

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 29, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [14-13601](#)-A-7 LAWRENCE STIEB
JES-2
JAMES SALVEN/MV

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR BAIRD'S
AUCTION & APPRAISAL,
AUCTIONEER(S).
10-1-14 [[15](#)]

DAVID JENKINS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Guns described in notice of hearing

Sale Type: Public auction

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

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.

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

2. [14-12107](#)-A-7 AMADO GOMEZ
JES-3
JAMES SALVEN/MV
9-30-14 [[43](#)]
OSCAR SWINTON/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS

No tentative ruling.

3. [14-10911](#)-A-7 LITCONN, INC.
KDG-2

MOTION BY HAGOP T. BEDOYAN TO
WITHDRAW AS ATTORNEY
9-30-14 [[20](#)]

JERRY LOWE/Atty. for dbt.

No tentative ruling.

4. [14-12114](#)-A-7 CRYSTAL GARLICK
RH-2
JAMES SALVEN/MV

MOTION TO SELL
10-2-14 [[63](#)]

THOMAS ARMSTRONG/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 6940 Live Oak Drive, Sanger, CA

Buyer: Violet N. Owens-Turner, but not to her undisclosed nominee

Sale Price: \$135,000

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).

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.

5. [13-14421](#)-A-7 KIMBERLY WALTON
TMT-1
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KIMBERLY ROBIN
WALTON
9-29-14 [[17](#)]

DEDE AGRAVA/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

6. [14-14622](#)-A-7 RAMIRO CORRALES
JRL-1
RAMIRO CORRALES/MV
JERRY LOWE/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-6-14 [[17](#)]

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: Debtor's trucking company, 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).

7. [14-14023](#)-A-7 AUDRA GRAVES
RHT-1

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
9-12-14 [[16](#)]

ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); Hearing date reset by order dated October 10, 2014

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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

DISMISSAL

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

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once,

the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 30, 2014 at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

- MOTION TO COMPEL ABANDONMENT
10-3-14 [[16](#)]

Motion: Compel Abandonment of Property of the Estate

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

Business Description: Rodriguez Trucking, a 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 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).

- MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-19-14 [5]

No tentative ruling.

10. [11-13043](#)-A-7 MORRIS/SHARON GARCIA CONTINUED MOTION FOR CONTEMPT
KDG-8 9-12-12 [[333](#)]
MORRIS GARCIA/MV
HAGOP BEDOYAN/Atty. for dbt.
RESCHEDULED TO 12/9/14 BY
ORDER DTD 10/1/14

Final Ruling

The matter has been continued by stipulation and order to December 9, 2014, at 9:00 a.m.

11. [14-14443](#)-A-7 HARJINDER MANDAIR MOTION TO COMPEL ABANDONMENT
MJK-1 10-14-14 [[16](#)]
HARJINDER MANDAIR/MV
RATTAN DEV DHALIWAL/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: Mandair Transport, 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).

12. [13-13063](#)-A-7 WILLIAM MANUSZAK
CJS-4
WILLIAM MANUSZAK/MV
CHERYL JOLLEY-SMITH/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
8-11-14 [[103](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to December 10, 2014, to allow the filing, not later than November 12, 2014, of an amended motion and declaration, and exhibits, as well as a declaration stating what actions were taken to comply with Rule 9037 regarding already-filed papers

Order: Civil minute order

INCONSISTENCIES IN THE MOTION

The motion contains inconsistencies that it should not contain. For example, the amount of the exemption claimed in the real property is given as \$65,000 twice on page 3 of the motion. On page 1 and on page 3, the amount of this same exemption is given as \$75,000. The amount of the lien is inconsistently stated. On page 1 it is \$15,535.98, on page 2 it is \$15,535.97, and on page 3 it is given as \$98.97.

Although the debtor is entitled to the relief requested whether the exemption is \$65,000 or \$75,000, the court would prefer that clearly and consistently stated amounts be used in all moving papers. Since the court is continuing the hearing, the debtor has the chance to provide precise and consistent amounts in an amended motion. *The amended motion shall contain the same docket control number as this motion.*

Further, the court will treat the judicial lien amount as \$15,535.97 despite the ambiguity in the motion. The declaration states the amount is \$15,535.97 and incorporates a "true and correct copy of the Abstract of Judgment" by reference. The declaration states that the abstract is attached as "Exhibit A," but there is no exhibit A to the motion. Exhibit 3 contains copy of the abstract of judgment, and though the text of this exhibit is for the most part readable, it could be much more clear and readable than it is.

COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037 in filing the motion or the supporting papers. The attorney shall file an ex parte application to seal and restrict public access to the pertinent filed documents under § 107(c)(1) and Rule 9037(c) or (d) no later than November 12, 2014. A redacted copy of any sealed documents will be filed to replace the documents that will have been sealed. The court will continue the hearing on this matter until the attorney files a supplemental declaration that describes what actions were taken to comply with Rule 9037 for all papers filed in connection with this matter.

The debtor's attorney shall also review all other motions and papers filed in this case to determine whether sensitive or confidential information has been filed in an unprotected or unredacted form. As to those documents, the attorney shall also file whatever ex parte motions are necessary to seal or restrict access to them.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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

DISMISSAL

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

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

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing

Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 30, 2014, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

14. [14-12972](#)-A-7 MARK/DARLENE JONES
PLF-1
MARK JONES/MV

MOTION TO AVOID LIEN OF E M
THARPE, INC. AND/OR MOTION TO
AVOID LIEN OF DON ROSE OIL CO.,
MOTION TO AVOID LIEN OF
MANUEL MACHADO ,
MOTION/APPLICATION TO AVOID
LIEN OF VALLEY PACIFIC
PETROLEUM SERVICES, INC.
9-30-14 [[50](#)]

PETER FEAR/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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, Don Rose Oil Co.'s judicial lien would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens, though it is still subject to senior consensual liens and, according to the motion, it is also subject to senior tax liens in the amount of \$258,516.01. In determining whether Don Rose Oil Co.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Don Rose Oil Co.'s judicial lien (\$1,070.06), plus all other liens, including tax liens but excluding judicial liens lower in priority (\$681,232.05), plus the exemption amount (\$1,000) together equal \$683,302.11, and this sum exceeds the property's value (\$545,000.00) by an amount greater than or equal to the debt secured by such judicial lien. As a result, Don Rose Oil Co.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is immaterial to the outcome. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

15. [12-14975](#)-A-7 AMANDA BARRAZA
ER-2
AMANDA BARRAZA/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
9-15-14 [[30](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to November 12, 2014; a certificate of service for amended Schedule C shall be filed no later than November 5, 2014

Order: Prepared by moving party

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 debtor has filed an amended Schedule C claiming a \$5000 exemption in the real property located at 6539 E. Laurel Ave., Fresno, CA. Am. Schedule C, ECF No. 28. Rule 1009(a) permits amendment to the schedules by the debtor. But this rule also requires that the debtor to give notice of the amendment to the trustee and entities affected by it. The Eastern District of California's form, EDC 2-015 (rev. 11/11), also notes that proof of service must be filed with the court showing that notice of the filing of the amendment was given to the appropriate parties.

Here, no notice of the amended exemptions was provided. The court will continue the hearing to the date indicated. The proof of service showing notice of the amended Schedule C was given to the proper parties shall be filed no later than November 5, 2014.

In addition, a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2) shall be used and served on the respondent pursuant to Rule 7004(h).

In the absence of opposition at the continued hearing date, the court will grant the motion on the merits. 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.

16. [12-14975](#)-A-7 AMANDA BARRAZA
ER-3
AMANDA BARRAZA/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF SAVE
MART SUPERMARKETS
9-15-14 [[36](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to November 12, 2014; a certificate of service for amended Schedule C shall be filed no later than November 5, 2014

Order: Prepared by moving party

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 debtor has filed an amended Schedule C claiming a \$5000 exemption in the real property located at 6539 E. Laurel Ave., Fresno, CA. Am. Schedule C, ECF No. 28. Rule 1009(a) permits amendment to the schedules by the debtor. But this rule also requires that the debtor to give notice of the amendment to the trustee and entities affected by it. The Eastern District of California's form, EDC 2-015 (rev. 11/11), also notes that proof of service must be filed with the court showing that notice of the filing of the amendment was given to the appropriate parties.

Here, no notice of the amended exemptions was provided. The court will continue the hearing to the date indicated. The proof of service showing notice of the amended Schedule C was given to the proper parties shall be filed no later than November 5, 2014.

In addition, a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2) shall be used and served on the respondent pursuant to Rule 7004(h).

In the absence of opposition at the continued hearing date, the court will grant the motion on the merits. 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.

17. [14-12077](#)-A-7 JOE DELGADO
JOE DELGADO/MV
PATRICIA CARRILLO/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK N.A.
9-8-14 [[23](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the

responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

In addition, a docket control number has not been used for the motion. The movant must comply with LBR 9014-1(c) in filing papers with this court.

9:15 a.m.

1. [14-11316](#)-A-7 VINCENT/SARAH CARABBA STATUS CONFERENCE RE: AMENDED
[14-1052](#) COMPLAINT
MAS FINANCIAL SERVICES V. 9-18-14 [[22](#)]
CARABBA
PAUL REZA/Atty. for pl.

No tentative ruling.

2. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED TRUSTEE FINAL ACCOUNT
AND DISTRIBUTION REPORT
10-23-12 [[92](#)]
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter has been continued to November 18, 2014, at 9:15 a.m., pursuant to an order entered October 23, 2014, ECF #226.

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

Final Ruling

This matter has been continued to November 18, 2014, at 9:15 a.m., pursuant to an order entered October 23, 2014, ECF #226.

4. [08-10861](#)-A-7 JAMES/DAISY CORBETT
[14-1089](#)
CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION V.
ED HAYS/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT
8-25-14 [[1](#)]

Final Ruling

This matter has been continued to November 18, 2014, at 9:15 a.m., pursuant to an order entered October 23, 2014, ECF #13.

10:00 a.m.

1. [14-13513](#)-A-7 FRANCISCO PEREZ AND ERICA MOTION FOR RELIEF FROM
KAZ-1 BUTZ AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 10-2-14 [[18](#)]
ASSOCIATION/MV
LAYNE HAYDEN/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party (see specific instructions below)

Subject: 182 O'Brien Cr., Vallejo, CA

The moving party requests relief from stay under § 362(d)(1), for cause, under § 362(d)(2) for lack of equity in this liquidation case, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court considers the debtors' opposition as directed only at relief under § 362(d)(4).

Subsection (d)(4) of § 362 allows a creditor having a claim secured by real property relief from stay "of an act against real property . . . if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme may involve either (i) unauthorized transfer of an interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such real property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The declaration lacks evidence in support of a bad faith filing, much less a bad faith filing in which the debtors' participated.

The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The deed of trust allegedly held by the debtors against the subject property does not appear on the debtor's Schedules A or B. The court has no evidentiary basis to conclude that the debtors filed this case in bad faith or as

part of a scheme to hinder, delay or defraud any creditor.

In addition, other than an unauthenticated copy of a facsimile received by the movant that contains a notice of the debtors' bankruptcy filing with the debtors' case number on it, the moving party has not adduced facts showing that the individual named in the deed of trust is in fact the same person as the debtor. The moving party has not produced sufficient facts to exclude the possibility that a person other than the debtor with the same name as the debtor was intended as the deed of trust holder. The property may not be property of the estate.

The court will grant relief under § 362(d)(2). The liens against the property are \$581,320.75. The debtors do not appear to have any equity in the property as the property does not appear on Schedule A.

The court will grant the motion in part and deny the motion in part. The order shall state as follows: "To the extent that the property may be property of the estate affected by the debtor's bankruptcy, relief from stay under § 362(d)(2) is granted. The request for relief under § 362(d)(4) is denied." No other relief will be awarded, and the order shall not state the debtor was part of a scheme to delay, hinder or defraud creditors.

2. [14-14259](#)-A-7 MIGUEL PINEDO
APN-1
SANTANDER CONSUMER USA INC./MV
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-18-14 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2013 Volkswagen Jetta

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

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

3. [14-13963](#)-A-7 SALVADOR FRAUSTO
TJS-1
PENNYMAC LOAN SERVICES, LLC/MV
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-23-14 [[16](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 471 South Pratt Street, Tulare, CA

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

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

Here, the debtor has missed only 1 partial post-petition payment due on the debt secured by the moving party's lien. Although the stay relief summary sheet shows 3 post-petition payments missed, the motion itself shows that the only delinquent *postpetition* payment as of the date the motion was filed was the September 1, 2014, though a partial payment for this month was made. The petition was filed August 7, 2014, so the July 1, 2014, and August 1, 2014 payments that were not made are not delinquent *post-petition* payments. These facts are insufficient for a showing of cause under § 362(d)(1).

However, the property has not been listed on Schedule A nor has the movant's secured claim been listed on Schedule D. This constitutes cause for stay relief as to this property. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

10:30 a.m.

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|----|-------------------------------|-------------------------------|--|
| 1. | 14-13707 -A-7 | DAVID CASTELLANO | REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
9-25-14 [12] |
| | | THOMAS GILLIS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 2. | 14-13415 -A-7 | RON/KARRIE HATLEY | REAFFIRMATION AGREEMENT WITH
JPMORGAN CHASE BANK, N.A.
10-7-14 [19] |
| | | DAVID JENKINS/Atty. for dbt. | |
| | | No tentative ruling. | |
| 3. | 14-13228 -A-7 | EDWARD/LISA RIVERA | PRO SE REAFFIRMATION AGREEMENT
WITH ONEMAIN FINANCIAL
10-10-14 [25] |
| | | No tentative ruling. | |
| 4. | 14-12575 -A-7 | ALICE RODRIGUEZ | PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COMMUNITY
DEVELOPMENT FINANCIAL
INSTITUTION
9-11-14 [106] |
| | | RICHARD MENDEZ/Atty. for dbt. | |
| | | No tentative ruling. | |
| 5. | 14-13999 -A-7 | JESSICA CORENTE | PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE
9-30-14 [17] |
| | | No tentative ruling. | |

1:30 p.m.

1. [12-17336](#)-A-11 VISSER FARMS
RAC-41
VISSER FARMS/M

SCOTT BLAKELEY/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED OBJECTION TO CLAIM OF
FRUIT GROWERS SUPPLY COMPANY,
CLAIM NUMBER 3
4-9-14 [[370](#)]

Tentative Ruling

Matter: Objection to Claim
Notice: Continued hearing date; opposition filed
Disposition: Pending
Order: Pending

This matter was continued from a previous calendar on September 24, 2014. A motion to approve the compromise of this dispute was filed and denied without prejudice to the refiling of another such motion. The status conference statement filed June 30, 2014, states that the matter has been settled. No further motion to approve a compromise has been filed. The court requires that the parties appear and provide guidance to the court as to the resolution of this matter and inform the court whether an evidentiary hearing is necessary or another motion to compromise will be forthcoming.

2. [13-13284](#)-A-11 NICOLETTI OIL INC.
LRP-6
EXXONMOBIL OIL CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
- MOTION TO EXTEND TIME TO FILE
PROOFS OF CLAIM
10-15-14 [[363](#)]

No tentative ruling.

3. [14-11991](#)-A-11 CENTRAL AIR
LMW-1 CONDITIONING, INC.
CASTLEWOOD PARTNERS, INC/MV

HAGOP BEDOYAN/Atty. for dbt.
LAUREN WINSTON/Atty. for mv.
- MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY
9-15-14 [[222](#)]

Tentative Ruling

Motion: Motion for Approval of Stipulation for Relief from the Automatic Stay
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party pursuant to the instructions below

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

Having reviewed the motion and stipulation attached as Exhibit A, the court will grant the relief sought and approve the stipulation. The order shall approve the stipulation and attach the stipulation as an exhibit to the order.

1:45 p.m.

1. [10-61725](#)-A-7 PAMELA ENNIS
[12-1160](#)
STRAIN V. ENNIS ET AL
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-16-12 [[7](#)]

No tentative ruling.

2. [10-61970](#)-A-7 BRIAN ENNIS
[12-1161](#)
SALVEN V. ENNIS
10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT

No tentative ruling.