

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

TUESDAY

DECEMBER 9, 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. [14-15113](#)-A-7 VICENTE REYNOSO MOTION FOR DENIAL OF DISCHARGE
UST-1 OF DEBTOR UNDER 11 U.S.C.
TRACY DAVIS/MV SECTION 727(A)
11-5-14 [[19](#)]
GREGORY POWELL/Atty. for mv.

Tentative Ruling

Motion: Denial of Discharge of Debtor under 11 U.S.C. § 727(a)(8)
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).

For the reasons stated in the motion and supporting papers, the court will grant the motion and deny the discharge of the debtor. The present case was filed on October 20, 2014. The prior case was filed on May 24, 2012, and the debtor received a discharge in that case. The debtor has thus been granted a discharge under section 727 in a case commenced within 8 years before the filing of the present case.

2. [14-15339](#)-A-7 ADAM TELLOIAN MOTION TO COMPEL ABANDONMENT
JRL-1 11-7-14 [[12](#)]
ADAM TELLOIAN/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); 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: Coin-operated pay phone 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). 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).

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).

3. [14-14742](#)-A-7 MARTHA FLORES
RHT-1
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-7-14 [[18](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Continued to January 21, 2014 at 9:00 a.m.

Order: Civil minute order

FIRST GROUND FOR OBJECTION

The trustee has objected to the debtor's claim of exemption on several grounds. First, the trustee contends that the debtor has claimed an exemption in real property located at 14097 Hood Avenue, Armona, CA ("Armona property") using both § 703.140(b)(1) and § 522(b)(3)(B). The trustee argues that use of both statutory exemption provisions is impermissible use of both the federal and the state exemption schemes.

The trustee is incorrect. Section 522(b)(3)(B) is one of the federal bankruptcy exemptions available to debtors who claim exemptions under state or local law, *and federal law other than § 522(d)*, even if the state is an opt-out state as California is. See 11 U.S.C. § 522(b)(2), (3). Under § 522(b)(3)(B), a debtor in an opt-out state such as California may nevertheless exempt property under federal law other than § 522(d). Such federal law includes § 522(b)(3)(B) and (C) as well as other federal statutes permitting exemptions in other types of property, such as Social Security payments under 42 U.S.C. § 407.

The trustee as the objecting party has the burden of proving the exemptions are not properly claimed. Fed. R. Bankr. P. 4003(c). Here, the debtor has claimed an exemption in the Armona property under § 703.140(b)(1) of the California Code of Civil Procedure in the amount of \$25,575 and also under § 522(b)(3)(B) of Title 11 of the U.S. Code in the amount of \$3,864.50. The trustee's only ground for objection is that the statutory provisions used as the basis for the exemption in this property are inconsistent and such mixing of schemes is not allowed. As discussed, the trustee's legal assumption is inaccurate. No other legal ground for objection has been given

addressing the merits, for example, the factual inapplicability of § 522(b)(3)(B). Thus, the trustee has not met his burden.

The court will continue the hearing on this matter so that the trustee may file supplemental declarations that provide a factual basis for concluding that § 522(b)(3)(B) has been improperly claimed by the debtors.

SECOND GROUND FOR OBJECTION

After objecting to the improper mixing of statutory schemes, the trustee then objects that the amount claimed exempt exceeds the maximum amount permitted under § 703.140(b)(1) and (5). This ground for objection implicitly relies on the fact that the exemption claimed under § 522(b)(3)(B) of the Bankruptcy Code is improper. In other words, the trustee's assertion that the total amount claimed exempt under § 703.140(b)(1) and (5) exceeds the applicable limit assumes that the exemption under § 522(b)(3)(B) of the Bankruptcy Code is not allowed, so that amount claimed exempt under § 522(b)(3)(B) must then be treated as having been added to the amounts claimed exempt under § 703.140(b)(1) and (5). As discussed, the court has rejected the trustee's argument that the exemption claimed under § 522(b)(3)(B) is improper. Thus, the exemption under § 522(b)(3)(B) of the U.S. Code must be treated as valid.

Accordingly, the amount claimed exempt under § 703.140(b)(1) does not exceed the statutory limit under § 703.140(b)(1), which is \$ 25,575, the precise amount claimed under that provision. Similarly, the amount of other property claimed exempt under § 703.140(b)(5) is \$1138.48, which amount does not exceed the statutory limit of \$1350 under such subsection.

But if the trustee's supplemental declarations show that the debtor has improperly used § 522(b)(3)(B), the court may reconsider whether the exemption amount exceeds the statutory limits under § 703.140(b)(1) and (5).

THIRD GROUND FOR OBJECTION

Lastly, the trustee objects on the ground that "there is equity over and above any claim of exemption in the debtor's assets which can and should be preserved for the benefit of creditors of this estate." Objection at 2, ECF No. 20. This objection is too general, conclusory and vague to be sustained. Further, if equity does exist over and above the claimed exemptions, then such equity does not invalidate the debtor's exemptions, but it may allow the trustee to pursue sales of such assets for the benefit of the estate.

4. [11-13043](#)-A-7 MORRIS/SHARON GARCIA RESCHEDULED STATUS CONFERENCE
KDG-8 RE: MOTION FOR CONTEMPT
MORRIS GARCIA/MV 9-12-12 [[333](#)]
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

5. [11-13043](#)-A-7 MORRIS/SHARON GARCIA MOTION FOR SUMMARY JUDGMENT
KDG-8 11-7-14 [[516](#)]
BANK OF STOCKTON/MV
HAGOP BEDOYAN/Atty. for dbt.
TIMOTHY NALLY/Atty. for mv.

No tentative ruling.

6. [11-13043](#)-A-7 MORRIS/SHARON GARCIA MOTION FOR SUMMARY JUDGMENT
KDG-8 11-7-14 [[522](#)]
MORRIS GARCIA/MV
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [14-14256](#)-A-7 TONG XIONG OBJECTION TO DEBTOR'S CLAIM OF
RHT-1 EXEMPTIONS
ROBERT HAWKINS/MV 10-31-14 [[14](#)]
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Sustained

Order: Civil minute order

On Amended Schedule C filed October 24, 2014, the debtor Tong Xiong has claimed an exemption in property described as a "2014 income tax refund from earnings (estimate)" having a value of \$1500. The law specified as the basis for this exemption is § 704.070 of the California Code of Civil Procedure. Cal. Civ. Proc. Code § 704.070. Paid earnings are exemptible under this section, and if paid earnings are traceable into deposit accounts or cash or its equivalent, then they are exempt in the amounts specified in § 704.070(b)(1)-(2).

But this section of the exemption statutes does not permit tax refunds to be exempted, even if the tax refund is being paid due to an overpayment of taxes withheld from earnings in the first instance. The definition of paid earnings does not include tax refunds. Under § 704.070, paid earnings means "earnings as defined in Section 706.011

that were paid to the employee during the 30-day period ending on the date of the levy." Section 706.011(b) defines "earnings" as "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." Cal. Civ. Proc. Code § 706.011(b). An "employer" is "a person for whom an individual performs services as an employee." *Id.* § 706.011(f).

Under the plain language of this section and incorporated definition from section 706.011, a tax refund is not compensation, and payment from a taxing agency to a taxpayer a payment is not made by an employer to an employee for personal services performed by the taxpayer. Tax refunds clearly are not compensation for personal services. Instead, a tax refund is a taxing agency's return of an overpayment of tax paid on a tax liability of the taxpayer.

8. [14-14556](#)-A-7 CHARMIN COSTA
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
10-29-14 [[11](#)]

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 December 12, 2014, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

9. [13-13063](#)-A-7 WILLIAM MANUSZAK CONTINUED AMENDED MOTION TO
CJS-4 AVOID LIEN OF UNIFUND CCR
WILLIAM MANUSZAK/MV PARTNERS .
11-12-14 [[127](#)]
CHERYL JOLLEY-SMITH/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien of Unifund CCR Partners

Notice: Initially LBR 9014-1(f)(1) / hearing date continued; written opposition required

Disposition: Continued to January 21, 2014, at 9:00 a.m.

Order: Civil minute order

COMPLIANCE WITH RULE 9037

The court incorporates by reference the civil minutes from the hearing dated October 29, 2014, at docket no. 118. The debtor has not complied with the court's previous instruction at the hearing on October 29, 2014, and has filed a second document that fails to comply with Rule 9037.

In the exhibits supporting the initial motion, sensitive and confidential personal information of the debtor was included. At the hearing on October 29, 2014, the court identified the problem and noted that the attorney filing the papers for this matter had not complied with Rule 9037 in filing *the motion or the supporting papers*. The court required the attorney to correct the problem, giving an instruction to file an ex parte application to seal and restrict public access to the pertinent filed documents. See Civ. Mins. Hr'g on Mot. Avoid Lien, Oct. 29, 2014, ECF No. 118.

The court has reviewed the original motion to avoid a lien, and the problem has not been corrected. Docket no. 106 is unrestricted and yet contains sensitive, confidential information that should not have been filed, or should have been redacted consistent with Rule 9037(a). The attorney's disclosure of this information could create undue risk of identity theft or other unlawful injury to the individual debtor or his property. See 11 U.S.C. § 107(c).

In support of the presently amended motion, the same problem has been replicated at docket no. 130. The attorney filing the papers for this amended motion has not complied with Rule 9037 as the supporting papers contain sensitive, confidential information of the debtor.

The court will continue the hearing to January 21, 2014. 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 December 30, 2014. A redacted copy of any restricted or sealed documents shall be filed to replace the documents that will have been restricted or sealed.

No later than December 30, 2014, the attorney shall additionally file a separate supplemental declaration stating specifically what actions were taken to comply with Rule 9037 for each problematic document identified in this ruling by docket number.

READABILITY OF ABSTRACT OF JUDGMENT

The court further noted in the prior civil minutes that the abstract of judgment attached as exhibits could be much more readable. The court would prefer that a more readable abstract of judgment be filed on or before December 23, 2014.

CIVIL MINUTE ORDER

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

The debtor William Manuszak's amended motion to avoid a lien has been presented to the court.

IT IS ORDERED that the hearing is continued to January 21, 2014, at 9:00 a.m. Before the continued hearing, the attorney for the debtor

shall perform the following:

- (1) No later than December 23, 2014, the debtor shall file a notice of continued hearing requiring written opposition pursuant to LBR 9014-1(f)(1) and serve the notice on the respondent;
- (2) No later than December 23, 2014, the debtor shall file ex parte applications to seal and restrict public access to the documents specified in this ruling;
- (3) No later than December 23, 2014, the attorney shall file a separate supplemental declaration stating specifically what actions were taken to comply with Rule 9037 for each problematic document identified in this ruling by docket number.

10. [13-11665](#)-A-7 DENNIS MCGOWAN
PLF-6

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF FEAR LAW GROUP, P.C. FOR
PETER L. FEAR, TRUSTEE'S
ATTORNEY(S).
10-27-14 [[62](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Application: First and Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, denied in part

Order: Civil Minute Order

Applicant: Fear Law Group, P.C.

Compensation approved: \$8,670.00

Costs approved: \$697.90

Aggregate fees and costs approved in this application: \$9,367.90

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).

DISCUSSION

On a first and final basis Fear Law Group, P.C. seeks compensation of \$9,668.00 (Final Application, filed October 27, 2014, ECF #62 \$8,670.00 and Ex Parte Supplemental Application, filed December 2, 2014, ECF #80 \$998.00) and costs of \$697.90.

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), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The motion will be granted in part and denied in part.

Final Application for Allowance of Professional Fees and Expenses

Applicant's Final Application, filed October 27, 2014, ECF #62, prayed fees of \$8,670.00, including fees for "Asset Disposition" of \$7,270.00 for the sale of two parcels of real estate, and costs of \$697.90. At

the November 18, 2014, hearing on the application the court questioned the reasonableness of the "Asset Disposition" fee of \$7,270.00 since only two sale of real property were involved and asked for a supplemental declaration from the applicant. Applicant Fear Law Group filed a Supplemental Declaration, filed December 2, 2014, ECF #81, further allocating the "Asset Disposition" category into four motions: motion to compel turnover, motion to sell commercial property, motion to sell residential property, and redone motion to sell residential property. Having considered the supplemental declaration of Peter Fear, the court finds that the compensation and expenses sought in the Final Application for Allowance of Professional Fees and Expenses, filed October 27, 2014, ECF #62, are reasonable, and the court will approve the application on a final basis in the following amounts: compensation \$8,670.00 and costs \$697.90.

Ex Parte Supplemental Application for Payment of Fees

Applicant Fear Law Group, P.C. also prays an additional \$998.00 incurred in responding the court's request for additional information. Ex Parte Supplemental Application for Payment of Fees, filed December 2, 2014, ECF #80.

Applicant's request for additional fees of \$998.00 in responding to the court's inquiries will be denied. First, insufficient notice has been given. Fed. R. Bank. P. 2002(a)(6) (requiring 21 days notice of requests for compensation of more than \$1,000.00). Applicant mistakenly suggests that the 21 day notice period is inapplicable because it seeks \$998.00. Such an interpretation misreads the dollar limitation of Rule 2002(a)(6), which refers to the aggregate amount prayed, which in this case is \$9,668.00 (Final Application, filed October 27, 2014, ECF #62 \$8,670.00 and Ex Parte Supplemental Application, filed December 2, 2014, ECF #80 \$998.00), not to the component parts of the application.

Second, approval of these fees runs afoul of § 330(a)(4)(A)(i) (denying fees for unnecessary duplication). This matter was continued for supplemental declarations because the initial application did not provide sufficient detail and supporting evidence for the application. Because the applicant sought fees of \$7,270.00 for the apparently straight-forward sale of two parcels of real estate, the need for additional evidence to support a higher than typical fee should have been apparent to the applicant.

Third, the applicant has been fairly compensated for preparing the fee application. The Final Application, Exhibit C, page 2 of 2, filed October 27, 2014, ECF #62, includes a category for "Fee/Employment Applications" and seeks compensation of \$1,400 (based on 7.4 hours spent). That category includes 1.90 hours for "FUTURE ESTIMATED FEES: Appear at hearing on fee application; preparing order approving same and lodge with court; correspondence to Trustee regarding order." (emphasis original). The applicant has already built into the process, and the court has approved, fees to cover contingencies and additional work associated with the fee application.

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 First and Final Application for Compensation and Expenses filed by Fear Law Group, P.C. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$8,670.00 is approved on a final basis; (3) costs of \$697.90 are approved on a final basis; (4) if in the discretion of the Chapter 7 trustee the estate is administratively solvent, the amounts awarded herein may be paid forthwith and without further order of this court; and (5) all other relief is denied.

11. [14-14467](#)-A-7 JOSEFINA MUNIZ
RHT-1
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-31-14 [[12](#)]

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Pending

Order: Pending

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

But the debtor has filed a spousal waiver since the trustee brought this objection. It appears that the debtor's signature is on the waiver. It appears that the debtor's spouse's name—and perhaps signature—is on the waiver as well, but it is unclear whether the spouse's name has been filled in or is actually a signature. The court will ask at the hearing whether the trustee is satisfied that both spouses have signed the waiver, and if so, the objection will be overruled as moot.

12. [11-18670](#)-A-7 LARDOW, INC. A
PLF-3 CALIFORNIA CORPORATION
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JANICE E. WILLEY
11-14-14 [[71](#)]

ADRIAN WILLIAMS/Atty. for dbt.
PETER FEAR/Atty. for mv.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Janice E. Willey as trustee of the Willey
Family Trust dated November 2, 1989

Dispute Compromised: Life Insurance Proceeds

Summary of Material Terms: Division of \$750,000 life insurance
proceeds, \$375,000 to the bankruptcy estate and \$375,000 to the Willey
trust

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).

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.

13. [14-12972](#)-A-7 MARK/DARLENE JONES
JES-2
JAMES SALVEN/MV
PETER FEAR/Atty. for dbt.

MOTION TO SELL FREE AND CLEAR
OF LIENS
10-28-14 [[55](#)]

[The hearing on this matter will be concurrent with the hearing on the motion for stay relief in this case having docket control no. JFL-1 to be heard at 10:00 a.m.]

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted in part (sale and compensation for Keller Williams Realty); denied in part (free and clear relief)

Order: Prepared by moving party

Property: 250 North Oakmore, Tulare, CA

Buyer: Randy and Stephanie Moore

Sale Price: \$540,000

Sale Type: Private sale subject to overbid opportunity

Sale Free and Clear of Lien: Relief denied

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

SALE UNDER § 363(b)

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

COMPENSATION

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

SALE FREE AND CLEAR UNDER § 363(f)

The court will not grant free and clear relief. First, the liens identified for which free and clear relief is sought appear to have been avoided by the debtor as impairing exemptions to which the debtor is entitled. The court has reviewed the order avoiding liens of several lienholders (ECF No. 61) and the names of the lienholders in

such order match the names of the lienholders identified by the trustee as the liens for which free and clear relief is sought. (The instrument numbers in the order avoiding liens also match the instrument numbers of the liens identified by the trustee as the liens for which free and clear relief is sought with one exception: the instrument number for Valley Pacific Petroleum Services, Inc. in the order avoiding liens varies from the same instrument number in the trustee's motion by one digit, but the court finds that this is likely a typographical error in the order or the trustee's motion.)

Second, the trustee has not offered a basis under section 364(f) for granting the relief sought. One of the specific enumerated sections must be identified along with the factual grounds warranting the relief sought under such provision.

14. 10-12576 -A-7 SHERMAN FUJIOKA RH-3 SHERYL STRAIN/MV RICHARD HARRIS/Atty. for dbt. ROBERT HAWKINS/Atty. for mv.	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BORTON & PETRINI 11-14-14 [27]
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Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Conrad Anzures and Rosario Untialan

Dispute Compromised: Personal Injury (Automobile Accident)

Summary of Material Terms: \$225,000.00

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).

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.

15. [10-12576](#)-A-7 SHERMAN FUJIOKA MOTION TO EMPLOY BRADLEY A.
SSA-1 POST AS SPECIAL COUNSEL
SHERMAN FUJIOKA/MV 11-17-14 [[33](#)]
RICHARD HARRIS/Atty. for dbt.
NON-OPPOSITION

Tentative Ruling

Motion: Nunc Pro Tunc Employment

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

Disposition: Denied

Order: Civil minute order

Borton Petrini, LLP seek nunc pro tunc employment as of May 5, 2011, for representation of Sheryl Strain, Chapter 7 trustee, to pursue a personal injury action. Not having sustained the burden of proof as to exceptional circumstances as described in *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 974 (9th Cir. 1995), the motion is denied.

FACTS

On May 24, 2009, debtor Sherman Fujioka was injured in an automobile accident.

On March 12, 2010, Sherman Fujioka filed a Chapter 7 petition. Sheryl Strain was named the trustee. Fujioka's schedules disclosed the existence of the personal injury claim.

On March 5, 2011, Fujioka hired Borton Petrini LLP on a contingent fee basis to represent him in connection with the injuries sustained in the automobile accident. Borton Petrini designated one of its associates, Benjamin Tryk to handle the file.

On June 4, 2011, trustee Strain sent Borton Petrini, LLP and Tryk a letter notifying them of the estate's interest in the cause of action. Among other things, the letter stated, "...you (the debtor) have no authority to settle, negotiate, or in any way pursue this action without my approval...." Trustee's Motion for Order Approving Compromise, Exh. A, filed November 14, 2014, ECF #27.

Neither Borton Petrini, nor Tryk, sought employment. Instead, on April 12, 2014, the firm and Tryk settled the case for \$225,000 and dispersed those monies. Borton Petrini received \$80,180.08 in fees and costs (of that amount the firm paid Tryk \$14,079.84 as a referral fee). It also distributed \$74,819.92 to the debtor and held the remainder of those monies in trust.

Borton Petrini contends it, as opposed to Tryk, first learned of the Chapter 7 filing on August 13, 2013, when it received an email from trustee Strain.

Some 15 months later, Borton Petrini, LLP filed its motion for nunc pro tunc employment by the estate to the date of its employment by

Fujioka. In explanation, Borton Petrini contends: (1) Tyrk has since left the firm and has been unresponsive to requests for information about the matter; (2) Borton Petrini LLP had no knowledge of the bankruptcy until August 13, 2013; and (3) has fully cooperated with the Chapter 7 trustee to the extent of its ability since learning of the bankruptcy.

LEGAL STANDARDS

A Chapter 7 trustee may employ counsel to assist the trustee in performance of her duties. 11 U.S.C. § 327. Section 327(e) controls employment of counsel for a special purpose. "The applicant bears the burden of proving that the standards for appointment have been met." *Official Comm. Of Unsecured Creditors v. ABC Capital Mkts. Grp. (In re Capitol Metals Co.)*, 228 B.R. 724, 727 (B.A.P. 9th Cir. 1998).

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir. 1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir. 1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); see also *Mehdipour v. Marcus & Millichap (In re Mehdi-pour)*, 202 B.R. 474, 479 (B.A.P. 9th Cir. 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327 . . ."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. See 11 U.S.C. §§ 327(e), 328(c); see also *Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir. 1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure). Second, the applicant must show "exceptional circumstances" that justify *nunc pro tunc* approval. *Atkins*, 69 F.3d at 974; *Mehdipour*, 202 B.R. at 479. "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must . . . (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Atkins*, 69 F.3d at 975-76; accord *Occidental Fin. Grp.*, 40 F.3d at 1062; *In re Gutterman*, 239 B.R. 828, 830 (Bankr. N.D. Cal. 1999)." *In re Grant*, 507 B.R. 306, 309-310 (Bankr. E.D. Cal. 2014).

DISCUSSION

Borton Petrini LLP's motion suffers at least two fatal defects. First, the applicant has not sustain its burden as to a satisfactory explanation for the reason prior judicial approval was not obtained. At least 9 months prior to the settlement, Borton Petrini received actual knowledge of the bankruptcy and its absence of authority to settle this case. The applicant's only explanation is that a rogue associate settled the case without its knowledge. The problem is that the representation is not supported by the evidence. Trustee Strain's letter was specifically addressed to Benjamin Tryk at the offices of Borton Petrini, LLP. This letter imparted actual knowledge to both Tryk and to the firm. Moreover, even if it had not, the firm is charged with its attorney's knowledge. See *In re Grant*, 507 B.R. 306

(Bankr. E.D. Cal. 2014). As a consequence, the firm's claim of ignorance does not sufficiently explain its failure to seek employment in a timely fashion.

Second, the applicant has not adequately explained its own delay in seeking approval once it learned of the problem. *F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 105-106 (3rd Cir. 1988). Bradley A. Post, managing partner, admits knowledge of the bankruptcy and the trustee's demand as of August 13, 2013. Declaration of Bradley A. Post ¶ 13, filed November 17, 2014, ECF #35. But the firm did not move for nunc pro tunc employment until November 2014, some 15 months later. As a consequence, the motion will be denied.

CIVIL MINUTE ORDER

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

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

The motion for nunc pro tunc employment filed by Borton Petrini, LLP having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that motion is denied.

16. [10-12576](#)-A-7 SHERMAN FUJIOKA
SSA-2
SHERMAN FUJIOKA/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BORTON PERINI,
LLP SPECIAL COUNSEL(S).
11-17-14 [[39](#)]

RICHARD HARRIS/Atty. for dbt.

Tentative Ruling

Motion: First and Final Application for Compensation

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

Disposition: Denied

Order: Civil minute order

DISCUSSION

Chapter 7 estates may only compensate professionals who have been employed. 11 U.S.C. § 330(a)(1). The applicant, Borton Petrini, LLP's employment was not approved by this court and, as a consequence, the application is denied.

CIVIL MINUTE ORDER

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

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

The First and Final Application for Compensation filed by Borton Petrini, LLP 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 First and Final Application for Compensation is denied.

17. [14-14583](#)-A-7 EDWARD ANGUIANO MOTION FOR DENIAL OF DISCHARGE
UST-1 OF DEBTOR UNDER 11 U.S.C.
TRACY DAVIS/MV SECTION 727(A)
11-5-14 [[13](#)]
GREGORY POWELL/Atty. for mv.

Tentative Ruling

Motion: Denial of Discharge of Debtor under 11 U.S.C. § 727(a)(8)

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).

For the reasons stated in the motion and supporting papers, the court will grant the motion and deny the discharge of the debtor. The present case was filed on September 17, 2014. The prior case was filed on October 4, 2012, and the debtor received a discharge in that prior case. The debtor has thus been granted a discharge under section 727 in a prior case commenced within 8 years before the filing of the present case.

18. [14-13892](#)-A-7 DOMENICO FERRUA AND MOTION TO EXTEND DEADLINE TO
TMT-1 SHAWNA GILES FILE A COMPLAINT OBJECTING TO
TRUDI MANFREDO/MV DISCHARGE OF THE DEBTOR
10-29-14 [[13](#)]
JASON TAYLOR/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Extend Trustee's Deadline for Objecting to Discharge under § 727(a)

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).

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee's deadline for objecting to discharge under § 727(a). The debtors have not cooperated with the trustee as required by § 521(a)(3), and surrender to the trustee any recorded information, including books, documents, records and papers, relating to property of the estate as required by § 521(a)(4).

The current deadline to object to discharge under Rule 4004(a) is November 9, 2014, and the trustee's motion was timely filed before such deadline. The deadline for the trustee and the U.S. Trustee to object to discharge will be extended up to and including May 1, 2015.

The trustee refers to Rule 4007(c), which suggests that the deadline for bringing a § 523 action is requested to be extended as well. But reading the prayer for relief and paragraph 12 together, the trustee appears to request only an extension of the § 727 deadline. The trustee specifically requests an extension of the deadline to file any appropriate action under § 727 to deny Debtor's discharge, and does not reference an action under § 523. The court concludes that the reference to Rule 4007(c) is an inadvertent mistake.

9:15 a.m.

1. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER STATUS CONFERENCE RE: COMPLAINT
[14-1115](#) 9-30-14 [[1](#)]
CADLES OF GRASSY MEADOWS II,
LLC. V. TEISINGER ET AL
HOLLY WALKER/Atty. for pl.

No tentative ruling.

2. [14-12631](#)-A-7 ANGEL/BRICIA LEON STATUS CONFERENCE RE: COMPLAINT
[14-1117](#) 9-30-14 [[1](#)]
STERLING JEWELERS, INC. V.
LEON ET AL
CHERYL ROUSE/Atty. for pl.

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

3. [14-11040](#)-A-7 FRANCIS MACIEL CONTINUED STATUS CONFERENCE RE:
[14-1060](#) COMPLAINT
MACIEL V. GADDO
6-9-14 [[1](#)]
JERRY LOWE/Atty. for pl.
DISMISSED

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

4. [13-18043](#)-A-7 TARSEM PABLA CONTINUED STATUS CONFERENCE RE:
[14-1075](#) COMPLAINT
MANFREDO V. PABLA ET AL 7-28-14 [[1](#)]
TRUDI MANFREDO/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

5. [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

No tentative ruling.

6. [08-10861](#)-A-7 JAMES/DAISY CORBETT
[14-1089](#)
CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION V.
ED HAYS/Atty. for pl.
RESPONSIVE PLEADING
- CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-25-14 [[1](#)]

No tentative ruling.

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

No tentative ruling.

8. [13-15067](#)-A-7 CARLOS BERBEREIA
[14-1041](#) TGM-2
MANFREDO V. BERBEREIA
TRUDI MANFREDO/Atty. for mv.
- MOTION FOR ENTRY OF DEFAULT
JUDGMENT
10-30-14 [[37](#)]

Tentative Ruling

Motion: Entry of Default Judgment

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

Disposition: Denied without prejudice

Order: Civil minute order

The certificate of service for the summons and first amended complaint is defective. The certificate states that service of the summons and a copy of the first amended complaint was made April 25, 2014 by regular first class United States mail. The certificate is dated July 10, 2014. But the summons was reissued on July 7, 2014. And the first amended complaint was filed July 3, 2014. So the certificate of service cannot logically be true. The trustee may file an amended certificate of service if the date of service shown is in fact inaccurate.

9. [12-16876](#)-A-7 WILLIAM VANDER POEL
[14-1033](#) MM-2
VANDER POEL, SR. V. MEDINA ET
AL
JOSEPH SUTTON/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR LEAVE OF COURT TO
FILE AMENDED ANSWER
10-24-14 [[117](#)]

No tentative ruling.

10. [14-12994](#)-A-7 ABDELBASET AWAWDEH
[14-1081](#)
TRAVELERS EXPRESS COMPANY,
INC., NOW KNOWN AS MONE V.
ROBERT RENTTO/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-4-14 [[1](#)]

No tentative ruling.

10:00 a.m.

1. [14-14704](#)-A-7 SALVADOR LOPEZ
RCO-1
BANK OF AMERICA, N.A./MV
JAMES CANALEZ/Atty. for dbt.
NANCY LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-27-14 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 12970 Gleason Drive, Madera, 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).

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

The debtor has missed 1 post-petition payments due on the debt secured by the moving party's lien. Before the petition, the debtor missed 4 pre-petition payments. This constitutes cause for stay relief. 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.

2. [14-14009](#)-A-7 GLORIA MARTINEZ ROCHA CONTINUED MOTION FOR RELIEF
KAZ-1 FROM AUTOMATIC STAY
U.S. BANK TRUST, N.A./MV 10-15-14 [[14](#)]
PETER BUNTING/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1420 Cardella St., Firebaugh, California

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 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. [14-14056](#)-A-7 LARRY DORTCH MOTION FOR RELIEF FROM
RFM-1 AUTOMATIC STAY
U.S. BANK, N.A./MV 10-23-14 [[14](#)]
KARNEY MEKHITARIAN/Atty. for dbt.
RAYMOND MOATS/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to January 14, 2014, and require

that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

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

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

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The trustee has not been served at the correct address.

4.	14-13967 -A-7 ALBERT/LILLIAN PATINO PPR-1 WELLS FARGO BANK, N.A./MV MARK ZIMMERMAN/Atty. for dbt. HALIE LEONARD/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-23-14 [15]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1380 North Alta Avenue, Dinuba, 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.

5. [14-12972](#)-A-7 MARK/DARLENE JONES
JFL-1
SETERUS, INC./MV
PETER FEAR/Atty. for dbt.
JAMES LEWIN/Atty. for mv.
DISCHARGED, RESPONSIVE
PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-25-14 [[18](#)]

*[To be heard in conjunction with Motion to Sell Free and Clear of
Liens, DC No. JES-2, Item 13 on 9:00 a.m. calendar]*

Tentative Ruling

Motion: Relief from the Automatic Stay

Notice: Continued hearing date / LBR 9014-1(f)(1); written opposition
filed by Bank of the Sierra

Disposition: Granted in part, denied in part

Order: Prepared by the movant

Subject: 250 North Oakmore Street, Tulare, CA

The court continued the hearing and requested that Mr. Salven, the trustee, file a status report 7 days prior to the continued hearing. No report has been filed. The court therefore assumes that the matter is ripe for a decision.

The court will adopt the ruling set forth in the "Tentative Ruling" found in the civil minutes dated September 24, 2014. *[The pertinent portion of such ruling is set forth below:]*

OPPOSITION

Bank of the Sierra opposes the motion on two grounds. First, it contends that it did not receive a copy of the motion even though it has filed a request for special notice. But Bank of the Sierra has had actual notice of the motion in time to oppose the motion, so any lack of notice is considered harmless and will be waived. Rule 7004 service of the motion, moreover, is not required by Rule 4001(a) regardless of whether a party's special notice request contains.

Further, Bank of the Sierra argues that the movant's lien position is protected by an adequate equity cushion of approximately \$263,305.62, which ignores Bank of the Sierra's lien on the property as well as other junior liens. But this argument must be rejected because it fails to recognize that under § 362(d)(2), all liens encumbering the collateral are taken into account in determining whether the debtor has equity. See *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984). Section 362(d)(2), moreover, refers to the debtor's equity, which requires determining whether the debtor has value in the property that is unencumbered by liens. 11 U.S.C. § 362(d)(2).

Essentially, Bank of the Sierra's argument improperly conflates the distinct concepts of adequate protection under § 362(d)(1) with debtor's equity under § 362(d)(2).

Bank of the Sierra does not dispute the value of the property or the amount of the lienholders' debt. In fact, Bank of the Sierra admits that there may be no "overall equity" in the property. See Opp'n at 3:12, ECF No. 34. Accordingly, the movant is entitled to stay relief if the total liens on the property exceed the value of the property.

RELIEF AS TO DEBTOR

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

RELIEF AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens equals \$673,104.08. This amount exceeds the value of the collateral, which is \$545,000, so the debtor has no equity in the property.

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

- | | | |
|----|---|--|
| 6. | 14-15075 -A-7 ROWENA/RANDY PETERS
APN-1
SANTANDER CONSUMER USA INC./MV
F. GIST/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv. | MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-4-14 [23] |
|----|---|--|

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to January 14, 2014 and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

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

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

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

7. [14-14176](#)-A-7 KENNETH/AMY COLE MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 11-4-14 [[20](#)]
JONATHAN CAHILL/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: 2936 E. Pico Avenue, Fresno, California

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

8. [14-14589](#)-A-7 BRIAN/JEANNE KYLE MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
ONEWEST BANK N.A./MV 10-28-14 [[12](#)]
GEOFFREY ADALIAN/Atty. for dbt.
MARK ESTLE/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1117 Willow Ave., Exeter, 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.

10:30 a.m.

1. [14-14024](#)-A-7 CARRIE PENNER PRO SE REAFFIRMATION AGREEMENT
WITH JPMORGAN CHASE BANK, N.A.
11-6-14 [[16](#)]

No tentative ruling.

2. [14-14326](#)-A-7 OCTAVIANO/RITA CALDERON AMENDED PRO SE REAFFIRMATION
AGREEMENT WITH VALLEY FIRST
CREDIT UNION
10-10-14 [[19](#)]

Final Ruling

Pursuant to civil minute order issued November 14, 2014, ECF #37, debtors are excused from appearing at this hearing.

3. [14-13934](#)-A-7 CHRISTINA GONZALES PRO SE REAFFIRMATION AGREEMENT
WITH STERLING JEWELERS INC
11-13-14 [[22](#)]

No tentative ruling.

4. [14-14438](#)-A-7 MARIA COBIAN

REAFFIRMATION AGREEMENT WITH
BANK OF STOCKTON
11-5-14 [[16](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

5. [14-15047](#)-A-7 SANDRA MARQUEZ

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA,
INC.
11-21-14 [[16](#)]

No tentative ruling.

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-47
JOHN VISSER/MV

MOTION FOR FINAL DECREE AND
ORDER CLOSING CASE AND/OR
MOTION FOR ENTRY OF DISCHARGE
11-19-14 [[1036](#)]

RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

Motion: Enter Final Decree Closing Chapter 11 Case and Enter Discharge of Debtors

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

Disposition: Continued to December 17, 2014, at 1:30 p.m. with supplemental declarations to be filed no later than December 15, 2014

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). 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).

FINAL DECREE

Under § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." 11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022. "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" *See In re Ground Sys., Inc.*, 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Rule 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. *See* Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. These factors present a court with "flexibility in

determining whether an estate is fully administered," and "not all of the factors . . . need to be present to establish that a case is fully administered for final decree purposes." *In re Provident Fin., Inc.*, Nos. MT-10-1134-JuPaD, MT-10-1135-JuPaD, Bankr. No. 09-61756, 2010 WL 6259973 (B.A.P. 9th Cir. Oct. 12, 2010) (unpublished opinion).

The Advisory Committee Note also states that entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed." Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. It further provides that "[t]he court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code." *Id.*

Here, factors supporting a finding of full administration of the estate have been satisfied. The order confirming the plan has become final pursuant to Rule 8002. The motion asserts that the Reorganized Debtors have paid in full, with interest where required, all claims—thus, all plan payments have been made. All motions, other than this motion, contested matters, and adversary proceedings have been finally resolved. Other factors addressed in the motion support entry of the final decree closing the case. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

At the continued hearing, the court will grant the motion as to the final decree and issue an order closing the case assuming all other aspects of the motion are able to be resolved at that time.

DISCHARGE OF DEBTORS

For the reasons stated in the motion, the court finds that entry of discharge is likely appropriate under § 11 U.S.C. 1141(d)(5). Because all classified and unclassified claims required to be paid under the plan have been paid in full with interest where required, the court does not believe that any debts of the kind described in § 522(q) exist.

But the court would prefer a supplemental declaration specifically stating grounds that give the court no reasonable cause to believe that § 1141(d)(5)(C)(i)-(ii) are applicable. If a supplemental declaration satisfies the court that none of § 1141(d)(5)(C)(i)-(ii) grounds are applicable, then the court will grant the motion and issue an order discharging the debtors.

2. [12-17336](#)-A-11 VISSER FARMS
RAC-47
VISSER FARMS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FRUIT GROWERS
SUPPLY COMPANY
11-17-14 [[442](#)]

SCOTT BLAKELEY/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

Parties to Compromise: Visser Farms (Reorganized Debtor) and Fruit Growers Supply Company ("Claimant")

Dispute Compromised: Reorganized Debtor's objection to Claimant's Claim in the amount of \$14,859.69 including a dispute about whether any portion of the claim is entitled to priority as an administrative claim under § 503(b)(9)

Material Terms: Reduction of Claimant's Claim to \$7429.84 and treatment of such claim as a general unsecured nonpriority claim, as well as general mutual releases of each party from all claims and liabilities, et cetera, arising out of the allowed claim

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

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.

3. [12-17336](#)-A-11 VISSER FARMS
RAC-48
VISSER FARMS/MV
SCOTT BLAKELEY/Atty. for dbt.

MOTION FOR FINAL DECREE AND
ORDER CLOSING CASE
11-19-14 [[449](#)]

Tentative Ruling

Motion: Enter Final Decree Closing Chapter 11 Case

Notice: LBR 9014-1(f)(2); no 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). 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).

Under § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." 11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022. "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" *See In re Ground Sys., Inc.*, 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Rule 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. *See* Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. These factors present a court with "flexibility in determining whether an estate is fully administered," and "not all of the factors . . . need to be present to establish that a case is fully administered for final decree purposes." *In re Provident Fin., Inc.*, Nos. MT-10-1134-JuPaD, MT-10-1135-JuPaD, Bankr. No. 09-61756, 2010 WL 6259973 (B.A.P. 9th Cir. Oct. 12, 2010) (unpublished opinion).

The Advisory Committee Note also states that entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed." Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. It further provides that "[t]he court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code." *Id.*

Here, factors supporting a finding of full administration of the estate have been satisfied. The order confirming the plan has become final pursuant to Rule 8002 and payments under the confirmed plan have commenced. All motions, other than this motion and the pending motion to compromise the dispute concerning Fruit Growers Supply Company's claim which is also on this calendar, and all contested matters, and adversary proceedings have been finally resolved. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

4. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-21
JOHN VAN DYK/MV

MOTION TO SELL
11-25-14 [[309](#)]

RILEY WALTER/Atty. for dbt.
OST 11/25/14
NON-OPPOSITION

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(3) and Order Shortening Time for Notice; no written opposition required

Disposition: Granted in part (as to sales); denied in part without prejudice (commissions and declaration that debtors have complied with all applicable notice procedures)

Order: Prepared by moving party

Property: Livestock (about 2100 head of livestock)

Sale Type: 2 separate public auctions

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). 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.

5. [14-11595](#)-A-11 RAY FISHER PHARMACY,
INC.

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

ALAN KINDRED/Atty. for dbt.

Final Ruling

The status conference is continued to January 21, 2015, at 1:30 p.m.

6. [14-11595](#)-A-11 RAY FISHER PHARMACY,
UST-1 INC.
TRACY DAVIS/MV

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7 (FILING
FEE NOT PAID OR NOT REQUIRED),
MOTION TO DISMISS CASE
10-27-14 [[114](#)]

ALAN KINDRED/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

Final Ruling

The hearing is continued to January 21, 2015, at 1:30 p.m.

1:45 p.m.

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

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-16-14 [[1](#)]

Final Ruling

The status conference is continued to December 17, 2014, a 1:45 p.m.,
to coincide with the Motion for Entry of Default Judgment.