

**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

**TUESDAY**

**July 1, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

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

**ERRORS IN FINAL RULINGS**

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

9:00 a.m.

1. [14-11801](#)-A-7     BRETT JONES     OPPOSITION RE: TRUSTEE'S MOTION  
RHT-1     TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
5-15-14 [[16](#)]

**Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Prepared by chapter 7 trustee

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.

The court will conditionally deny the motion in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is July 10, 2014, at 12:00 p.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

2. [14-12107](#)-A-7     AMADO GOMEZ     OBJECTION TO DEBTOR'S CLAIM OF  
JES-1     EXEMPTIONS  
JAMES SALVEN/MV  
5-28-14 [[11](#)]  
OSCAR SWINTON/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Final Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor and the debtor's spouse have waived in writing the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b). The trustee objects because the debtor, who is represented, has claimed various exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). In other words, the debtor has claimed the very exemptions he and his spouse have waived. The objection will be sustained.

3. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER MOTION TO EXTEND DEADLINE TO  
SAS-1 FILE A COMPLAINT OBJECTING TO  
SHERYL STRAIN/MV DISCHARGE OF THE DEBTOR  
6-3-14 [[54](#)]
- JERRY LOWE/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines

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

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

**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).

### **EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE**

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

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through and including September 30, 2014.

### **EXTENSION OF DEADLINE FOR OBJECTING TO NONDISCHARGEABILITY OF A DEBT UNDER § 523(c)**

The trustee references Rule 4007(c), which permits extension of the deadline for filing a complaint under § 523(c). The sentence in the motion that references Rule 4007(c) (see ¶ 9) requests only that the court extend the deadline to file an action under § 727 to deny the

debtors' discharge, and does not mention and action under § 523(c). Further, the prayer for relief and the title of the motion refer only to extension of the deadline to object to the debtor's discharge under § 727.

Accordingly, the court construes the motion as requesting only extension of the deadline to object to the debtors' discharge under § 727. To the extent the trustee is seeking to extend the deadline to file a complaint under § 523(c), the court will deny this relief as it has not been clearly requested in the motion. See Fed. R. Bankr. P. 9013.

4. [13-14530](#)-A-7 KATHRYN JONES  
RJR-9  
KATHRYN JONES/MV  
RANDY RISNER/Atty. for dbt.

MOTION BY RANDY J. RISNER TO  
WITHDRAW AS ATTORNEY  
6-2-14 [[217](#)]

#### **Final Ruling**

**Motion:** Withdraw as Attorney

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

The motion will be granted.

5. [13-17934](#)-A-7 MICHAEL CARNER

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-27-14 [[26](#)]

#### **Tentative Ruling**

If the filing fee of \$306 has not been paid in full by the time of the hearing, the case will be dismissed.

6. [12-11035](#)-A-7 MARIA LEMUS  
  
ALBERT GARCIA/Atty. for dbt.

ORDER TO SHOW CAUSE FOR  
DISGORGEMENT  
5-21-14 [[50](#)]

**Final Ruling**

At debtor's request, an order has been entered continuing the hearing on the Order to Show Cause for Disgorgement to July 30, 2014, at 9:00 a.m.

7. [12-11035](#)-A-7 MARIA LEMUS  
AGG-1  
MARIA LEMUS/MV  
  
ALBERT GARCIA/Atty. for dbt.

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](#)]

**Final Ruling**

The hearing is continued to July 30, 2014, at 9:00 a.m.

8. [11-13043](#)-A-7 MORRIS/SHARON GARCIA  
RH-9  
SHERYL STRAIN/MV  
  
HAGOP BEDOYAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

MOTION FOR COMPENSATION FOR  
ROBERT HAWKINS, TRUSTEE'S  
ATTORNEY(S)  
5-22-14 [[470](#)]

**Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Continued to July 30, 2014, at 9:00 a.m.

**Order:** Civil minutes only

This matter is continued to July 30, 2014, at 9:00 a.m. Not later than July 15, 2014, the applicant may supplement the record.

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). Compensation shall not be allowed for (1) unnecessary duplication of services; or (2) services that were not reasonably likely to benefit the estate or necessary to the administration of the case. See *id.* § 330(a)(4)(A).

Here, there are two problems. First, the narrative report is not signed under penalty of perjury. LBR 9014-1(d)(6). Second, and more importantly, the narrative fails to describe why the services benefitted the estate, were likely to benefit the estate or were

necessary to the administration of the estate.

9. [13-11747](#)-A-7    ONTIVEROS CONCRETE, INC.    MOTION TO COMPROMISE  
JES-5    CONTROVERSY/APPROVE SETTLEMENT  
JAMES SALVEN/MV    AGREEMENT WITH ISAAC ONTIVEROS  
5-21-14 [[45](#)]
- HAGOP BEDOYAN/Atty. for dbt.  
JAMES SALVEN/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.

10. [12-60460](#)-A-7 VITALINA BATISTA-MIRANDA MOTION FOR COMPENSATION FOR  
JTW-2 JANZEN, TAMBERI & WONG,  
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S)  
5-27-14 [[32](#)]  
JOSEPH ARNOLD/Atty. for dbt.

**Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Janzen, Tamberi & Wong

**Compensation approved:** \$657.68

**Costs approved:** \$0.00

**Aggregate fees and costs approved in this application:** \$657.58

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.

11. [11-60663](#)-A-7 HUMMER TRANSPORTATION, CONTINUED OBJECTION TO CLAIM OF  
RHT-5 INC. NATIONAL CONTINENTAL INSURANCE  
ROBERT HAWKINS/MV COMPANY, CLAIM NUMBER 3  
11-8-13 [[184](#)]  
KENNETH ALLEN/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

The court will overrule the objection as moot given the settlement in this case and pending withdrawal of NCIC's proof of claim.

12. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION TO COMPROMISE  
RHT-7 INC. CONTROVERSY/APPROVE SETTLEMENT  
ROBERT HAWKINS/MV AGREEMENT  
5-30-14 [[274](#)]  
  
KENNETH ALLEN/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.

13. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION FOR COMPENSATION FOR  
RHT-8 INC. KENNETH J. ALLEN, SPECIAL  
COUNSEL  
6-3-14 [[281](#)]

### **Tentative Ruling**

The application is denied without prejudice. A review of the record fails to indicate that the application was noticed to creditors and others. Fed. R. Bankr. P. 2002(a)(6); LBR 9014-1(e).

14. [14-10893](#)-A-7 JERALD/ROXY SCHMIDT  
SAS-2  
SHERYL STRAIN/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
6-3-14 [[24](#)]

STEVEN SIEVERS/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines

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

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

**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).

### **EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE**

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

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through and including September 30, 2014.

### **EXTENSION OF DEADLINE FOR OBJECTING TO NONDISCHARGEABILITY OF A DEBT UNDER § 523(c)**

The trustee references Rule 4007(c), which permits extension of the deadline for filing a complaint under § 523(c). The sentence in the motion that references Rule 4007(c) (see ¶ 9) requests only that the court extend the deadline to file an action under § 727 to deny the debtors' discharge, and does not mention an action under § 523(c). Further, the prayer for relief and the title of the motion refer only to extension of the deadline to object to the debtor's discharge under § 727.

Accordingly, the court construes the motion as requesting only extension of the deadline to object to the debtors' discharge under § 727. To the extent the trustee is seeking to extend the deadline to file a complaint under § 523(c), the court will deny this relief as it has not been clearly requested in the motion. See Fed. R. Bankr. P. 9013.

9:15 a.m.

1. [10-61605](#)-A-7 VINCENTE BERNABE CONTINUED STATUS CONFERENCE RE:  
[11-1016](#) AMENDED COMPLAINT  
ESPINOSA V. BERNABE 11-7-12 [[91](#)]  
BENJAMIN SIMINOU/Atty. for pl.  
DISMISSED

**Final Ruling**

The adversary proceeding dismissed by Order, ECF #157, the status conference is concluded.

2. [10-61605](#)-A-7 VINCENTE BERNABE CONTINUED STATUS CONFERENCE RE:  
[11-1018](#) AMENDED COMPLAINT  
HALEY V. BERNABE 11-7-12 [[90](#)]  
BENJAMIN SIMINOU/Atty. for pl.  
DISMISSED

**Final Ruling**

The adversary proceeding dismissed by Order, ECF #132, the status conference is concluded.

3. [10-61605](#)-A-7 VINCENTE BERNABE CONTINUED STATUS CONFERENCE RE:  
[11-1019](#) AMENDED COMPLAINT  
STEVENS V. BERNABE 11-7-12 [[89](#)]  
BENJAMIN SIMINOU/Atty. for pl.  
DISMISSED

**Final Ruling**

The adversary proceeding dismissed by Order, ECF #130, the status conference is concluded.

4. [13-15067](#)-A-7 CARLOS BERBEREIA CONTINUED STATUS CONFERENCE RE:  
[14-1041](#) COMPLAINT  
MANFREDO V. BERBEREIA 4-15-14 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

5. [13-15067](#)-A-7 CARLOS BERBEREIA  
[14-1041](#) TGM-1  
MANFREDO V. BERBEREIA  
TRUDI MANFREDO/Atty. for mv.

MOTION TO AMEND  
6-16-14 [[18](#)]

**No tentative ruling.**

6. [11-15299](#)-A-7 ERNEST ROQUE  
[11-1217](#)  
YNIGUEZ V. ROQUE  
CYRIL LAWRENCE/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
8-23-11 [[1](#)]

**No tentative ruling.**

7. [11-15299](#)-A-7 ERNEST ROQUE  
[11-1217](#) CLL-3  
YNIGUEZ V. ROQUE  
CYRIL LAWRENCE/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION FOR SUMMARY  
JUDGMENT  
5-12-14 [[116](#)]

**No tentative ruling.**

10:00 a.m.

1.     [14-11301](#)-A-7     MARYUM HASTON                     MOTION FOR RELIEF FROM  
          GAR-1   AUTOMATIC STAY  
          NATIONSTAR MORTGAGE LLC/MV                   5-27-14 [[15](#)]  
          JEFF REICH/Atty. for dbt.  
          GAIL RINALDI/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1209 Wolf Ridge Road, Mobile, Alabama

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

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

2.     [14-10411](#)-A-7     PATRICIA SAMSON                     MOTION FOR RELIEF FROM  
          APN-1   AUTOMATIC STAY  
          SANTANDER CONSUMER USA INC./MV               5-20-14 [[19](#)]  
          ALFRED GALLEGOS/Atty. for dbt.  
          AUSTIN NAGEL/Atty. for mv.  
          DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2012 Chrysler 300

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

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

3. [14-11224](#)-A-7 IRENE GUTIERREZ AND RUBEN MOTION FOR RELIEF FROM  
TJS-1 CEBALLOS AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A./MV 5-23-14 [[11](#)]  
TIMOTHY SILVERMAN/Atty. for mv.  
DISCHARGED

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2008 Chevrolet Malibu

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

### **AS TO DEBTOR**

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

### **AS TO ESTATE**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form

of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4.	<a href="#">14-12128</a> -A-7     DONALD/DENISE HAMBLÉN KAZ-1 BANK OF AMERICA, N.A./MV GARY HUSS/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-28-14 [ <a href="#">14</a> ]
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**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1915 Monroe Avenue, Madera, California

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

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

5. [14-11431](#)-A-7 LUIS TENORIO, JR.  
JHW-1  
CARMAX BUSINESS SERVICES,  
INC./MV  
STEPHEN LABIAK/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-30-14 [[15](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Prepared by moving party

**Subject:** 2008 Chevrolet Malibu (also described as a 2007 Chevy Malibu)

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).

Creditor Carmax Business Services moves for stay relief as to a 2008 Chevrolet Malibu. The creditor states that the debtor has filed a statement of intention to surrender the vehicle and that the vehicle has been impounded. The Creditor states that it now has possession of the vehicle.

The court takes judicial notice of the debtor's statement of intention filed with the petition. The statement of intention references a "2007 Chevy Malibu." But the motion refers to a 2008 Chevrolet Malibu. Schedule B also indicates that debtor owns a 2007 Chevy Malibu. The vehicle referenced in the schedules and statement of intention and the vehicle described in the motion are of the same make and model but differ only as to the year of the model. As a result, the court will assume that the creditor is seeking relief from stay as to the same vehicle described in the debtor's schedules and that the year is misidentified in either the motion or the schedules. The lack of opposition by the debtor, who is represented, further supports the court's assumption that the vehicles are the same.

The statement of intention also has a hand-written "X" in the box beside the option to surrender the vehicle. The debtor left blank the box beside the option to "Retained."

In the next part of the statement of intention, if the debtor is to retain the property, the statement of intention has three options for what the debtor will do to retain the property: an option to redeem, an option to reaffirm, and an "other" option. The box designated as "Other" appears to have a very small mark inside it, but this is mark is not a clear, affirmative selection of this option. Although this mark in the box beside the "Other" option may create some inconsistency and ambiguity, so the court will interpret the statement of intention as indicating the debtor chose to surrender the property because the surrender option was conspicuously marked and the box beside the word "Retained" has been left blank.

Further, the debtor has not opposed the Creditor's assertion that "[p]ursuant to the Statement of Intention filed by Debtor, the Vehicle

will be surrendered." Given this lack of opposition by the debtor and the debtor's conspicuous selection of the surrender option, the court must accept as true the creditor's assertion that the debtor's statement shows he intended to surrender the vehicle.

Alternatively, even if the court were to find that the debtor intended to select inconsistently both the retention option and the surrender option, then debtor has not complied with the spirit of § 521(a)(2)(A) and (B). As a result the debtor would not have timely "indicated in such statement [of intention] that the debtor will *either* surrender such personal property or retain it." 11 U.S.C. § 362(h)(1)(A) (emphasis added). When such statement of intention does not indicate *either* of the two options, surrender or retention of property, the stay expires as to the property and the result would therefore be the same. See *id.* §§ 362(c)(1), (h)(1)(A), 521(a)(2)(A).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). In the absence of opposition by the trustee asserting that the estate could benefit from any equity in the vehicle, the court finds that the debtor's statement of intention to surrender the vehicle to the Creditor constitutes cause for stay relief.

6. [13-17255](#)-A-7     PAULETTE AVEDIKIAN  
RWR-2  
FRESNO COUNTY FEDERAL CREDIT  
UNION/MV  
JERRY LOWE/Atty. for dbt.  
RUSSELL REYNOLDS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-29-14 [[56](#)]

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 4626 N. Emerson Avenue, Fresno, California

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

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

7. [14-11861](#)-A-7 EDDIE/RACHEL OCAMPO  
JHW-1  
AMERICREDIT FINANCIAL  
SERVICES, INC./MV  
THOMAS GILLIS/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-28-14 [[16](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2012 Volkswagen Jetta

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.

8. [14-11169](#)-A-7 ROBERT REYNOSO  
ASW-1  
BUDGET FUNDING I, LLC/MV  
STEPHEN LABIAK/Atty. for dbt.  
JOELY BUI/Atty. for mv.

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

**Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1) / continued hearing date; written opposition required

**Disposition:** Pending

**Order:** Prepared by moving party

**Subject:** 4139 East Nebraska 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).

The court continued this matter to allow the debtor time to convert the case. The motion was required to be noticed by July 1, 2014. See Civ. Mins. Hr'g Mot. Relief from Stay, May 28, 2014, ECF No. 58.

The debtor has filed what appears to be a motion to convert the case to chapter 13. ECF No. 46. A motion to substitute attorney is also on file and set for hearing on July 9, 2014. The motion requests a substitution of the attorney and the debtor will proceed in propria persona.

The court will consider this matter further at the hearing and determine why a conversion motion has not been filed.

9. <a href="#">12-13170</a> -A-7    AUGUSTINE PENA MRG-2 U.S. BANK NATIONAL ASSOCIATION/MV FRANCISCO ALDANA/Atty. for dbt. MICHAEL GONZALES/Atty. for mv. DISCHARGED RESPONSIVE PLEADING	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-28-14 [ <a href="#">506</a> ]
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**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 3042 West Delta Avenue, Visalia, CA

The moving party has requested relief from the automatic stay under § 362(d)(1) for lack of adequate protection and § 362(d)(2) for lack of equity in the property and for lack of necessity to an effective reorganization. The trustee opposes the motion arguing that the court lacks subject matter jurisdiction to hear this matter given that the appeal of the court's order converting this case to chapter 7 remains pending before the Ninth Circuit Court of Appeals.

The trustee points out that this court denied a number of motions for relief from stay for lack of jurisdiction. In this matter, the court has previously followed the approach in *In re Whispering Pines Estates, Inc.*, 369 B.R. 752 (B.A.P. 1st Cir. 2007) in determining that the issues involved in this stay relief are closely related to the issues on appeal of the conversion order. See, e.g., Civ. Mins. Hr'g Mot. Stay Relief, May 30, 2013, ECF No. 433; Civ. Mins. Hr'g Mot. Stay Relief, Aug. 22, 2012, ECF No. 254; Civ. Mins. Hr'g Mot. Stay Relief, Aug. 22, 2012, ECF No. 255; Ch. 7 Tr.'s Opp'n to Mot. Stay Relief ¶ 4, ECF No. 520.

Similarly, the court will follow the *Whispering Pines* approach as to this matter. The court finds that the matter is too closely related to the issues involved in the appeal so that the court lacks jurisdiction. Thus, the court will deny the motion without prejudice.

10. [14-11383](#)-A-7 MARTHA LOPEZ MOTION FOR RELIEF FROM  
BHT-1 AUTOMATIC STAY  
VENTURES TRUST 2013-I-NH/MV 6-13-14 [[35](#)]  
ALEXIA KIRKLAND/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 4884 East San Gabriel 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). 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.

11. [14-11684](#)-A-7 LEO BERGER MOTION FOR RELIEF FROM  
PD-1 AUTOMATIC STAY  
CITIMORTGAGE, INC./MV 5-14-14 [[16](#)]  
GARY HOOD/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Stay relief is granted; the requests made in the debtor's response will be considered and decided at the hearing

**Order:** Prepared by the moving party

**Subject:** 981 N. Willsie Street, Porterville, CA

The moving party, Citimortgage Inc., requests relief from the automatic stay on grounds that the debtor lacks equity in the above real property and that cause exists to grant stay relief because the debtor has not made payments owed on the moving party's secured loan. The debtor has responded to the motion by requesting that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) not be waived and that the court explicitly order that the termination of the stay in this case be without prejudice to any right the debtor may have to seek relief under chapter 13 of the Code.

#### **RELIEF UNDER § 362(d)(2)**

Because the factual basis for stay relief has not been opposed or disputed, the court will grant stay relief under § 362(d)(2). 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.

#### **DEBTOR'S REQUESTS**

The court will consider the debtor's requests at the hearing. As to the waiver of the stay of the order on the motion, the court does not understand why a waiver of the 14-day stay is appropriate given the seventeen missed payments pre-petition. The court will allow the debtor to be heard on this point further at the hearing.

The court will also consider at the hearing the request that the order expressly state that the termination of the stay is without prejudice to the debtor's right to seek relief under Chapter 13 of the Bankruptcy Code. First, the court does not understand what is requested. On the one hand, the debtor may be requesting that the relief from the automatic stay not be extended into a chapter 13 case to which the debtor may convert or a chapter 13 case that the debtor may file after a dismissal of this case. If the debtor is requesting that the stay not be extended to a converted chapter 13 case, the law appears to justify a denial of this request. See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1835 (rev. 2013) (citing cases). "[A]n order granting relief from the stay remains in effect notwithstanding subsequent conversion of the case to a different Chapter." *Id.* If the debtor seeks to have the stay reinstated after a dismissal of this case and upon the filing of a new case under Chapter 13, the court will not address such a request at this time and will consider the issue when raised in the chapter 13 case.

On the other hand, the debtor may be seeking only to ensure that stay relief does not prevent him from either converting his case to a case under chapter 13 or dismissing and re-filing his case under chapter 13. The court will consider such a request at the hearing.

10:30 a.m.

1. [14-11306](#)-A-7 ISRAEL/YESSENIA SANCHEZ PRO SE REAFFIRMATION AGREEMENT  
WITH FINANCE AND THRIFT COMPANY  
6-3-14 [[24](#)]

**No tentative ruling.**

2. [14-12114](#)-A-7 CRYSTAL GARLICK REAFFIRMATION AGREEMENT WITH TD  
AUTO FINANCE LLC  
5-28-14 [[13](#)]  
  
THOMAS ARMSTRONG/Atty. for dbt.

**No tentative ruling.**

3. [14-11736](#)-A-7 NAYELI LEON VAZQUEZ PRO SE REAFFIRMATION AGREEMENT  
WITH WELLS FARGO DEALER  
SERVICES  
5-30-14 [[11](#)]

**No tentative ruling.**

4. [14-11738](#)-A-7 EVERARDO ROCHA PRO SE REAFFIRMATION AGREEMENT  
WITH WESTAMERICA BANK  
6-2-14 [[15](#)]

**No tentative ruling.**

5. [14-10742](#)-A-7 SARAH VALENZUELA PRO SE REAFFIRMATION AGREEMENT  
WITH WELLS FARGO DEALER  
SERVICES  
5-29-14 [[23](#)]

**No tentative ruling.**

6. [14-10646](#)-A-7 TODD/CINDY PAIGE REAFFIRMATION AGREEMENT WITH  
BANK OF AMERICA  
6-6-14 [[29](#)]

GARY HUSS/Atty. for dbt.

**No tentative ruling.**

7. [14-11155](#)-A-7 ESMERALDA GOVEA

PRO SE REAFFIRMATION AGREEMENT  
WITH BANK OF AMERICA, N.A.  
6-3-14 [[30](#)]

**No tentative ruling.**

8. [14-11859](#)-A-7 LACIE NOLE

REAFFIRMATION AGREEMENT WITH  
BALBOA THRIFT & LOAN  
6-4-14 [[13](#)]

GARY HUSS/Atty. for dbt.

**No tentative ruling.**

9. [14-11381](#)-A-7 JOE HARPER

PRO SE REAFFIRMATION AGREEMENT  
WITH FIRST CALIFORNIA FEDERAL  
CREDIT UNION  
5-29-14 [[13](#)]

HENRY NUNEZ/Atty. for dbt.

**No tentative ruling.**

10. [14-11092](#)-A-7 VEASNA ARIM

PRO SE REAFFIRMATION AGREEMENT  
WITH JPMORGAN CHASE BANK, N. A.  
6-13-14 [[23](#)]

**No tentative ruling.**

**11:00 a.m.**

1. [08-10861](#)-A-7 JAMES/DAISY CORBETT  
JES-1

TRUSTEE'S FINAL ACCOUNT AND  
DISTRIBUTION REPORT  
10-23-12 [[92](#)]

MARK ZIMMERMAN/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**No tentative ruling.**

2. [08-10861](#)-A-7 JAMES/DAISY CORBETT  
JES-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS

JAMES SALVEN/MV  
12-20-12 [[104](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
ORDER 5/29/14, ECF NO. 188

**No tentative ruling.**

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL  
LRP-11 PROPERTIES, LLC  
DAVID STAPLETON/MV  
PETER FEAR/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.
- MOTION FOR AUTHORIZATION TO  
RELEASE FUNDS  
6-11-14 [[1215](#)]

**No tentative ruling.**

2. [10-62315](#)-A-11 BEN ENNIS  
LRP-19  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
MICHAEL GOMEZ/Atty. for mv.
- MOTION TO EMPLOY SOUTHERN  
SIERRA REAL ESTATE AS BROKER  
6-16-14 [[1545](#)]

**No tentative ruling.**

3. [12-17336](#)-A-11 VISSER FARMS  
RAC-41  
VISSER FARMS/MV  
CLAIM NUMBER 3  
4-9-14 [[370](#)]  
SCOTT BLAKELEY/Atty. for dbt.  
RESPONSIVE PLEADING
- CONTINUED OBJECTION TO CLAIM OF  
FRUIT GROWERS SUPPLY COMPANY,

**No tentative ruling.**

4. [13-17444](#)-A-11 A & A TRANSPORT, CO.,  
CRD-2 INC.  
WESTAMERICA BANK/MV  
HILTON RYDER/Atty. for dbt.  
CAROLINE DJANG/Atty. for mv.
- AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-12-14 [[136](#)]

**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). The motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

Rule 7004 service of motions seeking stay relief in chapter 11 cases must also be made on the creditors included on the list of the 20-largest creditors filed under Rule 1007(d). See Fed. R. Bankr. P. 4001(a)(1); *In re LSSR, LLC*, No. CC-12-1636-DKiTa, 2013 WL 2350853, \*4 (B.A.P. 9th Cir. May 29, 2013). The proof of service shows that, as to some of the creditors on the proof, service was mailed to the attention of an individual's name, but the proof does not indicate on

its face the status of that individual, such as whether the individual is an agent is a managing or general agent, an agent authorized by appointment or by law to receive service, or an officer of the entity served. In addition, some entities do not appear to have an agent listed at all, such as Bonander Truck.

In addition, the State Compensation Insurance Fund is listed as one of the 20-largest unsecured creditors. It may be that Lisa Stolzy was the correct person to whom service must be made, but the court cannot determine this from the face of the proof. In any event, service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), *incorporated by* Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6). Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b). Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a).

5. [13-11766](#)-A-11 500 WHITE LANE LP  
DMG-13  
500 WHITE LANE LP/MV

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

D. GARDNER/Atty. for dbt.

**No tentative ruling.**