

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

JUNE 11, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [12-19109](#)-A-7 DEAUNNA GRANT MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI AND WONG,
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S).
5-6-14 [[86](#)]

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Janzen, Tamberi & Wong

Compensation approved: \$906.50

Costs approved: \$10.08

Aggregate fees and costs approved in this application: \$916.58

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 a final basis as to the amounts requested.

2. [14-12212](#)-A-7 ENRIQUE HERNANDEZ AND MOTION FOR WAIVER OF THE
CARITINA NAVARRETE CHAPTER 7 FILING FEE OR OTHER
ENRIQUE HERNANDEZ/MV FEE
4-29-14 [[5](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

Final Ruling

The fee having been paid in full, the motion is denied as moot.

3. [14-12234](#)-A-7 ALEXANDRA CHAMPAGNE

ALEXANDRA CHAMPAGNE/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
5-10-14 [[11](#)]

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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).

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

4. [12-11035](#)-A-7 MARIA LEMUS

AGG-1
MARIA LEMUS/MV

CONTINUED MOTION FOR ORDER
CONFIRMING THAT ANY LOAN
MODIFICATION GIVEN BY WELLS
FARGO BANK WOULD NOT CONSTITUTE
A VIOLATION OF THE DISCHARGE
INJUNCTION
3-18-14 [[29](#)]

ALBERT GARCIA/Atty. for dbt.
CONTINUED TO 7/1 PER ORDER

Final Ruling

The matter has been continued to July 1, 2014, at 9:00 a.m. pursuant to Order, ECF No. 48.

5. [14-10437](#)-A-7 JORGE/SILVIA FARIAS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-22-14 [[36](#)]

ALBERT GARCIA/Atty. for dbt.
\$30.00 FEE PAID 5/23

Final Ruling

The fee paid in full, the order to show cause is discharged.

6. [13-18043](#)-A-7 TARSEM PABLA
TMT-1
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NARINDER KAUR
5-8-14 [[16](#)]

PETER FEAR/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

7. [14-11449](#)-A-7 JOSE/MARIA GALINDO
CGF-1
JOSE GALINDO/MV
5-4-14 [[17](#)]
CHRISTOPHER FISHER/Atty. for dbt

MOTION TO AVOID LIEN OF MIDLAND
FUNDING LLC

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. [12-16851](#)-A-7 CHITA BOX
SAH-3
CHITA BOX/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
5-7-14 [[46](#)]

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: 7159 North Whitney Avenue, Fresno, CA

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

ABANDONMENT

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).

USE OF MASTER ADDRESS LIST

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

9. [13-16457](#)-A-7 DES BANGAR
TGM-2
JAMES SALVEN/MV

CONTINUED MOTION TO SELL
4-2-14 [[48](#)]

GARY HUSS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 1740 North Cecelia Avenue, Fresno, CA

Buyer: Salvador Chavez Vasquez and Maria L. Chavez

Sale Price: \$190,000

Sale Type: Private sale subject to overbid opportunity

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

SALE OF 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.

COMMISSION

Notice Insufficient

The notice of hearing does not comply with Rule 2002(c)(2) in that it does not identify the applicant by name. The notice only refers generically to the seller's and buyer's brokers. In the future, the notice of hearing for sale motions that request approval of compensation should identify by name the person or entity to be compensated.

Approval of Compensation

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

10. [10-17858](#)-A-7 LLOYD/ALICE MORELOCK MOTION FOR COMPENSATION FOR
JES-3 BAIRD AUCTIONS AND APPRAISALS,
JAMES SALVEN/MV AUCTIONEER(S).
5-14-14 [[77](#)]

GABRIEL WADDELL/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Baird Auctions and Appraisals

Compensation approved: \$237.75

Costs approved: \$252.00

Aggregate fees and costs approved in this application: \$489.75

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 a final basis as to the amounts requested.

11. [14-10458](#)-A-7 ERNIE MARTINEZ CONCRETE, MOTION TO SELL
DMG-3 INC. 5-20-14 [[25](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
JEFFREY VETTER/Atty. for mv.
ORDER #33

Tentative Ruling

Motion: Sell Property

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

Disposition: Continued to July 30, 2014; evidence of secured creditor's consent to carve-out agreement must be filed no later than 21 days (July 9, 2014) before the continued hearing date along with a notice of continued hearing served on all creditors and parties in interest

Order: Prepared by moving party

Property: Vehicles, equipment and tools described in the notice of hearing

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). 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 at the continued hearing provided some evidence of the secured creditor's consent to the carve-out agreement is provided. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

NOTICE

The moving party did not provide a sufficient period of notice pursuant to LBR 9014-1(f)(1). Although the notice required written opposition served at least 14 days before the hearing date and selected the procedure under LBR 9014-1(f)(1), only 22 days' notice was provided. Accordingly, the motion will be treated as having been noticed under LBR 9014-1(f)(2).

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| 12. | 13-13063 -A-7 WILLIAM MANUSZAK
CJS-3
WILLIAM MANUSZAK/MV
CHERYL JOLLEY-SMITH/Atty. for dbt. | MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
4-25-14 [87] |
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Final Ruling

The matter has been renoticed for July 9, 2014, at 9:00 a.m.

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| 13. | 10-64343 -A-7 SONIA ALVAREZ
11-1269
ALVAREZ V. BANK OF AMERICA ET
AL
SONIA ALVAREZ/Atty. for mv. | MOTION TO DISMISS CASE
5-12-14 [338] |
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Final Ruling

The court ordered dismissal of this adversary. ECF No. 310. The appeal of such order has been dismissed. This motion will be denied as moot.

14. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER MOTION FOR COMPENSATION FOR
JES-5 BAIRD AUCTIONS AND APPRAISALS,
JAMES SALVEN/MV AUCTIONEER(S).
5-14-14 [[54](#)]

BRIAN HADDIX/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Baird Auctions and Appraisals

Compensation approved: \$1279.50

Costs approved: \$324.00

Aggregate fees and costs approved in this application: \$1603.50

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 a final basis as to the amounts requested.

15. [13-17885](#)-A-7 CONNIE BETHEL OBJECTION TO DEBTOR'S CLAIM OF
SAS-3 EXEMPTIONS
SHERYL STRAIN/MV 5-6-14 [[38](#)]
KEITH KNOCHER/Atty. for dbt.

Final Ruling

The trustee's motion to compromise the dispute involving this objection has been granted. In that motion, the trustee represented that one of the terms of the settlement was that she would withdraw her second Objection to Exemptions, which is the present objection. The court will overrule this objection as moot.

16. [14-12498](#)-A-7 SEQUOIA PROSTHETICS AND ORDER TO APPEAR AND SHOW CAUSE
ORTHOTICS, INC. WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
5-13-14 [[4](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Matter: Order to Appear and Show Cause Why a Patient Care Ombudsman Should Not Be Appointed

Disposition: Discharged without appointment of an ombudsman

Order: Civil minute order

The court has issued an Order to Appear and Show Cause Why a Patient Care Ombudsman Should Not Be Appointed. The debtor's president has filed a declaration representing that the healthcare business that was the business of the debtor is no longer operating since before the date that the petition was filed.

However, if any patients would be affected by the bankruptcy, the debtor shall inform the court of all pertinent facts at the hearing. From the declaration, it appears that no patients would likely to be affected by this bankruptcy, which supports the conclusion that no ombudsman should be appointed and the order to show cause discharged.

17. [14-12575](#)-A-7 ALICE RODRIGUEZ MOTION TO COMPEL ABANDONMENT
RCM-1 5-22-14 [[13](#)]
ALICE RODRIGUEZ/MV
RICHARD MENDEZ/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Denied without prejudice

Order: Prepared by moving party pursuant to the instructions below

Business Description: Two sole proprietorships more fully described in the motion

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.

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion contains the conclusory statement that

the "Debtor has claimed an exemption in each and every asset comprising the Properties in an amount at least as great as its equity."

Even if the court were to read the declaration as part of the motion, the declaration does not present facts that constitute a prima facie case. It lists assets of the debtor but does not show what exemptions were claimed in such assets, with the exception of livestock. The debtor states the dollar amount of the liens secured by the 2008 Kenworth Semi Truck, but the debtor does not indicate anywhere whether the difference between the liens and the truck's value (\$23,497) is exempt.

The 1990 Fruehauf 52' Cargo trailer valued at \$3000 has no encumbrances but the motion and declaration do not state that this trailer has been claimed exempt. The court should not be required to research the docket to determine the basic facts that constitute the relief requested.

Both the original Schedule C and amended Schedule C do not indicate that the 2008 Kenworth has been exempted. Thus, the motion inaccurately represents the debtor had claimed an exemption in each and every asset in an amount at least as great as its equity.

18. [14-12719](#)-A-7 ESTHER MANNING
AG-1
ESTHER MANNING/MV
ALBERT GARCIA/Atty. for dbt.
ORDER 6/9/14

RESCHEDULED HEARING RE: MOTION
TO EXTEND AUTOMATIC STAY
6-2-14 [[12](#)]

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.

If this case was filed under Chapter 13 of title 11, the court will extend the automatic stay subject to the condition that all plan payments are timely made to the Chapter 13 trustee for the next six months, and the order shall provide that (i) the debtor shall make such timely payments for the next six months to the Chapter 13 trustee, (ii) if the debtor fails to make any such monthly payment, the Chapter 13 trustee may file a certification of noncompliance with the order on this motion along with a proposed order, and (iii) upon the filing of such certification, the court may then dismiss the case without further notice or a hearing.

9:15 a.m.

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| 1. | <u>12-18810</u> -A-7 JAMES MERCER
<u>13-1082</u>
MANFREDO V. ESTATE OF SUSAN E.
MERCER ET AL
JAMES MILLER/Atty. for pl. | CONTINUED STATUS CONFERENCE
COMPLAINT
7-23-13 [<u>1</u>] |
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Final Ruling

The status conference is continued to July 9, 2014, at 9:00 a.m.

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| 2. | <u>13-12112</u> -A-7 GLEN/MELISSA MCCLARAN
<u>13-1073</u>
KARRAKER ET AL V. MCCLARAN
DAVID EMERZIAN/Atty. for pl. | PRE-TRIAL CONFERENCE RE:
COMPLAINT
6-28-13 [<u>1</u>] |
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No tentative ruling.

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| 3. | <u>13-15067</u> -A-7 CARLOS BERBEREIA
<u>14-1041</u>
MANFREDO V. BERBEREIA
TRUDI MANFREDO/Atty. for pl.
RESPONSIVE PLEADING | STATUS CONFERENCE RE: COMPLAINT
4-15-14 [<u>1</u>] |
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No tentative ruling.

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

No tentative ruling.

5. [11-15299](#)-A-7 ERNEST ROQUE MOTION FOR SUMMARY JUDGMENT
[11-1217](#) CLL-3 5-12-14 [[116](#)]
YNIGUEZ V. ROQUE
CYRIL LAWRENCE/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

10:00 a.m.

1. [14-11602](#)-A-7 TRACEY PRITCHETT MOTION FOR RELIEF FROM
RMD-1 AUTOMATIC STAY
UNITED SECURITY FINANCIAL/MV 5-9-14 [[14](#)]
MARK ZIMMERMAN/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: 1089 Tranquility Cir., Lemoore, 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.

2. [13-16509](#)-A-7 LUCIO GARCIA
JHW-1
TD AUTO FINANCE LLC/MV
LAYNE HAYDEN/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-12-14 [[44](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 2010 Nissan Versa

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

3. [14-10522](#)-A-7 GERARDO VILLEGAS AND MOTION FOR RELIEF FROM
KAZ-1 SILVIA LUCATERO AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 5-14-14 [[20](#)]
GEORGE ALONSO/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 1165 Payne Avenue, Gustine, 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).

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

4. [14-10152](#)-A-7 ANA ESCALERA
ASW-1
BANK OF AMERICA, N.A./MV
THOMAS GILLIS/Atty. for dbt.
JOELY BUI/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-14 [[18](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 3937 North Woodson 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).

AS TO THE DEBTOR

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

AS TO THE ESTATE

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

5. [14-10865](#)-A-7 PAUL/ASHLEY CHAVEZ
KEH-1
BALBOA THRIFT & LOAN/MV
PATRICIA CARRILLO/Atty. for dbt.
KEITH HERRON/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-9-14 [[19](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2007 Suzuki XL7 Limited Sport Utility 4D

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. [14-10646](#)-A-7 TODD/CINDY PAIGE

CONTINUED REAFFIRMATION
AGREEMENT WITH KIA MOTORS
FINANCE
5-5-14 [[20](#)]

GARY HUSS/Atty. for dbt.

No tentative ruling.

2. [14-11083](#)-A-7 DAVID HERNANDEZ

CONTINUED PRO SE REAFFIRMATION
AGREEMENT WITH FINANCE AND
THRIFT COMPANY
4-15-14 [[12](#)]

LAYNE HAYDEN/Atty. for dbt.

No tentative ruling.

3. [14-11384](#)-A-7 MANUEL/JOVITA SANCHEZ

REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC.
5-22-14 [[27](#)]

JEFFREY ROWE/Atty. for dbt.

No tentative ruling.

4. [14-10688](#)-A-7 JACQUELINE
CROCKET-GALLMON

CONTINUED REAFFIRMATION
AGREEMENT WITH ALLY FINANCIAL
4-28-14 [[15](#)]

RANDY RISNER/Atty. for dbt.

No tentative ruling.

1:30 a.m.

1. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION FOR RELIEF FROM
CRD-1 INC. AUTOMATIC STAY
WESTAMERICA BANK/MV 5-28-14 [[121](#)]
HILTON RYDER/Atty. for dbt.
CAROLINE DJANG/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, the motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). Contested matters require Rule 7004 service of the motion. Fed. R. Bankr. P. 9014(b).

In contested matters, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). The debtor is the party against whom relief is sought by the motion for stay relief. The motion must be served on the party against whom relief is sought in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(a)-(b).

In this case, the motion did not comply with Rule 7004 because service on the debtor was insufficient. The debtor was not served.

If service on the debtor is required, and the debtor is represented by an attorney, then, in addition to serving the debtor, the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney.

Lastly, the motion did effectuate service that complies with Rule 7004 on the 20 largest creditors.

2. [13-17744](#)-A-11 SREP V, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-6-13 [[1](#)]
THOMAS ARMSTRONG/Atty. for dbt.

No tentative ruling.

3. [13-17744](#)-A-11 SREP V, LLC
THA-6

DISCLOSURE STATEMENT FILED BY
DEBTOR SREP V, LLC
5-9-14 [[75](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Matter: Approval of Disclosure Statement

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

Disposition: Continued to July 30, 2014

Order: Civil minute order

BACKGROUND

The debtor in possession SREP V, LLC (the "Debtor") has filed a disclosure statement and plan, and now requests court approval of the disclosure statement. For the reasons discussed, the court will continue the hearing on approval of the disclosure statement to allow amendments to it to be made consistent with this ruling.

The court will continue the hearing on the approval of the amended disclosure statement and plan to the date indicated above. No later than July 2, 2014, the Debtor will (i) file an amended disclosure statement and plan addressing the issues identified in this ruling, along with red-lined copies of both documents, and (ii) transmit notice of the continued date of the hearing on all creditors and parties in interest and the time fixed for filing objections to the amended disclosure statement. Objections to the approval of the amended disclosure statement may be filed no later than 14 days before the continued date of the hearing.

DISCUSSION

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1).

"The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted).

Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. C.D. Cal. 1999) (citations omitted); accord *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154-55 (3d Cir. 2012). To avoid inefficiency, issues appearing on the face of the plan or disclosure statement that would make the plan non-confirmable are addressed at the hearing on the approval of the disclosure statement rather than at the hearing on confirmation of the plan. See, e.g., *In re Valrico Square Ltd.*, 113 B.R. 794, 795-96 (Bankr. S.D. Fla. 1990) (reasoning that the court properly considered classification problem in the plan at the hearing on the disclosure statement because waiting until confirmation to consider such an issue

would delay an inevitable obstacle to confirmation at a cost to creditors).

Liquidation Analysis. The debtor has not provided as sufficient liquidation analysis. The liquidation analysis should be in balance sheet or tabular format using numerical dollar amounts and values. Such amounts and values may be estimates. The analysis may subtract the hypothetical chapter 7 case's estimated administrative costs and trustee's fees.

Risk Factors. The disclosure statement does not adequate information about the risk factors that would affect what creditors could receive under the plan. The Disclosure Statement (p. 15) states that no risks are posed to creditors if the plan is confirmed. Every business has risks, and the significant, material risks affecting the distributions creditors receive under the plan should be identified.

Financial Statements / Adequate Means for Implementation. The disclosure statement does not include adequate financial information to permit creditors to make an informed judgment about the plan. It should include historical financial statements that provide information about the debtor's historical performance, including its performance while in chapter 11. It should also include projected financial statements. Such data must be sufficient to allow creditors to determine whether to accept or reject the plan, whether the plan is feasible, see §1129(a)(11), and whether the plan provides adequate means for implementation, see § 1129(a)(5).

The disclosure statement should also discuss the rental income and member contributions that will be the source of the plan's funding and state the reasons that such amounts will be sufficient to fund the plan.

Administrative Claims and Priority Tax Claims. These claims must be unclassified in the plan, see § 1123(a)(1).

Compensation of Insiders. The disclosure statement indicates that Mr. Fischer will continue as the Debtor's managing member. Mr. Fischer owns a 21.74% membership interest in the Debtor. Although the Code does not include which persons or entities associated with LLCs are insiders, the Code does define "insiders" with respect to corporations and partnerships, see § 101(31), and applying such definition by analogy to business entities such as LLCs means that a managing member of an LLC should probably be treated as an insider. The disclosure statement, therefore, should discuss Mr. Fischer's duties and compensation, and any other insider employed and compensated by the reorganized Debtor.

Amount of Wells Fargo's Claim. The disclosure statement does not indicate the post-petition arrearage amount of Wells Fargo's claim. In addition, the plan and disclosure statement should clarify whether the pre- and post-petition arrearages are included in the total secured claim of Wells Fargo. Lastly, the disclosure statement should clarify the reference to Wells Fargo's unsecured claim (DS at p. 5). This creates ambiguity with other portions of the plan and disclosure statement which indicate Wells Fargo only has a secured claim. Accordingly, unless Wells Fargo has an unsecured claim, the disclosure statement should remove Wells Fargo from discussion of unsecured classes.

CONCLUSION

For the reasons discussed, the court will continue the hearing on the approval of the disclosure statement to the date indicated above. No later than July 2, 2014, the Debtor will (i) file an amended disclosure statement and plan addressing the issues identified in this ruling, along with red-lined copies of both documents, and (ii) transmit notice of the continued date of the hearing on all creditors and parties in interest and the time fixed for filing objections to the amended disclosure statement. Objections to the approval of the amended disclosure statement may be filed no later than 14 days before the continued date of the hearing.

4. [14-10851](#)-A-11 JOHN/BETTY VAN DYK CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-25-14 [[1](#)]
RILEY WALTER/Atty. for dbt.

Final Ruling

The status conference is continued to August 6, 2014, at 1:30 p.m.

5. [14-10851](#)-A-11 JOHN/BETTY VAN DYK MOTION TO ASSUME LEASE OR
WW-4 EXECUTORY CONTRACT
JOHN VAN DYK/MV
4-18-14 [[73](#)]
RILEY WALTER/Atty. for dbt.

Final Ruling

The matter is continued to August 6, 2014, at 1:30 p.m., pursuant to Order ECF No. 120.

6. [14-10851](#)-A-11 JOHN/BETTY VAN DYK CONTINUED DISCLOSURE STATEMENT
WW-6 FILED BY JOINT DEBTOR BETTY
JEAN VAN DYK, DEBTOR JOHN
WILLIAM VAN DYK
3-21-14 [[50](#)]
RILEY WALTER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The matter is continued to August 6, 2014, at 1:30 p.m., pursuant to Order ECF No. 120.

1:45 p.m.

1. [10-61725](#)-A-7 PAMELA ENNIS
[12-1160](#)
STRAIN V. ENNIS ET AL
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-16-12 [[7](#)]

No tentative ruling.

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

No tentative ruling.