

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: JUNE 14, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [16-11404](#)-A-7 BRITTNEY AVILA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-23-16 [[32](#)]

NOTICE TO DISREGARD 6/1/16

Final Ruling

Pursuant to the Notice to Disregard, the matter is dropped as moot.

2. [15-14906](#)-A-7 VICTOR/EVILA NAJERA

MOTION TO ABANDON
5-13-16 [[63](#)]

RHT-1

ROBERT HAWKINS/MV

ANTHONY EGBASE/Atty. for dbt.

ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Abandon Real Property and Cause of Action Entitled *Victor Najera and Evila Najera v. U.S. Bank National Association, et al.*, Adv. No. 16-1154

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

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 trustee seeks to abandon the estate's interest in real property located at 3463 East Mountain View Avenue, Selma, CA, as well as the cause of action described above. The trustee asserts that the estate's interest in such assets is of inconsequential value and burdensome to the estate. Unless an objection is filed, trustee's may abandon property without a hearing so long as notice is given to all creditors and parties in interest. Fed. R. Bankr. P. 6007(a). The court will grant the motion and order abandonment.

3. [11-15808](#)-A-7 ENRIQUE/GRACIELA RIOS

MOTION TO AVOID LIEN OF
UNINSURED EMPLOYERS BENEFITS
TRUST FUND RECOVERY UNIT
5-18-16 [[32](#)]

TOG-3

ENRIQUE RIOS/MV

THOMAS GILLIS/Atty. for dbt.

WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [07-12925](#)-A-7 TIMOTHY/JOANNE KUBELKA PRETRIAL CONFERENCE RE: MOTION
MRE-1 FOR CONTEMPT AND/OR MOTION TO
TIMOTHY KUBELKA/MV DISMISS CIVIL COLLECTION ACTION,
11-18-15 [[74](#)]
- STEVEN STANLEY/Atty. for dbt.

Final Ruling

Pursuant to an Order, filed May 11, 2016, ECF # 13, the pretrial conference is continued to August 24, 2016, at 9:00 a.m. Not later than August 10, 2016, the parties shall file a joint status report.

5. [16-10226](#)-A-7 LINDA RUIZ MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 5-5-16 [[14](#)]
COMPANY/MV
GEORGE LOGAN/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party (see specific instructions below)

Subject: 419-421 East 24th Street, National City, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedules A or D, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit (unauthenticated) is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief for cause under § 362(d)(1) because the property was not scheduled and may not be estate property and the property's transfer was not authorized by the court or the movant.

The order shall state as follows: "To the extent that the property may be property of the estate affected by the debtor's bankruptcy, relief from stay under § 362(d)(1) is granted. The request for relief under § 362(d)(4) is denied." No other relief will be awarded, and the order shall not state the debtor's bankruptcy petition was part of a scheme to delay, hinder or defraud creditors.

6. [16-10129](#)-A-7 HERIBERTO/MICHELLE AVILA MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 5-17-16 [[48](#)]
PETER BUNTING/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1172 East Duff Avenue, Reedley, 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).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1172 East Duff Avenue, Reedley, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [16-11033](#)-A-7 TAURIE THAYER
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
5-5-16 [[22](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor

appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for June 30, 2016, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

8. [15-11535](#)-A-7 JOHN HALOPOFF
KDG-13

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
5-24-16 [[346](#)]

JUSTIN HARRIS/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Klein DeNatale, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$93,995.50 and reimbursement of expenses in the amount of \$1,730.40. The motion requests authority for immediate payment of all costs, i.e. \$1,730.40, and 80% of fees, i.e. \$75,196.40.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved. The court allows interim compensation in the amount of \$93,995.50 and reimbursement of expenses in the amount of \$1,730.40. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate all approved costs, \$1,730.40, and 80% of fees, \$75,196.40, in accordance with the Bankruptcy Code and the distribution priorities of § 726 and to do so immediately, if within the trustee's discretion the estate holds sufficient funds to do so.

9. [16-11242](#)-A-7 SHANIE MATEIRO
HDP-1
TRINITY FINANCIAL SERVICES
LLC/MV
AMANDA BILLYARD/Atty. for dbt.
HENRY PALOCI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-25-16 [[9](#)]

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014.

The trustee has not been served or has not been served at the correct address. Fed. R. Bankr. P. 7004(b), 9014(b). In addition, the trustee has not been given notice via the notice of hearing, which violates Rule 9014(a), which requires reasonable notice and an opportunity for hearing afforded the party against whom relief is sought.

10. [16-10945](#)-A-7 ROGER POWELL
JES-1
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-17-16 [[18](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Overruled

Order: Civil minute order

EXEMPTIONS IN BANKRUPTCY

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d). "California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

HOMESTEAD EXEMPTION

Article 4 of Part 2, Title 9 (Enforcement of Judgments), Division 2, Chapter 4 of the California Code of Civil Procedure provides for an exemption known as the "automatic" homestead exemption. See Cal. Civ. Proc. Code §§ 704.710-704.850; *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 17-20 (B.A.P. 9th Cir. 2003). This exemption is conceptually distinct from the declared homestead exemption provided in Article 5 of Part 2, Title 9, Division 2, Chapter 4 of the California Code of Civil Procedure. See §§ 704.910-704.995; *Kelley*, 300 B.R. at 18-19.

The automatic homestead exemption under Article 4 is limited to the "principal dwelling" of the debtor or the debtor's spouse. A "dwelling" is defined by statute to include any place a person

"resides." Cal. Civ. Proc. Code § 704.710(a), (c). Section 704.710 further provides that the term "'homestead' means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." *Id.* § 704.710(c).

Additionally, "the factors a court should consider in determining residence for homestead purposes are [(i)] physical occupancy of the property and [(ii)] the intention with which the property is occupied." *Kelley*, 300 B.R. at 21 (citing *Ellsworth v. Marshall*, 16 Cal. Rptr. 588, 589 (Cal. Ct. App. 1961)); accord *In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994).

"[T]he automatic homestead exemption can only be claimed by a debtor who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling." *Kelley*, 300 B.R. at 21 (citing Cal. Civ. Proc. Code §§ 704.710(a)-(c), 704.720, 704.730, 704.740). The bankruptcy petition constitutes a "forced sale" for purposes of the Article 4 automatic exemption under sections 704.710-704.850. See *id.* at 17, 20, 21 (citing *In re Pike*, 243 B.R. 66, 70 (B.A.P. 9th Cir. 1999)). Thus, to claim an automatic homestead exemption, the debtor must reside (or be related to one who resides) at the homestead property on the petition date. *Id.* at 21 (stating that the debtor did not reside at a particular property at the time of the petition's filing).

ANALYSIS

The trustee objects to the debtor's claim of homestead exemption in real property located at 527 Porter Way St., Hanford, CA 93230. The exemption is claimed in the amount of \$65,825.01. The trustee asserts he has found records of Kings County showing that the debtor is in the process of evicting a person who resides at the residence. From this fact, the trustee concludes that the homestead is improper because the debtor does not reside there.

The trustee also supports his objection by asserting the failure of the debtor to disclose in the schedules the eviction action or the rental nature of the property. The trustee also objects that the debtor has failed to disclose any unpaid rent. Aside from the central issue whether the real property qualifies as a homestead because it is the debtor's principal dwelling, these factual assertions are not relevant to the exemption objection.

The debtor opposes the objection. Under oath, he states that he was living in the home at the time of his bankruptcy filing. He offers a declaration that the person he was evicting was a roommate who did not pay rent. No unpaid rent was disclosed because the person evicted was a roommate, not a tenant. The court finds the debtor's declaration credible. This plausibly explains why the trustee has discovered eviction papers relating to the property. Moreover, the trustee's exhibits are not legible in large part (other than the debtor's Schedule C), and have not been authenticated. Fed. R. Evid. 901(a).

CIVIL MINUTE ORDER

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

The chapter 7 trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

- | | |
|--|--|
| 11. <u>12-60054</u> -A-7 DWIGHT/NELLIE LONG
DMG-1
GILMORE MAGNESS LEIFER/MV
LAYNE HAYDEN/Atty. for dbt.
DAVID GILMORE/Atty. for mv. | MOTION /OBJECTION TO TRUSTEE'S
DISTRIBUTION TO GROSS MORTGAGE
5-11-16 [<u>293</u>] |
|--|--|

No tentative ruling.

- | | |
|--|--|
| 12. <u>12-60054</u> -A-7 DWIGHT/NELLIE LONG
JLG-1
GROSS MORTGAGE CORPORATION/MV

LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
RESPONSIVE PLEADING | CONTINUED MOTION FOR AN ORDER
OVERRULING ALL PENDING
OBJECTIONS TO CLAIM #9 AND/OR
MOTION TO SET A DEADLINE FOR
CLAIM OBJECTIONS
4-20-16 [<u>280</u>] |
|--|--|

No tentative ruling.

13. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-2
GROSS MORTGAGE CORPORATION/MV

OBJECTION TO CLAIM OF GILMORE,
WOOD, VINNARD & MAGNESS, P.C.,
CLAIM NUMBER 16
5-12-16 [[299](#)]

LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE INSUFFICIENCY

Because this objection was mailed to the respondent creditor on only 33 days' notice, rather than the 44 days' notice required by LBR 3007-1(b)(1), the court will treat the objection as having been noticed pursuant to LBR 3007-1(b)(2).

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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

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

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal 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.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other

words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

But "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

CLAIM OBJECTION

Gross Mortgage Company ("GMC") objects to respondent Gilmore, Wood, Vinnard & Magness, P.C.'s ("Gilmore Wood") claim no. 16, filed in the total amount of \$420,801.52. GMC has raised three grounds for disallowance.

Lack of a Written Fee Agreement

First, GMC contends that the claim is defective on its face and loses the presumption of validity because it was not filed in accordance with the rules. Rule 3001(c)(2) requires that, when a claim is based on a writing, a copy of the writing be filed with the proof of claim. Fed. R. Bankr. P. 3001(c)(2). GMC's premise is that no written fee agreement is attached to the claim showing the services that would be provided to debtors for which the estate should now be liable.

GMC's assumption is that a written fee agreement is required for the debtors, and now the estate, to have liability on this claim. California law does require written agreements in the non-contingency fee agreement context when "it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000)." Cal. Bus. & Prof. Code § 6148(a). But this statute also provides exceptions to the rule, and on this record, it is unclear whether any exception applies. See *id.* § 6148(d). More importantly, even if a written fee agreement was required but not entered, the remedy is not elimination of all liability. In such a case, the agreement would be voidable by the client, but the attorney is entitled nevertheless to collect a reasonable fee in quantum meruit. *Id.* § 6148(c).

While the lack of a written fee agreement supporting this \$420,801.52 claim may be problematic under § 6148(a), it does not preclude recovery under § 6148(c) for the reasonable value of services. Without any evidence in the record of the reasonable value of the services provided, the court is unwilling to decide that the claim should be reduced under § 6148(c) based on the lack of a written fee agreement.

The rule cited by GMC for precluding the omitted fee agreement in this case may apply if one exists. Fed. R. Bankr. P. 3001(c)(2)(D)(i). But without knowing whether the liability is based on a written fee agreement or quantum meruit under § 6148(c), the court cannot determine whether the respondent creditor failed to provide information required by Rule 3001(c).

Debtors' Liability for Services Performed

The second argument raised by GMC is that it is impossible to tell whether the legal services underlying the claim were performed for the debtors or third parties. See 11 U.S.C. § 502(b)(1) (claims shall be disallowed to the extent the claim is unenforceable *against the debtor* and property of the debtor under any agreement or applicable law).

Except for invoice nos. 8686-1 and 8686-6, each invoice for legal services indicates that legal services were "regarding" matters naming a third party or third parties other than the debtors. This reasonably permits an inference that such legal services were performed on behalf of entities and parties other than the debtors. No evidence has been offered showing that the debtor guaranteed payment of such services on behalf of such other entities. Nothing in the invoices shows how the legal services were performed for the debtors or on their account. Nothing in the invoices suggests that the debtors would be liable for the claims.

Accordingly, the court finds that all invoices, other than invoice nos. 8686-1 and 8686-6, are not a claim that is enforceable against the debtor or the debtor's property under agreement or applicable law. § 502(b)(1). The total amount of Gilmore Wood's claim that will be disallowed on this theory equals \$408,581.31.

Post-petition Services

The objection also points out that some of the invoices include post-petition services. No application has been filed employing Gilmore Wood for services rendered in this case for which the estate would be liable. §§ 327, 330. And any liability of the debtors post-petition for legal services rendered by Gilmore Wood should not be included in the claim. Proofs of claim may only be filed by a creditor or indenture trustee, § 501(a), with exceptions not applicable here. 11 U.S.C. § 501(a)-(c). A creditor, with exceptions not applicable here, is an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." *Id.* § 101(10)(A).

Thus, the general rule is that a claim arising after the order for relief, i.e., the petition date, § 301(a)-(b), is not a claim held by a creditor as defined by § 101(10)(A). And a claim not held by a creditor cannot be filed under § 501(a). It follows that a claim for legal services rendered after the order for relief, i.e., the petition date, § 301(a)-(b), is not a claim that arose at the time of or before the order for relief under § 101(10)(A). So such a claim for postpetition services is not one held by a creditor that may be filed under § 501(a).

GMC has identified 2 invoices that include postpetition services. Invoice No. 8686-0 has already been found to be disallowed on the theory that the invoice is for services for the debtors are not liable. But invoice no. 8686-6 contains \$1,115.90 of entries that are for services rendered postpetition. The court disallows \$1,115.90 on this ground.

Statutes of Limitation

GMC challenges some of the invoices on the theory that the applicable

statutes of limitation make the claim unenforceable. § 501(b)(1). The invoice addressed under this theory is invoice 8686-2. But this invoice has already been found unenforceable against the debtor on a different theory. Thus, the court need not address this argument based on statutes of limitations.

Conclusion

The court disallows the respondent creditor's claim in the amount of \$409,697.21. The balance of the claim, \$11,104.31, is an allowed unsecured claim.

14. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-3
GROSS MORTGAGE CORPORATION/MV

OBJECTION TO CLAIM OF ERNSTER
LAW OFFICES: JOHN H. ERNSTER,
CLAIM NUMBER 13
5-12-16 [[303](#)]

LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim No. 13

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. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the claim is based on fee agreements for which third parties, not the debtor, are liable; (ii) whether the debtor signed the fee agreements in a representative capacity or in his individual capacity; (iii) if the fees and costs on which this claim is based are directly owed by third parties, whether the debtor guaranteed all the fees on which this claim was based; (iv) whether the claim includes amounts that are unenforceable under applicable statutes of limitations; and (v) whether the claim is based in part on usurious interest, and what the effect of such interest is on the amount of the claim under California law.

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

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;

(8) whether the alternate-direct testimony procedure will be used;
(9) the deadlines for any dispositive motions or evidentiary motions;
(10) the dates for the evidentiary hearing and the trial time that will be required;
(11) any other such matters as may be necessary or expedient to the resolution of these issues.

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

15. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-4
GROSS MORTGAGE CORPORATION/MV
LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF KEN
ENGLE, CLAIM NUMBER 1
5-12-16 [[307](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Overruled

Order: Civil minute order

LEGAL STANDARDS

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

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal 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.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other

words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

But "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

DISCUSSION

The claim objection does not actually raise a ground for contesting the debtor's liability or the amount of the debt. The claim objection is based solely on grounds of noncompliance with the Federal Rules of Bankruptcy Procedure, specifically, Rule 3001 and the form instructions. Gross Mortgage Company ("GMC") does not raise any substantive factual basis that would tend to show that the claim is unenforceable in whole or in part. 11 U.S.C. § 502(b)(1). Accordingly, under *Campbell*, 336 B.R. at 434, the objection is insufficient to disallow a proof of claim even if the claim lacks the documentation required by Rule 3001.

CIVIL MINUTE ORDER

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

Gross Mortgage Company's claim objection has been presented to the court. Having considered the objection together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

16. [12-60054](#)-A-7 DWIGHT/NELLIE LONG
JLG-5
GROSS MORTGAGE CORPORATION/MV
LAYNE HAYDEN/Atty. for dbt.
HANNO POWELL/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF BILL
LONG, CLAIM NUMBER 15
5-12-16 [[311](#)]

Tentative Ruling

Objection: Objection to Claim No. 15

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. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether claim no. 15

is supported by an actual, bona fide loan by the claimant to either of the debtors; (ii) whether claim no. 15 includes the amount of \$1300 that is unrecoverable because it was disbursed postpetition in this case; and (iii) whether the 2-year statute of limitations under California Code of Civil Procedure section 339 applies to preclude the claimant from recovering approximately \$131,500 of the total claim amount.

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.

17. [15-10355](#)-A-7 GONZALO/MARIA ROBLES MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 5-10-16 [\[28\]](#)
JOEL WINTER/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1366.00 and reimbursement of expenses in the amount of \$396.62.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1366.00 and reimbursement of expenses in the amount of \$396.62.

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

18. [16-11664](#)-A-7 ROBERTA VILLAFANA
CARRINGTON MORTGAGE SERVICES,
LLC/MV
BRET ALLEN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-23-16 [[14](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

19. [08-12067](#)-A-7 FAUSTINO/MARY SERRATO
SL-3
FAUSTINO SERRATO/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO AVOID LIEN OF
FINANCIAL CREDIT NETWORK, INC.
5-23-16 [[39](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$239,594

Property Value: \$90,000

Judicial Lien Avoided: \$50,706.06

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 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.

20. [15-12369](#)-A-7 JUSTINIANO MORALES
NRA-1
JUSTINIANO MORALES/MV
NELLIE AGUILAR/Atty. for dbt.

MOTION TO ABANDON
5-10-16 [[22](#)]

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: 2315 Oxford Street, Delano, CA, and 605 Glenwood St., Delano, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). 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).

21. [16-10973](#)-A-7 DOUGLAS SINGER AND MARY
RHT-2 ANN VALENTINO-SINGER
ROBERT HAWKINS/MV
ERIC ESCAMILLA/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
5-31-16 [[17](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2004 Toyota Prius, 1997 Dodge Ram, 2001 BMW K1200 LT Motorcycle

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).

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

22.	11-19687 -A-7 ROBERT SCARPITTO SAS-2 SHERYL STRAIN/MV STEVEN SIEVERS/Atty. for dbt.	MOTION FOR COMPENSATION FOR SHERYL A. STRAIN, ACCOUNTANT(S) 5-11-16 [96]
-----	--	--

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Disapproved without prejudice

Order: Civil minute order

The application requests compensation for accounting services rendered on behalf of the estate. But the exhibit attached to the application describes no services and is a copy of the court's mailing matrix instead. Without such an exhibit describing the services rendered, the court cannot determine whether the services were reasonably likely to benefit the estate.