

**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**

**AUGUST 27, 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. [14-13803](#)-A-7 KENNETH/MICHELE HAMILTON MOTION TO COMPEL ABANDONMENT  
MAZ-1 8-4-14 [[12](#)]  
KENNETH HAMILTON/MV  
MARK ZIMMERMAN/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:** Michele's Day Care, 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).

2. [14-11505](#)-A-7 FERNANDO VIRGEN, JR.

FERNANDO VIRGEN, JR./MV

MOTION FOR AN EXTENSION OF TIME  
TO PAY THE UNPAID FILING FEE  
AND ADMINISTRATIVE FEE AND/OR  
MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE

8-8-14 [[18](#)]

STEPHEN LABIAK/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Waive Filing Fee or Extension of Time to Pay Filing Fee in Installments

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

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

**Order:** Civil minute order

On March 27, 2014, the debtor filed his Chapter 7 petition. On the same date, he filed an Application for Individuals to Pay Filing Fee in Installments. In response, the Clerk issued an Order Approving Paying of Filing Fee in Installments. Order, March 27, 2014, ECF #6. Payments of \$76 were due April 28, May 27, and June 25; a final installment of \$78 was due July 25, 2014. *id.* The debtor made one payment of \$76 on April 24, 2014. The Clerk has issued Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to Pay Filing Fee. Notice of Intent, filed July 28, 2014, ECF #16. Under that notice, the debtor must the Clerk \$230 no later than August 27, 2014, to avoid closure without entry of discharge.

### **WAIVER OF FILING FEE**

Chapter 7 debtors whose income is less than 150% of the income official poverty line and who are otherwise unable to pay the filing fee qualify for a waiver of the filing fee. 28 U.S.C. § 1930(f)(1). The debtor has a household of three persons. Schedule J, filed March 27, 2014, ECF #1. The 150% of the official poverty line for such a household is \$2,473.75. His income is \$1,488.00. Schedule I, filed March 27, 2014, ECF #1. As a result, the debtor satisfies the income component of the § 1930(f)(1).

But Schedules B and C reflect an anticipated tax refund of \$6,260.00. That amount is a source from which the filing fee could be paid. The debtor's motion and supporting declaration does not address the 2013 tax refund. As a result, the debtor has not satisfied the otherwise unable to pay component of the § 1930(f)(1). As a result, the request for waiver of the filing fee is denied.

### **EXTENSION OF TIME TO PAY FILING FEE IN INSTALLMENTS**

In the alternative the motion prays a three months extension of time to pay the filing fee. The debtor having failed to address the 2013 tax refund, the request for an additional three months is denied. But the court will give the debtor through close of business on Wednesday, September 17, 2014, to pay the Clerk of the Bankruptcy Court all amounts due and owing.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion to Extend Time to Pay Filing Fee or, In the Alternative, to Waive the Filing Fee filed by debtor Fernando Virgen, Jr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that request to waive the Chapter 7 filing fee is denied.

It is also hereby ordered that the debtor is granted through and including close of business on Wednesday, September 17, 2014, to pay the Clerk of the Bankruptcy Court all remaining amounts due and owing and, failing such timely payment, the Clerk shall close the case without the entry of discharge.

3. [11-15407](#)-A-7 CALIFORNIA HOME CARE AND MOTION FOR COMPENSATION FOR  
JTW-2 HOSPICE, INC. JANZEN, TAMBERI AND WONG,  
JANZEN, TAMBERI AND WONG/MV ACCOUNTANT(S), FEE: \$5115.00,  
EXPENSES: \$0.00  
10-22-13 [[78](#)]
- DENNISE HENDERSON/Atty. for dbt.

#### **Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Janzen, Tamberi & Wong, an Accountancy Corporation

**Compensation approved:** \$5115.00

**Costs approved:** \$0.00

**Aggregate fees and costs approved in this application:** \$5115.00

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.

The court notes that while the average hourly rate may be determined mathematically from the hours worked and the fees requested, the

hourly rate, or various hourly rates, should be included clearly in any future fee applications.

4. [11-15407](#)-A-7 CALIFORNIA HOME CARE AND MOTION FOR COMPENSATION FOR  
RH-8 HOSPICE, INC. ROBERT A. HAWKINS, TRUSTEE'S  
ROBERT HAWKINS/MV ATTORNEY(S), FEE: \$4950.00,  
EXPENSES: \$195.13.  
11-19-13 [[83](#)]  
DENNISE HENDERSON/Atty. for dbt.

#### **Final Ruling**

**Application:** Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Robert Hawkins

**Compensation approved:** \$4950.00

**Costs approved:** \$195.13

**Aggregate fees and costs approved in this application:** \$5145.13

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.

5. [12-18810](#)-A-7 JAMES MERCER CONTINUED STATUS CONFERENCE RE:  
[13-1082](#) COMPLAINT  
MANFREDO V. ESTATE OF SUSAN E.  
MERCER ET AL 7-23-13 [[1](#)]  
JAMES MILLER/Atty. for pl.

*[This matter will be called at 9:15 a.m.]*

**No tentative ruling.**

6. [14-11610](#)-A-7 DANIEL PEDRELLI  
JES-1  
JAMES SALVEN/MV  
7-14-14 [[19](#)]  
GEORGE LOGAN/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS

**Tentative Ruling**

**Objection:** Objection to Debtor's Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Civil minute order

**JUDICIAL NOTICE**

The court takes judicial notice of Schedules A and C as amended and of their contents. Fed. R. Evid. 201(b)(2), (c)(1), (e). These Schedules have the debtor's signature on them and therefore their contents are admissions of the debtor. These schedules indicate that this property was quitclaimed to the debtor's father on December 12, 2012. The petition was filed on December 18, 2013.

**TRUSTEE'S OBJECTION**

The trustee objects to the debtor's claim of exemption in an interest the debtor formerly had in real property described on Schedule C as 5 acres in Merced County, California. The legal description of the property is included on a Quit Claim Deed attached to the objection as an exhibit.

The trustee argues the exemption should not be allowed under § 522(g). However, the court does not rule on the question whether the exemption is proper under § 522(g). This issue is not ripe. Section 522(g) provides that "the debtor may exempt under subsection (b) of this section property that the trustee recovers under [enumerated sections of the Code] . . ., to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred . . . . The trustee does not state that he has formally recovered or taken action or threat of action that would constitute a recovery of the debtor's interest in this real property, nor has the trustee presented sufficient facts showing that exemption is foreclosed by § 522(g). See *In re Glass*, 60 F.3d 565, 570 (9th Cir. 1995). Thus, section 522(g) cannot be used to disallow the exemption.

Section 522(g) cannot be the basis for disallowance of the exemption claimed. This subsection does not apply when property transferred prepetition has not yet been recovered by formal or informal action. See 11 U.S.C. § 522(g); *In re Glass*, 60 F.3d 565, 569-70 (9th Cir. 1995). The trustee has not avoided the prepetition transfer at issue and the property transferred has not been recovered by the trustee's formal or informal action grounded on facts that support a recovery under one of the sections enumerated in § 522(g). See *In re Glass*, 60 F.3d at 569-70.

But the exemption may be disallowed on another ground. Only property of the estate may be exempted. See 11 U.S.C. § 522(b)(1). The property transferred prepetition is not property of the estate until it is actually recovered by the estate. See 11 U.S.C. § 541(a)(3) ("[Property of the estate comprises] [a]ny interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or

723 of this title." ). Property that may be recovered under the avoidance sections of the Bankruptcy Code is not property of the estate until the property has been recovered. See 5 *Collier on Bankruptcy* ¶ 541.12[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2013) (emphasis added) (noting a conflict of authority on the issue of whether avoiding power *causes of action* are property of the estate, and distinguishing such causes of action from *proceeds* of the avoiding power causes of action, which are property of the estate under § 541(a)(3)).

#### **DEBTOR'S RESPONSE**

The debtor's response to the objection states that the property cannot be divided under the Merced County Zoning Code and that the 1/4 interest of the debtor cannot be divided. The debtor states that "if the transfer is set aside, it becomes property of the debtor and thus, may be claimed as exempt." The debtor's argument is in essence that (i) the property is not worth anything to the estate because it cannot be divided, and (ii) the property is not valuable to the estate even if it were recovered because the property may be exempted if it were recovered.

But the debtor's arguments are misplaced. The trustee's duty is to determine whether transfers are avoidable and whether avoiding a transfer would benefit the estate given the value of the property transferred. See 11 U.S.C. § 704(a). Further, the prepetition transfer has not been avoided and the property transferred has not been recovered by the trustee formally or informally based on facts that support a recovery under one of the enumerated sections in § 522(g). See *In re Glass*, 60 F.3d 565, 570 (9th Cir. 1995).

Thus, the issue of whether the property may or should be recovered is not ripe and will not be considered by the court at this time.

#### **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. Trustee James Salven's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

KATHRYN LAUER/MV  
KATHRYN LAUER/Atty. for mv.  
RESPONSIVE PLEADING

*[This matter will be called no earlier than 9:15 a.m. and will be heard simultaneously with the creditors' Motion to Set Trial Date, ACB-1.]*

### **Tentative Ruling**

**Motion:** Dismiss Involuntary Petition

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

**Disposition:** Granted

**Order:** Civil minute order

Creditors Architectural Network, Inc. ("ANI"), Custom Restoration, Inc. ("CRI"), and B & Q Construction ("B&Q") filed an involuntary petition against Kathryn A. Lauer. The petition listed aliases used by Lauer, including entities that the creditors contends she owns or has an interest in, including "Crane Valley Acceptance LLC" and "Glendale Acceptance LLC." All three are corporations, who acted in filing the petition through an officer but without counsel. In support of the petition, each creditor filed a declaration, supported by exhibits, setting forth the basis of its claim. CRI and B & Q each contends it assigned a claim against a third party to Glendale Acceptance, LLC (an entity in which Lauer is alleged to have an interest) for collection and Glendale Acceptance owes it monies in connection with that assignment. ANI makes a similar claim, except its claims is against Central Valley Acceptance LLC (another Lauer entity). Each of the supporting declarations is apparently filed in response to the "Transfer of Claim" portion of the Involuntary Petition, p. 2, filed May 7, 2014, ECF #1.

Lauer presents a 12(b)(6) motion to dismiss. FRBP 1001(b). Each of the three petitioning creditors opposes the motion.

### **LEGAL STANDARDS**

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all



reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *accord Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

## **DISCUSSION**

The involuntary petition fails on at least two grounds.

### Corporations Appearing Pro Se

First, corporations and other unincorporated associations must appear in court by counsel. *United States v. High Country Broad. Co. Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993). Doing so is a basis to strike the corporations pleadings. *Licht v. Am. W. Airlines (In re A. W. Airlines)*, 40 F.3d 1058, 1059 (9th Cir. 1994). They may not do so by an officer or director. *id.*

In this case, all three are each corporations. See, Voluntary Petition, pp. 2-4, May 7, 2014, ECF #1; Declaration of Thomas Breen, filed May 7, 2014, ECF #5 (Transfer of Claim referring to "B & Q Construction, Inc.") None of the three has appeared through counsel.

### Failure to State a Claim

Second, the declarations filed in support of the petition show that two of Lauer's entities, Glendale Acceptance LLC and/or Crane Valley LLC, allegedly owes the petitioning creditors money. But these are separate entities, not Lauer herself. The creditors concede this point. Response to Motion to Dismiss, p. 4, lines 3-5, filed August 13, 2014, ECF #22.

## **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion to Dismiss filed by Kathryn Lauer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that motion to dismiss is granted and the involuntary petition is dismissed.

8. [10-61725](#)-A-7 PAMELA ENNIS  
JTW-4  
JANZEN TAMBERI AND WONG/MV

MOTION FOR COMPENSATION FOR  
JANZEN TAMBERI AND WONG,  
ACCOUNTANT(S).  
7-25-14 [[177](#)]

RILEY WALTER/Atty. for dbt.

### **Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Janzen, Tamberi & Wong, an Accountancy Corporation

**Compensation approved:** \$7182.00

**Costs approved:** \$93.60

**Aggregate fees and costs approved in this application:** \$7275.60

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

9. [14-12332](#)-A-7 EDWARD MUSHYAN  
TMT-1  
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION  
AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
7-30-14 [[17](#)]

DAVID JENKINS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by the moving party

**Property:** Vehicles

**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).

### **PROCEDURAL MATTERS**

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 motion states that the date for the public sale is August 30, 2014 but that this date is subject to change to a subsequent date due to unforeseen circumstances. The notice, however, states that the date for the public sale is August 30, 2014 and does not place the same limiting condition on this date (providing that the date is subject to change to a later date due to unforeseen circumstances).

Fed. R. Bank. P. 2002(c)(1) requires the notice of a public sale to include the time and place of the sale. If the motion is correct that the date is subject to change due to unforeseen circumstances, and the date changes, then the notice is insufficient because it does not correctly state the time of the sale. Further, the notice is inconsistent with the motion as the notice does not state that the date provided is subject to change.

In the future, the motion to sell property at a public sale should only be brought if a firm date for the sale is known and given in the motion and notice. Fed. R. Bankr. P. 2002(c)(1).

### **EMPLOYMENT**

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the

requirements of § 327(a), and the court will approve the auctioneer's employment.

#### 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 at the continued hearing if no creditor or party in interest objects at that time.

10. [14-11537](#)-A-7      GUILLERMO RIOS AND GINA      MOTION TO COMPROMISE  
TMT-1                      MORALES                      CONTROVERSY/APPROVE SETTLEMENT  
TRUDI MANFREDO/MV                      AGREEMENT WITH RUBEN GRIJALVA  
7-24-14 [[33](#)]
- MONA PATEL/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

#### Final Ruling

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

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

11. [05-61838](#)-A-7 TOBY/JULIE KEENEY  
JTW-2  
JANZEN TAMBERI AND WONG/MV  
  
PATRICIA CARRILLO/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION FOR COMPENSATION FOR  
JANZEN, TAMBERI AND WONG,  
ACCOUNTANT(S)  
7-24-14 [[54](#)]

### **Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(1); written opposition filed by joint-debtor Julie Keeney

**Disposition:** Continued to September 24, 2014, at 9:00 a.m.; a supplemental proof of service shall be filed along with a notice of continued hearing no later than September 10, 2014.

**Order:** Prepared by applicant

**Applicant:** Janzen, Tamberi & Wong, an Accountancy Corporation

**Compensation approved:** \$1488.50

**Costs approved:** \$11.04

**Aggregate fees and costs approved in this application:** \$1499.54

### **PROCEDURAL ISSUES**

The computer-generated date on the copy of the court's Master Mailing List, also known as the court's matrix, is approximately 50 days prior to the actual date of service of the notice. The date shown on the copy of the court's matrix is too remote from the date the application was served. The court believes that the following creditors/parties in interest, DFS Acceptance, Discover Bank, Department of the Treasury/Internal Revenue Service, IRS, Discover, and Washington Mutual, were not properly served at the addresses shown on the most recent creditors' matrix.

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 court emphasizes the requirement of currency: the copy of the master address list should indicate a date near in time to the date of service of the notice.

A notice of continued hearing may be filed no later than September 10, 2014, and a proof of service showing transmittal of the notice of continued hearing may be filed no later than this date.

*The following will be the ruling as of the continued hearing date if no additional objections (other than the ones already raised as of August 27, 2014) have been raised:*

## COMPENSATION APPLICATION

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.

The court notes that while the average hourly rate may be determined mathematically from the hours worked and the fees requested, the hourly rate, or various hourly rates, should be included clearly in any future fee applications.

## DEBTOR'S OBJECTION

Joint debtor Julie Keeney objects on the basis that the fee request is made too long after the petition was filed. The debtor further objects that notice of the application was not received by the debtors.

### Standing to Raise Objections

First, the debtors do not have standing to object. The debtor lacks standing because the debtor has not shown that the outcome of the claim objection affects the debtor in some way. See *Dellamarggio ex rel. Barker v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 346-47 (Bankr. E.D. Cal. 2004). "This [standing] requirement is satisfied by cognizable prospects of receiving a distribution or of a nondischargeable debt being affected." *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); see also Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:1362 (rev. 2012) (standing conferred by existence of surplus estate or an outcome that would affect a nondischargeable debt).

Although the cases cited specifically apply to claim objections rather than applications for administrative expenses, such as an application for compensation and reimbursement of expenses, they are applicable by analogy to the latter situation.

The trustee's Notice of Final Report indicates that certain claims of unsecured creditors, the claims of tardily filed, general unsecured claims, are being paid at 59.8%. The debtor has not raised facts that would show that the final report is incorrect to the extent that it does not show a distribution to the debtors. Nor is a nondischargeable debt of the debtors likely to be affected by the application.

### Notice

Regardless of where the notice was sent, the debtors clearly had notice of this application in time to file a timely response. The objection was filed on August 7, 2014, which is more than 14 days prior to the hearing and well within the time permitted for objection. See LBR 9014-1(f)(1).

In any event, the debtor's own objection admits that the debtors did not apprise the court or anyone of their change of address. The debtors are required to do so, so their reasons for not apprising the court of their address changes in writing are not relevant. Service on the debtor pursuant to Rule 7004(b)(9) is sufficient at the address shown on the petition or the debtor's last filed address in the case. Similarly, notice sent to the debtor's address shown on the petition, or the last-filed address of the debtors, will suffice. See 11 U.S.C. § 102(1); see also Fed. R. Bankr. P. 7004(b)(9). Because the debtors did not update their address as they admit in a filed writing, notice was sufficient at the address shown on the petition.

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

CONTINUED 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:** 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:** a sole proprietorship that is a beautician business

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).

13. [13-11947](#)-A-7 ROBERT/AMY BADILLA  
HDN-3  
ROBERT BADILLA/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO COMPEL  
7-24-14 [[134](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

14. [14-13151](#)-A-7 YVONNE MARTINEZ  
GMA-1  
YVONNE MARTINEZ/MV  
  
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO AVOID LIEN OF  
COMMERCIAL TRADE BUREAU OF  
CALIFORNIA  
7-15-14 [[11](#)]

**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.



15. [14-13554](#)-A-7 JAVIER GARCIA  
MAZ-1  
JAVIER GARCIA/MV  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
7-18-14 [[14](#)]

**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:** Garcia Gardening & Landscaping, 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).

16. [14-12262](#)-A-7 RAUL PATINO-NEGRETE  
MAZ-1  
RAUL PATINO-NEGRETE/MV

MOTION TO AVOID LIEN OF  
PORTFOLIO RECOVERY ASSOCIATES,  
LLC  
7-22-14 [[18](#)]

MARK ZIMMERMAN/Atty. for dbt.

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to September 24, 2014; the supplemental proof of service shall be filed no later than September 10, 2014, along with a notice of continued hearing for September 24, 2014, that permits opposition, if any, at the continued hearing under LBR 9014-1(f)(2)

**Order:** Civil minute order

## **SERVICE**

The respondent is Portfolio Recovery Associates, LLC ("Portfolio Recovery"). The motion was served at two addresses. One address lists the respondent, Portfolio Recovery but does not name an agent of the respondent for that address.

The other address shows that the motion was mailed to the attention of a corporate agent for service of process called "The Prentice-Hall Corporation System, Inc." at 2710 Gateway Oaks Drive Ste 150N, Sacramento, CA 95833. This address does not state that this entity is an agent for the respondent.

However, the attached papers show that the respondent's agent for service of process is the Corporation Service Company Which Will Do Business In California As CSC - Lawyers Incorporating Service ("CSC"). Another printout from the Secretary of State's website shows that the CSC's agent for service of process is the Prentice-Hall Corporation System, Inc.

Essentially, the movant has served the *agent for service* for the *respondent's agent for service*. This means service was made on the agent rather than on the respondent as required by Rules 9014(b) and 7004(b). But Rule 7004(b)(3) does not appear to require that a corporate agent's agent for service of process be served. Fed. R. Bankr. P. 7004(b)(3). The rule only requires service at one level: the respondent entity. It requires that *service* be made on the corporation or other entity by *mailing* (first class postage prepaid) the relevant documents "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." *Id.*

In informal parlance, attorneys speak of service on an entity's authorized agent, which is a generally accurate inasmuch as the target of service on a corporate respondent is an agent. But more precisely, the rule does not provide that service on an entity is accomplished by further service on the agent of the entity. Instead, it requires service on the corporate entity and further prescribes *the manner* of such service: mailing the documents by first class mail to the attention of the proper officer or agent. Although the agent is the target of service on the entity, the agent itself is not the one for whom service is prescribed. Thus, service on a corporate agent by mailing the documents to the corporate agent's own agent is not likely sufficient to constitute service on the corporate entity. Rule 7004(b)(8) supports this conclusion as it permits service on any defendant's agent by mailing the documents "at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession." Fed. R. Bankr. P. 7004(b)(8).

Here, service on Portfolio Recovery is improper as it was not mailed to Portfolio Recovery's agent, CSC, but rather was served on CSC's agent, Prentice Hall.

## **MERITS**

*Assuming service is proper as of the continued hearing date, and no other objection is raised, then the court will grant the relief requested by adopting the following as the ruling:*

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).

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

Based on the facts provided in the motion, the court will grant the motion. After deducting consensual lien debt of \$95,285.60 from the value of the property, which is \$80,000.00, the debtor's fractional interest in the property is \$0.00 ( $-15,285.60 / 2 = -\$7,642.80$ ). Thus, there is no equity for any judicial liens, and the respondent's lien is impaired. In the future, the counsel for the movant shall address the co-owned property analysis when it is applicable. See *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007). In this case, the court applied this analysis and found that the relief requested was warranted.

17. [10-61970](#)-A-7 BRIAN ENNIS  
JTW-4  
JANZEN, TAMBERI AND WONG/MV  
  
RILEY WALTER/Atty. for dbt.

MOTION FOR COMPENSATION FOR  
GEORGE A. TAMBERI,  
ACCOUNTANT(S).  
7-25-14 [[294](#)]

### **Final Ruling**

**Application:** Interim 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:** Janzen, Tamberi & Wong

**Compensation approved:** \$5,098.00

**Costs approved:** \$87.84

**Aggregate fees and costs approved in this application:** \$5,185.84

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).

### **DISCUSSION**

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Interim Compensation filed by Janzen, Tamberi & Wong having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) compensation of \$5,098.00 is approved on an interim basis; (2) costs of \$87.84 are approved on an interim basis; and (3) 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.

18. [14-11270](#)-A-7    MARCOS/DOLORES GONZALEZ    MOTION TO EMPLOY BAIRD'S  
JES-3    AUCTIONS AS AUCTIONEER,  
JAMES SALVEN/MV    AUTHORIZING SALE OF PROPERTY AT  
PUBLIC AUCTION AND AUTHORIZING  
PAYMENT OF AUCTIONEER FEES AND  
EXPENSES  
7-29-14 [[31](#)]

OVIDIO OVIEDO/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property and Compensate Auctioneer

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

**Disposition:** Granted in part; denied in part as to expenses applicable to storage and sale

**Order:** Prepared by moving party

**Property:** 2008 Honda Ridgeline

**Sale Type:** Public auction

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

### **SALE OF PROPERTY**

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

### **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 15% commission sought is reasonable and will approve the application. The court will not approve any other expenses sought. No cap or limitation on the expenses approved has been given. Further, no cap or limitation appears in the notice, so the notice does not contain the amount of the expenses requested as required by Fed. R. Bankr. P. 2002(c)(2).

19. [14-11171](#)-A-7    JASON PHELPS    MOTION TO COMPEL ABANDONMENT

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Disposition:** Continued to September 24, 2014, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(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 requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required 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. The court cannot grant the motion at this time due to insufficient 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.

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

8-5-14 [[80](#)]

### **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:** A. Rodriguez Transport (truck driving business) and Alice C. Rodriguez Ranch (a livestock business)

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).

21. [14-12077](#)-A-7     JOE DELGADO  
JOE DELGADO/MV  
PATRICIA CARRILLO/Atty. for dbt.

MOTION TO AVOID LIEN OF  
PORTFOLIO RECOVERY ASSOCIATES  
LLC  
7-17-14 [[15](#)]

### **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:** \$122,105.54

**Property Value:** \$120,000.00

**Judicial Lien Avoided:** \$2,105.54

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).

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).

The movant has not addressed the priority of the two judicial liens referenced in the motion. But the court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Because the debtor's exemption in the property is equal to the property's value, both judicial liens referenced in the motion would be avoidable regardless of their priority.

In the future, counsel shall ensure that when multiple judicial liens on the property exist, the reverse-priority analysis is included in the motion, or a statement of the reasons that such analysis is not necessary (as in this case).

The responding party's judicial lien, all other liens (excluding the other judicial lien referenced in the motion held by Citibank N.A. as that lien might be lower in priority), 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.



22. [09-18191](#)-A-7 CON DEV SERVICES, INC.  
HAR-3  
HILTON RYDER/MV

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF MCCORMICK,  
BARSTOW, SHEPPARD, WAYTE &  
CARRUTH LLP FOR HILTON A.  
RYDER, SPECIAL COUNSEL(S), FEE:  
\$9365.00, EXPENSES: \$694.80.  
8-20-13 [[427](#)]

### **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:** Civil minute order

**Applicant:** McCormick Barstow

**Compensation approved:** \$9,365.00

**Costs approved:** \$694.80

**Aggregate fees and costs approved in this application:** \$10,059.80

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).

### **DISCUSSION**

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.

To the extent that the motion requests an order requiring the trustee pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Final Compensation filed by McCormick Barstow having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) default of the respondents are entered;

(2) compensation of \$9,365.00 is approved on a final basis; (3) costs of \$694.80 are approved on a final basis; and (4) said compensation shall not be paid until such time as the presumption described in Rule 5009(a) arises or the court approves an early distribution.

23. [09-18191](#)-A-7 CON DEV SERVICES, INC. MOTION FOR COMPENSATION BY THE  
LRP-20 LAW OFFICE OF LANG, RICHERT AND  
CRAIG FRY/MV PATCH FOR CRAIG B. FRY,  
TRUSTEE'S ATTORNEY(S), FEE:  
\$279331.50, EXPENSES: \$18796.19  
10-14-13 [[441](#)]

### **Final Ruling**

**Application:** First and 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:** Civil minute order

**Applicant:** Lang Richert and Patch

**Compensation approved:** \$279,331.50

**Costs approved:** \$18,796.19

**Aggregate fees and costs approved in this application:** \$298,127.69

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).

### **DISCUSSION**

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.

To the extent that the motion requests an order requiring the trustee pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil

Minutes for the hearing.

The Motion for Final Compensation filed by Lang, Richert & Patch having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$279,331.50 is approved on a final basis; (3) costs of \$18,796.19 are approved on a final basis; (4) applicant may draw on any retainer held; and (5) except for amounts to be paid from any retainer held, said compensation shall not be paid until such time as the presumption described in Rule 5009(a) arises or the court approves an early distribution.

24.	<a href="#">09-18191</a> -A-7     CON DEV SERVICES, INC. MKK-3 M. KLEIN/MV	MOTION FOR COMPENSATION FOR M. KATHLEEN KLEIN, ACCOUNTANT(S), FEE: \$20824.00, EXPENSES: \$1270.64 9-5-13 [ <a href="#">432</a> ]
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### **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:** Civil minute order

**Applicant:** M. Kathleen Klein, Certified Public Accountant

**Compensation approved:** \$23,498.50

**Costs approved:** \$1,331.07

**Aggregate fees and costs approved in this application:** \$24,829.57

**Retainer Held:** \$6,808.44

**Amount to be Paid as Administrative Expense:** \$18,021.13

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).

### **DISCUSSION**

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 and all interim awards are reasonable, and the court will approve the application on a final basis as to the amounts requested.

To the extent that the motion requests an order requiring the trustee

pay the amounts requested on or before the time that a presumption described in Rule 5009(a) arises or the court otherwise approves an early distribution, the court will deny the motion without prejudice.

#### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Final Compensation filed by McCormick Barstow having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$23,498.50 is approved on a final basis; (3) costs of \$1,331.07 are approved on a final basis; (4) applicant may draw on the retainer of \$6,808.44; (5) after application of the retainer the remainder of the fee and costs award \$18,021.13 shall be paid as an administrative expense; (6) all interim fee and costs awards are finalized; and (7) except for amounts to be paid from any retainer held, said compensation shall not be paid until such time as the presumption described in Rule 5009(a) arises or the court approves an early distribution.

**9:15 a.m.**

- |    |  |   |
|----|--|---|
| 1. | <a href="#"><u>14-11316</u></a> -A-7    VINCENT/SARAH CARABBA<br><a href="#"><u>14-1052</u></a><br>MAS FINANCIAL SERVICES V.<br>CARABBA<br>PAUL REZA/Atty. for pl. | CONTINUED STATUS CONFERENCE RE:<br>COMPLAINT<br>5-7-14 [ <a href="#"><u>1</u></a> ] |
|----|--|---|

**No tentative ruling.**

- |    |  |   |
|----|--|---|
| 2. | <a href="#"><u>11-18763</u></a> -A-7    MARY/JERRY CARMONA<br><a href="#"><u>14-1063</u></a><br>CARMONA V. CAPITAL ONE BANK<br>(USA) N A<br>PETER BUNTING/Atty. for pl.<br>DISMISSED | STATUS CONFERENCE RE: COMPLAINT<br>6-19-14 [ <a href="#"><u>1</u></a> ] |
|----|--|---|

#### **Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

3. [12-17166](#)-A-7 BILLY JOHNSON STATUS CONFERENCE RE: COMPLAINT  
[12-1150](#) 9-7-12 [[1](#)]  
U.S. TRUSTEE V. JOHNSON  
GREGORY POWELL/Atty. for pl.  
ORDER 7/31/14, RESPONSIVE  
PLEADING

**No tentative ruling.**

4. [12-17166](#)-A-7 BILLY JOHNSON MOTION FOR SUMMARY JUDGMENT  
[12-1150](#) UST-1 1-23-13 [[17](#)]  
U.S. TRUSTEE V. JOHNSON  
GREGORY POWELL/Atty. for mv.  
ORDER 7/31/14, RESPONSIVE  
PLEADING

**No tentative ruling.**

5. [14-11466](#)-A-7 JOSE VAZQUEZ STATUS CONFERENCE RE: COMPLAINT  
[14-1064](#) 6-30-14 [[1](#)]  
FIRST NATIONAL BANK OF OMAHA  
V. VAZQUEZ, SR  
DONALD DUNNING/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

6. [13-15067](#)-A-7 CARLOS BERBEREIA STATUS CONFERENCE RE: AMENDED  
[14-1041](#) COMPLAINT  
MANFREDO V. BERBEREIA 7-3-14 [[24](#)]  
TRUDI MANFREDO/Atty. for pl.

**No tentative ruling.**

7. [11-15299](#)-A-7 ERNEST ROQUE MOTION TO REOPEN DISCOVERY  
[11-1217](#) ER-3 7-31-14 [[154](#)]  
YNIGUEZ V. ROQUE  
ERNEST ROQUE/Atty. for mv.  
RESPONSIVE PLEADING

*[This matter will be called on the 2:00 p.m. calendar pursuant to the Scheduling Order issued July 2, 2014, ECF #148.]*

8. [14-12422](#)-A-7 KATHRYN LAUER  
ACB-1

MOTION TO SET TRIAL DATE  
6-25-14 [[17](#)]

### **Tentative Ruling**

If the court adopts its tentative ruling granting the debtor's Motion to Dismiss, Item 7 on the 9:00 a.m. Chapter 7 calendar, the matter will be dropped as moot.

**10:00 a.m.**

1. [14-12123](#)-A-7 TAMARA BROWN  
RMD-1  
OCWEN LOAN SERVICING, LLC/MV  
RYAN DAVIES/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-30-14 [[24](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted as to estate, denied as to debtor

**Order:** Prepared by moving party

**Subject:** 5617 Campus Drive, Virginia Beach, Virginia

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

### **AS TO THE DEBTOR**

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

### **AS TO THE ESTATE**

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

2. [14-12627](#)-A-7 MARIA ESPINOZA  
RDW-1  
CAM VII TRUST LLC/MV  
GEORGE LOGAN/Atty. for dbt.  
REILLY WILKINSON/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-24-14 [[15](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 986 Arrow Wood Lane, Atwater, 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.

3. [14-12233](#)-A-7 FRANCISCO ZAPIEN  
APN-1  
WELLS FARGO BANK, N.A./MV  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-24-14 [[22](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied in part as moot, denied without prejudice in part

**Order:** Prepared by moving party

**Subject:** 2290 Driftwood Drive, Madera, CA

**AS TO DEBTOR**

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

## AS TO ESTATE

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

According to the motion, the debtor has missed only 1 post-petition payments due on the debt secured by the moving party's lien. The court does not find that this constitutes a sufficient showing for cause. Properly excluding junior liens from the analysis, moreover, the movant has adequate protection based on an equity cushion of approximately 50%. See *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984) (recognizing that 20% equity cushion constitutes adequate protection for a secured creditor).

The motion will be denied in part without prejudice as to the estate.

4. <a href="#">12-13170</a> -A-7    AUGUSTINE PENA PPR-1 U.S. BANK NATIONAL ASSOCIATION/MV FRANCISCO ALDANA/Atty. for dbt. CATHERINE VINH/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-14 [ <a href="#">546</a> ]
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### Tentative Ruling

**Motion:** Stay Relief

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

**Disposition:** Unless the service deficiency is waived by the trustee, the hearing will be continued to September 24, 2014; supplemental proof of service and notice of continued hearing filed no later than September 10, 2014

**Order:** Civil minute order if appropriate

The trustee has not been served with a copy of the motion although the trustee's attorney has been served. The court will continue the hearing to September 10, 2014. A supplemental proof of service and a notice of continued hearing may be filed no later than September 28, 2014.



If the trustee waives this service deficiency at the hearing, then the court will grant the motion under § 362(d)(2) and the following will be the ruling:

Subsection (d)(2) of § 362 of Title 11 allows relief from stay as against property of the debtor if the moving party shows that two elements are satisfied: (i) "the debtor does not have an equity in such property," and (ii) "such property is not necessary to an effective reorganization." *Id.* § 362(d)(2). Under the first element of this subsection, the moving party bears the burden of proof to show that the debtor lacks equity in the property. See 11 U.S.C. § 362(g)(1); *In re Bialac*, 712 F.2d 426, 432 (9th Cir. 1983). The responding party has the burden of showing that the property is necessary for an effective reorganization and all other issues. 11 U.S.C. § 362(g)(2); see also *In re Bonner Mall P'ship*, 2 F.3d 899, 902 (9th Cir. 1993).

The movant requests relief from the stay as to property located at 1557 Mateus Avenue, Tulare, California. The value of the property is \$259,500. The movant's deed of trust against the property secures a loan with a balance of \$560,506.30. 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.	<a href="#">14-13070</a> -A-7     JORGE FLORES AND MARCELA ABG-1                URIAS KINECTA FEDERAL CREDIT UNION/MV MARK ZIMMERMAN/Atty. for dbt. MARK BLACKMAN/Atty. for mv. NON-OPPOSITION	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-14 [ <a href="#">14</a> ]
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#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2006 Acura TSC automobile

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.

6. [14-12978](#)-A-7 ROBERTO JAUREGUI  
CJO-1  
GREEN TREE SERVICING LLC/MV  
THOMAS GILLIS/Atty. for dbt.  
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-6-14 [[16](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2860 Birch Street, Livingston, CA

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).

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. The motion also states that the property is to be surrendered by the debtor, and in the absence of opposition by the debtor, the court will accept this statement as true. These facts 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.

7. [14-13382](#)-A-7 MARTIN/MARIA SANCHEZ MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 8-8-14 [[17](#)]  
STARR WARSON/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2006 Cadillac CTS

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 debt owed to the movant does not appear on Schedule D filed in this case. In the absence of opposition at the hearing, the court will find that the debtors' failure to schedule the debt owed to the movant is cause for stay relief. See 11 U.S.C. § 362(d)(1).

If the debt had been scheduled, the stay would have terminated as of August 1, 2014, which is the date that is 30 days after the petition. §§ 362(h)(1), 521(a)(2). The stay would have terminated in such a case because the debtor failed within the applicable time set by § 521(a)(2) to file timely a statement of intention with respect to the 2006 Cadillac CTS. Section 521(a)(2) requires such a statement to be filed *by the earlier of* 30 days after the petition date or on or before the date of the meeting of creditors, or within such additional time as the court for cause, fixes.

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. [14-12593](#)-A-7 ARMANDO/VIRGINIA MOTION FOR RELIEF FROM  
RCO-1 RODRIGUEZ AUTOMATIC STAY  
WELLS FARGO BANK, NA/MV 7-21-14 [[15](#)]  
SCOTT SAGARIA/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted as to estate, denied as to debtor

**Order:** Prepared by moving party

**Subject:** 1418 E. Brown Avenue, Fresno, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written

No tentative ruling.

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-42  
JOHN VISSER/MV

OBJECTION TO CLAIM OF AMERICAN  
EXPRESS TRAVEL RELATED SERVICES  
CO, INC CORP CARD, CLAIM NUMBER  
8 AND/OR OBJECTION TO CLAIM OF  
AMERICAN EXPRESS TRAVEL RELATED  
SERVICES CO, INC CORP CARD,  
CLAIM NUMBER 10  
7-16-14 [[999](#)]

RONALD CLIFFORD/Atty. for dbt.

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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 Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

In this case, in objecting to Claims No. 8 and 10 filed by the claimant, the presumption has been rebutted. The objection and the declaration of John Visser support conclusion that the obligations for which the claims were filed are not the personal obligations of the Vissers. The claims are for debts owed by Visser Ranch, Inc. and John Visser Dairy, Inc. on a corporate credit card. A review of the claims supports the fact that they are corporate debts as well. A claim substantially identical in nature and amount to Claim No. 8 was filed as Claim No. 28 in the John Visser Dairy, Inc. case, and the documentation attached to the claim shows that the account was a corporate account of John Visser Dairy. Similarly, a claim substantially identical in nature and amount to Claim No. 10 was filed as Claim No. 33-1 in the Visser Ranch, Inc. case., and the documentation attached to the claim shows that the account was a corporate account of Visser Ranch, Inc.

For the reasons stated in this ruling, the objection, and supporting documents, the court will sustain the objection and disallow the claim.

2. [12-17310](#)-A-11 JOHN/GRACE VISSER  
RAC-43  
JOHN VISSER/MV  
RONALD CLIFFORD/Atty. for dbt.

OBJECTION TO CLAIM OF VICTOR  
TRUCKING, INC., CLAIM NUMBER 9  
7-16-14 [[1006](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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 Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

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

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

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

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

The reorganized debtors, the Vissers, have objected to Claim No. 9 filed by Victor Trucking, Inc. As grounds for the objection, the Vissers assert that the claim is not owed by the Vissers individually. The claim is for a debt resulting from transportation and deliveries of livestock. The Vissers had no need as individuals for transportation of livestock. John Visser states in his declaration that the Vissers did not routinely purchase livestock in their individual capacity. After reviewing the claim, John Visser also contends that the documentation supporting the claim makes clear that the asserted obligation is not owed by him or his wife, Grace Visser, in their individual capacities. For the reasons stated in this ruling, the objection, and supporting documents, the court will sustain the objection and disallow the claim.

3. [10-62315](#)-A-11 BEN ENNIS  
LRP-24  
DAVID STAPLETON/MV  
  
RILEY WALTER/Atty. for dbt.  
WILLIAM FREEMAN/Atty. for mv.  
WITHDRAWN
- OBJECTION TO CLAIM OF TULARE  
COUNTY TAX COLLECTOR, CLAIM  
NUMBER 5  
7-7-14 [[1573](#)]

#### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

4. [10-62315](#)-A-11 BEN ENNIS  
LRP-28  
DAVID STAPLETON/MV  
  
RILEY WALTER/Atty. for dbt.  
WILLIAM FREEMAN/Atty. for mv.
- OBJECTION TO CLAIM OF CLOVIS  
STONE & LANDSCAPE SUPPLY IN THE  
AMOUNT OF \$55,508.00  
7-8-14 [[1579](#)]

#### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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 claim to which the objection is directed arises from the schedules. In Chapter 11 cases, "a proof of claim . . . is deemed filed under § 501 of this title for any claim . . . that appears in the schedules . . . except a claim . . . that is scheduled as disputed, contingent, or unliquidated." § 1111(a); see also Fed. R. Bankr. P. 3003(b)(1).

The time for filing a proof of claim was stated in the notice of the



creditors' meeting. The deadline for nongovernmental creditors is February 28, 2011. The order confirming the plan deletes a plan provision to the contrary that sets a different deadline for filing proofs of claim. Order Confirming Plan, ECF No. 1203. The order further states that "[n]otwithstanding any contrary provision in the Plan, the Plan does not re-open the deadline for filing unsecured claims." ECF No. 1203.

The deadline for objecting to claims is within 1 year after the plan's effective date. The effective date is on or after 15 days following the confirmation date. The confirmation order was issued June 27, 2013. Thus, the effective date of the plan was 15 days later, on July 12, 2013, so the deadline for filing claims objections was July 12, 2014. The objection was timely filed.

For the reasons stated in the objection, the court will sustain the objection and disallow the claim. The plan administrator, through its employee or agent, has thoroughly searched the records of Ben Ennis for evidence of any debt owed to the Claimant as set forth in the schedules. After such review, the plan administrator has not found any documentation evidencing an amount due to the claimant, nor any record of the basis of a debt to the claimant.

5. [13-17444](#)-A-11 A & A TRANSPORT, CO., CONTINUED STATUS CONFERENCE RE:  
INC. VOLUNTARY PETITION  
11-21-13 [[1](#)]

HILTON RYDER/Atty. for dbt.

*[This matter will be called subsequent to the Motion to Sell, filed July 29, 2014, ECF #179, Motion to Sell, filed July 29, 2014, ECF #184, and Motion to Convert, filed July 29, 2014, ECF #170.]*

**No tentative ruling.**

6. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO SELL  
HAR-15 INC. 7-29-14 [[179](#)]  
A & A TRANSPORT, CO., INC./MV  
HILTON RYDER/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Sell Property

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received sufficient notice. Notice of a proposed sale other than in the ordinary course of business 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).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing 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 mailing 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.

7. [13-17444](#)-A-11 A & A TRANSPORT, CO., MOTION TO SELL  
HAR-16 INC. 7-29-14 [[184](#)]  
A & A TRANSPORT, CO., INC./MV  
HILTON RYDER/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received sufficient notice. Notice of a proposed sale other than in the ordinary course of business 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).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing 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 mailing 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.

8. [13-17444](#)-A-11 A & A TRANSPORT, CO.,                    MOTION TO CONVERT CASE FROM  
WW-2                    INC.                    CHAPTER 11 TO CHAPTER 7  
THE OFFICIAL CREDITORS                    7-29-14 [[170](#)]  
COMMITTEE/MV  
HILTON RYDER/Atty. for dbt.  
MICHAEL WILHELM/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Conversion to Chapter 7

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or Scheduling Order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether cause to dismiss or convert exists under 11 U.S.C. § 1112(b)(1),(4)(A)-(B); and (ii) whether dismissal or conversion to Chapter 7 is in the best interests of creditors and of the estate.

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

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

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

9. [13-17744](#)-A-11 SREP V, LLC  
THA-10

MOTION FOR COMPENSATION FOR  
THOMAS H. ARMSTRONG, DEBTOR'S  
ATTORNEY(S).  
7-24-14 [[100](#)]

THOMAS ARMSTRONG/Atty. for dbt.

**Final Ruling**

The motion has been renoticed for October 15, 2014, at 1:30 p.m. and will not be called on August 27, 2014.

10. [14-10851](#)-A-11 JOHN/BETTY VAN DYK

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-25-14 [[1](#)]

RILEY WALTER/Atty. for dbt.

**No tentative ruling.**

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

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF WALTER & WILHELM  
FOR RILEY C. WALTER, DEBTOR'S  
ATTORNEY(S)  
8-6-14 [[199](#)]

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:** Civil minute order

**Applicant:** Walter Wilhelm

**Compensation approved:** \$6,871.50

**Costs approved:** \$1,413.78

**Aggregate fees and costs approved in this application:** \$8,285.28

**Retainer held:** \$18,370.00

**Amount to be paid as administrative expense:** \$0.00

DIP counsel Walter Wilhelm files it Fourth Interim Motion for Compensation. It is supported by the debtor. No party in interest has filed written opposition. If none is presented at the hearing, the court will rule as follows.

**DISCUSSION**

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.

#### **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Interim Compensation filed by Walter Wilhelm having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) compensation of \$6,871.50 is approved on an interim basis; (2) costs of \$1,413.78 are approved on an interim basis; and (3) the applicant may draw upon any retainer held; and (4) 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.

12. [14-10851](#)-A-11 JOHN/BETTY VAN DYK  
WW-4  
JOHN VAN DYK/MV  
RILEY WALTER/Atty. for dbt.

CONTINUED MOTION TO ASSUME  
LEASE OR EXECUTORY CONTRACT  
4-18-14 [[73](#)]

#### **Final Ruling**

**Motion:** Assume Dairy Lease

**Notice:** Continued hearing date

**Disposition:** Dropped from calendar

**Order:** Civil minute order if appropriate

The parties have entered a stipulation under which the time to assume or reject the lease will be extended to and through December 31, 2014. Extending the time to assume the lease allows the debtor and the Creditors' Committee to continue negotiating the terms of a consensual plan. When the debtor wishes to assume the lease, the debtor may re-file the motion to assume and notice it for hearing on the court's available calendar.

13. [14-10851](#)-A-11 JOHN/BETTY VAN DYK  
WW-6

CONTINUED DISCLOSURE STATEMENT  
FILED BY JOINT DEBTOR BETTY  
JEAN VAN DYK, DEBTOR JOHN  
WILLIAM VAN DYK  
3-21-14 [[50](#)]

RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Approve Disclosure Statement  
**Notice:** Continued hearing date  
**Disposition:** Dropped from calendar  
**Order:** Civil minute order if appropriate

On May 14, 2014, the court continued the hearing on the disclosure statement to June 11, 2014, to allow the debtor to file a revised plan and disclosure statement and redline versions of the documents no later than May 28, 2014.

On June 11, 2014, the hearing was further continued to August 6, 2014. A stipulation was entered on July 18, 2014, that continued the hearing further to August 27, 2014. This stipulation further provided that any amended disclosure statement was to be filed in clean and redline format by August 13, 2014.

Recently, the debtor has filed a declaration that indicates that an amended plan has not been filed by August 13, 2014, but that the debtors are working with the committee and secured creditors on a consensual plan and expect that one will be developed and filed by October 20, 2014.

The court will drop the hearing at this time. A new hearing may be set on the disclosure statement when the debtor has completed negotiations and prepared the final version of the plan and disclosure statement.

14. [14-11991](#)-A-11 CENTRAL AIR  
KDG-10 CONDITIONING, INC.  
CENTRAL AIR CONDITIONING,  
INC./MV  
HAGOP BEDOYAN/Atty. for dbt.

CONTINUED MOTION TO USE CASH  
COLLATERAL AND/OR MOTION FOR  
ADEQUATE PROTECTION  
7-30-14 [[128](#)]

**Tentative Ruling**

**Motion:** Use Cash Collateral  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Creditor:** Carlos DeOchoa  
**Expiration:** December 31, 2014  
**Adeq. Protection:** Replacement Lien

Absent opposition at the hearing, the court will grant the use of cash collateral through December 31, 2014.

15. [14-11991](#)-A-11 CENTRAL AIR KDG-11 CONDITIONING, INC. CENTRAL AIR CONDITIONING, INC./MV  
HAGOP BEDOYAN/Atty. for dbt.
- MOTION TO ENLARGE SCOPE OF COURT'S PREVIOUS ORDER FIXING, ALLOWING AND AUTHORIZING DEBTOR TO PAY CLAIMS  
8-6-14 [[142](#)]

**Tentative Ruling**

**Motion:** Enlarge Scope of Court's Previous Order Fixing, Allowing and Authorizing Debtor to Pay Claims

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

A motion initiating a contested matter not otherwise governed by the rules must be served as provided in Rule 7004. This motion requests to enlarge the scope of a previous order that fixed § 503(b)(9) claims and allowed the debtor to pay creditors holding such claims. The debtor requests to both add new claims to the order and amend the claim amount of several administrative claims that were already fixed by the order. Some of the claims have been reduced. As a result, the motion is a contested matter and should have been served on every creditor affected by the motion.

The proof of service indicates that the 20 largest creditors have received notice, secured creditors, special notice parties, and employed professionals. But the proof does not include a list of the creditors affected by the motion. Although some of the creditors affected by the motion do appear on the proof of service, others do not. The ones appearing on the proof of service have not been served according to Rule 7004(b).

16. [14-11991](#)-A-11 CENTRAL AIR KDG-8 CONDITIONING, INC. CENTRAL AIR CONDITIONING, INC./MV  
HAGOP BEDOYAN/Atty. for dbt.
- CONTINUED MOTION FOR ORDER ESTABLISHING CLAIMS BAR DATE  
7-9-14 [[97](#)]

**Tentative Ruling**

**Motion:** Set Claims Bar Date

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

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

**Order:** Prepared by moving party

The court may fix a deadline for filing a Proof of Claim in a Chapter 11 case. Fed. R. Bankr. P. 3003(c)(3). In the Eastern District of California the matter has been dealt with by local rule: "Unless otherwise ordered by the Court, and except as provided in Fed. R. Bankr. P. 3003(c)(3), a proof of claim in a chapter 11 case shall be

filed within ninety (90) days after the date first set for the meeting of creditors called pursuant to 11 U.S.C. § 341(a), unless the claimant is a governmental unit, in which case a proof of claim shall be filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide." LBR 3003-1.

The court finds cause and grants the motion in part. The claims bar date is close of business on Friday, October 3, 2014, for any party served with this order on or before Monday, September 1, 2014. Given the continuance of this motion to address noticing errors, a claims bar date of September 17, 2014, is insufficient to give parties in interest the opportunity to file a claim.

17. [13-14894](#)-A-11 JORENE MIZE CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
7-17-13 [[1](#)]  
ROSEANN FRAZEE/Atty. for dbt.

**No tentative ruling.**

18. [13-14894](#)-A-11 JORENE MIZE CONFIRMATION OF DEBTOR'S SECOND  
RAF-10 AMENDED CHAPTER 11 PLAN  
5-30-14 [[304](#)]  
ROSEANN FRAZEE/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Matter:** Chapter 11 Plan Confirmation

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

**Disposition:** Confirmation denied without prejudice

**Order:** Civil minute order

**PROCEDURAL MATTERS**

The exhibits to the revised, second amended disclosure statement and plan have not been transmitted to all creditors and parties in interest. This means that an essential component of the disclosure statement and plan have not been transmitted to all creditors and parties in interest as required by the court's order and procedural rules. Some relevant background to this issue may be useful.

On April 24, 2014, the court issued an order continuing the hearing on the disclosure statement and plan in this case to May 28, 2014. Order on Disclosure Statement, Apr. 24, 2014, ECF No. 271. The order required the debtor to "file a second amended disclosure statement and plan, which must address the issues raised by the court . . . ."

On May 7, 2014, the debtor filed a second amended plan (ECF No. 279) and a second amended disclosure statement (ECF No. 281). Exhibits (ECF No. 283) referred to in this plan and disclosure statement were filed on this date as well. A notice of continued hearing for May 28,

2014, was filed and transmitted to creditors and parties in interest. Notice of Continued Hr'g on 2nd Am. Disclosure Statement, ECF No. 284; Certificate of Service, ECF No. 286. The second amended plan and disclosure statement, and the exhibits thereto, were mailed to the court, the U.S. Trustee, and the SEC's office in Los Angeles, California. Certificate of Service, ECF No. 287.

At the hearing on May 28, 2014, the court approved the second amended disclosure statement subject to conditions. The conditions were that certain changes be made to the Second Amended Plan and Disclosure Statement relating to provisions that violate public policy (relating to future bankruptcy filings and modification of creditors' rights). Civ. Mins., May 28, 2014, ECF No. 291.

On May 30, 2014, the debtor filed a revised second amended plan, ECF No. 304, and a revised second amended disclosure statement, ECF No. 306, along with red-lined copies of those documents. The exhibits were not filed with this revised version of the disclosure statement and plan. After filing these revised documents, the debtor served them on May 30, 2014, and the service list included the court and U.S. Trustee. Certificate of Service, ECF No. 308. The exhibits were not included on this proof of service.

On June 3, 2014, the court entered an order approving the debtor's second amended disclosure statement that had been filed on May 30, 2014, at ECF No. 306. The order required transmission of the plan, disclosure statement, the scheduling order that also approved the disclosure statement, and ballots, no later than June 11, 2014.

On June 11, 2014, the debtor filed a proof of service showing transmission to the court's Master Mailing List(or matrix) of the second amended disclosure statement (revised), second amended plan, scheduling order approving the disclosure statement, and ballots. But the exhibits are not listed on the proof of service.

The exhibits are an integral and critical component of the disclosure statement and plan. Both the plan and the disclosure statement refer to them and incorporate them by reference. The plan at pages 7 and 8 refers to Exhibit A to identify the Class 5 general unsecured claims and the amount that they will be paid. Likewise, the disclosure statement refers to Exhibit A for a detailed claims chart. An unsecured creditor cannot determine whether its claim is included in the unsecured class without having Exhibit A available.

Similarly, Exhibits B and C are referenced in the disclosure statement. Exhibit B is the liquidation analysis which must be provided for the court to confirm the plan. See Disclosure Statement at 26, ECF No. 306. Exhibit C is referred to in the disclosure statement as attached "cash flow projections." See *id.* at 27.

Because the exhibits were not transmitted to all creditors and parties in interest, the court finds that the debtor has not fully complied with the scheduling order approving the disclosure statement. In essence, some of the essential portions of the disclosure statement have not been sent to all creditors and parties in interest as required by the order and Fed. R. Bankr. P. 3017(d).

Accordingly, the court cannot confirm the plan.

**SUBSTANTIVE MATTERS**



Consent of Debtor's Attorney to Treatment in Plan

As a § 507(a)(2) claimant, the debtor's attorney must be paid in full in cash on the plan's effective date. But the plan provides for different treatment. The plan proposes to pay the debtor's attorney approximately \$57,000 in professional fees but to pay only \$30,000 of such fees on the effective date of the plan and pay the remainder in installments. When administrative claimants are paid other than in accordance with § 1129(a)(9), the court requires affirmative consent of such creditor to treatment that is different than the treatment required under § 1129(a)(9).

Characterization of Adequate Protection Payments

The confirmation brief, at page 15, discusses treatment of adequate protection payments. The court is uncertain whether this treatment is part of the agreement between the debtor and the debtor's major secured creditor, Lestie Fry, or whether this issue is in dispute. At the hearing, the debtor will clarify whether the secured creditor is in agreement with such treatment.

19. [13-14894](#)-A-11 JORENE MIZE  
RAF-13  
JORENE MIZE/MV

MOTION TO APPROVE MODIFICATIONS  
TO DEBTOR'S SECOND AMENDED PLAN  
AND/OR MOTION TO DEEM CREDITORS  
TO HAVE ACCEPTED MODIFIED PLAN  
8-1-14 [[324](#)]

ROSEANN FRAZEE/Atty. for dbt.

**No tentative ruling.**

20. [14-11595](#)-A-11 RAY FISHER PHARMACY,  
INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-31-14 [[1](#)]

ALAN KINDRED/Atty. for dbt.

**No tentative ruling.**

21. [14-11595](#)-A-11 RAY FISHER PHARMACY, CONTINUED MOTION FOR  
PWC-3 INC. COMPENSATION BY THE LAW OFFICE  
OF LEECH, TISHMAN, FUSCALDO &  
LAMPL, LLC FOR PATRICK W.  
CAROTHERS, DEBTOR'S  
ATTORNEY(S).  
6-18-14 [[68](#)]

ALAN KINDRED/Atty. for dbt.

**Final Ruling**

The matter being resolved by an order approving fees, ECF #97, the hearing is dropped as moot.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL STATUS CONFERENCE RE: COMPLAINT  
[14-1062](#) PROPERTIES, LLC 6-16-14 [[1](#)]  
ENNIS COMMERCIAL PROPERTIES,  
LLC ET AL V. ENNIS DEVELOPMENT  
MICHAEL GOMEZ/Atty. for pl.

**Final Ruling**

This matter is continued to October 15, 2014, at 1:45 p.m. to allow the plaintiff to seek a default judgment.

2:00 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:  
[12-1033](#) PROPERTIES, LLC AMENDED COMPLAINT  
 ENNIS COMMERCIAL PROPERTIES, 2-7-14 [[76](#)]  
 LLC V. NICHOLSON ET AL  
 MICHAEL GOMEZ/Atty. for pl.  
 RESPONSIVE PLEADING

## Final Ruling

The status conference is continued to September 24, 2014, at 2:00 p.m. The parties shall file a joint status report seven (7) days prior to the hearing.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:  
[12-1050](#) PROPERTIES, LLC AMENDED COMPLAINT  
 ENNIS COMMERCIAL PROPERTIES, 1-14-14 [[56](#)]  
 LLC ET AL V. HA DEVCO, INC. ET  
 MICHAEL GOMEZ/Atty. for pl.  
 RESPONSIVE PLEADING

## Final Ruling

The status conference is continued to September 24, 2014, at 2:00 p.m. The parties shall file a joint status report seven (7) days prior to the hearing.

3. [10-62315](#)-A-11 BEN ENNIS CONTINUED STATUS CONFERENCE RE:  
[13-1107](#) AMENDED COMPLAINT  
 STAPLETON ET AL V. WATKINS ET  
 3-11-14 [[50](#)]  
 AL  
 MICHAEL GOMEZ/Atty. for pl.  
 RESPONSIVE PLEADING

## Final Ruling

The status conference is continued to September 24, 2014, at 2:00 p.m. The parties shall file a joint status report seven (7) days prior to the hearing.

4. [10-62315](#)-A-11 BEN ENNIS  
[13-1108](#)  
STAPLETON ET AL V. NICHOLSON  
ET AL  
MICHAEL GOMEZ/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-12-14 [[46](#)]

### **Final Ruling**

The status conference is continued to September 24, 2014, at 2:00 p.m. The parties shall file a joint status report seven (7) days prior to the hearing.

5. [11-15299](#)-A-7 ERNEST ROQUE  
[11-1217](#) ER-3  
YNIGUEZ V. ROQUE  
ERNEST ROQUE/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO REOPEN DISCOVERY  
7-31-14 [[154](#)]

### **Tentative Ruling**

**Motion:** Reopen Discovery

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

**Disposition:** Denied

**Order:** Civil minute order

Defendant Ernest Roque, a represented party, moves pro se to reopen discovery. Plaintiff Rafaela Yniguez opposes the motion. The plaintiff has the better side of the argument and the motion will be denied.

### **FACTS**

On August 23, 2011, plaintiff Rafaela Yniguez brought the instant adversary proceeding. Defendant Ernest Roque pro se answered the complaint.

Initially, a discovery cut off of April 13, 2012, was set. Civil Minute Order, filed December 12, 2011, ECF #15. Because Roque did not timely respond to the discovery propounded to him the discovery cut off was extended to September 30, 2012. Civil Minute Order, June 22, 2012, ECF #33.

On December 17, 2012, the plaintiff moved for summary judgment. The defendant responded by requesting a continuance of the summary judgment to: (1) find counsel; and (2) obtain documents with which to oppose the summary judgment. The request for a continuance was denied because defendant Roque failed to explain why he had not undertaken the actions he proposed earlier. Ultimately, the summary judgment was granted as to the §523(a)(2)(A) cause of action.

Defendant Roque appealed. The Bankruptcy Appellate Panel reversed and remanded on the elements of justifiable reliance and damages.

The plaintiff again moved for summary judgment. Roque again requested a continuance, citing the same grounds: (1) the need for counsel; and (2) a desire to locate documents. The request for a continuance was denied.

On July 1, 2014, the court heard the plaintiff's summary judgment and conducted a status conference. At the hearing, Roque was represented by attorney Janice Polglase. The motion for summary judgment was denied and trial on the remaining issues was scheduled for September 23, 2014.

## **DISCUSSION**

### Pro Se Arguments from a Represented Party Need Not Be Considered

Pro se motions and briefs received from represented parties need not be considered. *United States v. Pearl*, 324 F.3d 1210, 1216 (10 Cir. 2003); *United States v. McKermott*, 64 F.3d 1448, 1450 n.1 (10 Cir. 1995); *Deal v. Countrywide Home Loans*, 2013 WL 3786339 (N.D. Cal. 2013).

Roque is represented by attorney Janice Polglase. Civil Minutes, July 1, 2014, ECF #151. This motion was filed pro se and, therefore, need not be considered.

### Roque Has Not Sustained His Burden to Reopen Discovery

Even if the court were to consider Roque's motion, it would deny it. the parties correctly cite, *United States ex. rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir. 1995), vacated on other grounds 520 U.S. 939 (1997), for the standard applicable to motions to reopen discovery: "1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence."

In this case, the standard weight against Roque. Trial is scheduled for September 23. The motion is opposed by Yniguez. Granting the motion will result in loss of the trial date, and the inevitable prejudice associated with delay. Roque has not shown diligence. This case has been pending for three years, and the court gave Roque 12 months to conduct discovery. For each of these reasons, even if the court were to consider the motion, it would be denied.

## **CIVIL MINUTE ORDER**

The court shall issue a minute order substantially in the following form holding that:

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

The Motion to Reopen Discovery filed by defendant Ernest Roque having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is denied.

3:00 p.m.

1. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED TRUSTEE FINAL ACCOUNT  
AND DISTRIBUTION REPORT  
10-23-12 [[92](#)]

MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to October 29, 2014, at 9:15 a.m.

2. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED OBJECTION TO DEBTOR'S  
JES-3 CLAIM OF EXEMPTIONS  
JAMES SALVEN/MV  
12-20-12 [[104](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to October 29, 2014, at 9:15 a.m.