

**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**

**MAY 28, 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. [14-10802](#)-A-7 CARLOS SANCHEZ CONTINUED MOTION TO DISMISS  
SAS-1 CASE  
SHERYL STRAIN/MV 3-21-14 [[16](#)]  
THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

2. [12-19109](#)-A-7 DEAUNNA GRANT MOTION FOR COMPENSATION FOR  
RH-4 ROBERT HAWKINS, TRUSTEE'S  
ATTORNEY(S)  
4-25-14 [[80](#)]

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved in part only as to the amounts requested and denied in part as to the timing of payment

**Order:** Prepared by applicant

**Applicant:** Robert Hawkins

**Compensation approved:** \$5700.00

**Costs approved:** \$81.78

**Aggregate fees and costs approved in this application:** \$5781.78

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

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

To the extent that the motion requests an order requiring the trustee pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

3. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER MOTION TO EXTEND TIME FOR  
HW-1 OBJECTION TO DEBTORS CLAIM OF  
CADLES OF GRASSY MEADOWS II, EXEMPTIONS  
L.L.C./MV 4-17-14 [[22](#)]  
JERRY LOWE/Atty. for dbt.  
IAN BONIFIELD/Atty. for mv.

### **Tentative Ruling**

**Motion:** Extend Time for Objection to Exemptions

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

**Disposition:** Denied

**Order:** Prepared by moving party

In support of the motion, the moving creditor has argued that it has had insufficient time to conduct a Rule 2004 examination and to investigate the debtors' assets, liabilities, and claim of exemptions. The court disagrees.

In every version of Schedule C that has been filed, the homestead exemption claimed by debtors has remained the same since the petition was filed February 27, 2014. The debtor has amended Schedule C again as of May 7, 2014. This allows the moving creditor from February 27, 2014 until June 6, 2014 to have undertaken appropriate investigation for filing an objection to the debtors' exemptions. The court finds that this amount of time is sufficient for the creditor to have completed whatever investigations of the debtor's assets, liabilities, and exemptions are necessary to file an objection to exemptions, including the Rule 2004 examination.

Furthermore, if the creditor seeks to object to the claim of exemptions for the sole purpose of opposing the debtors' avoidance of the creditor's lien under § 522(f), then the filing of such an objection would be unnecessary if the creditor will dispute the debtors' exemptions in an opposition to the lien avoidance motion. Federal Rule of Bankruptcy Procedure 4003(d) allows a creditor to raise the validity of an exemption in response to a motion to avoid a lien under 522(f). Subdivision (d) begins with the language "[n]otwithstanding the provisions of subdivision (b) . . . ." This indicates that a creditor may challenge the validity of the exemption in response to a lien avoidance motion even if subdivision (b) would preclude a claim objection after the deadline for such objections has passed. This rule makes practical sense given the unfairness of allowing a debtor to litigate lien avoidance while at the same time precluding the creditor from defending against the motion by challenging the exemption that serves as the chief ground for the motion.

4. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER HW-2  
CADLES OF GRASSY MEADOWS II,  
L.L.C./MV MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR  
MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
4-23-14 [[27](#)]

JERRY LOWE/Atty. for dbt.  
IAN BONIFIELD/Atty. for mv.

**No tentative ruling.**

5. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER JRL-1  
CLAUDE TEISINGER/MV CONTINUED MOTION TO AVOID LIEN  
OF CADLES OF GRASSY MEADOWS II,  
LLC  
3-27-14 [[11](#)]

JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

6. [14-10318](#)-A-7 DANILO GRISALEAS SAS-1  
SHERYL STRAIN/MV MOTION TO DISMISS CASE  
4-18-14 [[16](#)]  
LAYNE HAYDEN/Atty. for dbt.

### **Final Ruling**

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

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

The Chapter 7 trustee moves to dismiss this case because the debtor did not timely provide the trustee copies of pay advices for the 60-day period preceding the petition date from any employer of the debtor.

No later than 7 days before the first date set for the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of

payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. Under Local Bankruptcy Rule 1007-1(c)(1), the court has required debtors not to file payment advices or other evidence of payment. Instead, debtors are to provide such documents to the assigned case trustee not later than 7 days before the first date set for the creditors' meeting. Section 521(i), by contrast, is premised on the requirement that a debtor *file* such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, within which time such materials must be filed, but a very different deadline is imposed for providing documents to the trustee under Local Bankruptcy Rule 1007-1(c)(1). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules. Failure to provide pay advices timely to the trustee may also be grounds for dismissal of a case for cause based on unreasonable delay that is prejudicial to creditors. *Id.* § 707(a)(1).

The court will dismiss the case given that the debtor has not timely provided the trustee with pay advices described in § 521(a)(1)(B)(iv).

7. [14-11519](#)-A-7     ALFREDO/HAPPINESS JIMENEZ     MOTION TO AVOID LIEN OF KINGS  
GMA-1     CREDIT SERVICES  
ALFREDO JIMENEZ/MV     4-16-14 [[12](#)]  
GEOFFREY ADALIAN/Atty. for dbt.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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.

8.	<a href="#">13-13924</a> -A-7    BOGHOS/HELEN KRIKORIAN KDG-3 BOGHOS KRIKORIAN/MV BOGHOS KRIKORIAN/Atty. for mv.	CONTINUED MOTION TO AVOID LIEN OF BETTY EGAN 1-9-14 [ <a href="#">92</a> ]
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#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition filed by Creditor Egan

**Disposition:** Pending

**Order:** Pending

The debtors filed a motion to avoid the lien of creditor Betty Egan. The motion was opposed by Egan. The matter was referred to the Bankruptcy Resolution Dispute Program before Mr. David Jenkins, who was appointed as the resolution advocate. Order Appointing Resolution Advocate, Feb. 13, 2014, ECF No. 107.

The most recent status report indicates that a settlement has been reached between the debtors and Egan. Egan has also filed a copy of an Acknowledgment of Full Satisfaction of Judgment filed with the Fresno County Recorder at docket no. 120.

At the hearing, the court will inquire whether after settlement Egan's lien still attaches to the debtors' personal property (based on the order to appear for examination under § 708.110(d) of the California Code of Civil Procedure) and whether the relief requested is now mooted by the settlement. If the parties have entered into a stipulation that will resolve all issues including the relief requested in this motion, then the court will drop the matter as moot.

9. [13-13924](#)-A-7 BOGHOS/HELEN KRIKORIAN CONTINUED OBJECTION TO DEBTOR'S  
LDM-3 CLAIM OF EXEMPTIONS  
BETTY EGAN/MV 1-30-14 [[98](#)]  
LARRY MILLER/Atty. for mv.

**Tentative Ruling**

**Matter:** Objection to Debtors' Claim of Exemptions

**Notice:** Continued date of the hearing; opposed

**Disposition:** Pending

**Order:** Pending

Creditor Betty Egan filed an objection to the debtors' claim of exemptions. The objection was opposed by the debtors. The matter was referred to the Bankruptcy Resolution Dispute Program before Mr. David Jenkins, who was appointed as the resolution advocate. Order Appointing Resolution Advocate, Feb. 13, 2014, ECF No. 107.

Egan has filed a status report indicating that the parties have entered into a settlement agreement. ECF No. 117. The court will inquire at the hearing whether the objection is being withdrawn and whether the objection should be dropped as moot.

10. [14-12129](#)-A-7 DELORES TELFOR MOTION FOR WAIVER OF THE  
DELORES TELFOR/MV CHAPTER 7 FILING FEE OR OTHER  
FEE  
GARY HUSS/Atty. for dbt. 4-24-14 [[5](#)]

**No tentative ruling.**

11. [14-11833](#)-A-7 MARIA GONZALEZ MOTION FOR WAIVER OF THE  
MARIA GONZALEZ/MV CHAPTER 7 FILING FEE OR OTHER  
FEE  
MARIA GONZALEZ/Atty. for mv. 4-10-14 [[5](#)]

**No tentative ruling.**

12. [14-10936](#)-A-7 CLIFFORD/DARLENE  
SAS-1 HENDERSON  
SHERYL STRAIN/MV  
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO SELL  
4-23-14 [[13](#)]

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2005 Chevrolet Silverado and 2008 Keystone Cougar travel trailer

**Buyer:** Debtors

**Sale Price:**

–2005 Chevrolet Silverado: \$6300 (\$3400 cash plus \$2900 exemption credit)

–2008 Keystone Cougar: \$8000 cash

**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 OF 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.

### **NOTICE OF HEARING INSUFFICIENT**

The notice of hearing does not contain the name of the proposed buyer. The notice of a proposed sale must contain the terms and conditions of the proposed sale, and the names of the parties to the sale are a material terms that must be included in the notice in the future. Fed. R. Bankr. P. 2002(c)(1), 6004(a).



13. [11-60138](#)-A-7 LARRY/LORA NEAL  
ASW-1  
LARRY NEAL/MV  
ADRIAN WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF LVNV  
FUNDING LLC  
4-29-14 [[59](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Denied without prejudice

**Order:** Prepared by moving party

**Liens Plus Exemption:** \$309,999.36

**Property Value:** \$310,000.00 (conversion date)

**Judicial Lien Avoided:** \$0.00

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

In addition, the moving party has not provided the proper valuation date. In applying the statutory-impairment formula of section 522(f)(2)(A), the court must determine the value of the debtor's interest in property in the absence of liens. See 11 U.S.C. § 522(f)(2)(A). Although this subsection does not refer to the date on which such value is determined, subsection 522(a) explicitly refers to the *petition date* as the operative date for determining the value of the debtor's property unless the property became property of the estate after the petition date. See *id.* § 522(a).

Use of the petition date to determine the value of the property, as well as the amount of liens under § 522(f)(2)(A), is supported by case law in this circuit. The bankruptcy appellate panel has indicated

that the focus in determining exemption rights should be "the petition date, not the current date." *Mbaba v. Clark Fergus & Assocs. (In re Mbaba)*, No. CC-05-1401-PaBK, 2006 WL 6810948, at \*5 (B.A.P. 9th Cir. Aug. 15, 2006). The bankruptcy appellate panel has also provided the following discussion:

[T]he well-established rule [is] that the critical date for determining exemption rights is the petition date. "[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property[.]" A debtor's § 522(f) lien avoidance rights are also determined as of the petition date. "Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date."

*Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003) (third, fourth, and fifth alterations in original) (citations omitted) (quoting *Culver, LLC v. Chiu (In re Chiu)*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), *aff'd*, 304 F.3d 905 (9th Cir. 2002)).

Thus, "[i]t is well settled that the petition date is the operative date to value the debtor's residence and the homestead [exemption] for section 522(f) purposes." *Mbaba*, 2006 WL 6810948, at \*5 (citing *In re Salanoa*, 263 B.R. 120, 124 (Bankr. S.D. Cal. 2001); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)). "This approach is consistent with *Dewsnup* because it allows a lien creditor to enjoy the increase in value if the lien is not avoided. However, it also preserves the parties' rights as they existed on the petition date to the extent the lien is avoidable under § 522(f)." *Salanoa*, 263 B.R. at 124. It is also consistent with Ninth Circuit precedent that allows a debtor to avoid a lien under § 522(f) even when the debtor "[no longer has] an interest in the property at the time it moves to avoid." *Chiu*, 304 F.3d at 908.

14. [14-10447](#)-A-7 MARIA NAVA  
MAZ-2  
MARIA NAVA/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO AVOID LIEN OF  
PORTFOLIO RECOVERY ASSOC.  
4-24-14 [[26](#)]

### **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.

15. [13-17453](#)-A-7 DANIEL/IVY ROCHA  
TMT-1  
TRUDI MANFREDO/MV  
SCOTT MITCHELL/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO EMPLOY KENNETH C.  
ABSALOM AS SPECIAL COUNSEL  
4-30-14 [[43](#)]

### **Tentative Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved subject to conditions stated below

**Order:** Prepared by moving party

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

The court may approve employment of professional persons who "do 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"). Section 327(e) further provides that "[t]he trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed."

From the factual information provided in the motion and supporting papers, the court will approve the employment subject to the following conditions:

—Paragraph 3 of the retainer agreement (entitled "Lien") will be stricken and given no effect. Paragraph 1 and any other provisions of

the retainer agreement that purport to create a lien on property of the estate will also be stricken and given no effect.

–Paragraph 5’s provisions specifically regarding association other counsel will be stricken and given no effect. But Paragraph 5’s provisions regarding assigning work to any attorney in the firm of The Law Offices of Kenneth C. Absalom will remain valid and unaffected by this change.

–Paragraph 6 will be stricken and replaced with the language concerning settlement that was provided in the trustee’s letter to Mr. Absalom dated April 21, 2014.

–Paragraph 7 on termination will be stricken in its entirety and given no effect.

–Paragraph 1(b) will be stricken in its entirety and all references to this provision. Compensation for services rendered will be governed by the Bankruptcy Code.

–The agreement must remove all references to representation of the debtor as the client. The term client will be defined as the estate and the trustee. To be employed under § 327(e), special counsel representation of the debtor must have ended. See 11 U.S.C. § 327(e). Section 327(e) permits only an attorney that “has represented” the debtor, not an attorney that still represents the debtor while at the same time representing the estate.

16. [14-10258](#)-A-7 HEATHER BRANDT  
TMT-1  
TRUDI MANFREDO/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO EMPLOY GUARANTEE REAL  
ESTATE AS BROKER(S)  
4-24-14 [[17](#)]

**No tentative ruling.**

17. [14-10762](#)-A-7 RICHARD/JANE URRUTIA  
RHT-2  
ROBERT HAWKINS/MV  
DAVID JENKINS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL  
4-30-14 [[15](#)]

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1966 Pontiac GTO, 1979 Chevy Suburban, and a travel trailer  
**Buyer:** Debtors  
**Sale Price:** \$7900 aggregate for both vehicles and trailer (\$5,000 cash plus \$2900 exemption credit)  
**Sale Type:** Private sale subject to overbid opportunity

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

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.

18. [14-10762](#)-A-7     RICHARD/JANE URRUTIA     MOTION TO SELL  
RHT-3     4-30-14 [[20](#)]  
ROBERT HAWKINS/MV  
DAVID JENKINS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

#### **Final Ruling**

**Motion:** Sell Property  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Property:** 2009 Toyota Avalon  
**Sale Type:** Public auction

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

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

19. [14-11462](#)-A-7 MIGUEL/ANGELICA HERRERA MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
MIGUEL HERRERA/MV FEE  
4-24-14 [[19](#)]  
MIGUEL HERRERA/Atty. for mv.

**No tentative ruling.**

20. [13-13063](#)-A-7 WILLIAM MANUSZAK OBJECTION TO CLAIM OF UNIFUND  
CJS-2 CCR PARTNERS, CLAIM NUMBER 3  
WILLIAM MANUSZAK/MV 3-27-14 [[82](#)]  
CHERYL JOLLEY-SMITH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, ECF No. 90, the matter is dropped from calendar as moot.

21. [11-12264](#)-A-7 GENEAL CHIMA CONTINUED MOTION FOR SANCTIONS  
WW-1 FOR VIOLATION OF THE AUTOMATIC  
GENEAL CHIMA/MV STAY AND/OR MOTION FOR  
SANCTIONS FOR VIOLATION OF THE  
DISCHARGE INJUNCTION  
7-11-13 [[122](#)]  
JEFF REICH/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The motion has been dismissed. ECF No. 214. The matter is dropped from calendar as moot.

22. [14-12371](#)-A-7 RODNEY/TERESA WILLIAMS MOTION TO COMPEL ABANDONMENT  
MAZ-1 5-12-14 [[13](#)]  
RODNEY WILLIAMS/MV  
MARK ZIMMERMAN/Atty. for dbt.

**Tentative Ruling**

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

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

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

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

**Business Description:** U.S. Tactical & Sporting Arms, a sole proprietorship

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).

23. [13-16877](#)-A-7 DENNIS/PHYLLIS BALL MOTION TO COMPEL ABANDONMENT  
PBB-1 4-25-14 [[54](#)]  
DENNIS BALL/MV  
PETER BUNTING/Atty. for dbt.

#### **Final Ruling**

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

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

**Disposition:** Granted

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

**Real Property Description:** 7896 N. Fine Avenue, Fresno, 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).

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).

24. [14-11199](#)-A-7 ROSA SILVA AND JOSE SILVA MOTION TO DISMISS ROSA SILVA  
TMT-1 - AYALA AND/OR MOTION TO EXTEND  
TRUDI MANFREDO/MV DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGE OF THE  
DEBTOR  
4-18-14 [[19](#)]
- RALPH AVILA/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Tentative Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The Chapter 7 trustee moves to dismiss this case because joint debtor Rosa Silva did not timely provide the trustee the most recently filed tax returns required by § 521(e)(2)(A)(i) and copies of pay advices for the 60-day period preceding the petition date from any employer of the debtor. The trustee asserts that, instead of providing these documents before the meeting of creditors, she provided them at the meeting of creditors.

The trustee also asserts that the debtor's testimony was that she gave these documents to her attorney in time for him to have provided the documents to the trustee by the deadline.

In opposition, Rosa Silva's attorney states under penalty of perjury that he timely provided the documents to the trustee along with her spouse's documents submitted to the trustee.

### **FAILURE TO PROVIDE TAX RETURNS TIMELY TO THE TRUSTEE**

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

The trustee acknowledges that the debtor testified that she provided the documents to her attorney in time for him to provide the documents to the trustee by the deadline, the court finds that the case should not be dismissed due to circumstances beyond the debtors' control. See *id.* § 521(e)(2)(B). The statutory provision for dismissal makes an exception for circumstances beyond the debtor's control. The cause of the untimely delivery of Rosa Silva's documents appears to be beyond the debtor's control.



## **FAILURE TO PROVIDE PAY ADVICES TIMELY TO THE TRUSTEE**

No later than 7 days before the first date set for the creditors' meeting, debtors are required to provide the trustee with the pay advices or other evidence of payment required by § 521(a)(1)(B)(iv). LBR 1007-1(c)(1). The default rule under § 521(a)(1), however, is that such materials must be filed with the court "unless the court orders otherwise." See § 521(a)(1)(B). This court has ordered otherwise and required that payment advices or other evidence of payment under § 521(a)(1)(B)(iv) be provided to the trustee and not filed with the court. LBR 1007-1(c)(1).

Section 521(i)(1) provides for automatic dismissal of cases in which an individual debtor fails to file all of the information required under § 521(a)(1) within 45 days of the petition. 11 U.S.C. § 521(i)(1). Section 521(i)(4) permits the court to decide not to dismiss the case based on a failure to comply with § 521(a)(1)(B)(iv) "if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case." *Id.* § 521(i)(4).

Section 521(i), however, is inapplicable to payment advices and other evidences of payment. Under Local Bankruptcy Rule 1007-1(c)(1), the court has required debtors not to file payment advices or other evidence of payment. Instead, debtors are to provide such documents to the assigned case trustee not later than 7 days before the first date set for the creditors' meeting. Section 521(i), by contrast, is premised on the requirement that a debtor *file* such materials. Further, no analysis under § 521(i) can be performed because the subsection depends on the application of a 45-day period, or an extension of such period, within which time such materials must be filed, but a very different deadline is imposed for providing documents to the trustee under Local Bankruptcy Rule 1007-1(c)(1). The deadline under the local rule relates to the date of the creditors' meeting while the deadline under § 521(i) relates to the petition date.

However, the court may impose sanctions, including dismissal of a case under the court's inherent power and § 105 for noncompliance with the court's rules. *Id.* § 105(a). Local Bankruptcy Rule 1001-1(g) recognizes this authority and permits sanctions, including dismissal of any action and imposition of attorneys' fees and costs, for noncompliance with the Federal Rules of Bankruptcy Procedure or the court's local rules. Failure to provide pay advices timely to the trustee may also be grounds for dismissal of a case for cause based on unreasonable delay that is prejudicial to creditors. *Id.* § 707(a)(1).

Because the cause of the untimely delivery of documents was not within the debtor's control, the court will not exercise its discretion to impose sanctions and dismiss her case.

## **REQUEST FOR DISMISSAL UNDER § 707(a)(1)**

While the court sympathizes with the trustee's predicament of having to prepare for multiple creditors' meetings, and recognizes that the trustee has been delayed, the court does not find that the delay imposed on creditors is unreasonable or prejudicial as a result of the continuance of the creditors' meeting. See *id.* § 707(a)(1). Further, even if the delay could be characterized as unreasonable, the court

will not dismiss the case under § 707(a)(1) because creditors have not been delayed *by the debtor*.

9:15 a.m.

1. [12-16876](#)-A-7 WILLIAM VANDER POEL CONTINUED STATUS CONFERENCE RE:  
[14-1033](#) COMPLAINT  
VANDER POEL, SR. V. MEDINA ET 3-10-14 [[1](#)]  
AL  
MICHAEL FLETCHER/Atty. for pl.  
RESPONSIVE PLEADING

No tentative ruling.

2. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION FOR SUMMARY JUDGMENT  
[14-1033](#) WW-1 4-25-14 [[13](#)]  
 VANDER POEL, SR. V. MEDINA ET  
 AL  
 MICHAEL FLETCHER/Atty. for mv.  
 RESPONSIVE PLEADING

No tentative ruling.

3. [14-10691](#)-A-7 JOHN/MESHELL RUIZ CONTINUED STATUS CONFERENCE RE:  
[14-1031](#) COMPLAINT  
 RUIZ, II V. KINGS CREDIT 3-5-14 [[1](#)]  
 SERVICES, INC.  
 TIMOTHY SPRINGER/Atty. for pl.  
 NOTICE OF SETTLEMENT FILED  
 5/17/14

## Final Ruling

The adversary proceeding dismissed, ECF No. 10, the status conference is concluded.

4. [11-15299](#)-A-7 ERNEST ROQUE RESCHEDULED STATUS CONFERENCE  
[11-1217](#) RE: COMPLAINT  
YNIGUEZ V. ROQUE 8-23-11 [[1](#)]  
CYRIL LAWRENCE/Atty. for pl.  
RESPONSIVE PLEADING

## Tentative Ruling

The status conference is continued to June 11, 2014, at 9:15 a.m., to be heard in conjunction with motion for summary judgment.

10:00 a.m.

1. [13-16509](#)-A-7 LUCIO GARCIA  
MDE-1  
CITIMORTGAGE, INC./MV  
LAYNE HAYDEN/Atty. for dbt.  
MARK ESTLE/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-30-14 [[37](#)]

### **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:** 3570 W Garland Ave., Fresno, CA

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

### **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**

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). Adequate protection is also required where the property is declining in value, but "[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)).

The debtor has missed 4 post-petition payments. This constitutes cause for stay relief. 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. <a href="#">14-11819</a> -A-7    DEBORA CELILLO APN-1 BMW FINANCIAL SERVICES NA, LLC/MV JOHN BIANCO/Atty. for dbt. AUSTIN NAGEL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-28-14 [ <a href="#">9</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:** 2013 BMW 328i (formerly leased)

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). Adequate protection is also required where the property is declining in value, but "[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)).

Cause includes the debtor's loss of the property to the lessor prepetition. Further, the debtor has missed one post-petition payment. The movant alleges that the property is depreciating and continues to depreciate while the payments are not being made. 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. [14-11537](#)-A-7 GUILLERMO RIOS AND GINA MOTION FOR RELIEF FROM  
SW-1 MORALES AUTOMATIC STAY  
ALLY FINANCIAL INC./MV 5-8-14 [[20](#)]  
MONA PATEL/Atty. for dbt.  
TORIANA HOLMES/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:** 2010 Mercedes-Benz GLK

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

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

4. [14-10758](#)-A-7 VERONICA BLANCAS-PEREZ MOTION FOR RELIEF FROM  
RMD-1 AUTOMATIC STAY  
UNIVERSAL AMERICAN MORTGAGE, 4-23-14 [[17](#)]  
INC./MV  
STEPHEN LABIAK/Atty. for dbt.  
RYAN DAVIES/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:** 3104 West Oriole Avenue, Visalia, 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.

5. [14-11169](#)-A-7 ROBERT REYNOSO  
ASW-1  
BUDGET FUNDING I, LLC/MV  
STEPHEN LABIAK/Atty. for dbt.  
JOELY BUI/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-23-14 [[33](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 4139 East Nebraska Avenue, Fresno, CA

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). Adequate protection is also required where the property is declining in value, but "[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)).

The debtor has missed 1 post-petition payments due on the debt secured by the moving party's lien. But before the petition, the debtor had a history of missed payments including 8 pre-petition payments and arrearages of approximately \$14,980.70 have accrued. The movant's equity cushion is approximately 5% (based on a value of \$135,000 and an outstanding balance of \$128,216.41 as shown on the stay relief summary sheet). This cushion will further decline if interest continues to accrue without being paid when due. This constitutes cause for stay relief.

The debtor has requested time to refinance. The debtor has opposed none of the grounds in the motion. The court cannot deny the relief to which the movant is entitled under the Code simply because the opposition requests time to refinance.

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.

6.	<a href="#">14-11384</a> -A-7     MANUEL/JOVITA SANCHEZ RCO-1 U.S. BANK TRUST, N.A./MV JEFFREY ROWE/Atty. for dbt. KRISTI WELLS/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-24-14 [ <a href="#">19</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:** 6628 North Kennedy Avenue, Fresno, 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.

10:30 a.m.

1. [14-11306](#)-A-7 ISRAEL/YESSENIA SANCHEZ PRO SE REAFFIRMATION AGREEMENT  
WITH FINANCE AND THRIFT COMPANY  
5-6-14 [[15](#)]

**No tentative ruling.**

2. [14-10834](#)-A-7 YVETTE MARTIN PRO SE REAFFIRMATION AGREEMENT  
WITH A-L FINANCIAL CORP.  
5-7-14 [[25](#)]

SUSAN HEMB/Atty. for dbt.

**Final Ruling**

The reaffirmation agreement withdrawn, the matter is dropped from  
calendar as moot.

3. [14-11341](#)-A-7 JUAN MEJIA PRO SE REAFFIRMATION AGREEMENT  
WITH SANTANDER CONSUMER USA  
INC.  
4-30-14 [[12](#)]

**No tentative ruling.**

4. [14-10646](#)-A-7 TODD/CINDY PAIGE REAFFIRMATION AGREEMENT WITH  
KIA MOTORS FINANCE  
5-5-14 [[20](#)]

GARY HUSS/Atty. for dbt.

**No tentative ruling.**

5. [14-10688](#)-A-7 JACQUELINE REAFFIRMATION AGREEMENT WITH  
CROCKET-GALLMON ALLY FINANCIAL  
4-28-14 [[15](#)]

RANDY RISNER/Atty. for dbt.

**No tentative ruling.**

6. [14-11194](#)-A-7 RICHARD/ESTHER RODRIGUEZ CONTINUED RE: REAFFIRMATION  
AGREEMENT  
4-15-14 [[10](#)]

GEORGE LOGAN/Atty. for dbt.

**No tentative ruling.**



1:30 p.m.

1. [12-10503](#)-A-11 GAIL MOORE  
KDG-22

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER, COOPER, ROSENLIEB AND  
KIMBALL, LLP FOR JACOB L.  
EATON, DEBTOR'S ATTORNEY(S)  
5-5-14 [[389](#)]

T. BELDEN/Atty. for dbt.

#### **Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Compensation approved:** \$54,698.50

**Costs approved:** \$727.05

**Aggregate fees and costs approved in this application:** \$55,425.55

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$55,425.55

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

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves all prior awards of compensation.

2. [12-10503](#)-A-11 GAIL MOORE  
TSB-5  
GAIL MOORE/MV

MOTION FOR COMPENSATION FOR T.  
SCOTT BELDEN, DEBTOR'S  
ATTORNEY(S).  
4-29-14 [[383](#)]

T. BELDEN/Atty. for dbt.

#### **Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Office of T. Scott Belden, PC

**Compensation approved:** \$4017.50

**Costs approved:** \$219.34

**Aggregate fees and costs approved in this application:** \$4236.84

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$4236.84

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

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

3. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-40  
JOHN VISSER/MV  
RONALD CLIFFORD/Atty. for dbt.

OBJECTION TO CLAIM OF MANUEL  
MACHADO, CLAIM NUMBER 3  
4-9-14 [[990](#)]

### **Final Ruling**

**Objection:** Objection to Claim No. 3

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

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 Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

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

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

Here, the reorganized debtors dispute that they owe the debt. They contend that the debt is owed by Visser Ranch, a partnership that the debtors own. The documentation supporting the claim is not regular on its face. The buyer statement of account attached to the claim indicates that the buyer to whom it is addressed is Visser Ranch. Further, the declaration of John Visser in support presents evidence indicating that the reorganized debtors do not owe this debt. The court will disallow the claim in its entirety.

4. [12-17336](#)-A-11 VISSER FARMS  
RAC-38  
VISSER FARMS/MV

OBJECTION TO CLAIM OF FRANSE  
IRRIGATION INC., CLAIM NUMBER 1

4-9-14 [[376](#)]

SCOTT BLAKELEY/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim No. 1

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

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 Garvida*, 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.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will allow the claim as a general unsecured claim in the amount of \$4,349.00 and disallow the remaining portion of the claim (\$1322.01) that is not owed by Visser Farms.

5. [12-17336](#)-A-11 VISSER FARMS  
RAC-39  
VISSER FARMS/MV  
COMPANY, CLAIM NUMBER 2  
SCOTT BLAKELEY/Atty. for dbt.

OBJECTION TO CLAIM OF MANUEL  
MACHADO DBA CIRCLE M HAY

4-9-14 [[382](#)]

### **Final Ruling**

**Objection:** Objection to Claim No. 1

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

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 Garvida*, 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.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

For the reasons stated in the objection and supporting papers, the court will sustain the objection. Some evidence has been presented in the form of a declaration that supports the conclusion that Visser Farms does not owe the debt asserted in the claim. Visser Farms has no need for hay as it is an operator of a fruit and nut farm. Visser Ranch's name, moreover, appears on the Buyer Statement of Account attached to the claim. The court will disallow the claim in its entirety.

6. [12-17336](#)-A-11 VISSER FARMS  
RAC-41  
VISSER FARMS/MV  
NUMBER 3

OBJECTION TO CLAIM OF FRUIT  
GROWERS SUPPLY COMPANY, CLAIM

4-9-14 [[370](#)]

SCOTT BLAKELEY/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** Objection to Claim No. 3 (filed by claimant Fruit Growers Supply Co.)

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

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.

7. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION FOR RELIEF FROM  
DK-1 LLC AUTOMATIC STAY  
CNA PROPERTIES, LLC/MV 5-9-14 [[142](#)]  
ELAINE NGUYEN/Atty. for dbt.  
SCOTT LEE/Atty. for mv.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

The moving party seeks relief from the automatic stay for the limited purpose of filing a continuation UCC financing statement pursuant to section 9515 of the California Uniform Commercial Code. On or about June 25, 2009, the moving party's assignor filed a UCC-1 financing statement. The moving party asserts that the financing statement expires on June 25, 2014. Thus, the moving party is requesting relief from stay to extend the period of effectiveness of the initial financing statement by filing a continuation statement as provided under state law.

Section 362(b)(3) provides that the automatic stay does not apply to "any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title . . . ."

Section 546(b)(1)(B) describes certain laws to which the rights and powers of a trustee under sections 544, 545 and 549 are subject. The rights and powers of a trustee under this subsection are subject to "any generally applicable law that . . . provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation."

The court finds that section 9515 of the California Uniform Commercial Code is the type of law described in §§ 362(b)(3) and 546(b)(1)(B). Section 9515(e) permits a secured party to continue perfection of its interest in property within 6 months before the expiration of a 5-year period, and the effect of the continuation statement—so long as it is filed within the timeframe permitted by the statute—continues the effectiveness of the *initial* financing statement. Thus, a trustee who acquires rights in the collateral described in the financing statement would be subject to the initial, pre-petition financing statement under section 9515(e) if the continuation statement is timely filed. As a result, section 9515 provides for the continuation of perfection of a security interest to be effective against a trustee that acquires rights in the collateral after the date of the initial financing statement but before the date on which the continuation statement is filed. Thus, under § 362(b)(3), no stay prevents the moving party from *timely* filing its continuation statement.

8. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-13  
500 WHITE LANE LP/MV  
D. GARDNER/Atty. for dbt.

MOTION FOR COMPENSATION FOR N12  
INVESTMENTS INC., BROKER(S).  
5-7-14 [[296](#)]

**No tentative ruling.**

9. [14-10268](#)-A-11 RODRIGO ROMERO  
[14-1028](#)  
U.S. TRUSTEE V. ROMERO  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-28-14 [[1](#)]

**Final Ruling**

A stipulated judgment entered, ECF No. 22, and the case dismissed, the status conference is concluded.

10. [14-11991](#)-A-11 CENTRAL AIR  
CONDITIONING, INC.

CHAPTER 11 STATUS CONFERENCE  
RE: VOLUNTARY PETITION  
4-17-14 [[1](#)]

HAGOP BEDOYAN/Atty. for dbt.

**No tentative ruling.**

11. [13-14894](#)-A-11 JORENE MIZE

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
7-17-13 [[1](#)]

ROSEANN FRAZEE/Atty. for dbt.  
CONTINUED PER ORDER 5/12/14

**No tentative ruling.**



12. [13-14894](#)-A-11 JORENE MIZE  
MCG-3  
JORENE MIZE/MV  
  
ROSEANN FRAZEE/Atty. for dbt.

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LESTIE FRY  
4-25-14 [[273](#)]

### **Tentative Ruling**

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

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

**Disposition:** Granted in part and denied in part

**Order:** Prepared by McGoldrick & McGoldrick, approved by RoseAnn Frazee

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).

### **ON THE MERITS**

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.*

Except as otherwise provided herein, based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The Settlement Agreement has two provisions that appear to violate public policy. The first is paragraph 2(iii), which bars future bankruptcy filings. This appears to violate public policy. *Bank of China v. Huang*, 275 F.3d 1173 (9th Cir. 2002); *In re Wank*, 505 B.R. 878 (9th Cir. B.A.P. 2014). The second is paragraph 2(vi), which precludes future modification of the creditors rights. *Id.* These two portions of the settlement agreement are disapproved. Otherwise, the compromise will be approved.

### **VIOLATION OF LOCAL RULES**

The moving party has violated Local Bankruptcy Rule 9014-1(c) by twice using the same docket control number. *Compare*, Motion for Stay Relief, October 2, 2013, ECF #72, with Motion to Approve Compromise,



April 25, 2014, ECF #273. Future violations may result in summary denial of the motion or sanctions against counsel.

13. [13-14894](#)-A-11 JORENE MIZE  
RAF-10

CONTINUED AMENDED DISCLOSURE  
STATEMENT  
5-7-14 [[281](#)]

ROSEANN FRAZEE/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Motion to Approve Second Amended Disclosure Statement

**Notice:** Continued date of hearing; written opposition required

**Disposition:** Granted, subject to conditions

**Order:** Prepared by the court

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

The debtor Jorene Mize (the "Debtor") has filed a second amended disclosure statement (the "Disclosure Statement") and plan (the "Plan") and now requests court approval of the Disclosure Statement. No party in interest has filed an opposition.

Because the Debtor has addressed the issues raised by the court in the prior ruling and no new issues have arisen and except as otherwise provided herein, the court will approve the Disclosure Statement. Portions of the plan and disclosure statement that limit the debtor's ability to file future bankruptcies or otherwise modify the rights of creditors appear to violate public policy and to be unenforceable. Amended Plan, p. 6, lines 20-26 and p. 7, line 14-17, May 7, 2014, ECF #279; Second Amended Disclosure Statement, p. 13, lines 6-10, May 7, 2014, ECF #281. *Bank of China v. Huang*, 275 F.3d 1173 (9th Cir. 2002); *In re Wank*, 505 B.R. 878 (9th Cir. BAP 2014). The particular offending portions of the settlement agreement are paragraphs 2(iii) and 2(vi) (precluding future filings or modification of creditors rights).

Not later than close of business on Friday, May 30, 2014, the debtor shall file an amended plan and amended disclosure statement, together with redline versions of each, removing these provisions. Thereafter, the court will issue an order approving the Disclosure Statement and setting forth the scheduling for confirmation. The relevant dates and deadlines for confirmation will be discussed with the parties at the hearing.

14. [13-14894](#)-A-11 JORENE MIZE  
RAF-12

CONTINUED MOTION FOR  
COMPENSATION BY THE LAW OFFICE  
OF FRAZEE LAW GROUP FOR ROSEANN  
FRAZEE, DEBTOR'S ATTORNEY(S)  
4-2-14 [[249](#)]

ROSEANN FRAZEE/Atty. for dbt.

**No tentative ruling.**

15. [14-11595](#)-A-11 RAY FISHER PHARMACY,  
INC.

CONTINUED STATUS CONFERENCE RE:  
CHAPTER 11 VOLUNTARY PETITION  
3-31-14 [[1](#)]

ALAN KINDRED/Atty. for dbt.  
CONTINUED TO 6/4 PER ORDER  
#53

**Final Ruling**

The status conference has been continued to June 4, 2014, at 1:30  
p.m., by this court's order dated May 12, 2014, ECF No. 56.