

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

APRIL 2, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [13-17607](#)-A-7 FRANCISCO/VERONICA LOPEZ MOTION TO SELL
TMT-1 2-19-14 [[13](#)]
TRUDI MANFREDO/MV
ADRIAN WILLIAMS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Winchester 357 magnum lever-action rifle, Winchester 12-gauge shotgun, Marlin semi-automatic .22 rifle

Buyer: Debtors

Sale Price: \$870 in the aggregate

Winchester 357 magnum lever-action rifle: \$425

Winchester 12-gauge shotgun: \$318

Marlin semi-automatic .22 rifle: \$127

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.

2. [12-60513](#)-A-7 POTTER FAMILY FARMS LLC MOTION FOR COMPENSATION BY THE
PLF-6 LAW OFFICE OF LAW OFFICES OF
PETER FEAR/MV PETER L. FEAR FOR PETER L.
FEAR, TRUSTEE'S ATTORNEY(S),
FEE: \$18787.00, EXPENSES:
\$762.13
3-5-14 [[72](#)]

PATRICK COSTELLO/Atty. for dbt.

Final Ruling

Motion: First and Final Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Peter Fear

Compensation approved: \$18,787.00

Costs approved: \$762.13

Aggregate fees and costs approved: \$19,549.13

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

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

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

3. [14-10117](#)-A-7 ERACLIO SANCHEZ AND CONTINUED MOTION TO COMPEL
 TOG-3 RAQUEL SOLIS ABANDONMENT
 ERACLIO SANCHEZ/MV 2-25-14 [[15](#)]
 THOMAS GILLIS/Atty. for dbt.
 OST 2/26/14

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(3) / continued hearing date; no written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

For the reasons stated in the civil minutes for the initial hearing on this matter, the court previously continued the matter to allow the debtors to provide notice of the motion to all creditors and parties in interest. In these civil minutes, the court explained its position that notice must be provided to all creditors and parties in interest described in Rule 6007(a).

But the amended proof of service that was filed does not show whether the notice of hearing transmitted was the original notice of hearing filed at docket number 16 or whether it was a new notice of hearing providing notice of the *continued* hearing date. Because the certificate of service does not unequivocally show that creditors and parties and interest received notice that the hearing on this matter would be on April 2, 2014, rather than March 5, 2014, the court will deny the motion without prejudice to another motion being re-filed.

4. [10-61725](#)-A-7 PAMELA ENNIS
THA-7
THOMAS ARMSTRONG/MV

MOTION FOR COMPENSATION FOR
THOMAS H. ARMSTRONG, TRUSTEE'S
ATTORNEY(S), FEE: \$3610.89,
EXPENSES: \$491.62
3-3-14 [[156](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Thomas H. Armstrong

Compensation approved: \$3610.89

Costs approved: \$491.62

Aggregate fees and costs approved: \$4,102.51

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

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

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

5. [14-10526](#)-A-7 JOE SILVA

JOE SILVA/MV

JOE SILVA/Atty. for mv.

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
2-4-14 [[6](#)]

No tentative ruling.

6. [14-10627](#)-A-7 DAVID/ROSEMARY GUERRA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-26-14 [[16](#)]

MARCIA RANDLE/Atty. for dbt.
\$306 FILING FEE PAID 2/26

No tentative ruling.

7. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR
JES-2
JAMES SALVEN/MV

MOTION TO SELL
3-4-14 [[21](#)]

VINCENT GORSKI/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted in part, denied in part without prejudice

Order: Prepared by moving party

Property: 2 vacant lots in Whitehorn, Humboldt County, CA more fully described in the notice

Buyer: Mark and Nancy Mitchell

Sale Price: \$26,000 (with property taxes and commission to be paid in escrow)

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).

SALE

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

COMPENSATION

The motion states that "[t]he trustee has agreed to pay a 10% commission in connection with the proosed sale." The motion may not be requesting authorization of compensation at this time. The prayer for relief does not request compensation. But to the extent the motion is requesting authorization to compensation the broker, the court will deny such request without prejudice because the notice (sent to all

creditors and parties in interest) does not specify the applicant or the amounts requested. Fed. R. Bankr. P. 2002(c)(2).

8.	13-17238 -A-7 CHRISTOPHER LOPEZ UST-1 TRACY DAVIS/MV DAVID JENKINS/Atty. for dbt. GREGORY POWELL/Atty. for mv.	MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 2-18-14 [20]
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Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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

Disposition: Granted

Order: Prepared by moving party

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

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, is \$24,265.20, an amount that exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

9. [14-10839](#)-A-7 LUANN KLANN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-10-14 [[11](#)]

ANTHONY WILSON/Atty. for dbt.
FEE PAID \$306

No tentative ruling.

10. [13-11740](#)-A-7 GILDARDO CRUZ AND AMPARO
ASW-5 LARA
AGUSTIN CENDEJAS/MV

MOTION TO JOIN UNITED STATES
TRUSTEE'S MOTION TO ENLARGE
TIME TO FILE MOTION FOR
DISMISSAL AND COMPLAINT TO DENY
DISCHARGE TO MAY 19, 2014
2-20-14 [[108](#)]

THOMAS GILLIS/Atty. for dbt.
ADRIAN WILLIAMS/Atty. for mv.

Tentative Ruling

Motion: Join U.S. Trustee's Motion to Enlarge Time to File Motion for Dismissal and Complaint to Deny Discharge

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

Disposition: Denied

Order: Civil Minute Order

LEGAL STANDARDS

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Under Rule 1017(e)(1), a motion to dismiss a case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

After conversion of a case, a new filing period commences for filing a motion under § 707(b) or (c) under Rule 1017 or a complaint objecting to discharge under Rule 4004. See Fed. R. Bankr. P. 1019(2).

ANALYSIS

This case was originally filed under chapter 13 on March 14, 2013 and was converted from chapter 13 to chapter 7 on November 12, 2013. The last day to file a complaint or motion objecting to discharge was February 18, 2014, and the last day to file motion to dismiss under § 707(b) and (c) was this same date.

The creditor has filed a motion to join the U.S. Trustee's motion to extend the deadline for objecting to discharge and for filing a motion to dismiss. The U.S. Trustee's motion requests that the court extend only the U.S. Trustee and the chapter 7 trustee's deadline for filing a motion to dismiss or a complaint to deny discharge. See U.S. Tr.'s Mot. at 3, ECF No. 102.

By requesting to join the U.S. Trustee's motion, the creditor seeks relief indirectly that the creditor could not seek directly. The court will not allow the moving creditor to use a motion for joinder in another party's timely motion as a means of evading the deadline imposed on the creditor by the rules for seeking the relief requested.

11. [13-11740](#)-A-7 GILDARDO CRUZ AND AMPARO MOTION TO EXTEND TIME TO FILE A
UST-1 LARA MOTION TO DISMISS CASE UNDER
TRACY DAVIS/MV SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
2-18-14 [102]

Final Ruling

Order: Prepared by moving party

NEW PERIODS COMMENCE UPON CONVERSION TO A CHAPTER 7 CASE

After conversion of a case, a new filing period commences for filing a motion under § 707(b) or (c) and Rule 1017(e) or a complaint objecting to discharge under Rule 4004. See Fed. R. Bankr. P. 1019(2). This case was originally filed under chapter 13 on March 14, 2013 and was converted from chapter 13 to chapter 7 on November 12, 2013. Therefore, new filing periods commence after November 12, 2013 for a motion to dismiss and for a complaint objecting to discharge.

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

The last day to file a complaint or motion objecting to discharge was February 18, 2014. This motion was timely filed. Unscheduled assets have come to light recently. More time is necessary for the trustee and U.S. Trustee to investigate the debtors' financial circumstances.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for objecting to discharge under § 727(a). The deadline for the trustee or the U.S. Trustee to object to discharge will be extended through May 19, 2014.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

The last day to file motion to dismiss under § 707(b) and (c) was February 18, 2014. This motion was timely filed.

Unscheduled assets have come to light recently. More time is necessary for the trustee and U.S. Trustee to investigate the debtors' financial circumstances.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b)(3).

12. [14-10647](#)-A-7 AURORA MARTIN

AURORA MARTIN/MV

GARY HUSS/Atty. for dbt.

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
2-13-14 [[5](#)]

No tentative ruling.

13. [13-16548](#)-A-7 ALFREDO GONZALEZ
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
2-21-14 [[21](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 Honda Accord

Buyer: Debtor

Sale Price: \$6165.00 (\$3475.00 cash plus \$2690 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

14. [13-17255](#)-A-7 PAULETTE AVEDIKIAN
RWR-1
FRESNO COUNTY FEDERAL CREDIT
UNION/MV
JERRY LOWE/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
2-18-14 [[34](#)]

Tentative Ruling

Motion / Objection: Dismiss, 11 U.S.C. § 707(b)(2),(3)

Disposition: Continued for evidentiary hearing

Order: Civil minute order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the Paulette Avedikian's debts are primarily consumer debts, (ii) applicability of 11 U.S.C. § 707(b)(2), and (iii) applicability of 11 U.S.C. § 707(b)(3).

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

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

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

15. [14-11060](#)-A-7 PAUL FREITAS BORGES MOTION TO EXTEND AUTOMATIC STAY
TCS-1 3-19-14 [[9](#)]
PAUL FREITAS BORGES/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

16. [14-10761](#)-A-7 JIZELA LOPEZ

JIZELA LOPEZ/MV

JIZELA LOPEZ/Atty. for mv.
MOTION GRANTED AND HEARING
VACATED 3/27/14

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
2-21-14 [[5](#)]

Final Ruling

The hearing vacated and waiver granted, the matter is dropped as moot.

17. [14-10065](#)-A-7 VICTOR CORONADO

JES-1

JAMES SALVEN/MV

JAMES SALVEN/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-19-14 [[21](#)]

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File
Spousal Waiver

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

Originally, the debtor claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).

18. [10-61970](#)-A-7 BRIAN ENNIS
THA-5
THOMAS ARMSTRONG/MV

MOTION FOR COMPENSATION FOR
THOMAS H. ARMSTRONG, SPECIAL
COUNSEL(S), FEE: \$3601.00,
EXPENSES: \$356.22
3-3-14 [[274](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Thomas H. Armstrong

Compensation approved: \$3601.00

Costs approved: \$356.22

Aggregate fees and costs approved: \$3,957.22

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

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

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

ARASTO FARSAD/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Matter: Order to Show Cause re Dismissal of Case or Imposition of Sanctions [Case Converted to Chapter 7]

Response: Debtor's Reply filed at ECF No. 28

Disposition: Case Dismissed

Rule 1007(c) provides the time limits for filing schedules, statements and other documents required under Rule 1007(b)(1), (4)-(6). Rule 1007(c) mandates that the schedules, statements and other documents required by Rule 1007(b)(1), (4), (5), and (6) be filed with the petition or within 14 days after the petition except as provided in other subsections of Rule 1007. Fed. R. Bankr. P. 1007(c).

When a case is converted to a chapter 7 case and the schedules had not been filed before the conversion, then "the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7." Fed. R. Bankr. P. 1019(1)(A). In an involuntary case, the schedules, statements, and other documents required by (b)(1) of Rule 1007 shall be filed within 14 days after entry of the order for relief. Fed. R. Bankr. P. 1007(c). In a converted case, therefore, the schedules, statements, and other documents required by Rule 1007(b)(1) must be filed 14 days after entry of the order converting the case.

Section 521(i)(2) and § 105(a) together permit the court to *sua sponte* dismiss a case as necessary and appropriate to enforce and implement the rules provided by § 521(a)(1) and Rule 1007 and as necessary to prevent an abuse of process arising from the failure to file required schedules and statements.

Here, the debtor's case was converted on January 21, 2014. The debtor was required to file her schedules and statements no later than February 5, 2014, as provided in the Notice to File Documents in Converted Case at docket number 14. The debtor has not filed her schedules. The debtor's reply states that the debtor will not be able to complete her case and will be moving to dismiss her case due to her becoming very ill and her age. The court will dismiss the case.

20. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER MOTION TO COMPEL ABANDONMENT
BSH-7 3-6-14 [[18](#)]
RICHARD GRENINGER/MV
BRIAN HADDIX/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

Real Property Description: 10113 S. Highway 59, El Nido, CA

Other Property: Accounts, household goods and furnishings, books, jewelry, other goods, a retirement plan, vehicles, and pets more fully described in the motion

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

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

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

21. [14-10689](#)-A-7 KRISTINA DATRICE MOTION FOR WAIVER OF THE
KRISTINA DATRICE/MV CHAPTER 7 FILING FEE OR OTHER
FEE
JANINE ESQUIVEL/Atty. for dbt. 2-17-14 [[5](#)]

No tentative ruling.

22. [12-19194](#)-A-7 PAMELA WISE
DRJ-4
TRUDI MANFREDO/MV
THOMAS ARMSTRONG/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

OBJECTION TO CLAIM OF PATRICK
MURPHY, CLAIM NUMBER 7
1-28-14 [[50](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained as to priority status and the claim will be allowed as a general unsecured claim

Order: Prepared by objecting party

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

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

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

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

The claim is defective on its face in that the claim amount exceeds the maximum allowable amount for a priority wage claim. The objection is further defective in that it does not provide sufficient documentation to show that the claim is for compensation earned within the earlier of 180 days before the petition or the cessation of the debtor's business. *See* 11 U.S.C. § 507(a)(4).

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

23. [12-19194](#)-A-7 PAMELA WISE
DRJ-5
TRUDI MANFREDO/MV
THOMAS ARMSTRONG/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

OBJECTION TO CLAIM OF DOUGLAS
DOUCETTE, CLAIM NUMBER 18
1-28-14 [[52](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained as to priority status and the claim will be allowed as a general unsecured claim

Order: Prepared by objecting party

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

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

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

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

The claim is defective on its face in part because the claim amount exceeds the maximum allowable amount for a priority wage claim. *See* 11 U.S.C. § 507(a)(4).

Further, the claim is defective as to the entire amount for which priority is claimed. The claim seeks priority for compensation earned outside the earlier of the two 180-day look-back periods specified in § 507(a)(4). The compensation for which priority is sought in a claim must have been earned within 180 days before the petition date or the cessation date for the debtor's business, whichever is earlier. *See* § 507(a)(4). The Defendant named in this Order is Wise Engineering, Inc. ("Wise Engineering"). The Statement of Financial Affairs indicates that Wise Engineering ended business operations on June 21,

2012. The bankruptcy petition was filed October 31, 2012. The earlier of these two dates is applicable date from which the 180-day look-back period is measured.

A copy of the order, decision, or award of the Labor Commissioner ("Order") attached to the proof of claim shows that the wages and overtime forming the basis of the claim were earned between June 3, 2010 and August 15, 2011. Thus, as stated in the objection, the last wages were earned approximately 311 days before the cessation date for the debtor's business. The respondent's claim is not entitled to priority.

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

9:15 a.m.

1.	12-10802 -A-7	TERENCE MOORE	MOTION BY JEFF REICH TO
	12-1135	RLF-1	WITHDRAW AS ATTORNEY
	MOORE V. MOORE		3-6-14 [69]
	JEFF REICH/Atty. for mv.		

Tentative Ruling

Motion: Attorney's Withdrawal from Representation of a Client

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

Disposition: Granted

Order: Prepared by moving party

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

Withdrawal of an attorney from representing a client is governed by Local Bankruptcy Rule 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. Pursuant to Local Bankruptcy Rule 2017-1(e), the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. California Rule of Professional Conduct 3-700(C)(1)(d) provides for permissive withdrawal if the client "by other conduct renders it unreasonably difficult for the member to carry out the employment effectively." Cal. R. Prof'l Conduct 3-700(C)(1)(d).

The declaration properly states what appears to be the last known address of the client and mentions the attorney's efforts to notify the client of the motion to withdraw. The facts asserted in the motion and supporting papers show that continued, effective representation of the client will be unreasonably difficult for the attorney to undertake, and that the client has assented to the withdrawal by terminating the attorney from further employment. See Cal. R. Prof'l Conduct 3-700(C)(1)(d), (5). The court finds that the attorney's withdrawal from the representation is appropriate.

2. [13-16236](#)-A-7 MARIO TALAMANTES STATUS CONFERENCE RE: COMPLAINT
[14-1011](#) 1-22-14 [[1](#)]
FEAR V. TALAMANTES ET AL
TRUDI MANFREDO/Atty. for pl.

Final Ruling

At the suggest of the plaintiff, the matter is continued to May 14, 2014, at 9:15 a.m. Not less than 7 days prior to the continued hearing, the plaintiff shall file a status report.

3. [13-16052](#)-A-7 SALVADOR/ROSA ALCANTAR STATUS CONFERENCE RE: AMENDED
[13-1115](#) COMPLAINT
RODRIGUEZ V. ALCANTAR, III 3-24-14 [[20](#)]
MARIA RODRIGUEZ/Atty. for pl.

No tentative ruling.

4. [12-16876](#)-A-7 WILLIAM VANDER POEL STATUS CONFERENCE RE: COMPLAINT
[14-1007](#) 1-17-14 [[1](#)]
VANDER POEL, SR. V. MEDINA
RILEY WALTER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

5. [13-17191](#)-A-7 ISABELL JEGEN CONTINUED STATUS CONFERENCE RE:
[13-1131](#) COMPLAINT
JEGEN V. CACH, LLC ET AL 11-25-13 [[1](#)]
GABRIEL WADDELL/Atty. for pl.
DISMISSED
CLOSED

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

10:00 a.m.

1. [13-13145](#)-A-7 MARIA ZAVALA DE GUZMAN MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 3-4-14 [[38](#)]
ALBERT GARCIA/Atty. for dbt.
JOELY BUI/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied as moot in part

Order: Prepared by moving party

Subject: 3412 Aslin 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).

RELIEF UNDER § 362(d)(1)

Relief 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. As a result, the motion will be denied in part as moot as to the debtor.

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

The moving party contends that its interest in the subject property is not adequately protected. Mot. Relief from Stay ¶ 16.a. The person obligated to make payments—whether such person is Matthew Latray, the borrower, or some other person, has missed approximately 22 payments prepetition and approximately 8 payments postpetition. Although the equity cushion appears to be around 27.4%, this cushion is declining rapidly due to the significant number of missed payments of principal

and interest and the ongoing nature of the default.

RELIEF UNDER § 362(d)(4)

Section 362(d)(4) authorizes binding relief from stay with respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.*

The motion's well-pleaded facts—that the debtor has not opposed—support a finding that the debtor's petition was part of a scheme to hinder, delay or defraud creditors that involved a transfer of the subject property without the secured creditor's consent or court's approval.

The motion asserts that the property was quitclaimed to the debtor by Matthew Latray, who was the borrower of the loan represented by the note secured by a deed of trust against the property. This transfer is alleged to have occurred on February 8, 2011. After making this transfer, Latray filed a petition on July 27, 2012.

The debtor filed her petition on April 30, 2013. Ten days later, a quitclaim deed was recorded that transferred title to the property from the debtor back to Latray. This motion was filed and served on the debtor and her attorney, but no opposition or response has been timely filed. The debtor has not filed any papers indicating her lack of knowledge of these transfers. Her schedules do not include the property.

Accordingly, the court will infer that the quitclaim deed purporting to transfer the property back to Latray, recorded on May 10, 2013, represents an actual transfer made by the debtor without court authorization or the consent of the movant. Such a transfer, combined with Latray's petition and the transfer from Latray to the debtor, provide sufficient facts from which the court may infer that the petition was part of a scheme to hinder or delay the movant creditor.

The court will grant relief under section 362(d)(4). This relief may be binding in subsequent bankruptcy cases purporting to affect such property if the order is recorded in compliance with applicable state law as described in § 362(d)(4).

2. [14-10354](#)-A-7 MIKE/DENISE WOODWARD MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 2-27-14 [[15](#)]
JONATHAN CAHILL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2110 Winter Street, Kingsburg, CA 93631

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

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

3. [14-11056](#)-A-7 HAI NGUYEN MOTION FOR RELIEF FROM
MET-1 AUTOMATIC STAY
HOOVER TRUST #13282 3-12-14 [[14](#)]
SOUTHLAND HOMES REAL ESTATE
MARY TANG/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

4. [13-17970](#)-A-7 MONTY/MELANIE HOGGARD MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 2-25-14 [[12](#)]
HILTON RYDER/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 500 Pepper Dr., Hanford, CA

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

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

10:30 a.m.

1. [13-17020](#)-A-7 ANGELA ROBERSON CONTINUED REAFFIRMATION
AGREEMENT WITH AMERICREDIT
FINANCIAL SERVICES, INC.
1-17-14 [[18](#)]
JAMES MILLER/Atty. for dbt.

No tentative ruling.

2. [14-10420](#)-A-7 JAVIER/BEATRICE PEREZ PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
2-25-14 [[16](#)]

No tentative ruling.

3. [14-10351](#)-A-7 GIA DELGADO PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
3-11-14 [[16](#)]
- No tentative ruling.**
4. [13-17453](#)-A-7 DANIEL/IVY ROCHA PRO SE REAFFIRMATION AGREEMENT
WITH WILSHIRE CONSUMER CREDIT
3-3-14 [[29](#)]
- SCOTT MITCHELL/Atty. for dbt.
- No tentative ruling.**
5. [14-10261](#)-A-7 ROSA FLORES PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
2-28-14 [[13](#)]
- No tentative ruling.**
6. [14-10081](#)-A-7 GEORGE PUTICH REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
2-25-14 [[16](#)]
- GARY HUSS/Atty. for dbt.
- No tentative ruling.**
7. [13-17290](#)-A-7 LARRY/DESIREE BLAIR PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO BANK, N.A. - (
\$50.255.81)
2-21-14 [[21](#)]
- VACATED PER ORDER DATED
3/13/14

Final Ruling

The hearing vacated, the matter is dropped as moot.

8. [13-17290](#)-A-7 LARRY/DESIREE BLAIR PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO BANK, N.A. - (
\$11,000.00)
2-21-14 [[22](#)]

VACATED PER ORDER DATED
3/13/14

Final Ruling

The hearing vacated, the matter is dropped as moot.

1:30 p.m.

1. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED STATUS CONFERENCE RE:
LLC CHAPTER 11 VOLUNTARY PETITION
11-1-13 [[1](#)]
ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

2. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO APPROVE STIPULATION
HAR-4 INC. FOR RELIEF FROM THE AUTOMATIC
A & A TRANSPORT, CO., INC./MV STAY
2-27-14 [[51](#)]
HILTON RYDER/Atty. for dbt.

Final Ruling

Motion: Approval of Agreement to Terminate the Stay
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).

Having reviewed the motion's well-pleaded facts, the court finds that the agreement to terminate the stay should be approved.

The court will approve the agreement and allow Miguel Angel Gomez, Jr. to have relief from stay pursuant to that agreement and subject to its terms and conditions. The motion will be granted.

3. [13-17444](#)-A-11 A & A TRANSPORT, CO.,
HAR-8 INC.
A & A TRANSPORT, CO., INC./MV
HILTON RYDER/Atty. for dbt.
- MOTION FOR APPROVAL OF
AGREEMENT TO TERMINATE THE STAY
OF 11 U.S.C. SECTION 362
3-4-14 [[55](#)]

Final Ruling

Motion: Approval of Agreement to Terminate the Stay
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).

Having reviewed the motion's well-pleaded facts, the court finds that the agreement to terminate the stay should be approved.

The court will approve the agreement and allow James Guider to have relief from stay pursuant to that agreement and subject to its terms and conditions. The motion will be granted.

4. [13-17744](#)-A-11 SREP V, LLC
THOMAS ARMSTRONG/Atty. for dbt.
- CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-6-13 [[1](#)]

Final Ruling

The status conference is continued to June 11, 2014, at 1:30 p.m. The debtor shall file a plan and disclosure statement and shall notice the disclosure statement for approval not later than June 11, 2014.

5. [13-17744](#)-A-11 SREP V, LLC
THA-3
THOMAS ARMSTRONG/MV
THOMAS ARMSTRONG/Atty. for dbt.
- MOTION FOR COMPENSATION FOR
THOMAS H. ARMSTRONG, DEBTOR'S
ATTORNEY(S), FEE: \$7,031.00,
EXPENSES: \$184.24
2-20-14 [[43](#)]

Final Ruling

Motion: Interim Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Thomas H. Armstrong
Compensation approved: \$7,031.00
Costs approved: \$184.24
Aggregate fees and costs approved: \$7,215.24
Retainer held: \$10,000.00
Amount to be paid as administrative expense: \$0.00

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on 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. The moving party is authorized to draw on any retainer held.

6. [13-17744](#)-A-11 SREP V, LLC
THA-5
SREP V, LLC/MV

MOTION TO EXTEND EXCLUSIVITY
PERIOD FOR FILING A CHAPTER 11
PLAN AND MOTION/APPLICATION TO
EXTEND EXCLUSIVITY PERIOD FOR
FILING A CHAPTER 11 PLAN AND
DISCLOSURE STATEMENT FILED BY
DEBTOR SREP V, LLC
3-19-14 [[57](#)]

THOMAS ARMSTRONG/Atty. for dbt.
OST 3/21

Tentative Ruling

Motion: Extend Exclusivity Period Pursuant to § 1121(b)

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

Disposition: Granted

Order: Prepared by moving party

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

The 120-day period specified in § 1121(b) is an exclusivity period during which only the debtor may file a plan. 11 U.S.C. § 1121(b). Competing plans may not be filed during this period. *Id.* The court

may extend this 120-day period for cause. *Id.* § 1121(d)(1). The request to extend must be made before the period ends and after notice and a hearing. *Id.* The 120-day exclusivity period may not be extended beyond a date that is 18 months after the order for relief. *Id.* § 1121(d)(2)(B).

The 180-day period specified in § 1121(c)(3) is an "extended exclusivity period" during which competing plans may not be filed by parties in interest "during the acceptance and solicitation period required by sections 1126 and 1129(a)." 7 *Collier on Bankruptcy* ¶ 1121.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011). This 180-day period may itself be extended by the court for cause. 11 U.S.C. § 1121(d)(1). The request to extend must be made before the period ends and after notice and a hearing. *Id.* The 180-day exclusivity period may not be extended beyond a date that is 20 months after the order for relief. *Id.* § 1121(d)(2)(B).

Courts consider several fact-specific factors in determining whether cause exists. *See, e.g., In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007). The debtor, as the party seeking the extension, bears the burden of proving the existence of cause. *Id.*

The 120-day exclusivity period described in § 1121(b) expires on April 5, 2014. The court finds cause to extend this 120-day exclusivity period to May 9, 2014.

7. [13-14894](#)-A-11 JORENE MIZE CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-17-13 [[1](#)]
ROSEANN FRAZEE/Atty. for dbt.

Final Ruling

The status conference is continued to April 22, 2014, at 1:15 p.m. in Bakersfield.

8. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA DISCLOSURE STATEMENT FILED BY
MTL-3 DEBTOR ANTHONY LAWRENCE DA
COSTA, JOINT DEBTOR MONIQUE
DANIELLE DA COSTA
2-3-14 [[155](#)]
CHRISTIAN JINKERSON/Atty. for dbt.
CASE DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

9. [13-16596](#)-A-11 ANTHONY/MONIQUE DA COSTA STATUS CONFERENCE RE: MOTION
TJD-1 FOR RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 10-16-13 [[35](#)]
ASSOCIATION/MV
CHRISTIAN JINKERSON/Atty. for dbt.
TODD DRESSEL/Atty. for mv.
CASE DISMISSED, MOTION
WITHDRAWN, CIVIL MINUTES ECF
NO. 205

Final Ruling

The motion withdrawn and the case dismissed, the matter is dropped as moot.

1:45 p.m.

1. [10-61725](#)-A-7 PAMELA ENNIS CONTINUED STATUS CONFERENCE RE:
[12-1160](#) AMENDED COMPLAINT
STRAIN V. ENNIS ET AL 10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

At the request of the parties, the status conference is continued to June 11, 2014, at 1:45 p.m.

In the event that matter has not been resolved by settlement, which has been memorialized and signed by all parties, no later than June 4, 2014, David Stapleton shall file a responsive pleading. If he fails to do so, no later than close of business on Friday, June 6, 2014, the plaintiff shall seek the entry of default against Stapleton. No additional enlargements of time shall be granted by stipulation or otherwise.

In the event the matter has not been settled by June 4, 2014, the parties will file a joint status report. The status report shall include a proposed schedule for further handling of the case, including cutoffs for discovery and dispositive motions.

A referral to the BDRP will not toll or extend any of the deadlines herein or excuse compliance with this order.

2. [10-61970](#)-A-7 BRIAN ENNIS
[12-1161](#)
SALVEN V. ENNIS
10-16-12 [7]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT

Final Ruling

At the request of the parties, the status conference is continued to June 11, 2014, at 1:45 p.m.

In the event that matter has not been resolved by settlement, which has been memorialized and signed by all parties, no later than June 4, 2014, David Stapleton shall file a responsive pleading. If he fails to do so, no later than close of business on Friday, June 6, 2014, the plaintiff shall seek the entry of default against Stapleton. No additional enlargements of time shall be granted by stipulation or otherwise.

In the event the matter has not been settled by June 4, 2014, the parties will file a joint status report. The status report shall include a proposed schedule for further handling of the case, including cutoffs for discovery and dispositive motions.

A referral to the BDRP will not toll or extend any of the deadlines herein or excuse compliance with this order.

2:00 p.m.

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

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

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

No tentative ruling.

2:30 p.m.

1. [14-11595](#)-A-11 RAY FISHER PHARMACY, MOTION TO USE CASH COLLATERAL
AMK-1 INC. 3-31-14 [[5](#)]

RAY FISHER PHARMACY, INC./MV
ALAN KINDRED/Atty. For dbt.

Tentative Ruling

Motion: Use Cash Collateral [Preliminary Hearing]

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

Disposition: To be determined

Order: Prepared by moving party

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2),(e), 361; Fed. R. Bankr. P. 4001(b). If the court conducts a preliminary hearing, "the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). The court will also inquire as to the appropriate date for a final hearing on the motion and set a briefing schedule.

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(1)-(3); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted creditor and any other party in interest so requesting approval.

2. [14-11595](#)-A-11 RAY FISHER PHARMACY, MOTION TO PAY AND/OR CHAPTER 11
AMK-2 INC. FIRST DAY MOTION
3-31-14 [[9](#)]

RAY FISHER PHARMACY, INC./MV
ALAN KINDRED/Atty. For dbt.

No tentative ruling.