

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: AUGUST 5, 2015
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [10-16017](#)-A-7 LAURA WILLIAMS
JMV-1
JEFFREY VETTER/MV

MOTION FOR COMPENSATION FOR
JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
6-4-15 [[227](#)]

LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

Final Ruling

The matter is continued to September 2, 2015, at 10:00 a.m. Applicant's Certificate of Service, filed June 29, 2015, ECF # 237, was not executed. Not later than August 19, 2015, applicant shall: (1) file and serve notice of the continued hearing date and time, including instruction that opposition may be presented at the hearing; and(2) file a Certificate of Service of the notice of continued hearing date and time and of the (A)Trustee's Narrative, filed June 4, 2015, ECF # 227; (B) Notice of Hearing to Approve the Amended Trustee's Final Report, filed June 29, 2015, ECF # 235; and(C) Declaration of Jeffrey M. Vetter, filed June 29, 2015, ECF # 236. All such services shall be made on the U.S. Trustee, debtor, debtor's counsel, and all creditors. The court will issue a civil minute order.

2. [10-16017](#)-A-7 LAURA WILLIAMS
JTW-2
JANZEN, TAMBERI AND WONG/MV

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S), FEE: \$1674.00,
EXPENSES: \$0.00
10-22-13 [[141](#)]

LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Application: Compensation and Expenses

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

Here, the proof of service for the notice of the compensation application has not been signed. Without such a signature under penalty of perjury, the court will not conclude that all creditors and parties in interest have received sufficient notice of the compensation application.

3. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-11

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LANG, RICHERT AND
PATCH, P.C. FOR MICHAEL J.
GOMEZ, TRUSTEE'S ATTORNEY(S)
3-17-14 [[214](#)]

LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: First and Final Allowance of Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Lang, Richert & Patch, counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$86,194.00 and reimbursement of expenses in the amount of \$919.83.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$86,194.00 and reimbursement of expenses in the amount of \$919.83.

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

4. [15-10636](#)-A-7 WILLIAM/VIOLETTE BREWER MOTION TO AVOID LIEN OF
CEF-1 PERSOLVE, LLC
WILLIAM BREWER/MV 6-22-15 [[14](#)]
CURTIS FLOYD/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

5. [15-11044](#)-A-7 ROBERT JONES
PK-1
ROBERT JONES/MV

PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF
MATTERHORN FINANCIAL SERVICES,
LLC
7-1-15 [[13](#)]

Final 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 corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

The court notes that service on an attorney who represented the respondent in earlier litigation that resulted in the judgment does not suffice. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

6. [15-11044](#)-A-7 ROBERT JONES
PK-2
ROBERT JONES/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF MUFG
UNION BANK, N.A.
7-1-15 [[19](#)]

Final 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

corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

7. [15-11044](#)-A-7 ROBERT JONES
PK-3
ROBERT JONES/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE, N.A.
7-1-15 [[25](#)]

Final 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).

8. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION TO COMPROMISE
KDG-11 INC. CONTROVERSY/APPROVE SETTLEMENT
JEFFREY VETTER/MV AGREEMENT WITH MOJAVE AIR &
SPACE PORT
7-15-15 [[179](#)]

LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Mojave Air & Space Port and Jeffrey Vetter,
Chapter 7 trustee

Dispute Compromised: Contempt (Stay Violation)

Summary of Material Terms: Mojave Air & Space Port to pay \$50,000 and
not file Proof of Claim

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).

APPROVAL OF COMPROMISE

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

The movant requests approval of a compromise that settles contempt
proceedings. The compromise is reflected in the settlement agreement
attached to the motion as an exhibit and filed at docket no. 183.
Based on the motion and supporting papers, the court finds that the
compromise presented for the court's approval is fair and equitable
considering the relevant *A & C Properties* factors. The compromise or
settlement will be approved.

CIVIL MINUTE ORDER

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

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

Jeffrey Vetter's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 183.

9. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, RESCHEDULED PRE-TRIAL
KDG-9 INC. CONFERENCE RE: MOTION FOR
JEFFREY VETTER/MV CONTEMPT
3-11-15 [[132](#)]
- LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.
ORDER VACATING 7/9/15

Final Ruling

The pretrial conference is continued to August 11, 2015, at 9:00 a.m. in Fresno. Order Vacating Pretrial Conference, filed July 9, 2015, ECF # 177.

10. [13-10752](#)-A-7 MARK/BARBARA SHIRES MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 6-24-15 [[61](#)]
VINCENT GORSKI/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
DISCHARGED

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: 7200 Sierra Path Avenue, Bakersfield, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

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

AS TO 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. 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.

11. [15-11960](#)-A-7 JOHNNY/DARLENE DUNCAN MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 6-24-15 [[11](#)]
NEIL SCHWARTZ/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to September 2, 2015, at 10:30 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order or civil minutes as appropriate

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

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

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor was not served at the correct address shown for the debtor on the petition.

12. [15-12462](#)-A-7 MARK SOTELO
JHW-1
TD AUTO FINANCE LLC/MV
R. BELL/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-2-15 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Nissan Quest

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

13. [15-11866](#)-A-7 BERNARD/TONISE GRAY

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-6-15 [[41](#)]

Tentative Ruling

If the filing fee of \$335 has not been paid in full by the time of the hearing, the case will be dismissed.

14. [15-11681](#)-A-7 KYLE HALE
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-10-15 [[10](#)]

NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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

DISMISSAL

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

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for August 7, 2015, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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