

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

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

WEDNESDAY

JULY 30, 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. [14-13207](#)-A-7 TIMOTHY/GAYLE CARDASCIA MOTION TO COMPEL ABANDONMENT
RJI-1 6-28-14 [[12](#)]
TIMOTHY CARDASCIA/MV
RAYMOND ISLEIB/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [14-13207](#)-A-7 TIMOTHY/GAYLE CARDASCIA MOTION TO COMPEL ABANDONMENT
RJI-3 7-9-14 [[41](#)]
TIMOTHY CARDASCIA/MV
RAYMOND ISLEIB/Atty. for dbt.
NON-OPPOSITION

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Sole proprietorship business in which Debtor provides radio promotions, marketing and production

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

3. [14-12209](#)-A-7 JASON HERREN
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-9-14 [[11](#)]

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 August 1, 2014, at 9:30 a.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).

4. [10-18510](#)-A-7 JESUS JIMENEZ
ALG-3
JESUS JIMENEZ/MV
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
6-24-14 [[42](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

Even if somewhat lower standard of Rule 7004(b)(3) were applied, the respondent has not been sufficiently served. Citibank Service Corporation appears to be the entity served. But the entity named as a respondent in the motion is Citibank (South Dakota), N.A. Thus, the court infers that a different entity has been served than the respondent.

The motion does not adequately set forth the relief or order sought. Fed. R. Bank. P. 9013. An unambiguously named respondent is essential component of the type of relief requested, which is relief that by its adversarial nature must be directed at a specific party. Such relief cannot be granted in the abstract. Here, avoiding the lien requires clear identification of a particular respondent who holds the lien. But the motion is ambiguous about the identity of the respondent. The caption names Citibank (South Dakota), N.A. The prayer for relief names California Credit Bureaus. The proof of service identifies a new party, Citibank Service Corporation. Thus, the relief requested has not been adequately stated. Even if proper grounds were given, the court could not grant the motion.

The court's review of the FDIC-website for Citibank (South Dakota), N.A. reveals that this entity is no longer doing business under that name because it has been merged or acquired. The court will not decide which entity is the proper party. The court raises this issue so that the moving party exercises due diligence in determining the proper respondent to this motion.

5. [14-13116](#)-A-7 JOHN/TANYA MARTINEZ MOTION TO COMPEL ABANDONMENT
TCS-2 7-15-14 [[23](#)]
JOHN MARTINEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Continued to August 6, 2014, at 9:00 a.m. with a supplemental declaration no later than August 1, 2014

Order: Prepared by moving party

REAL PROPERTY

Real Property Description: 4014 W. Dayton Avenue, Fresno, CA

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 court will grant the motion as to the real property at the continued hearing date. 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).

BUSINESS ASSETS

Even though the business assets appear to be minimal in value, the motion does not state with specificity what business assets are being abandoned other than the goodwill. While each asset does not need to be described and enumerated separately, some specificity or general descriptive information about the assets to be abandoned should be included. The court will allow a supplemental declaration that describes the assets to be abandoned. General descriptive terms will suffice.

6. [11-60828](#)-A-7 DEBRA BRABANT
DRJ-3

MOTION FOR COMPENSATION FOR
DAVID R. JENKINS, TRUSTEE'S
ATTORNEY(S)
6-24-14 [[54](#)]

DAVID ADALIAN/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: David R. Jenkins

Compensation approved: \$2700.00

Costs approved: \$311.88

Aggregate fees and costs approved in this application: \$3011.88

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court notes that the application refers to a \$250.00 hourly rate and states that 9 hours total were performed at this rate. But 9 hours at this rate equals \$2250. At the hearing, counsel will inform the court if there was an error in the application other than an error in the hourly rate. If the error is limited to an understatement of the hourly rate by \$50 per hour, the court will approve the application and will treat the application as requesting a \$300.00 hourly rate.

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.

7. [12-11035](#)-A-7 MARIA LEMUS CONTINUED ORDER TO SHOW CAUSE
5-21-14 [[50](#)]
ALBERT GARCIA/Atty. for dbt.

No tentative ruling.

8. [12-11035](#)-A-7 MARIA LEMUS CONTINUED MOTION FOR ORDER
AGG-1 CONFIRMING THAT ANY LOAN
MARIA LEMUS/MV MODIFICATION GIVEN BY WELLS
FARGO BANK WOULD NOT CONSTITUTE
A VIOLATION OF THE DISCHARGE
INJUNCTION
3-18-14 [[29](#)]
ALBERT GARCIA/Atty. for dbt.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification in Chapter 7 Case

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

Disposition: Denied

Order: Civil minute order

The debtor requests declaratory relief that a mortgage loan modification entered into after her discharge will not violate the discharge injunction. The debtor states that such relief is necessary so that Wells Fargo Home Mortgage / Wells Fargo Bank ("Wells Fargo") will give her the loan modification she seeks. The debtor did not, however, enter a reaffirmation agreement with Wells Fargo prior to the entry of her discharge.

The Declaratory Judgment Act provides that federal courts may grant declaratory relief "whether or not further relief is or could be sought" but only if the relief is sought "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Supreme Court has recognized the potential for declaratory relief to present a non-justiciable case that "fall[s] outside the constitutional definition of a 'case' in Article III." *Calderon v. Ashmus*, 523 U.S. 740, 746 (1998). A party may not seek declaratory relief that would constitute "an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937)).

Under constitutional-ripeness principles, therefore, courts must preclude "federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution." *Id.* at 748. "The issues presented must be definite and concrete, not hypothetical and abstract. Where a dispute hangs on future contingencies that may or may not occur, it may be too impermissibly speculative to present a justiciable controversy." *Educ. Credit Mgmt. Corp. v. Coleman (In re Coleman)*, 560 F.3d 1000, 1005 (9th Cir. 2009) (citations omitted) (internal

quotation marks omitted). "The constitutional ripeness of a declaratory judgment action depends upon whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* (quoting *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003) (internal quotation marks omitted)).

The debtor essentially seeks to decide the issue of whether (i) the debt owed to Wells Fargo has been discharged, and (ii) whether a loan modification would violate the discharge injunction. No facts have been presented showing whether the mortgage or deed of trust was recourse or non-recourse. Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-565 (Bankr. E.D. Cal. 2010). If a mortgage secures a loan that is recourse debt, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Even if the loan at issue were recourse debt before the discharge was entered, the court would not grant the declaratory relief that the debtor seeks. No dispute appears to be actually present between the debtor and Wells Fargo about whether the discharge injunction would be violated by the proposed mortgage loan modification. This presents a question in the absence of a definite and concrete dispute. The question presented for resolution has many future contingencies before it would become an immediate, definite and concrete dispute. Such contingencies include whether the modification is effectuated and whether a proceeding to enforce the discharge violation is brought in response to such modification.

9. [12-15935](#)-A-7 EDWARD/TRACY BARKLEY MOTION TO AVOID LIEN OF
DRJ-2 AMERICAN EXPRESS BANK, FSB
EDWARD BARKLEY/MV 7-14-14 [[25](#)]
DAVID JENKINS/Atty. for dbt.

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: \$170,131.79

Property Value: \$167,000.00

Judicial Lien Avoided: \$3,126.79

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.

10. [11-13043](#)-A-7 MORRIS/SHARON GARCIA CONTINUED MOTION FOR CONTEMPT
KDG-8 9-12-12 [[333](#)]
MORRIS GARCIA/MV
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [11-13043](#)-A-7 MORRIS/SHARON GARCIA CONTINUED MOTION FOR
RH-9 COMPENSATION FOR ROBERT
SHERYL STRAIN/MV HAWKINS, TRUSTEE'S ATTORNEY(S)
5-22-14 [[470](#)]
HAGOP BEDOYAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Denied without prejudice

Order: Civil Minute Order

Applicant: Robert Hawkins

Compensation requested: \$12,600.00

Costs requested: \$702.84

Aggregate fees and costs approved in this application: \$0.0

LEGAL STANDARDS

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:

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. See *id.* § 330(a)(3).

DISCUSSION

The applicant originally noticed this matter for hearing on July 1, 2014. The matter was continued to July 30, 2014, to allow the applicant to supplement the record:

...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. Civil Minutes, July 1, 2014, ECF #476.

In response, the applicant filed one supplemental declaration. It is comprised of 15 double spaced lines of text. Aside from stating that the applicant was general counsel for the Chapter 7 trustee it states only:

"... 2. I was employed as counsel to assist the Trustee in this difficult case involving the debtor's interests in several limited liability companies wherein the debtor were partners with other family members.

3. Necessary to the administration of the estate, I provided legal analysis of the LLC interests of the debtors and participated in extensive mediation regarding settlement of creditor and LLC claims.

4. I, thereafter, assisted the Trustee in negotiating a resolution of several exemption issues and abandonment of the LLC and other assets of the debtor as a [part of the] compromise.

5. I prepared a motion for compromise which was approved by the Court after notice and hearing and which the benefits the estate as it will result in a return for the unsecured creditors.

6. Necessary to the administration of the estate I prepared and filed objections to claims. Supplemental Declaration of Robert Hawkins, July 2, 2014, ECF #477...."

Having failed to adequately address the second prong of the deficiencies identified in the Civil Minutes, date July 1, 2014, the application is denied without prejudice. The applicant must address necessity and/or beneficial nature of the services, 11 U.S.C. § 330(a)(3)(C), at a lower level of abstraction.

Future fee applications in this case will not include time or costs expended the in preparation or prosecution of Hawkins' Application for Fees, filed May 22, 2014, ECF No. 470, RH-9.

12. [14-13344](#)-A-7 OLGA GUTIERREZ
RCP-1
OLGA GUTIERREZ/MV
REYNALDO PULIDO/Atty. for dbt.
NON-OPPOSITION

MOTION TO COMPEL ABANDONMENT
7-16-14 [[20](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Continued to August 27, 2014, at 9:00 a.m., and a proof of service to be filed no later than August 13, 2014 along with a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2)

Order: Civil minute order

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that under Rule 6007(a) requires notice to all creditors and parties in interest listed in Rule 6007(a), the same notice required by Rule 6007(a) should be required under when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion.

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

13. [14-11846](#)-A-7 MARLENE JACKSON
RHT-1
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-13-14 [[14](#)]

Tentative Ruling

Objection: Claim of Exemption

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

Disposition: Sustained

Order: Civil minute order

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

Under California law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) ("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).

The court takes judicial notice of Schedule C filed on its docket in this case and takes judicial notice of what contents appear on Schedule C. Schedule C was filed with the voluntary petition of the debtor, which has a signature on it. In the absence of an objection to the document's authenticity at the hearing, the court will find that Schedule C as it appears on the docket in this case is the schedule of exemptions claimed by the debtor. Fed. R. Evid. 901(b)(4).

The debtor has claimed an exemption in real property located at 3901 Elmer Lane, Shreveport, LA ("Elmer property"). The debtor has claimed exemptions under both section 703.140(b) and under the regular non-bankruptcy provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure. Section 703.140(b) does not permit a debtor to use both sets of exemptions. Because the debtor has claimed exemptions under both sets of exemptions, the court will sustain the objection.

Further, as the trustee notes, the exemption amount claimed exceeds the appropriate amount under § 703.140(b). The court will sustain on this ground as well.

The court does not decide whether the debtor may be entitled to claim an exemption under § 704.730 (which is noted beside the Elmer property on Schedule C) or the amount of the exemption to which the debtor is entitled. But the debtor's petition indicates her county of residence is Fresno, California. The debtor's ability to claim a homestead exemption in the Elmer property in Louisiana may require her to rebut this inconsistent evidence about her principal residence on the petition date.

14. [11-13750](#)-A-7 PEDRO/MAGDALENA OCHOA MOTION TO AVOID LIEN OF HSBC
ALG-2 CREDIT CENTER, INC.
PEDRO OCHOA/MV 6-19-14 [[27](#)]
JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted in part and denied in part

Order: Prepared by moving party

Liens Plus Exemption: \$124,856.13

[\$13,701.13 (respondent's judicial lien) + 111,154.00 (consensual lien) + 1.00 (exemption)]

Property's Value: \$116,500.00

Extent of Lien Not Avoided: \$5,345.00

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 court finds that the liens, exemption amount, and property's value are as set forth above. The motion is granted in part and denied in part because the responding party's judicial lien, all other liens, and the exemption amount together do not exceed the property's value by an amount equal to the entire debt secured by the responding party's lien. The responding party's lien is not avoided to the extent set forth above. The balance of respondent's lien is avoided.

15. [14-13350](#)-A-7 EDWARD/LAURA CONNELLY MOTION TO COMPEL ABANDONMENT
CJY-1 7-1-14 [[5](#)]
EDWARD CONNELLY/MV
CHRISTIAN YOUNGER/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Connelly Marine, a sole proprietorship providing boat service and maintenance

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

16. [13-17255](#)-A-7 PAULETTE AVEDIKIAN
RWR-1
FRESNO COUNTY FEDERAL CREDIT
UNION/MV
JERRY LOWE/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.
RESPONSIVE PLEADING

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

Final Ruling

The parties have resolved the matter pursuant to the joint status report filed and signed by the attorneys for both the debtor and the moving creditor.

The matter is dropped from calendar as moot. The parties are excused from appearing at the pre-trial conference set for July 30, 2014.

17. [14-12157](#)-A-7 ELIZABETH GARCIA
JDR-1
ELIZABETH GARCIA/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF FORD
MOTOR CREDIT COMPANY
6-20-14 [[12](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

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

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

Additionally, the moving party has brought multiple motions on this calendar requesting avoidance of liens on the same real property. But this motion does not state the respective priority of the liens. In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B). If the highest-priority judicial lien may be avoided, this analysis is unnecessary. Otherwise, the motion should discuss the respective priority of the lien to be avoided and excluded lower-priority liens from the analysis.

18. [14-12157](#)-A-7 ELIZABETH GARCIA
JDR-2
ELIZABETH GARCIA/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF
CREDITORS BUREAU USA
6-20-14 [[18](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

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

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

Additionally, the moving party has brought multiple motions on this calendar requesting avoidance of liens on the same real property. But this motion does not state the respective priority of the liens. In

cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B). If the highest-priority judicial lien may be avoided, this analysis is unnecessary. Otherwise, the motion should discuss the respective priority of the lien to be avoided and excluded lower-priority liens from the analysis.

19. [14-12157](#)-A-7 ELIZABETH GARCIA
JDR-3
ELIZABETH GARCIA/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES
6-20-14 [[23](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

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

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

Additionally, the moving party has brought multiple motions on this calendar requesting avoidance of liens on the same real property. But this motion does not state the respective priority of the liens. In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided

are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B). If the highest-priority judicial lien may be avoided, this analysis is unnecessary. Otherwise, the motion should discuss the respective priority of the lien to be avoided and excluded lower-priority liens from the analysis.

20. [10-17858](#)-A-7 LLOYD/ALICE MORELOCK MOTION TO APPROVE LOAN
NLG-1 MODIFICATION
NATIONSTAR MORTGAGE LLC/MV 7-2-14 [[84](#)]
GABRIEL WADDELL/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

Tentative Ruling

Motion: Approve Loan Modification

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

Disposition: Denied

Order: Civil minute order

Nationstar Mortgage LLC ("Nationstar") moves for approval of a loan modification agreement entered into between Nationstar and the chapter 7 debtors in this case. The discharge has already been entered as of March 3, 2014. Nationstar also seeks an order confirming that the automatic stay will not be violated by Nationstar's contact with the debtors regarding the loan modification or by any written agreement between Nationstar and the debtors.

MORTGAGE LOAN MODIFICATION

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-565 (Bankr. E.D. Cal. 2010). When the debt secured by a mortgage is a recourse debt, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

This court does not approve mortgage loan modifications in chapter 7 cases. Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. See *Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

In any event, the discharge has already been entered in this case. Even if the mortgage loan were a recourse loan when the petition was filed, the court does not understand the basis or authority for court approval now that the discharge has been entered. The matter is an issue between the debtors and Nationstar and does not appear to have an effect on the estate.

DECLARATORY RELIEF AS TO STAY VIOLATIONS

The Declaratory Judgment Act provides that federal courts may grant declaratory relief "whether or not further relief is or could be sought" but only if the relief is sought "[i]n a case of actual

controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Supreme Court has recognized the potential for declaratory relief to present a non-justiciable case that "fall[s] outside the constitutional definition of a 'case' in Article III." *Calderon v. Ashmus*, 523 U.S. 740, 746 (1998). A party may not seek declaratory relief that would constitute "an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937)).

Under constitutional-ripeness principles, therefore, courts must preclude "federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution." *Id.* at 748. "The issues presented must be definite and concrete, not hypothetical and abstract. Where a dispute hangs on future contingencies that may or may not occur, it may be too impermissibly speculative to present a justiciable controversy." *Educ. Credit Mgmt. Corp. v. Coleman (In re Coleman)*, 560 F.3d 1000, 1005 (9th Cir. 2009) (citations omitted) (internal quotation marks omitted). "The constitutional ripeness of a declaratory judgment action depends upon whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* (quoting *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003) (internal quotation marks omitted)).

Nationstar is requesting declaratory relief that any loan modification agreement, or any contacts for the purpose of effectuating such an agreement, do not violate the automatic stay. The automatic stay has been terminated as to the debtors upon the entry of the debtors' discharge. See 11 U.S.C. § 362(c)(2)(C). But "the stay of an act against property of the estate continues until such property is no longer property of the estate." *Id.* § 362(c)(1). No dispute appears to be actually present between Nationstar and the debtors of sufficient immediacy and reality to warrant a declaratory judgment. The issue is hypothetical and abstract rather than concrete. The court will not grant the declaratory relief requested.

21. [14-10458](#)-A-7 ERNIE MARTINEZ CONCRETE, CONTINUED MOTION TO SELL
DMG-3 INC. 5-20-14 [[25](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Compensate Auctioneer

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by moving party

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

Sale Type: Public auction

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

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). The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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

22. [14-10561](#)-A-7 DORA REYES RESCHEDULED OBJECTION TO
JES-1 DEBTOR'S CLAIM OF EXEMPTIONS
JAMES SALVEN/MV 5-2-14 [[28](#)]

Tentative Ruling

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

Disposition: Overruled as moot

Order: Civil minute order

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

than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

But the debtor has filed the spousal waiver since the trustee brought this objection. The objection will be overruled as moot.

23. [11-60663](#)-A-7 HUMMER TRANSPORTATION, CONTINUED MOTION FOR
RHT-8 INC. COMPENSATION FOR KENNETH J.
ALLEN, SPECIAL COUNSEL(S)
6-3-14 [[281](#)]

Final Ruling

Application: Final Compensation and Expense Reimbursement

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

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

Order: Prepared by applicant

Applicant: Kenneth J. Allen

Compensation approved: \$500,000.00

Costs approved: \$5,117.06

Aggregate fees and costs approved in this application: \$505,117.06

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.

24. [13-11665](#)-A-7 DENNIS MCGOWAN
PLF-5
JAMES SALVEN/MV
PETER BUNTING/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SELL FREE AND CLEAR
OF LIENS AND/OR MOTION TO PAY
7-9-14 [[44](#)]

Tentative Ruling

Motion: Sell Real Property Free and Clear, Sell Personal Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Real Property: 3798 North Polk Avenue, Fresno, CA

Personal Property: 5th wheel, travel trailer, mobile home and other personal items left on the land

Buyer: Raul Cornejo

Sale Price: \$107,500

Sale Type: Private sale subject to overbid opportunity

Sale Free and Clear of Lien: Relief granted as stated below and the order prepared pursuant to the instructions below

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

SALE UNDER § 363(b)(1)

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

COMPENSATION

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

The court finds that the compensation sought is reasonable and will approve the application.

In the future, the court requests that the entity being compensated be identified in the notice of hearing. Fed. R. Bankr. P. 2002(c)(2) (requiring notice to identify the applicant and the amounts requested).

SALE FREE AND CLEAR UNDER § 363(f)(4)

The term "bona fide dispute" in § 363(f)(4) means that "there is an objective basis for either a factual or legal dispute as to the validity of the debt." *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004); see also 3 *Collier on Bankruptcy* ¶ 363.06[5], at 363-53 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2012) (citing cases). Under this subsection of § 363, the trustee has the burden of proof to show the existence of a bona fide dispute. See 3 *Collier on Bankruptcy, supra*, ¶ 363.06[5], at 363-53.

In *Burns*, the bankruptcy appellate panel for the Eighth Circuit found that an objective basis existed to avoid a bank's liens against two vehicles because the liens against those vehicles had not been perfected pursuant to the state statute governing perfection of liens against motor vehicles. *Burns*, 306 B.R. at 628-29. The panel held that the trustee would need to show "an objective basis for avoiding the liens, and thus establish a bona fide dispute for purposes of 11 U.S.C. § 363(f)(4)." *Id.* at 628.

Here, the motion presents sufficient facts showing that an objective factual or legal dispute exists as to the validity of the lien or the debt that the lien secures. Evidence has been presented that the debt securing the Wahlbergs' lien has been paid in full. "A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien." See *Alliance Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235 (1995). "The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation." *In re Thomas*, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989).

The sale will be free and clear of Wahlbergs' lien on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f). The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

25. [11-16070](#)-A-7 ROBERT JEFFERS
DRJ-2
ROBERT JEFFERS/MV

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, NATIONAL
ASSOCIATION
6-11-14 [[22](#)]

DAVID R. JENKINS/Atty. for dbt.
DAVID R. JENKINS/Atty. for mv.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

26. [14-13471](#)-A-7 CARLOS ORMENO
SL-1
CARLOS ORMENO/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
7-15-14 [[7](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: carpet cleaning and janitorial business, a sole proprietorship

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

27. [13-10072](#)-A-7 SUKHJINDER SINGH
JES-1
JAMES SALVEN/MV

MOTION TO SELL
6-17-14 [[19](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Nissan Altima

Buyer: Debtor

Sale Price: \$5725 (\$3000 cash plus \$2725 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

28. [14-12575](#)-A-7 ALICE RODRIGUEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-8-14 [[61](#)]

RICHARD MENDEZ/Atty. for dbt.
\$30.00 FEE PAID 7/9/14

Final Ruling

The fee paid, the order to show cause is discharged and the case will remain pending.

29. [14-12575](#)-A-7 ALICE RODRIGUEZ
RCM-11

MOTION TO COMPEL ABANDONMENT
6-26-14 [[45](#)]

ALICE RODRIGUEZ/MV
RICHARD MENDEZ/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Denied without prejudice

Order: Prepared by moving party pursuant to the instructions below

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon

property of the estate if the statutory standards for abandonment are fulfilled.

Previously, the court denied a similar motion to abandon the same two businesses described in the present motion. None of the reasons for the denial have been addressed in the present motion. The court will copy (below) the pertinent portions of the ruling denying the prior motion to compel abandonment as they apply to this present motion.

Moreover, the amount of the liens on the 2008 Kenworth as stated in the declaration do not equal the value of the vehicle given. The debt secured by the lien on the 2008 Kenworth is unstated and the declaration refers to the exhibits. The moving party must state the debt secured by all liens on this vehicle in the motion itself and, if there is any equity unencumbered, the exemptions claimed in such equity must be precisely stated. Exhibits that might reveal this information after examination do not suffice. The exhibits moreover, do not contain a clear statement of the lien amount. The court will not sift through multiple pages of exhibits to determine the existence and amount of a lien and the property to which the lien attaches.

[Ruling on prior motion to compel abandonment having docket control number RCM-1]:

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

The motion does not state with particularity the grounds for the relief requested. The motion contains the conclusory statement that the "Debtor has claimed an exemption in each and every asset comprising the Properties in an amount at least as great as its equity."

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

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

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

30. [12-19194](#)-A-7 PAMELA WISE
DRJ-6

MOTION FOR COMPENSATION FOR
DAVID R. JENKINS, TRUSTEE'S
ATTORNEY(S)
6-25-14 [[67](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: David R. Jenkins

Compensation approved: \$3325.00

Costs approved: \$434.74

Aggregate fees and costs approved in this application: \$3759.74

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). 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.

31. [13-16495](#)-A-7 JAMES/SHIRLEY PARKER
THA-2
JAMES SALVEN/MV

OBJECTION TO CLAIM OF CAVALRY
INVESTMENTS, LLC, CLAIM NUMBER
1
5-28-14 [[23](#)]

PHILLIP GILLET/Atty. for dbt.

THOMAS ARMSTRONG/Atty. for mv.

NON-OPPOSITION

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the

record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

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

Here, the claim filed by Cavalry Investments, LLC has not been filed in accordance with the rules. The proof of claim indicates that it is a secured claim, secured by a judgment lien. But the judgment attached to the proof of claim indicates that it is held by Cavalry Portfolio Services, LLC, et al. No indication of what other plaintiffs were involved has been included.

Further, no evidence that the judgment in the exhibits was perfected by recordation in the real property records has been attached to the proof of claim. But Rule 3001(f) provides that "[i]f a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected." The proof of claim does not comply with Rule 3001(f).

Next, the face of the claim indicates that the claim is held by Cavalry Investments, LLC as assignee of eCast Settlement Corp. But no evidence has been attached to the proof of claim showing that the claim was assigned to Cavalry Investments, LLC. The copy of the Bill of Sale and Assignment between ECAST SETTLEMENT CORPORATION and the Claimant sells, assigns and conveys to the Claimant the receivables "described in Schedule A-1, Schedule A-2, and Schedule A-3 hereto, together with other evidence of indebtedness, if any, the right to all principal, interest, or other proceeds of any kind with respect to the Receivables."

But the language quoted from the assignment to the Claimant does not specifically indicate that this particular claim against the debtors' estate was assigned. The referenced Schedules are not attached to the claim. The claim does not include any documentation showing that the claim asserted for \$30,696.04 was included within the Receivables assigned by ECAST or part of the "principal, interest, or other proceeds . . . with respect to [such assigned] Receivables."

Even if the court were to assume that the assignments (attached as

exhibits) included the claim asserted, the two attached assignments reveal that the claim is no longer held by Cavalry Investments, LLC but Cavalry SPV I, LLC, an entity different from the Claimant named on the first page of the proof of claim.

32. [14-13596](#)-A-7 STEPHAN/SHIELA BAYS
PLF-1
STEPHAN BAYS/MV
PETER FEAR/Atty. for dbt.
OST 7/22/14

MOTION TO COMPEL ABANDONMENT
7-21-14 [[10](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: printing business, a sole proprietorship

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

9:15 a.m.

1. [14-11316](#)-A-7 VINCENT/SARAH CARABBA STATUS CONFERENCE RE: COMPLAINT
[14-1052](#) 5-7-14 [[1](#)]
MAS FINANCIAL SERVICES V.
CARABBA
PAUL REZA/Atty. for pl.

Final Ruling

Pursuant to the Order Denying Request for Entry of Default, Vacating Entry of Default and Setting Status Conference ¶ 3, July 22, 20-14, ECF #13, the status conference is continued to August 27, 2014, at 9:15 a.m.

2. [13-18132](#)-A-7 TREENA PEREZ STATUS CONFERENCE RE: COMPLAINT
[14-1059](#) 5-30-14 [[1](#)]
U.S. TRUSTEE V. PEREZ
GREGORY POWELL/Atty. for pl.

Final Ruling

This matter is continued to October 1, 2014, at 9:15 a.m. to allow the plaintiff to obtain a default judgment.

10:00 a.m.

1. [14-12709](#)-A-7 WILLIAM BUTLER AND NANCY MOTION FOR RELIEF FROM
MDE-1 TOROSIAN BUTLER AUTOMATIC STAY
ONEWEST BANK N.A./MV 6-24-14 [[12](#)]
HAGOP BEDOYAN/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: Prepared by moving party

Subject: 2867 Austin Ave., Clovis, California

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the

estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [14-12233](#)-A-7 FRANCISCO ZAPIEN
PD-1
WELLS FARGO BANK, N.A./MV
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-20-14 [[13](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2290 Driftwood Drive, Madera, 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).

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 two 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.

- CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
6-25-14 [[14](#)]

Motion: Stay Relief

Disposition: Granted

Order: Prepared by moving party

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

14-12746-A-7 DANIEL MARTIN MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 6-26-14 [9]
AUSTIN NAGEL/Atty. for mv.

Motion: Stay Relief

Disposition: Granted

Order: Prepared by moving party

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

Section 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.

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). The moving party alleges that no insurance is being maintained on the vehicle by the debtor. This constitutes an alternative ground for stay relief as requested.

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.

5. [14-12660](#)-A-7 DEBRA TAYLOR
APN-1
SANTANDER CONSUMER USA INC./MV
LAYNE HAYDEN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-16-14 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Dodge Caliber

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, and the debtor has filed a non-opposition. 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.

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). The moving party alleges that no insurance is being maintained on the vehicle by the debtor. This constitutes an alternative ground for stay relief as requested.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [14-11964](#)-A-7 KAREN HULSEY MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
GREEN TREE SERVICING LLC/MV 7-2-14 [[16](#)]
CHRISTINA O/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 21084 Sherrill Avenue, Riverdale, 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. [14-12789](#)-A-7 KRYSTINA CIFUENTEZ MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 6-24-14 [[12](#)]
GEOFFREY ADALIAN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Nissan Versa

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

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 2 post-petition payments due on the debt secured by the moving party's lien. In addition, the moving party alleges that no insurance is being maintained on the vehicle by the debtor. These grounds constitute 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.

8. [14-10693](#)-A-7 RAQUEL BARBOSA
APN-1
SANTANDER CONSUMER USA INC./MV
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-24-14 [[21](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Prepared by moving party

Subject: 2011 Chevrolet Impala

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

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.

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). The moving party alleges that no insurance is being maintained on the vehicle by the debtor. This constitutes an alternative ground for stay relief as requested.

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.

10:30 a.m.

1. [14-12910](#)-A-7 PATSY ESPINO

PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION - 2008 NISSAN SENTRA
7-10-14 [[15](#)]

No tentative ruling.

2. [14-12910](#)-A-7 PATSY ESPINO

PRO SE REAFFIRMATION AGREEMENT
WITH TUCOEMAS FEDERAL CREDIT
UNION - 2007 WEEKEND WARRIOR
7-10-14 [[18](#)]

No tentative ruling.

3. [14-12413](#)-A-7 JAMSHED IQBAL

PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
7-2-14 [[12](#)]

No tentative ruling.

4. [14-11840](#)-A-7 JALESA BATTLE

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
6-30-14 [[12](#)]

No tentative ruling.

5. [14-11859](#)-A-7 LACIE NOLE

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

GARY HUSS/Atty. for dbt.

No tentative ruling.

6. [14-12660](#)-A-7 DEBRA TAYLOR

PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
6-24-14 [[19](#)]

LAYNE HAYDEN/Atty. for dbt.

No tentative ruling.

7. [14-12575](#)-A-7 ALICE RODRIGUEZ

PRO SE REAFFIRMATION AGREEMENT
WITH FORD MOTOR CREDIT COMPANY
7-7-14 [[58](#)]

RICHARD MENDEZ/Atty. for dbt.

No tentative ruling.

8. [14-12679](#)-A-7 ANTONIO/MARIA CABRAL

REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
6-30-14 [[13](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

9. [14-12987](#)-A-7 KRISTEN SYLVESTER

PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE
6-27-14 [[11](#)]

No tentative ruling.

10. [14-12293](#)-A-7 GINO CATTUZZO

REAFFIRMATION AGREEMENT WITH
FORD MOTOR CREDIT COMPANY
6-26-14 [[10](#)]

JEFFREY ROWE/Atty. for dbt.

No tentative ruling.

11. [14-12694](#)-A-7 EDWARD TREADWAY

PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
6-26-14 [[22](#)]

No tentative ruling.

11:00 a.m.

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

No tentative ruling.

2. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION TO STRIKE
[14-1007](#) WW-1 7-16-14 [[68](#)]
VANDER POEL, SR. V. MEDINA
RILEY WALTER/Atty. for mv.
WITHDRAWN

Final Ruling

The documents relating to this calendar entry having been withdrawn, the matter is dropped as moot.

3. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION TO STRIKE
[14-1007](#) WW-2 7-16-14 [[75](#)]
VANDER POEL, SR. V. MEDINA
RILEY WALTER/Atty. for mv.

No tentative ruling.

4. [12-16876](#)-A-7 WILLIAM VANDER POEL CONTINUED MOTION FOR SUMMARY
[14-1007](#) WW-2 JUDGMENT
VANDER POEL, SR. V. MEDINA 4-14-14 [[27](#)]
RILEY WALTER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

5. [12-16876](#)-A-7 WILLIAM VANDER POEL CONTINUED STATUS CONFERENCE RE:
[14-1033](#) COMPLAINT
VANDER POEL, SR. V. MEDINA ET 3-10-14 [[1](#)]
AL
MICHAEL FLETCHER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

6. [12-16876](#)-A-7 WILLIAM VANDER POEL CONTINUED MOTION FOR SUMMARY
[14-1033](#) WW-1 JUDGMENT
VANDER POEL, SR. V. MEDINA ET
4-25-14 [[13](#)]
AL
MICHAEL FLETCHER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

7. [12-16876](#)-A-7 WILLIAM VANDER POEL MOTION TO STRIKE
[14-1033](#) WW-1 7-16-14 [[58](#)]
VANDER POEL, SR. V. MEDINA ET
AL
MICHAEL FLETCHER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY SOUTHERN
LRP-18 PROPERTIES, LLC SIERRA REAL ESTATE AS
DAVID STAPLETON/MV REALTOR(S)
7-16-14 [[1242](#)]
PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

The applicant asserts that the confirmed plan governing the court's approval of this employment does not require application of § 327(a) to its approval of employment of professionals pursuant to the plan. The plan administrator has referenced the standards of § 327 as they are more rigorous than alternative standards.

The court finds that the real estate broker qualifies under the standards of § 327 applied by analogy to the relationships here, even if such standards do not apply, and qualifies under the other state law and ethics standards set forth in the motion. From the information provided in the motion and supporting papers, the court will approve the employment.

2. [10-62315](#)-A-11 BEN ENNIS
LRP-19
DAVID STAPLETON/MV

CONTINUED MOTION TO EMPLOY
SOUTHERN SIERRA REAL ESTATE AS
BROKER(S)
6-16-14 [[1545](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

Notice: LBR 9014-1(f)(2) / continued hearing date; no written
opposition required

Disposition: Approved

Order: Prepared by moving party

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

The applicant asserts that the confirmed plan governing the court's
approval of this employment does not require application of § 327(a)
to its approval of employment of professionals pursuant to the plan.
The plan administrator has referenced the standards of § 327 as they
are more rigorous than alternative standards.

The court finds that the real estate broker qualifies under the
standards of § 327 applied by analogy to the relationships here, even
if such standards do not apply, and qualifies under the other state
law and ethics standards set forth in the motion. From the
information provided in the motion and supporting papers, the court
will approve the employment.

3. [10-62315](#)-A-11 BEN ENNIS
LRP-30
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY KELLER
WILLIAMS REALTY AS REALTOR(S)
7-16-14 [[1613](#)]

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

The applicant asserts that the confirmed plan governing the court's
approval of this employment does not require application of § 327(a)
to its approval of employment of professionals pursuant to the plan.
The plan administrator has referenced the standards of § 327 as they

are more rigorous than alternative standards.

The court finds that the real estate broker qualifies under the standards of § 327 applied by analogy to the relationships here, even if such standards do not apply, and qualifies under the other state law and ethics standards set forth in the motion. From the information provided in the motion and supporting papers, the court will approve the employment.

4. [10-62315](#)-A-11 BEN ENNIS
LRP-7

SUPPLEMENTAL MOTION TO EMPLOY
COLLIERS TINGEY INTERNATIONAL,
INC. AS BROKER(S)
7-16-14 [[1599](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

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

The court previously approved the employment of the real estate broker named in the application. This application supplements the prior employment application by adding two additional real properties for which the broker's services will be retained in connection with the properties' sale.

Ennis Family Investments (EFI), not the estate of Ben Ennis, owns the real properties described in the supplemental application. EFI will be selling the real properties.

But the plan administrator of the Ben Ennis estate seeks to employ the broker who had been previously employed by this court "out of an abundance of caution" to allow the him to "shepherd the sales of the real properties pursuant to the terms of [a] settlement" between ECP's plan administrator and the chapter 7 trustees of the partners of EFI.

5. [13-17444](#)-A-11 A & A TRANSPORT, CO.,
INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-21-13 [[1](#)]

HILTON RYDER/Atty. for dbt.

No tentative ruling.

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

Tentative Ruling

Motion: Relief from Stay

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Continued to August 27, 2014, at 1:30 p.m.

Order: Civil minute order if appropriate

If the case is a chapter 11 reorganization case and a committee of unsecured creditors has not been appointed, then a motion for relief from stay must also be served 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). Service must be made on each of the creditors according to Rule 7004. See *In re LSSR, LLC*, No. CC-12-1636-DKiTa, 2013 WL 2350853, *4 (B.A.P. 9th Cir. May 29, 2013) (unpublished decision).

In the tentative ruling for the initial hearing, the court explained the pertinent authorities in the previous civil minutes for service on a state agency or entity under Rule 7004(b)(6). The court cited section 416.50 of the California Code of Civil Procedure. The amended proof does not show that a "clerk, secretary, president, presiding officer, or other head" of the State Compensation Insurance Fund has been served. The general counsel does not appear to satisfy Rule 7004(b)(6) and section 416.50 of the California Code of Civil Procedure.

Nevertheless, the U.S. Trustee has appointed a committee of unsecured creditors as of June 30, 2014. Rule 4001(a) requires service on a committee of unsecured creditors. The appointment reveals the agent of each creditor on the committee and the proper address.

The court will continue the hearing to August 27, 2014 to allow supplemental service on each member of the committee. The court will consider the service deficiencies resolved if service is made to the attention of the committee members named, and at the addresses indicated, on the appointment document at docket no. 146.

7. [13-17744](#)-A-11 SREP V, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
THOMAS ARMSTRONG/Atty. for dbt. 12-6-13 [[1](#)]

No tentative ruling.

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Matter: Approval of Disclosure Statement

Notice: LBR 9014-1(f)(1) / Continued date of the hearing; written opposition required

Disposition: Approved

Order: Prepared by the court

Unopposed matters 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).

DISCLOSURE STATEMENT

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted).

U.S. Trustee Fees. Section 1129(a)(9)(A) provides that claims under § 507(a)(2) must be paid in cash on the effective date of the plan. The plan provides that the fees of the United States Trustee will be paid as provided in 28 U.S.C. § 1930(a)(6). Fees under § 1930(a)(6) are payable the last day of a calendar month following the calendar quarter for which the fee is owed. If any outstanding U.S. Trustee fees are past due at confirmation, and if the court confirms the plan, the court will require that the order confirming the plan provide that such fees will be paid on the plan's effective date if such fees have not already been paid when due pursuant to 28 U.S.C. § 1930(a)(6), and the U.S. Trustee to approve the form and content of the order at that time.

Approval of Disclosure Statement. The court will approve the disclosure statement. At the hearing on this matter, the court will set procedural deadlines for taking action relating to the disclosure statement, balloting, and plan confirmation.

CONFIRMATION ISSUES

Shaver Lake Rental. At the hearing on the disclosure statement, the court would like to discuss with counsel for the debtor in possession the following statement in the disclosure statement at p. 15: "Due to the inability to speak with Wells, Debtor has yet to rent out the Shaver Lake, California real property." Because the plan depends in part on the proposed rental income from this property, this statement raises questions about whether the debtor's inability to communicate

with Wells Fargo is preventing the real property from being rented and whether this inability to communicate will continue and prevent the property from being rented after confirmation.

Cash for Effective Date Payments. The court also would like to discuss whether there will be sufficient cash on hand to make all required cash payments on the plan's effective date. It appears that cash payments due on the plan's effective date equal about \$83,127.73 (including the pre-petition arrears owed to Wells Fargo, plus post-petition arrears, plus administrative claims and U.S. Trustee fees, plus the priority tax claim and administrative convenience class).

The members of the debtor have provided \$60,000 in cash for the purpose of paying the amounts due on the plan's effective date. Cash in the debtor-in-possession account totals \$14,764. Together, these sums equal \$74,764. When compared to the cash due on the effective date, this results in an apparent deficiency of \$8363.69.

9. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-9

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WALTER AND
WILHELM FOR RILEY C. WALTER,
DEBTOR'S ATTORNEY(S)
7-2-14 [[160](#)]

RILEY WALTER/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Walter Wilhelm

Compensation approved: \$17,681.50

Costs approved: \$2,896.30

Aggregate fees and costs approved in this application: \$20,577.80

Retainer held: \$33,948.03

Amount to be paid as administrative expense: \$0.00

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

10. [13-13284](#)-A-11 NICOLETTI OIL INC.
LRP-5
EXXONMOBIL OIL CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
STIPULATION

MOTION TO EXTEND TIME TO FILE
PROOFS OF CLAIM
7-15-14 [[335](#)]

Tentative Ruling

Motion: Extend Bar Date to File Proofs of Claim

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

Disposition: Granted

Order: Prepared by moving party

The moving party seeks a further extension of the bar date for the moving party to file proofs of claim. For the reasons stated in the motion and supporting papers, the bar date will be extended to October 31, 2014, to allow the "contamination litigation" between the parties to continue in the district court. Cause has been shown for such an extension. Fed. R. Bankr. P. 3003(c)(3), 9006(b)(1).

11. [14-11991](#)-A-11 CENTRAL AIR
BJG-1 CONDITIONING, INC.
PALMA CONSTRUCTION, INC./MV

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
7-10-14 [[106](#)]

HAGOP BEDOYAN/Atty. for dbt.
CYNTHIA MARKS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted only to the extent specified in this ruling

Order: Prepared by movant consistent with this ruling

Subject: Construction defect litigation in two state court actions more fully described in the motion

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

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no

bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

12.	14-11991 -A-11 CENTRAL AIR KDG-8 CONDITIONING, INC. CENTRAL AIR CONDITIONING, INC./MV HAGOP BEDOYAN/Atty. for dbt.	MOTION FOR ORDER ESTABLISHING CLAIMS BAR DATE 7-9-14 [97]
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Tentative Ruling

Motion: Establish Claims Bar Date

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

Disposition: Continued to August 27, 2014; supplemental notice and proof of service may be filed no later than August 13, 2014

Order: Civil minute order if appropriate

"Fair or adequate notice has two basic elements: content and delivery. If the notice is unclear, the fact that it was received will not make it adequate." *Fogel v. Zell*, 221 F.3d 955, 962 (7th Cir. 2000). The court's local rules reflect this concept by prescribing a higher standard for the content of the notice when the notice is served without the motion or supporting papers. In such a case, the notice must "succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion." LBR 9014-1(d)(4).

The notice of hearing that was sent to the entire matrix of all creditors and parties in interest in this case does not sufficiently describe the relief requested. From the notice, a creditor or party in interest cannot determine the essential relief requested in the motion, which is that a claims bar date of September 17, 2014 be established. The notice states that debtor is requesting that creditors be required to file proofs of claim, a request substantially different from requiring them to file proofs of claim on or before a specified bar date. Further, the notice refers to fees and costs, which makes the notice ambiguous about what the court will actually be considering on the hearing date.

2:00 p.m.

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

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

MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

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

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS

JAMES SALVEN/MV
12-20-12 [[104](#)]
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.