

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

October 1, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [10-61725](#)-A-7 PAMELA ENNIS
THA-10

MOTION FOR COMPENSATION FOR
THOMAS A. ARMSTRONG, TRUSTEE'S
ATTORNEY(S).
9-2-14 [[189](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Application: Fifth Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: Thomas Armstrong

Compensation approved: \$6,086.25

Costs approved: \$736.43

Aggregate fees and costs approved in this application: \$6,822.68

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 Fifth Interim Fee Application filed by Thomas Armstrong, attorney at law, 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 granted and that: (1) compensation of \$6,086.25 is approved on an interim basis; (2) costs of \$736.43 are approved on an interim basis; (3) fees and costs approved by this application aggregate \$6,822.68; (4) the applicant holds no retainer; (5) provided the estate is administratively

solvent, the Chapter 7 trustee may pay those amounts to the applicant at this time; and (6) those amounts shall be finalized prior to the conclusion of the case and in a manner consistent with the terms of the confirmed plan.

2. [14-13232](#)-A-7 ERIC/JENNIFER FELDMAN MOTION TO DISMISS CASE
JRL-1 8-27-14 [[17](#)]
ERIC FELDMAN/MV

JERRY LOWE/Atty. for dbt.

No tentative ruling.

3. [14-14341](#)-A-7 VIOLETTE MULLOOLY MOTION TO COMPEL ABANDONMENT
PBB-1 9-16-14 [[12](#)]
VIOLETTE MULLOOLY/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Home child care business, a sole proprietorship

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

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

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

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

4. [14-13382](#)-A-7 MARTIN/MARIA SANCHEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-9-14 [[30](#)]

STARR WARSON/Atty. for dbt.
\$30.00 FILING FEE PAID
9/12/14

Final Ruling

The fee paid in full, the order to show cause is discharged.

5. [14-14502](#)-A-7 MARK ROUFF MOTION TO COMPEL ABANDONMENT
PLF-1 9-22-14 [[11](#)]
MARK ROUFF/MV
PETER FEAR/Atty. for dbt.
OST 9/24

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted in part only as to the business and such business
assets described in the motion; denied in part without prejudice as to
the real property (p. 2 of the motion)

Order: Prepared by moving party pursuant to the instructions below

Business Description: Hoof trimming business, a sole proprietorship

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

SOLE PROPRIETORSHIP

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).

REAL PROPERTY

The motion does not contain factual grounds for abandonment of the real property located at 2659 Bullard Avenue, Clovis, CA. The value of the property, the amount of encumbrances, or the amount claimed exempt, if any, is not provided in the motion.

In addition, the notice of hearing that was mailed to all creditors and parties in interest does not mention the real property as part of the property that the debtor seeks to abandon. The notice of hearing was sent to all creditors but the motion was not. 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 a portion of the relief apparently sought—abandonment of real property. The court will deny the motion in part without prejudice as to abandonment of the real property.

6. [14-14375](#)-A-7 JAVIER/MARIA MARAVILLA MOTION TO EXTEND AUTOMATIC STAY
JBC-1 AND/OR MOTION TO IMPOSE
JAVIER MARAVILLA/MV AUTOMATIC STAY
9-24-14 [[11](#)]
JAMES CANALEZ/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted with conditions and except as to any creditor without proper notice of this motion

Order: Civil minute order

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

JAVIER MARAVILLA

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). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

This is Javier Maravilla's second bankruptcy in the past one year. Cause is shown by the fact that he is now represented and has provided all documents necessary to complete his petition, schedules and

statements. Subject to the conditions in the Civil Minute Order below the motion will be granted except as to any creditor without proper notice of this motion.

MARIA MARAVILLA

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in good faith as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. This is Maria Maravilla's third bankruptcy in the past one year.

Cause is shown by the fact that she is now represented and has provided all documents necessary to complete his petition, schedules and statements. Subject to the conditions in the Civil Minute Order below the motion will be granted except as to any creditor without proper notice of this motion.

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 Stay filed by debtors Javier Maravilla and Maria Maravilla 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 granted with conditions. The case shall be dismissed without further notice or hearing: (1) if the debtor fails to make in a timely fashion any of the scheduled payments described in the Order Approving Payment of Filing Fee in Installments, filed September 2, 2014, ECF #6; or (2) on the declaration of the Chapter 7 trustee, if the debtors, or either them, fail to appear at the meeting of creditors or provide the documents described in 11 U.S.C. § 521 to the Chapter 7 trustee in a timely fashion.

9:15 a.m.

1. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND STATUS CONFERENCE RE: COMPLAINT
[14-1077](#) ROBYN SOUZA 7-30-14 [[1](#)]
WESTERN MILLING, LLC V. SOUZA,
JR.
HILTON RYDER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND STATUS CONFERENCE RE: COMPLAINT
[14-1082](#) ROBYN SOUZA 8-4-14 [[1](#)]
MILLER HAY AND TRUCKING, INC.
V. SOUZA, JR. ET AL
KEVIN LITTLE/Atty. for pl.

No tentative ruling.

3. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND MOTION TO DISMISS ADVERSARY
[14-1082](#) ROBYN SOUZA MLF-1 PROCEEDING/NOTICE OF REMOVAL
MILLER HAY AND TRUCKING, INC. 9-2-14 [[10](#)]
V. SOUZA, JR. ET AL
MICHAEL FARLEY/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Dismiss

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

Disposition: Granted in part, denied in part

Order: Civil Minute Order

Debtors Alvin Souza, Jr. and Robyn Souza move to dismiss under Rule 12(b)(6) plaintiff Miller Hay and Trucking, Inc.'s adversary proceeding against them.

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).

DISCUSSION

First Count: 11 U.S.C. § 523(a)(2)(A)

Miller Hay's first cause of action pleads a claim for nondischargeable fraud under § 523(a)(2)(A). Complaint, filed August 4, 2014, ECF #1. Souzas argue that the adversary proceeding fails to state a claim against them because: (1) a § 523(a)(A) cause of action may not be based on a promise not to file bankruptcy, citing *Rise v. Sasse (In re Sasse)*, 438 B.R. 631, 646-647 (Bankr. W.D. Wisc. 2010); and (2) Miller Hay has failed to plead facts as required by *Iqbal*, 556 U.S. at 678, and by *Twombly*, 550 U.S. at 555, that support a claim for fraud.

Section 523(a)(2)(A) and Representations of No Bankruptcy

This argument misses the mark for two reasons. First, the better reading of the law is that a representation that no bankruptcy is contemplated is a representation that will support an action under § 523(a)(2)(A). *Zarate v. Baldwin (In re Baldwin)*, 578 F.2d 293 (10th Cir. 1978) (covenant against bankruptcy together with other deceptive conduct constituted basis for finding of nondischargeability); *Johnson v. Kriger (In re Kriger)*, 2 B.R. 19 (Bankr. D. Or. 1979); *Stoner v. Walsh*, 24 Cal.App.3d 938 (1972). Admittedly, each of these are Bankruptcy Act cases. But Souzas have cited no binding or persuasive to depart from this precedent.

Second, and more importantly, Miller Hay's complaint is not premised solely on the Souzas' alleged representation that no bankruptcy was contemplated. The complaint also pleads other basis for fraud under § 523(a)(2)(A). It alleges that the debtors "were capable of paying cash on delivery...". Complaint ¶ 13. It alleges, "Mr. [Jake] Miller once again inquired regarding rumors of the Debtors' bankruptcy and financial difficulties. Debtor Alvin Souza again assured Mr. Miller that he was not going to file bankruptcy and would be able to pay for the pending hay shipments." Complaint ¶ 14 (emphasis added). It also alleges that "Mr. Miller was again assured by Robyn that the Debtors would make good on the debt and would not file bankruptcy because they were good friends and that they 'would never do that to them.'" Complaint 15 (emphasis added). The simple point is that the representation that no bankruptcy was contemplated was but one in a family of factual representations alleged by the complaint, which individually or collectively might support a cause of action for nondischargeable fraud under § 523(a)(2)(A).

Iqbal and Twombly Facts

Section 523(a)(2)(A) requires a showing: (1) the debtor knowingly made false representations; (2) the debtor made the representations to deceive the creditor; (3) the creditor justifiably relied on those representations; and (4) the creditor sustained loss as a result. *In re Mbunda*, 484 B.R. 344, 350 (9th Cir. B.A.P. 2012).

Considering both the facts pled and inferences from those facts, Miller Hay has pled a cause of action for § 523(a)(2)(A) fraud. Knowing false representations has been actually pled. Complaint ¶¶ 11-18. Scienter is inferred from the need for cattle feed, for which the debtors could not pay, the receipt of additional deliveries of feed and the planning for bankruptcy. Complaint ¶¶ 18-19. Justifiable reliance is inferred from a history of dealing and Miller Hay's continued deliveries after the alleged representations. Complaint ¶¶ 6, 9, 37. Damages are pled. Complaint ¶ 38.

As a result, the motion will be denied as to the first cause of action.

Second, Third, Fourth and Fifth Counts: 11 U.S.C. § 727

Miller Hay's second through fifth causes of action each pled claims under 11 U.S.C. § 727. Complaint, filed August 4, 2014, ECF #1. Each of those causes of action incorporates by reference paragraphs 9 through 17 of a similar complaint filed by Western Milling, LLC entitled *Western Milling LLC v. Souza*, No. 14-1077 (Bankr. E.D. Cal. 2014). See, Complaint ¶¶ 40, 44, 48, 55, filed August 4, 2014, ECF #1.

Federal Rule of Civil Procedure 10(c) provides, "A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10, *incorporated by* Fed. R. Bankr. P. 7010.

The best reading of Rule 10(c) is that it allows the incorporation of pleadings and exhibits filed in the same case, but not in different cases. *Texas Water Supply Corp., v. R.F.C.*, 204 F.2d 190, 196 (5th Cir. 1953); *Constellation Energy Commodities Group Inc. v. Transfield ER Cape Ltd.*, 801 F.Supp.2d 211, 223 (S.D.N.Y. 2011).

Having incorporated pleadings in another adversary proceeding, the complaint is improperly pled and the motion will be granted with leave to amend. See also, Fed. R. Civ. P. 12(f)(1), *incorporated by* Fed. R. Bankr. P. 7012(b).

Rule 12(f): Paragraph 30

Rule 12(f) motions to strike may be raised by the court. Fed. R. Civ. P. 12(f)(1), *incorporated by* Fed. R. Bankr. P. 7012(b).

Though not raised by Souzas, ¶ 30 of the first cause of action suffers the same incorporation defect as the Second, Third, Fourth and Fifth Causes of Action. *Texas Water Supply Corp.*, 204 F.2d at 196. Paragraph 30 and the reference to paragraph 30 in paragraph 31 are stricken with leave to amend.

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 Alvin Souza, Jr. and Robyn Souza 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) Souzas' motion is denied as to the first cause of action and granted with leave as to ¶¶ 40, 44, 48 and 55 of the complaint; (2) Paragraph 30, and the incorporating reference to paragraph 30 in paragraph 31, are stricken; (3) plaintiff Miller Hay and Trucking, Inc. may file its First Amended Complaint not later than 14 days after service of this Civil Minute Order; (4) defendants Alvin Souza, Jr. and Robyn Souza shall file a responsive pleading to the First Amended Complaint not later than 14 days after service of the First Amended Complaint or, if Miller Hay does not file a First Amended Complaint not later than 28 days after service of this Civil Minute Order; and (5) neither party may enlarge the time periods specified in this order without leave of court, which may be obtained by stipulation and order or motion.

4. [12-10802](#)-A-7 TERENCE MOORE
[12-1135](#)
MOORE V. MOORE
TERENCE MOORE/Atty. for mv.
ORDER FILED 9/25/14, ECF NO.
92

MOTION TO AMEND JUDGMENT
8-20-14 [[85](#)]

Final Ruling

The matter has been resolved by Memorandum Decision and by Order, filed September 25, 2014, ECF # 90, 92.

5. [09-15508](#)-A-7 KEVIN/BEVERLY GAIR
[14-1078](#)
GAIR V. NELNET ET AL
KEVIN GAIR/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
8-5-14 [[8](#)]

No tentative ruling.

6. [13-18132](#)-A-7 TREENA PEREZ CONTINUED STATUS CONFERENCE RE:
[14-1059](#) COMPLAINT
U.S. TRUSTEE V. PEREZ 5-30-14 [[1](#)]
GREGORY POWELL/Atty. for pl.

Final Ruling

The status conference is continued to October 15, 2014, at 9:15 a.m., to be heard in conjunction with the motion for entry of default judgment.

7. [13-18043](#)-A-7 TARSEM PABLA STATUS CONFERENCE RE: COMPLAINT
[14-1075](#) 7-28-14 [[1](#)]
MANFREDO V. PABLA ET AL
TRUDI MANFREDO/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

8. [12-16876](#)-A-7 WILLIAM VANDER POEL STATUS CONFERENCE RE: AMENDED
[14-1033](#) COMPLAINT
VANDER POEL, SR. V. MEDINA ET 9-12-14 [[89](#)]
AL
MICHAEL FLETCHER/Atty. for pl.

Final Ruling

The status conference is continued to October 15, 2014, at 9:15 a.m., to be heard in conjunction with the motion for stay pending appeal.

9. [14-12994](#)-A-7 ABDELBASET AWAWDEH STATUS CONFERENCE RE: COMPLAINT
[14-1081](#) 8-4-14 [[1](#)]
TRAVELERS EXPRESS COMPANY,
INC., NOW KNOWN AS MONE V.
ROBERT RENTTO/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

At the request of the parties, the status conference is continued to December 9, 2014, at 9:15 a.m. Not less than 14 days prior to the continued hearing, the parties shall file a joint status report.

10:00 a.m.

1. [14-14205](#)-A-7 ROBERT ALLISON MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
MUFU UNION BANK N.A./MV 8-29-14 [[15](#)]
DREW CALLAHAN/Atty. for mv.
DISMISSED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part under 11 U.S.C. § 362(d)(1),(4); denied as moot in part

Order: Prepared by moving party

Subject: 1610 East Springville Avenue, Porterville, 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).

This Chapter 7 was filed on August 22, 2014; it was dismissed on September 9, 2014. It has not yet closed.

JURISDICTION

Notwithstanding dismissal this court retains jurisdiction. Motions for stay relief are core matters. 28 U.S.C. § 157(b)(2)(G). Dismissal does not effect jurisdiction as to core matters. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Jurisdiction §1:994 (Rutter Group 2013).

STAY RELIEF

As to the debtor

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

As to the property/estate

Section 362(d)(1) authorizes stay relief for cause shown. Cause exists here. The debtor is delinquent 21 payments, \$35,484.76. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

IN REM RELIEF

Section 362(d)(4) authorizes binding relief from stay with respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or

court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.*

The filing of the petition was part of a scheme to delay, hinder or default. In the last six months, a total of four bankruptcy have been filed by persons claiming an interest in the property. Moreover, there is evidence of the debtor's participation. See, Exh. 5. And there is evidence of two unauthorized transfers of the property. The request for in rem relief is granted.

2. [14-12114](#)-A-7 CRYSTAL GARLICK
PD-2
WELLS FARGO BANK, N.A./MV
THOMAS ARMSTRONG/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-29-14 [[48](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to the estate; denied as moot as to the debtor

Order: Prepared by moving party

Subject: 6940 Live Oak Drive, Sanger, California

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

AS TO 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.

10:30 a.m.

1. [14-13123](#)-A-7 EVANGELINA ORTIZ

REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
9-5-14 [[14](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

2. [14-12171](#)-A-7 TIFFANY LARKIN

PRO SE REAFFIRMATION AGREEMENT
WITH AMERICAN CREDIT
ACCEPTANCE, LLC
7-28-14 [[15](#)]

No tentative ruling.

3. [14-13999](#)-A-7 JESSICA CORENTE

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
9-11-14 [[11](#)]

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-21 PROPERTIES, LLC
DAVID STAPLETON/MV

CONTINUED MOTION FOR
COMPENSATION FOR DAVID
STAPLETON, OTHER
PROFESSIONAL(S).
8-8-14 [[1296](#)]

PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-24 PROPERTIES, LLC
DAVID STAPLETON/MV
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

MOTION TO EMPLOY PEARSON REALTY
AS REALTOR(S)
9-17-14 [[1383](#)]

No tentative ruling.

3. [10-62315](#)-A-11 BEN ENNIS
LRP-31
DAVID STAPLETON/MV

CONTINUED MOTION FOR
COMPENSATION FOR DAVID
STAPLETON, OTHER
PROFESSIONAL(S).
8-8-14 [[1670](#)]

RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [12-17336](#)-A-11 VISSER FARMS
RAC-45
VISSER FARMS/MV
AGREEMENT WITH R&M CATTLE
COMPANY

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT

9-3-14 [[426](#)]

SCOTT BLAKELEY/Atty. for dbt.

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

Settlement: Withdrawal of R & M Cattle Company and return of monies
paid

Debtor Visser Farms as confirmed a plan of reorganization. Order Confirming Second Amended Chapter 11 Plan, filed December 21, 2013, ECF #361. The confirmed plan authorizes the reorganized debtor to file claims objections. Second Amended Chapter 11 Plan § IIID4, filed December 21, 2013, ECF #361.

Here, the reorganized debtor Visser Farms and R & M Cattle Company have stipulated that R & M was erroneously listed on the debtor's schedules as a creditor in the amount of \$33,254.68. Under the terms of the stipulation, R & M will not be deemed a creditor and R & M will return all monies received on account of that claim not later than August 22, 2104.

5. [14-11991](#)-A-11 CENTRAL AIR CONTINUED STATUS CONFERENCE RE:
CONDITIONING, INC. VOLUNTARY PETITION
4-17-14 [[1](#)]
HAGOP BEDOYAN/Atty. for dbt.

No tentative ruling.

6. [14-11991](#)-A-11 CENTRAL AIR
KDG-16 CONDITIONING, INC.

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB AND
KIMBALL, LLP FOR HAGOP T.
9-10-14 [[207](#)]

HAGOP BEDOYAN/Atty. for dbt.
BEDOYAN, DEBTOR'S ATTORNEY(S).

Tentative Ruling

Application: Second Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Applicant: Klein DeNatale

Compensation approved: \$19,462.00

Costs approved: \$3,902.65

Aggregate fees and costs approved in this application: \$23,364.65

Retainer held: \$5,159.58

Amount to be paid as administrative expense: \$18,205.07

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 Second Interim Fee Application filed by Klein DeNatale, attorneys at law, 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 granted and that: (1) compensation of \$19,462.00 is approved on an interim basis; (2) costs of \$3,902.65 are approved on an interim basis; (3) fees and costs approved by this application aggregate \$23,364.65; (4) applicant is holding a retainer of \$5,159.58, which may be applied to the amount approved; (5) debtor in possession is authorized to pay an additional \$18,205.07 as an administrative expenses; and (6) those amounts shall be finalized prior to the conclusion of the case and in a manner consistent with the terms of the confirmed plan.

7. [12-12998](#)-A-11 FARSHAD TAFTI
PLF-10
FARSHAD TAFTI/MV
PETER FEAR/Atty. for dbt.

MOTION TO SELL FREE AND CLEAR
OF LIENS
9-10-14 [[297](#)]

Motion: Sell Property

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party

Property: Real Property, 40808 Sierra Drive, Three Rivers, California

Buyer: Jack Gibson

Sale Price: \$120,000.00

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). 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).

363(b) SALE

The debtor confirmed a Chapter 11 Plan. Order Confirming Plan, filed February 14, 2014, ECF #261. Property of the estate does not vest until discharge is entered. Plan § 15.01. Discharge has not issued. As a result, notwithstanding confirmation this court retains jurisdiction. 28 U.S.C. § 157(b)(2)(m).

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). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.,* 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). 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.

363(f) SALE

The debtor also seeks free and clear relief. 11 U.S.C. § 363(f). There are three liens: deed of trust in favor of Scott Kalloger; abstract of judgment in favor of Tulare County; and tax liens in favor of Tulare County. The Kalloger deed of trust and the tax liens will be paid from escrow and, hence, there is no need for free and clear relief. The judgment lien in favor of Tulare County will be resolved in escrow by payment of all net proceeds, except \$15,000, will be paid to Tulare County. As this will be resolved in escrow, free and clear relief is not necessary.

Finally, the motion is supported by a Stipulation with the County of Tulare, Exhibit C, which purports to carve out \$15,000 for professional fees. The court will not approve a carve out for professional fees but will approve a carve out for all administrative expenses and the order should so state.