

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Suite 2501
Department A, Courtroom 11
Fresno, California

WEDNESDAY

SEPTEMBER 11, 2013

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. [13-10901](#)-A-7 GINA VERTSON
TGM-3
GINA VERTSON/MV

MOTION TO REDEEM
8-12-13 [[31](#)]

TRUDI MANFREDO/Atty. for dbt.

Final Ruling

Motion: Redeem Tangible Personal Property

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).

Pursuant to the requirements of § 722, an individual debtor in Chapter 7 may redeem tangible personal property from a lien on such property by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722. The tangible personal property must be "intended primarily for personal, family, or household use." *Id.* The lien from which the property is being redeemed must "secur[e] a "dischargeable consumer debt." *Id.* The property must have been exempted under § 522 or abandoned under § 554. *Id.*

The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2). "Replacement value" is defined in § 506 as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.*

The debtor requests redemption of the tangible personal property described in the motion from the lien on such property. The court values the property at the amount set forth in the motion. The property has been claimed exempt or has been abandoned. No creditor has disputed whether the debt is dischargeable. The property may be redeemed by paying the lienholder the redemption price.

In the future, the court requests that counsel ensure that the motion and supporting papers make clear that the property has been claimed exempt on Schedule C or abandoned. Here, the court determined the exemption from Schedule C, but the motion should contain all material facts.

2. [13-10901](#)-A-7 GINA VERTSON
TGM-4
GINA VERTSON/MV

MOTION TO REDEEM
8-12-13 [[35](#)]

TRUDI MANFREDO/Atty. for dbt.

Final Ruling

Motion: Redeem Tangible Personal Property

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).

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The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2). "Replacement value" is defined in § 506 as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.*

The debtor requests redemption of the tangible personal property described in the motion from the lien on such property. The court values the property at the amount set forth in the motion. The property has been claimed exempt or has been abandoned. No creditor has disputed whether the debt is dischargeable. The property may be redeemed by paying the lienholder the redemption price.

In the future, the court requests that counsel ensure that the motion and supporting papers make clear that the property has been claimed exempt on Schedule C or abandoned. Here, the court determined the exemption from Schedule C, but the motion should contain all material facts.

3. [13-11301](#)-A-7 JAMES/VANESSA HARSKAMP MOTION TO SELL
TMT-2 8-7-13 [[26](#)]
TRUDI MANFREDO/MV
THOMAS ARMSTRONG/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2002 Ford Thunderbird

Buyer: Debtors

Sale Price: \$10,603.75 (\$7,878.75 cash plus \$2,725.00 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

4. [12-16603](#)-A-7 JUAN LOMELI MOTION TO COMPROMISE
PFT-3 CONTROVERSY/APPROVE SETTLEMENT
PETER FEAR/MV AGREEMENT WITH JUAN OCHOA
LOMELI
8-5-13 [[30](#)]

SCOTT MITCHELL/Atty. for dbt.
PETER FEAR/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.

5. [13-15717](#)-A-7 SHERRY DEVINE
DRJ-2
SHERRY DEVINE/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
8-29-13 [[16](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor who was not noticed or served with the motion

Order: Prepared by moving party

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case is in good faith as to the creditors to be stayed. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed and that the automatic stay should be extended. The motion will be granted except as to any creditor who was not noticed or served with the motion.

6. [12-17924](#)-A-7 MIGUEL/GLORIA LARA MOTION TO SELL
PFT-1 8-7-13 [[26](#)]
PETER FEAR/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1994 Ford F-150 and 1999 Chevy Silverado

Buyer: Debtor

Sale Price:

-\$1,500.00 for the 1994 Ford F-150

-\$4,825.00 for the 1999 Chevy Silverado (\$2,100.00 cash plus \$2,725.00 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

7. [13-13427](#)-A-7 DARYLIN REEDER
TCS-1
DARYLIN REEDER/MV

MOTION TO AVOID LIEN OF STATE
OF CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT
8-13-13 [[14](#)]

NANCY KLEPAC/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

8. [13-13427](#)-A-7 DARYLIN REEDER
TCS-2
DARYLIN REEDER/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO AVOID LIEN OF FORTIS
CAPITAL LLC
8-13-13 [[18](#)]

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).

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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.

9. [13-13427](#)-A-7 DARYLIN REEDER MOTION TO AVOID LIEN OF TARGET
TCS-3 NATIONAL BANK
DARYLIN REEDER/MV 8-14-13 [[22](#)]
NANCY KLEPAC/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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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.

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| 10. | 13-14932 -A-7 TMT-1 | ERIC FLACK AND SHANNON ABLES-FLACK | OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 8-13-13 [13] |
|-----|--|---------------------------------------|---|

GARY HUSS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Deadlines—as to joint-debtor Eric Flack only

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

Disposition: Granted in part, conditionally denied in part

Order: Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss joint-debtor Eric Flack's case for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. Eric Flack opposes the motion. The court will deny the motion to dismiss subject to the condition that Eric Flack attends the continued meeting of creditors.

Certain deadlines for Eric Flack's case will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is October 1, 2013, at 9:30 a.m. The deadline for objecting to Eric Flack's discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss Eric Flack's case under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

The motion will be granted in part and conditionally denied in part. The motion will be granted to the extent it requests extension of certain deadlines so that they run from the continued date of the meeting of creditors. The motion will be conditionally denied in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that Eric Flack appear

at the continued meeting of creditors, but if he does not appear at the continued meeting of creditors, Eric Flack's case will be dismissed on the trustee's ex parte declaration.

11. 13-11537-A-7 LYLE/DEOBRAH MORSE
JES-2
JAMES SALVEN/MV
PETER BUNTING/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

MOTION TO SELL
8-9-13 [22]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2 vehicles and a travel trailer

Buyer: Debtors

Sale Price:

-\$750.00 for the 1988 Yukon travel trailer

-\$500.00 for the 1991 Ford F250

-\$8,991.00 for the 2009 Honda Civic (\$6,266.00 cash plus \$2,725.00 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

12. [13-15037](#)-A-7 MANUEL MURCIA AND
TOG-1 MARISELA ARTEAGA
MANUEL MURCIA/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
8-5-13 [[14](#)]

No tentative ruling.

13. [13-13749](#)-A-7 CHANSOUDA/NOH HER
JES-2
JAMES SALVEN/MV
JACK REVVILL/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

MOTION TO SELL
8-8-13 [[18](#)]

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2001 Chevrolet Silverado 1500 Truck

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

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

Federal Rule of Bankruptcy Procedure 2002(c)(1) requires that a notice of a proposed sale contain the time and place of any public sale. Fed. R. Bankr. P. 2002(c)(1). The notice has the day and month of the sale, but does not indicate the year. While it may be inferred that September 17, 2013, is likely the correct date, the trustee should ensure in the future that sale notices contain complete information regarding the time and place of sale.

14. [13-11959](#)-A-7 GREGORY/DEBRA ANDERSON MOTION TO SELL
TMT-1 8-14-13 [[19](#)]
TRUDI MANFREDO/MV
GREG BLEVINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2 vehicles and various firearms

Buyer: Debtor

Sale Price:

-2005 Chevrolet Impala: \$4,000.00 (\$1,275.00 cash plus \$2,725.00 exemption credit)

-2004 Chevrolet Impala: \$1,825.00 cash

-various firearms described in notice of hearing: \$900.00

Sale Type: Private sale subject to overbid opportunity

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

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

15. [13-11864](#)-A-7 KATHERINE DAVIS MOTION TO SELL
TMT-1 8-14-13 [[16](#)]
TRUDI MANFREDO/MV
JOSEPH ARNOLD/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2000 Ford F150 and 2003 Lincoln Navigator

Buyer: Debtor

Sale Price:

-2000 Ford F150: \$3,400.00 (\$675.00 cash plus \$2,725.00 exemption credit)

-2003 Lincoln Navigator: \$2,975.00 cash

Sale Type: Private sale subject to overbid opportunity

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

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

16. [12-14779](#)-A-7 STEVEN/CARRIE WOOD
PFT-2
PETER FEAR/MV

OBJECTION TO CLAIM OF QUALITY
DOCK & DOOR, INC., CLAIM NUMBER
1
7-17-13 [[44](#)]

THOMAS ARMSTRONG/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This

presumption is rebuttable. See *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.

The claim is not regular on its face. Federal Rule of Bankruptcy Procedure 3001(a) requires a proof of claim to "conform substantially to the appropriate Official Form." Fed. R. Bankr. P. 3001(a).

On the proof of claim form at section 5, the claimant checked the box indicating the claim is entitled to priority under § 507(a). The box checked is the one designated as "Other," which requires the claimant to specify an applicable paragraph under § 507(a). The claimant failed to specify the applicable paragraph under § 507(a) that entitles its claim to priority. Nor has the claimant stated any other basis in support of the claim that entitles the claimant to priority.

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

17. [13-12390](#)-A-7 ROLAND/ELVIRA ADGERS MOTION TO SELL
TMT-1 8-14-13 [[20](#)]
TRUDI MANFREDO/MV
KRISTY HERNANDEZ/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 Hyundai Accent and 1973 Ford Ranchero

Buyer: Debtors

Sale Price:

—2007 Hyundai Accent: \$4,680.00 (\$1,780.00 cash plus \$2,900.00 exemption credit)

—1973 Ford Ranchero: \$1,000.00 cash

Sale Type: Private sale subject to overbid opportunity

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

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

18. [13-15962](#)-A-7 DUANE/BRIDGETT THOMPSON MOTION TO COMPEL ABANDONMENT
DRJ-1 9-4-13 [[6](#)]
DUANE THOMPSON/MV
DAVID JENKINS/Atty. for dbt.
OST 9/4/13, NON-OPPOSITION
BY TRUSTEE

Tentative Ruling

Motion: Compel Abandonment

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

Disposition: Granted

Order: Civil minute order

Business Description: Sole proprietorship business in which debtor and his two employees manufacture custom cabinetry

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling and enter the default of the responding party. In entering such default, 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.

9:15 a.m.

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

No tentative ruling.

2. [11-19990](#)-A-7 ROBERT/ALLYSEN CAMARA FURTHER TRIAL SETTING
 [11-1305](#) CONFERENCE RE: COMPLAINT
 THE BOARD OF TRUSTEES OF THE 12-5-11 [[1](#)]
 CARPENTERS HEALTH AND V.
 CHRISTIAN RAISNER/Atty. for pl.
 RESPONSIVE PLEADINGS

No tentative ruling.

10:00 a.m.

1. [13-15015](#)-A-7 RAMON DELGADILLO MOTION FOR RELIEF FROM
PKB-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 8-13-13 [[15](#)]
PATRICK BRUSO/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 912 East Clark Street, Madera, California

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

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

2. [13-14920](#)-A-7 DEMIKO KIPPERS MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
SUN TRUST BANK/MV 8-13-13 [[11](#)]
GARY HUSS/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Chevrolet Camaro

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.

| | |
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| 3. 13-15054 -A-7 SUSAN JOHNSON CJO-1 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/MV PATRICIA CARRILLO/Atty. for dbt. CHRISTINA O/Atty. for mv. | MOTION FOR RELIEF FROM AUTOMATIC STAY 8-23-13 [12] |
|--|--|

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3672 Sabre Avenue, Clovis, California

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

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

4. [13-15156](#)-A-7 CONSUELO DIAZ MOTION FOR RELIEF FROM
SRH-1 AUTOMATIC STAY
LUIS MOTA/MV 8-27-13 [[15](#)]
STEVEN HRDLICKA/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: Unlawful Detainer regarding 2427 Dorothea, Visalia, California

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure or other transfer. In this case, the debtor's interest in the property was extinguished prior to the petition. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [13-12473](#)-A-7 ANTONIO/IRENE ROCHA MOTION FOR RELIEF FROM
DB-1 AUTOMATIC STAY
FARMERS & MERCHANTS BANK OF 8-27-13 [[18](#)]
CENTRAL CALIFORNIA/MV
RILEY WALTER/Atty. for dbt.
R. GINTER/Atty. for mv.
DISCHARGED

[This matter will be called not earlier than 10:30 a.m.]

Tentative Ruling

Motion: Stay Relief and Excuse Receiver from Turnover

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

Disposition: Granted in part and denied in part as moot

Order: Prepared by moving party

Subject: State Court action *Farmers and Merchants Bank of Central California v. V & R Dairy*

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

BACKGROUND

Farms & Merchants Bank of Central California moves for stay relief and to excuse the receiver from turnover of assets in three related Chapter 7 bankruptcies: *In re Rocha*, No. 13-12473 (Bankr. E.D. Cal. 2013); *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013) and *In re Vaz*, No. 13-12471 (Bankr. E.D. Cal. 2013). Rocha and the Vazes are each one third owns of a general partnership, V & R Dairy. V & R Dairy is the subject of a state court action, including a state court appointed receivership. *Farmers and Merchants Bank of Central California v. V & R Dairy*, No. CV002845 (Merced County Superior Court 2012). Rocha and the Vazes have each filed a Chapter 7 bankruptcy. Each debtor has been discharged. V & R is not the subject of a bankruptcy.

STAY RELIEF

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)(1),(2) authorizes stay relief for cause shown or if there is no equity and the property is not necessary for reorganization. In two of the three cases, the Chapter 7 trustee has issued a report of no distribution. All three cases have a common trustee, suggesting that the assets found in the third case, *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013), is unrelated to V & R Dairy. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

TURNOVER

Upon the filing of a Chapter 7 case, a receiver for that debtor is ordinarily required to turnover assets and account for property of the debtor. 11 U.S.C. § 543(a); see also, 11 U.S.C. § 101(11). Section 543(a) provides, "A custodian with knowledge of *the commencement of a case under this title concerning the debtor* may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property." (emphasis added). The court does not believe that the order appointing the receiver is directed at the individuals, but only at V & R Dairy. See, Order Granting Ex Parte Application to Appoint Receiver. V & R Dairy is not a debtor before this court. Though the debtor's partnership interest is an asset of the estate, the assets of the partnership itself are not. *In re Cutler*, 165 B.R. 275, 280 (Bankr. D. Ariz. 1994). As a result, the receivership does not concern a petition under this title and the motion will be denied as moot.

No other relief will be awarded.

10:30 a.m.

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|----|-------------------------------|--|---|
| 1. | 13-14632 -A-7 | ALFONSO/ROCIO SAUCEDO | PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES (2005 DODGE TRUCK RAM 1500) 8-20-13 [13] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 2. | 13-14632 -A-7 | ALFONSO/ROCIO SAUCEDO | PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES (2010 CHEVROLET CAMARO) 8-20-13 [15] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 3. | 13-13466 -A-7 | JAVIER BALLESTEROS AND ERNESTINA ORTEGA | REAFFIRMATION AGREEMENT WITH WELLS FARGO FINANCIAL NATIONAL BANK 8-22-13 [14] |
| | | SCOTT LYONS/Atty. for dbt. | |
| | | No tentative ruling. | |

4. [13-15182](#)-A-7 MONICA PENA

PRO SE REAFFIRMATION AGREEMENT
WITH MERCO CREDIT UNION
8-22-13 [[14](#)]

No tentative ruling.

5. [13-12471](#)-B-7 JOSE/LUCIA VAZ
DB-1
FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
RILEY WALTER/Atty. for dbt.
R. GINTER/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-27-13 [[21](#)]

Tentative Ruling

Motion: Stay Relief and Excuse Receiver from Turnover
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted in part and denied in part as moot
Order: Prepared by moving party

Subject: State Court action *Farmers and Merchants Bank of Central California v. V & R Dairy*

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

BACKGROUND

Farms & Merchants Bank of Central California moves for stay relief and to excuse the receiver from turnover of assets in three related Chapter 7 bankruptcies: *In re Rocha*, No. 13-12473 (Bankr. E.D. Cal. 2013); *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013) and *In re Vaz*, No. 13-12471 (Bankr. E.D. Cal. 2013). Rocha and the Vazes are each one third owns of a general partnership, V & R Dairy. V & R Dairy is the subject of a state court action, including a state court appointed receivership. *Farmers and Merchants Bank of Central California v. V & R Dairy*, No. CV002845 (Merced County Superior Court 2012). Rocha and the Vazes have each filed a Chapter 7 bankruptcy. Each debtor has been discharged. V & R is not the subject of a bankruptcy.

STAY RELIEF

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)(1),(2) authorizes stay relief for cause shown or if there is no equity and the property is not necessary for reorganization. In two of the three cases, the Chapter 7 trustee has issued a report of no distribution. All three cases have a common trustee, suggesting that the assets found in the third case, *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013), is unrelated to V & R Dairy. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

TURNOVER

Upon the filing of a Chapter 7 case, a receiver for that debtor is ordinarily required to turnover assets and account for property of the debtor. 11 U.S.C. § 543(a); see also, 11 U.S.C. § 101(11). Section 543(a) provides, "A custodian with knowledge of *the commencement of a case under this title concerning the debtor* may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property." (emphasis added). The court does not believe that the order appointing the receiver is directed at the individuals, but only at V & R Dairy. See, Order Granting Ex Parte Application to Appoint Receiver. V & R Dairy is not a debtor before this court. Though the debtor's partnership interest is an asset of the estate, the assets of the partnership itself are not. *In re Cutler*, 165 B.R. 275, 280 (Bankr. D. Ariz. 1994). As a result, the receivership does not concern a petition under this title and the motion will be denied as moot.

No other relief will be awarded.

6. [13-12472](#)-B-7 JOAO/MARSHA VAZ
DB-1
FARMERS & MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
RILEY WALTER/Atty. for dbt.
R. GINTER/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-27-13 [[18](#)]

Tentative Ruling

Motion: Stay Relief and Excuse Receiver from Turnover

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

Disposition: Granted in part and denied in part as moot

Order: Prepared by moving party

Subject: State Court action *Farmers and Merchants Bank of Central California v. V & R Dairy*

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

BACKGROUND

Farms & Merchants Bank of Central California moves for stay relief and to excuse the receiver from turnover of assets in three related Chapter 7 bankruptcies: *In re Rocha*, No. 13-12473 (Bankr. E.D. Cal. 2013); *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013) and *In re Vaz*, No. 13-12471 (Bankr. E.D. Cal. 2013). Rocha and the Vazes are each one third owns of a general partnership, V & R Dairy. V & R Dairy is the subject of a state court action, including a state court appointed receivership. *Farmers and Merchants Bank of Central California v. V & R Dairy*, No. CV002845 (Merced County Superior Court 2012). Rocha and the Vazes have each filed a Chapter 7 bankruptcy. Each debtor has been discharged. V & R is not the subject of a bankruptcy.

STAY RELIEF

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)(1),(2) authorizes stay relief for cause shown or if there is no equity and the property is not necessary for reorganization. In two of the three cases, the Chapter 7 trustee has issued a report of no distribution. All three cases have a common trustee, suggesting that the assets found in the third case, *In re Vaz*, No. 13-12472 (Bankr. E.D. Cal. 2013), is unrelated to V & R Dairy. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

TURNOVER

Upon the filing of a Chapter 7 case, a receiver for that debtor is ordinarily required to turnover assets and account for property of the debtor. 11 U.S.C. § 543(a); see also, 11 U.S.C. § 101(11). Section 543(a) provides, "A custodian with knowledge of *the commencement of a case under this title concerning the debtor* may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property." (emphasis added). The court does not believe that the order appointing the receiver is directed at the individuals, but only at V & R Dairy. See, Order Granting Ex Parte Application to Appoint Receiver. V & R Dairy is not a debtor before this court. Though the debtor's partnership interest is an asset of the estate, the assets of the partnership itself are not. *In re Cutler*, 165 B.R. 275, 280 (Bankr. D. Ariz. 1994). As a result, the receivership does not concern a petition under this title and the motion will be denied as moot.

No other relief will be awarded.

1:30 p.m.

1. [13-13501](#)-A-11 CANYONS, LLC
ET-2
CANYONS, LLC/MV
7-10-13 [[28](#)]
MATTHEW EASON/Atty. for dbt.
MOTION WITHDRAWN, CASE
DISMISSED

CONTINUED MOTION TO EMPLOY
MATTHEW R. EASON AS ATTORNEY(S)

Final Ruling

The case dismissed, the matter is dropped as moot.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL
KAT-1 PROPERTIES, LLC
DAVID STAPLETON/MV
PETER FEAR/Atty. for dbt.

MOTION TO EMPLOY JENNIFER K.
BROOKS AS ATTORNEY(S)
8-14-13 [[1003](#)]

Final Ruling

Motion: Employ Katten Muchin

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

Disposition: Granted Nunc Pro Tunc to July 13, 2013

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).

ON THE MERITS

Plan administrator David Stapleton seeks to employ the firm of Katten Muchin. The confirmed Chapter 11 plan provides for the court approval of the employment of professionals. Order Confirming Second Amended Chapter 11 Plan V.E, June 25, 2013, ECF No. 961. Because the plan now defines the rights of the parties in interest and because it includes no reference to 11 U.S.C. § 327, the court finds the requirements of § 327 inapplicable. No party in interest has objected. The employment will be approved.

CERTIFICATES OF SERVICE

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 the motion and hearing being noticed. 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.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY MICHAEL J.
 LRP-1 PROPERTIES, LLC GOMEZ AS ATTORNEY(S)
 DAVID STAPLETON/MV 8-12-13 [[998](#)]
 PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Employ Lang Richert

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

Disposition: Granted Nunc Pro Tunc to July 26, 2013

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).

Plan administrator David Stapleton seeks to employ the firm of Lang Richert & Patch, P.C. The confirmed Chapter 11 plan provides for the court approval of the employment of professionals. Order Confirming Second Amended Chapter 11 Plan V.E, June 25, 2013, ECF No. 961. Because the plan now defines the rights of the parties in interest and because it includes no reference to 11 U.S.C. § 327, the court finds the requirements of § 327 inapplicable. No party in interest has objected. The employment will be approved.

4. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-2 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION FOR ORDER ESTABLISHING
PROCEDURE FOR INTERIM
COMPENSATION AND REIMBURSEMENT
OF THE PLAN ADMINISTRATOR AND
PROFESSIONALS
8-14-13 [[1009](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: For Order Establishing Procedure for Interim Compensation

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).

Plan administrator David Stapleton seeks an for order establishing procedure for interim compensation. The confirmed Chapter 11 plan provides for payment of post-petition professionals but provides little instruction regarding the frequency or procedure for payment. Order Confirming Second Amended Chapter 11 Plan V.E, June 25, 2013, ECF No. 961. It provides only, "The Plan Administrator shall pay (a) any professionals compensation for services rendered and expenses; provided that, in each instance, every such payment to a professional or the Plan Administrator has previously been approved by the Bankruptcy Court, after notice and a hearing or as is otherwise provided for in the order approving the appointment or retention of such payee; and (b) the Plan Administrator's agreed compensation and reimbursement of expenses." *Id.* The court finds that the proposed procedure for payment of professionals is consistent with the terms of the plan. No party in interest has objected. The motion will be granted.

5. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-31
RONALD CLIFFORD/MV

AMENDED MOTION FOR COMPENSATION
BY THE LAW OFFICE OF BLAKELEY &
BLAKELEY LLP FOR RONALD A.
CLIFFORD, DEBTOR'S ATTORNEY(S),
FEE: \$12859.04, EXPENSES:
\$0.00.
8-21-13 [[794](#)]

RONALD CLIFFORD/Atty. for dbt.
RESPONSIVE PLEADINGS

No tentative ruling.

6. [10-62315](#)-A-11 BEN ENNIS
KAT-1
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.

MOTION TO EMPLOY KATTEN MUCHIN
ROSENMAN LLP AS SPECIAL COUNSEL
8-14-13 [[1236](#)]

Final Ruling

Motion: Employ Katten Muchin

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

Disposition: Granted Nunc Pro Tunc to July 13, 2013

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).

ON THE MERITS

Plan administrator David Stapleton seeks to employ the firm of Katten Muchin. The confirmed Chapter 11 plan provides for the court approval of the employment of professionals. Order Confirming Second Amended Chapter 11 Plan V.E, June 27, 2013, ECF No. 1203. Because the plan now defines the rights of the parties in interest and because it includes no reference to 11 U.S.C. § 327, the court finds the requirements of § 327 inapplicable. No party in interest has objected. The employment will be approved.

CERTIFICATES OF SERVICE

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 the motion and hearing being noticed. 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. [10-62315](#)-A-11 BEN ENNIS
LRP-1
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.

MOTION TO EMPLOY LANG, RICHERT
& PATCH, P.C. AS ATTORNEY(S)
8-12-13 [[1231](#)]

Final Ruling

Motion: Employ Lang Richert

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

Disposition: Granted Nunc Pro Tunc to July 26, 2013

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).

Plan administrator David Stapleton seeks to employ the firm of Lang Richert & Patch, P.C. The confirmed Chapter 11 plan provides for the court approval of the employment of professionals. Order Confirming Second Amended Chapter 11 Plan V.E, June 27, 2013, ECF No. 1203. Because the plan now defines the rights of the parties in interest and because it includes no reference to 11 U.S.C. § 327, the court finds the requirements of § 327 inapplicable. No party in interest has objected. The employment will be approved.

8. [10-62315](#)-A-11 BEN ENNIS
LRP-2
DAVID STAPLETON/MV

MOTION TO ESTABLISH PROCEDURE
FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF PLAN
ADMINISTRATOR AND PROFESSIONALS
8-14-13 [[1245](#)]

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

Final Ruling

Motion: For Order Establishing Procedure for Interim Compensation

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).

Plan administrator David Stapleton seeks an for order establishing procedure for interim compensation. The confirmed Chapter 11 plan provides for payment of post-petition professionals but provides little instruction regarding the frequency or procedure for payment. Order Confirming Second Amended Chapter 11 Plan V.E, June 25, 2013, ECF No. 961. It provides only, "Subject to Bankruptcy Court approval (including approval in an appointment order that allows the Plan Administrator to make such payments subjects to future Bankruptcy Court review and possible disgorgement), the Plan Administrator shall pay..." *Id.* The court finds that the proposed procedure for payment of professionals is consistent with the terms of the plan. No party in interest has objected. The motion will be granted.

9. [13-13531](#)-A-11 DANIEL'S MEXICAN GRILL,
LLC
STEPHEN LABIAK/Atty. for dbt.
No tentative ruling.

CONTINUED CHAPTER 11 STATUS
CONFERENCE
5-24-13 [[7](#)]

10. [13-14037](#)-A-11 GIL/MARIA GILBUENA
J. IRIGOYEN/Atty. for dbt.
No tentative ruling.

CONTINUED CHAPTER 11 STATUS
CONFERENCE
6-13-13 [[12](#)]

11. [13-14037](#)-A-11 GIL/MARIA GILBUENA
JMI-3
GIL GILBUENA/MV
J. IRIGOYEN/Atty. for dbt.
RESPONSIVE PLEADING

RESCHEDULED HEARING RE: MOTION
TO VALUE COLLATERAL OF OCWEN
LOAN SERVICING, LLC
6-18-13 [[21](#)]

Final Ruling

The parties have resolved the matter by stipulation. The matter will
be dropped from calendar as moot.

12. [13-14037](#)-A-11 GIL/MARIA GILBUENA
JMI-8
GIL GILBUENA/MV
J. IRIGOYEN/Atty. for dbt.

MOTION TO USE CASH COLLATERAL
AND/OR MOTION FOR ADEQUATE
PROTECTION
8-28-13 [[139](#)]

Tentative Ruling

Motion: Use Cash Collateral

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: Internal Revenue Service and Employment Development
Department

Expiration: December 31, 2013

Adeq. Protection: Replacement and periodic payments-IRS \$775 per month
and Employment Development Department-\$250 per month

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2),(e), 361; Fed. R. Bankr. P. 4001(b).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(i)-(iv); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted creditor and any other party in interest so requesting approval.

13. [13-15159](#)-A-11 FRANK/MERALEE ROCHA

CHAPTER 11 STATUS CONFERENCE
8-9-13 [[12](#)]

FRANK ROCHA/Atty. for mv.

No tentative ruling.

14. [13-15159](#)-A-11 FRANK/MERALEE ROCHA
HAR-1
WESTERN MILLING, LLC/MV
HILTON RYDER/Atty. for mv.

MOTION TO DISMISS CASE
8-14-13 [[19](#)]

No tentative ruling.

15. [13-15159](#)-A-11 FRANK/MERALEE ROCHA
HAR-2
WESTERN MILLING, LLC/MV
HILTON RYDER/Atty. for mv.

No tentative ruling.
16. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA

PETER FEAR/Atty. for dbt.

No tentative ruling.
17. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA
DB-2
FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
PETER FEAR/Atty. for dbt.
R. GINTER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.
18. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA
DB-3
FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
PETER FEAR/Atty. for dbt.
R. GINTER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.
- MOTION TO RETAIN RECEIVER IN
POSSESSION, CUSTODY AND CONTROL
8-14-13 [[24](#)]
- CONTINUED CHAPTER 11 STATUS
CONFERENCE
12-14-12 [[12](#)]
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-13 [[189](#)]
- MOTION TO DISMISS CASE
8-14-13 [[198](#)]

19. [12-60065](#)-A-11 TONY TEIXEIRA & SON
DAIRY
PETER FEAR/Atty. for dbt.
No tentative ruling.
CONTINUED CHAPTER 11 STATUS
CONFERENCE
12-14-12 [[24](#)]
20. [12-60065](#)-A-11 TONY TEIXEIRA & SON
DB-2 DAIRY
FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
PETER FEAR/Atty. for dbt.
R. GINTER/Atty. for mv.
RESPONSIVE PLEADING
No tentative ruling.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-13 [[251](#)]
21. [12-60065](#)-A-11 TONY TEIXEIRA & SON
DB-3 DAIRY
FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA/MV
PETER FEAR/Atty. for dbt.
R. GINTER/Atty. for mv.
RESPONSIVE PLEADING
No tentative ruling.
MOTION TO DISMISS CASE
8-14-13 [[260](#)]
22. [12-60064](#)-A-11 ANTONIO/MARIA TEIXEIRA
PLF-17
ANTONIO TEIXEIRA/MV
PETER FEAR/Atty. for dbt.
No tentative ruling.
MOTION TO SELL
9-4-13 [[217](#)]

23. [12-60065](#)-A-11 TONY TEIXEIRA & SON
PLF-17 DAIRY
TONY TEIXEIRA & SON DAIRY/MV
PETER FEAR/Atty. for dbt.

MOTION TO SELL
9-4-13 [[281](#)]

No tentative ruling.