ariz. 2009). Having not cited a specific error or deficiency, the movant has not sustained his burden and the motion is denied.

#### Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements, filed January 21, 2015, ECF # 251

Zubcic's motion to amend was "denied with prejudice." Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements ¶ 2, filed January 21, 2015, ECF # 251. Upon further reflection, the court believes that a denial with prejudice goes too far and the court will strike the phrase "with prejudice" and will replace it with "without prejudice."

#### **VIOLATIONS OF LOCAL RULES AND REVISED GUIDELINES FOR PREPARATION OF DOCUMENTS**

Creditor Zubcic's pleadings include significant violations of local rules and guidelines for preparation of pleadings and other documents. Among those violations are: (1) reference to other motions, and the documents offered in support of those motions, as a basis of support for the instant motion, LBR 9014-1(c)(4); (2) failure to number each page of exhibits in support of the motion, Revised Guidelines for Preparation of Documents (Revised January 17, 2014) ¶ 9 (EDC Form EDC 2-901); and (3) improper use of docket control numbers.

An illustrative and particularly problematic example is Zubcic's Exhibits in Support of Motion for New Trial, filed February 3, 2015, ECF #284, 285, and 286. Dockets 284-286 contain 355 pages. Revised Guidelines for Preparation of Documents (Revised January 17, 2015) ¶ 9 requires an index that identifies each exhibit by number, title and

page. And Zubcic has done so. But paragraph 9 also requires that each exhibit use the corresponding exhibit number and page. Zubcic has not done. No exhibit dividers are provided and pages are not numbered sequentially. Rather, each exhibit is numbered only internally. Without these identifiers it is all but impossible for the court to verify the allegations from the exhibits provided.

Zubcic and his counsel are cautioned to comply with the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules the Revised Guidelines for Preparation of Documents (Revised January 17, 2015).

#### **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.

Creditor Marko Zubcic's motion for new trial 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: (1) the Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements, filed January 21, 2015, ECF # 251 is amended at paragraph 2, page 2 line 8 is modified to replace the phrase "with prejudice" to "without prejudice;" and (2) all other requests for relief are denied.

5. [12-11008](#)-A-7    RAFAEL ALONSO  
PWG-15  
MARKO ZUBCIC/MV

MOTION FOR A NEW TRIAL, TO  
RECONSIDER, AND/OR FOR OTHER  
RELIEF FROM THE COURT'S ORDER  
DENYING EX PARTE APPLICATION TO  
FILE ADDITIONAL DOCUMENTS AND  
DENYING THE MOTION FOR  
SANCTIONS  
2-4-15 [[289](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
PHILLIP GILLET/Atty. for mv.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** New Trial, Alter or Amend Order and/or Relief from Order

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

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

Creditor Marko Zubcic moves under Fed. R. Civ. P. 59 and 60, *incorporated by* Fed. R. Bankr. P. 9023 and 9024, for new trial or to clarify the Order Denying Ex Parte Application to File Additional Documents, filed December 31, 2014, ECF # 217, and Order Regarding Motion for Rule 11 Sanctions, filed January 21, 2015, ECF # 250. The motion is opposed by debtor Rafael Alonso. The motion will be granted in part and denied in part.

At the outset, the court notes that this motion presents a near mirror

image of Zubcic's motion for new trial regarding the motion to compel amendment of the petition, schedules and statements, PWG-14. As a result, this rule presents a near word-for-word response to it.

## **DISCUSSION**

### Motion to Compel Amendment of Schedules and Statements

The primary problem with this motion is the evidentiary record on which it is based. At a minimum, it is confused; at the maximum it asks the court to search its own files for documents that support Zubcic's argument. Lest this observation be thought an unfair characterization, consider the following example. The gist of Zubcic's argument is that the court failed to consider evidence before it at the time it denied the underlying motion. It states, "The relevant motion record cited in the chart (ECF no. 210) consisted [of] documents requested by judicial notice (ECF no. 141) ECF numbers 1, 46, 91, 109." Memorandum of Points and Authorities, p. 13, lines 19-20, filed February 4, 2015, ECF # 291. The motion then recites 3 representation and the evidence that purportedly proves that each fact was untrue or was true but omitted from the schedules and statements. Each of the 3 misrepresentations is purportedly supported by dockets no. 46 and 109 (which was not filed in support of this motion but only referred to in the request for judicial notice) and, Zubcic argues, that the court should locate within its own records and consider when deciding this motion.

The court's difficulty in following Zubcic's line of reasoning is exacerbated by the fact that the more than 350 pages of exhibits filed in support of the motion have not been marked consistent with the Preparation of Documents (Revised January 17, 2014) ¶ 9 (EDC Form EDC 2-901) or in a similar fashion that allows the court to navigate these documents.

Zubcic offers five arguments for revisiting these orders.

#### *Failure to Consider Documents Submitted/Judicially Noticed*

Zubcic's motion to compel amendment of the petition, schedules and statements was denied except as to items 35, 36 and 45 of Creditor's Exhibit in Support of Motion, filed December 24, 2014, ECF #210, because the documentation supporting the motion was outside the record. Order Regarding Motion for Rule 11 Sanctions ¶ 2(A), filed January 21, 2015, ECF # 250.

Zubcic argues evidentiary support for his contentions was a part of the record and, as a consequence, the ruling is erroneous. This court disagrees. The key is understanding the scope and limitations of Zubcic's Request for Judicial Notice, filed November 6, 2014, ECF #141, filed in support of the motion for sanctions. This one page document prays judicial notice of: (1) ECF No. 1 (Voluntary Petition, Schedules and Statements; (2) ECF No. 46 (Rafael Alonso's Opposition to Motion to Compel, filed July 16, 2014, VG-5); (3) ECF no. 109 (Deposition of Rafael Alonso filed in support of a Zubcic's motion for contempt, PWG-6); and (4) Proof of Claim No. 1. None of these documents are attached to the Request for Judicial Notice and, except for Proof of Claim No. 1, none of these documents were filed in support of the motion. Rather, the court is asked to locate these documents within the record. But from this reference Zubcic argues the existence of an adequate evidentiary record.

Motion practice in the Bankruptcy Court for the Eastern District of California does not recognize incorporation by reference as a means of evidentiary support for a motion. Local Bankruptcy Rule 9014-1(c) provides, "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice, shall include the same number..." Zubcic's motion for sanctions was assigned docket control number "PWG-8." The documents to which Zubcic refers in his motion for new trial, pp. 13, are docket numbers 46 and 109. Those documents were filed in support of PWG-6 and VG-5. The court declines Zubcic's invitation to review documents filed in support of other motions to find evidence that supports this motion.

In the court's view, the ruling that denied the requested relief as unsupported by evidence in the record before the court is precisely correct. Order Regarding Motion for Rule 9011 Sanctions ¶ 2(A), filed January 21, 2015, ECF # 250.

As a result, Zubcic's argument to the contrary is not well-taken.

#### *Failure to Grant Take Notice*

Zubcic argues that the use of the phrase "request for judicial notice" coupled with citations to documents within the Clerk's records is sufficient to trigger an obligation on the part of the court to review its own records.

The court disagrees. A mere request for judicial notice is an insufficient basis for the court to do so. Judicially noticed documents must be authenticated. *Madeja v. Olympic Packers, LLC*, 310 F.3d 628, 639 (9th Cir. 2002). Proof of Claim No. 1 was properly authenticated. Compare Request for Judicial Notice ¶ 4, November 6, 2014, ECF #141, with Declaration of Gillet ¶ 3, filed November 6, 2014, ECF # 142. Other documents offered in support of the motion were not authenticated, nor were certified copies provided. See Rafael Alonso's Opposition to Motion to Compel, filed July 16, 2014, ECF # 46. Beyond that, movant has not appended to the Request for Judicial Notice copies of the documents of which request is taken. Schwarzer, Tashima & Wagstaffe, *Federal Civil Procedure Before Trial: California and Ninth Circuit Edition*, Preparing and Filing Motions § 12:56 (Rutter Group). This argument is also not well-founded.

#### *Premature Closing of the Evidentiary Record*

Zubcic argues that closing the evidentiary hearing prior to date his reply brief was due denied him due process.

This court disagrees. While it is true that the court closed the evidentiary record prior to the date specified in LBR 9014-1(f)(1)(C), doing so does not amount to a denial of due process. It is the moving party's obligation to proffer admissible evidence that would justify relief. LBR 9014-1(d)(6). *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). And it would be improper for Zubcic's reply to offer new facts or different arguments not presented in the moving papers. *Lujan v. National Wildlife Federation*, 497 U.S. 871, 894-95 (1990). Since the decision to deny relief was based on the movant's failure in the motion to establish a prima facie case for relief, the court's decision to waive the reply and cut short the augmentation of the evidentiary record did not amount to a denial of due process. Further, though LBR 9014-1(1)(C) ordinarily closes the evidentiary record, the rules specifically contemplate a change in the dates and



deadlines when ordered by the court. LBR 1001-1(f). Finally, the movant's ex parte application to augment the record (which was denied for cause, including a lack of explanation of the need to augment the record and an untimely request) adequately cure any defect. This argument also fails.

#### *Necessary to Prevent Manifest Injustice*

Zubcic argues that reconsideration is necessary to prevent manifest injustice because "it is conceded that the schedules are inaccurate." Motion for New Trial p. 17, lines 1-4, filed February 4, 2015, ECF # 291.

The court disagrees. The primary problem is that it assumes facts not yet fully established. The extent to which the petition, schedules and statements are erroneous has not yet been determined. The underlying motion could - and should - have proffered admissible evidence to that fact. And it is because the motion did not do so that it was denied. To suggest (without further evidence) the inaccuracy begs the question.

#### *Mistake, Inadvertence, Surprise and/or Excusable Neglect by Counsel*

Finally, Zubcic makes a non-specific argument of mistake, inadvertence or excusable neglect on the part of his counsel.

The moving party bears the burden of proof. *FOC Financial Ltd Partnership v. National City Comm'l Capital Corp.*, 612 F.Supp.2d 1080, 19083 (D. Ariz. 2009). Having not cited a specific error or deficiency, the movant has not sustained his burden and the motion is denied.

#### Order Regarding Motion to Compel Amendment of Petition, Schedules and Statements, filed January 21, 2015, ECF # 251

Zubcic's motion to amend was "denied with prejudice." Order Regarding Motion for Rule 11 Sanctions ¶ 2, filed January 21, 2015, ECF # 250. Upon further reflection, the court believes that a denial with prejudice goes too far and the court will strike the phrase "with prejudice" and will replace it with "without prejudice."

#### **VIOLATIONS OF LOCAL RULES AND REVISED GUIDELINES FOR PREPARATION OF DOCUMENTS**

Creditor Zubcic's pleadings include significant violations of local rules and guidelines for preparation of pleadings and other documents. Among those violations are: (1) reference to other motions, and the documents offered in support of those motions, as a basis of support for the instant motion, LBR 9014-1(c)(4); (2) failure to number each page of exhibits in support of the motion, Revised Guidelines for Preparation of Documents (Revised January 17, 2014) ¶ 9 (EDC Form EDC 2-901); and (3) improper use of docket control numbers.

An illustrative and particularly problematic example is Zubcic's Exhibits in Support of Motion for New Trial, filed February 4, 2015, ECF #293, 294 and 295. Dockets 293-295 contain 365 pages. Revised Guidelines for Preparation of Documents (Revised January 17, 2015) ¶ 9 requires an index that identifies each exhibit by number, title and page. And Zubcic has done so. But paragraph 9 also requires that each exhibit use the corresponding exhibit number and page. Zubcic

has not done. No exhibit dividers are provided and pages are not numbered sequentially. Rather, each exhibit is numbered only internally. Without these identifiers it is all but impossible for the court to verify the allegations from the exhibits provided.

Zubcic and his counsel are cautioned to comply with the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules the Revised Guidelines for Preparation of Documents (Revised January 17, 2015).

#### **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.

Creditor Marko Zubcic's motion for new trial 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: (1) the Order Regarding Motion for Rule 9011 Sanctions, filed January 21, 2015, ECF # 250 is amended at paragraph 2, page 2 line 9 is modified to replace the phrase "with prejudice" to "without prejudice;" and (2) all other requests for relief are denied.

- |  |   |
|--|---|
| 6. <a href="#">12-11008</a> -A-7    RAFAEL ALONSO<br>VG-5<br>VINCENT GORSKI/MV<br>NICHOLAS ANIOTZBEHERE/Atty. for dbt.<br>VINCENT GORSKI/Atty. for mv.<br>ORDER CONTINUING TO 4/8/15 | RESCHEDULED PRETRIAL CONFERENCE<br>RE: MOTION TO COMPEL<br>6-13-14 [ <a href="#">34</a> ] |
|--|---|

#### **Final Ruling**

Pursuant to Order, ECF #273, the matter is continued to April 8, 2015, at 10:30 a.m.

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|---|---|
| 7. <a href="#">12-11008</a> -A-7    RAFAEL ALONSO<br>VG-6<br>VINCENT GORSKI/MV<br>NICHOLAS ANIOTZBEHERE/Atty. for dbt.<br>VINCENT GORSKI/Atty. for mv.<br>ORDER, 2/20/15, ECF NO. 331 | MOTION TO SELL<br>2-11-15 [ <a href="#">313</a> ] |
|---|---|

#### **Final Ruling**

The motion denied by Order, ECF #331, the matter is dropped as moot.

8. [15-10310](#)-A-7 CHARLES/MARY EWING  
GEG-1  
CHARLES EWING/MV  
GLEN GATES/Atty. for dbt.

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
2-4-15 [[10](#)]

### **Tentative Ruling**

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

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

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

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

**Business Description:** a dental laboratory, a sole proprietorship operated by Debtor Charles Ewing

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

9. [14-16024](#)-A-7 VANESSA VASQUEZ  
PK-1  
DAVID BOGERT/MV  
1-21-15 [[11](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
PATRICK KAVANAGH/Atty. for mv.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 5021 Yokut Ct., Weldon, California

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

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

10.	<a href="#">14-16124</a> -A-7    TOMAS/RHONDA FABELA CJO-1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A./MV BARRY BOROWITZ/Atty. for dbt. CHRISTINA O/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [ <a href="#">10</a> ]
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**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2006 Skyline Palm Springs

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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

11. [14-15126](#)-A-7     DAVID/ALICE BRISCOE     MOTION FOR RELIEF FROM  
GAR-1     AUTOMATIC STAY  
NATIONSTAR MORTGAGE LLC/MV     2-11-15 [[19](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
GAIL RINALDI/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:** 3313 Redlands Dr., Bakersfield, 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

12. [12-11333](#)-A-7     ROLAND/MARGARET SALINAS     MOTION TO EMPLOY VINCENT A.  
TGF-1     GORSKI AS ATTORNEY(S)  
VINCENT GORSKI/MV     1-22-15 [[26](#)]  
CURTIS FLOYD/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.

**Final Ruling**

**Application:** Approval of Employment

**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).

With court approval, a Chapter 7 trustee may employ an attorney, who does not "hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* §

101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

13. [13-11736](#)-A-7 FRANKIE/LUCY VALENZUELA MOTION TO AVOID LIEN OF RICHARD  
NES-2 A. MILLER, ESQ  
FRANKIE VALENZUELA/MV 2-3-15 [[23](#)]  
NEIL SCHWARTZ/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Debtors Frankie and Lucy Valenzuela move to avoid the lien of Richard A. Miller, attorney at law, against their residence, located at 1713 Verde Street, Bakersfield, California. Miller opposes the motion.

### **DISCUSSION**

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **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.

Frankie Valenzuela and Lucy Valenzuelas' motion to avoid lien has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

14. [13-11736](#)-A-7 FRANKIE/LUCY VALENZUELA MOTION TO AVOID LIEN OF AQUA  
NES-3 FINANCE, INC  
FRANKIE VALENZUELA/MV 2-3-15 [[32](#)]  
NEIL SCHWARTZ/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Debtors Frankie and Lucy Valenzuela move to avoid the lien of Aqua Finance, Inc. against their residence located at 1713 Verde Street, Bakersfield, CA. No opposition has been filed.

#### **DISCUSSION**

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on

the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a *prima facie* case has not been made for relief under § 522(f).

#### **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.

Frankie Valenzuela and Lucy Valenzuelas' motion to avoid lien has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

15. <a href="#">14-15738</a> -A-7    TUAN NGUYEN RNR-1 TUAN NGUYEN/MV ROSETTA REED/Atty. for dbt.	MOTION TO AVOID LIEN OF UNIFUND CCR, LLC 2-5-15 [ <a href="#">13</a> ]
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#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).



Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

#### **INSUFFICIENT NOTICE**

The notice indicates that opposition shall be in writing and filed preceding the hearing. But the notice gives no specific date by which the respondent must file written opposition and it does not mention LBR 9014-1(f)(1) or (f)(2). Informing respondents that the deadline for filing opposition is "preceding" the hearing is too general and does not comply with the court's local rules. The notice, then, does not comply with 9014-1(d)(3), which requires the notice to advise potential respondents *when* written opposition must be filed (a specific deadline stated in a number of days or as a date).

#### **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 debtor's motion to avoid lien has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having provided an opportunity for oral argument at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

16. [14-15738](#)-A-7 TUAN NGUYEN  
RNR-2  
TUAN NGUYEN/MV  
ROSETTA REED/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND  
CCR, LLC  
2-6-15 [[17](#)]

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

## INSUFFICIENT NOTICE

The notice indicates that opposition shall be in writing and filed preceding the hearing. But the notice gives no specific date by which the respondent must file written opposition and it does not mention LBR 9014-1(f)(1) or (f)(2). Informing respondents that the deadline for filing opposition is "preceding" the hearing is too general and does not comply with the court's local rules. The notice, then, does not comply with 9014-1(d)(3), which requires the notice to advise potential respondents *when* written opposition must be filed (a specific deadline stated in a number of days or as a date).

## 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 debtor's motion to avoid lien has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having provided an opportunity for oral argument at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

17. [14-16145](#)-A-7 JOHANNA CORONADO

JOHANNA CORONADO/MV

PHILLIP GILLET/Atty. for dbt.

ORDER 2/2/15

NON-OPPOSITION

CONTINUED MOTION FOR WAIVER OF  
THE CHAPTER 7 FILING FEE OR  
OTHER FEE  
1-5-15 [[5](#)]

## Final Ruling

Application: Waiver of Chapter 7 Filing Fee

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

**Disposition:** Granted

**Order:** Civil minute order

Debtor Johanna Coronado prays a waiver of the Chapter 7 filing fee.

## DISCUSSION

Title 28 U.S.C. § 1930(f)(1) authorizes the court to waive fees for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line...applicable to a family of the size involved"; and (2) who is otherwise unable to pay the filing fee in installments. The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

In response to inconsistencies in the application, the court set the matter for hearing. The debtor has provided a supplemental declaration in support of the application. The Chapter 7 trustee has

CIVIL MINUTE ORDER

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

IT IS ORDERED that the application is approved.

- ## Final Ruling

**Order:** Prepared by moving party

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.

19. [14-15056](#)-A-7 ROBIN DAVES  
KAZ-1  
U.S. BANK TRUST, N.A./MV  
NEIL SCHWARTZ/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-21-15 [[14](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 10108 Pavilion Dr., Bakersfield, 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

20. [14-15658](#)-A-7 CRIS STEPHENSON  
PK-1  
CRIS STEPHENSON/MV  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF RONALD  
C. STEPHENSON  
2-3-15 [[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.

21. [14-14160](#)-A-7 CHERYL LINEGAR  
VG-1  
VINCENT GORSKI/MV  
PATRICK KAVANAGH/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.

MOTION TO SELL  
2-4-15 [[29](#)]

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2013 Jeep Patriot

**Buyer:** Debtor

**Sale Price:** \$12,786.70 (\$3,000 cash plus \$2900 exemption credit plus a lien of \$6886.70 in favor of Bank of America to which the sale is made subject

**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.

22. [14-14265](#)-A-7 JASON/NANCY REED

RP-2

RANDELL PARKER/MV

MOTION TO SELL AND/OR MOTION  
FOR COMPENSATION FOR MIRAMAR  
INTERNATIONAL R.E., BROKER(S)  
2-3-15 [[22](#)]

VINCENT GORSKI/Atty. for dbt.

RANDELL PARKER/Atty. for mv.

NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 11509 Montague Avenue, Bakersfield, CA

**Buyer:** Samuel Ruben Madrid

**Sale Price:** \$261,000

**Sale Type:** Private sale subject to overbid opportunity

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

## **SALE OF REAL PROPERTY**

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.

## **BROKER'S COMMISSION**

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

## **CONDITIONAL NON-OPPOSITION**

Wells Fargo Bank N.A.'s Conditional Non-Opposition supports the sale on the condition that its secured claim be paid in full or in accordance with any approval as authorized by Wells Fargo Bank, N.A. Wells Fargo Bank, N.A. does not dispute the balance of its secured debt as stated in the trustee's motion (see page 4 of the motion). Because the motion proposes to sell the property for an amount sufficient to pay the broker's commission, escrow and closing costs, property taxes and Wells Fargo Bank, N.A.'s secured claim, with substantial net funds available for the estate, the condition under which Wells Fargo Bank N.A. does not oppose will be satisfied at the proposed purchase price.

The order submitted by the movant, however, shall reflect that if the sale of the real property does not occur, Wells Fargo Bank, N.A. shall retain its lien for the full amount due under the loan.

23.	<a href="#">14-13873</a> -A-7    MARIO/STACY PRUDENCIO PPR-1 BANK OF AMERICA, N.A./MV VINCENT GORSKI/Atty. for dbt. HALIE LEONARD/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-7-15 [ <a href="#">24</a> ]
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## **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 9805 Andalusia Lane, Bakersfield, 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 DEBTORS**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtors. The stay that protects the debtors 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 will be denied in part as moot as to the debtors.

#### **AS TO 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

24. [14-14376](#)-A-7     JOE PEREZ  
KDG-1  
MONICA TRIANO/MV  
ASHTON DUNN/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.  
DISCHARGED, RESPONSIVE  
PLEADING

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

*[This matter will be called subsequent to Item No. 25.]*

#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** Family Law Proceedings Pending in Florida

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



## **DISCUSSION**

### As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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. Discharge, filed December 30, 2014,, ECF #53. As a result, as of December 30, 2014, the stay terminated as to the debtor as a matter of law. But more to the point, as to those claims held by Triano involving domestic support, no stay has ever protected debtor Joe Perez. See e.g., Stipulation for Relief from Automatic Stay ¶ 3 ("fix the amount of her claims for child support") and ¶ 5(b) ("Tax Cost and claims against the Debtor") in support of Motion to Grant Stay Relief, filed January 20, 2015, ECF #65; 11 U.S.C. § 362(b)(2)(A)(ii).

### As to the Estate

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). Cause exists in this case. Chapter 7 trustee Randell Parker has entered into a settlement that resolves the estate's interests and provides for stay relief. See Motion to Compromise Controversy, Exhibit B (Settlement Agreement), filed January 28, 2015, ECF #71.

### No Finding Re Discharge

The court makes no finding as to whether the claims articulated by the stipulation survive the discharge. Such an ruling must be made after an adversary proceeding. See Fed. R. Bankr. P. 4007(a). Moreover, the Family Court in Florida has jurisdiction to determine whether the discharge extends to the particular obligation before it. *Rein v. Providian Fin'l Corp.*, 270 F.3d 895, 904 (9th Cir. 2001) (noting concurrent jurisdiction except for actions under 11 U.S.C. § 523(a)(2),(4),(6)).

## **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.

Monica Triano's and Philip Shechter's motion for stay relief 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 (1) denied as moot as to debtor Joe Perez; (2) granted as to the estate, provided however, that the movant shall not levy or execute on assets that remain property of the estate.

IT IS FURTHER ORDERED that the court makes no finding as to whether any of the claims held by Monica Triano, receiver Philip Shechter or any other party hereto survives the debtor's discharge.

25. [14-14376](#)-A-7 JOE PEREZ  
TGF-1  
PHILIP SHECHTER/MV  
ASHTON DUNN/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.

MOTION FOR A NEW TRIAL AND/OR  
MOTION TO RECONSIDER  
2-11-15 [[90](#)]

*[This matter will be called subsequent to Item No. 26.]*

### **Tentative Ruling**

**Motion:** New Trial and/Or Correct Order

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

**Disposition:** Granted in part, denied as moot in part

**Order:** Civil minute order

Receiver Philip Shechter moves under Fed. R. Civ. P. 59 and 60(b), incorporated by Fed. R. Bankr. 9023-9024 to alter or correct an order regarding stay relief. The motion will be granted in part and denied in part. Under an order shortening time, the court previously heard and granted in part an order approving stay relief. Three portions, i.e., ¶¶ 3, 4 and 5 of the Stipulation for Stay Relief were stricken. See Exhibit 3 to Motion to Grant Stay Relief, filed January 20, 2015, ECF #65; Civil Minutes, filed January 29, 2015, ECF #75.

### **DISCUSSION**

Under the terms of the agreement, Monica Triano (the debtor's former spouse), the Philip Shechter (the receiver) and Randell Parker (Chapter 7 trustee) but not debtor Joe Perez stipulated to the following stay relief, which the court declined to approve: "3. Ms. Triano should be immediately granted relief from [the] stay established by 11 U.S.C. § 362(a), if any, to file and prosecute a motion for contempt and to fix the amount of her claims for child support. 4. Receiver should be immediately granted relief from [the] stay established by 11 U.S.C. s 362(a) to file and prosecute a motion for payment of receiver's fees, receiver's attorney's fees, and receiver's broker's fees. 5. Upon the earlier of [specify conditions] Ms. Triano and Receiver should be granted complete relief from the automatic stay to continue litigation in the Family Court as necessary to: a. Fix the claims of Ms. Triano and Receiver, including claims other than claims for child support; b. Tax costs and claims against the Debtor; and c. Disburse any remaining funds held by the receivership estate and close the receivership estate." Exhibit 3 to Motion to Grant Stay Relief, filed January 20, 2015, ECF #65

#### As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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. Discharge, filed December 30, 2014,, ECF #53. As a result, as of December 30, 2014, the stay terminated as to the debtor as a matter of law. But more to the point, as to those claims held by Triano involving domestic support, no stay has ever protected debtor Joe Perez. See e.g., Stipulation for Relief from Automatic Stay ¶ 3 ("fix the amount of her claims for child support") and ¶ 5(b) ("Tax Cost and claims against the Debtor") in support of Motion to Grant Stay Relief, filed January 20, 2015, ECF #65; 11 U.S.C. § 362(b)(2)(A)(ii).

### As to the Estate

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). Cause exists in this case. Chapter 7 trustee Randell Parker has entered into a settlement that resolves the estate's interests and provides for stay relief. See Motion to Compromise Controversy, Exhibit B (Settlement Agreement), filed January 28, 2015, ECF #71. Beyond that, some of the issues raised by the stipulation do not impact the estate. See e.g., Settlement Agreement ¶¶ 3 (contempt). Provided however, that the movant shall not levy or execute on property of the estate.

### No Finding Re Discharge

The court makes no finding as to whether the claims articulated by the stipulation survive the discharge. Such an ruling must be made after an adversary proceeding. See Fed. R. Bankr. P. 4007(a). Moreover, the Family Court in Florida has jurisdiction to determine whether the discharge extends to the particular obligation before it. *Rein v. Providian Fin'l Corp.*, 270 F.3d 895, 904 (9th Cir. 2001) (noting concurrent jurisdiction except for actions under 11 U.S.C. § 523(a)(2),(4),(6)).

### **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.

Philip Shechter's motion for new trial 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 (1) denied as moot as to debtor Joe Perez; (2) granted as to the estate, provided however, that the movant shall not levy or execute on assets that remain property of the estate.

IT IS FURTHER ORDERED that the court makes no finding as to whether any of the claims held by Monica Triano, receiver Philip Shechter or any other party hereto survives the debtor's discharge.

26. [14-14376](#)-A-7 JOE PEREZ  
TGM-2  
RANDELL PARKER/MV

ASHTON DUNN/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH MONICA TRIANO,  
PHILIP SHECHTER, JEFFREY  
RUBENSTEIN, CARLOS JUSTO AND  
VINCENT GORSKI  
1-28-15 [[68](#)]

### **Tentative Ruling**

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

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party

Chapter 7 trustee Randell Parker seek approval of a compromise, attached as Exhibit 2 to the motion to approve the compromise. The motion is supported by Monica Triano, the debtor's former spouse. No party in interest, including debtor Joe Perez, has filed opposition to the motion. Perez has received a discharge in his Chapter 7 bankruptcy.

### **DEFAULT OF RESPONDENTS**

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).

### **LEGAL STANDARDS**

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.*

### **DISCUSSION**

Except as provided herein, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors and will be approved. The follow portions of the Settlement Agreement and Releases, whether specifically described or not, are not approved and are stricken.

11 U.S.C. § 727:

If otherwise qualified, Chapter 7 debtors are granted a discharge of debt. 11 U.S.C. § 727. The Chapter 7 trustee has no authority to bargain away this rights. 11 U.S.C. § 524(a)(c) (only the debtor may bargain away such rights). To the extent that the agreement purports to alter the Chapter 7 discharge, e.g. 11 U.S.C. § 524, 727, the agreement is invalid. Some of the provisions of the settlement agreement appear to reserve to the parties rights that might violate the discharge injunction, e.g. Settlement Agreement ¶¶ 7(e)(iii), 18, 19. To the extent that any portion of this settlement agreement seeks to preserve rights to pursue pre-petition claims against the debtor that are not otherwise excepted from the discharge, it is invalid.

Paragraph 15: \$900,000 Disbursement from PAJ Proceeds:

The receiver is holding \$1,260,000 from the sale of the marital interest in PAJ. Settlement Agreement ¶ 4. The Settlement Agreement also purports to assign \$900,000 of these to Monica Triano and specifies how these proceeds should be allocated among Triano's claims. This appears to fall within the jurisdiction of the Family Courts and paragraph 15 of the Settlement Agreement is stricken.

Paragraph 17: Waiver of Rights by Perez:

The Settlement Agreement purports to remove certain rights from Joe Perez. The motion is unsupported by any showing that the court may so order and paragraph 17 is stricken.

Paragraph 20: Triano's Claim in the Bankruptcy:

Paragraph 20 is ambiguous. It may be read as only stating Triano's willingness to subordinate certain of her claims to the rights of other creditors or administrative fees. It may also be read as reordering the distribution scheme of the Bankruptcy Code as to other parties not a part of this agreement. The former is acceptable; the later is not. The order shall make clear that the subordination described in paragraph 20 is only as Triano's rights and does not affect any other party's rights with respect to the Chapter 7 distribution scheme.

Paragraph 25(a) & (c): Receiver/Receiver's Counsel's Fees and Carlos Justo as Broker:

This provision appear to be invalid. To the extent that the agreement seeks approval of fees for professionals providing services other than to the bankruptcy estate, this court lacks jurisdiction over these matters. To the extent, that the settlement attempts to fix fees for professionals rendering services to the estate, motions under 11 U.S.C. § 327, 330 are required.

**ORDER**

Counsel for the Chapter 7 trustee shall prepare the order. The order shall append as an exhibit a copy of the settlement agreement. The order shall specifically provide for the disapproval of those portions of the settlement agreement described herein.

27. [14-14278](#)-A-7 ADONAY MARQUEZ  
PD-1  
WELLS FARGO BANK, N.A./MV  
PATRICK KAVANAGH/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
DISCHARGED  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-30-15 [[20](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Prepared by moving party

**Subject:** 2237 Oxford Street, Delano, 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). Debtor has filed a non-opposition, and no other opposition has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

### **AS TO 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

28. [14-13491](#)-A-7 SILVANA AGUILAR  
JMV-1  
JEFFREY VETTER/MV  
CURTIS FLOYD/Atty. for dbt.  
JEFFREY VETTER/Atty. for mv.

MOTION TO SELL  
2-11-15 [[16](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2008 Chevrolet Impala

**Buyer:** Debtor

**Sale Price:** \$6094 (\$3800 cash plus accounting for a lien in the amount of \$2294 owed to West America Bank to which the sale is made subject)

**Sale Type:** Private sale subject to overbid opportunity

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

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

**11:00 a.m.**

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

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-9-14 [[1](#)]

**No tentative ruling.**

11:30 a.m.

1. [14-14903](#)-A-7 ROBERT WHITE PRO SE REAFFIRMATION AGREEMENT  
WITH TOYOTA MOTOR CREDIT  
CORPORATION  
1-30-15 [[24](#)]

**No tentative ruling.**

2. [14-15916](#)-A-7 MARTIN CHAVEZ PRO SE REAFFIRMATION AGREEMENT  
WITH ALTAONE FEDERAL CREDIT  
UNION  
1-26-15 [[16](#)]

WILLIAM OLCOTT/Atty. for dbt.

**No tentative ruling.**

3. [14-15475](#)-A-7 MICHAEL/SANDRA HULTS REAFFIRMATION AGREEMENT WITH  
AMERICAN AUTO FINANCING INC.  
1-20-15 [[35](#)]

PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

4. [14-15476](#)-A-7 JOHN/LEE TOON PRO SE REAFFIRMATION AGREEMENT  
WITH CORNERSTONE HOME LENDING,  
INC  
1-26-15 [[25](#)]

LAUREN RODE/Atty. for dbt.

**No tentative ruling.**

5. [14-15580](#)-A-7 JENNY PALMER REAFFIRMATION AGREEMENT WITH  
SANTANDER CONSUMER USA INC.  
1-20-15 [[18](#)]

PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**