

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: JANUARY 9, 2020
CALENDAR: 9:45 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-11700](#)-A-7 **IN RE: CORY CAMPBELL**
[RP-1](#)

MOTION TO SELL
12-9-2019 [[19](#)]

RANDELL PARKER/MV
JOHN-PAUL SERRAO/ATTY. FOR DBT.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: '67 Chevrolet Camaro and '67 Ford Mustang

Buyer: Cory Campbell

Sale Price: \$5,000.00

Sale Type: Private sale subject to overbid opportunity

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

2. [14-12905](#)-A-7 **IN RE: MARIE ABD-ELAAL**
[NES-5](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
12-3-2019 [[112](#)]

MARIE ABD-ELAAL/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

Final Ruling

This motion having been withdrawn (ECF #122), the court will drop the matter from the calendar.

3. [14-12905](#)-A-7 **IN RE: MARIE ABD-ELAAL**
[NES-6](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK
12-3-2019 [\[106\]](#)

MARIE ABD-ELAAL/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

Final Ruling

This motion having been withdrawn (ECF #124), the court will drop the matter from the calendar.

4. [17-10417](#)-A-7 **IN RE: GEORGE REYES**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,
ACCOUNTANT(S)
12-9-2019 [\[63\]](#)

RATZLAFF, TAMBERI & WONG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

No Ruling

5. [19-14724](#)-A-7 **IN RE: MANUEL OSUNA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-20-2019 [\[11\]](#)

TD AUTO FINANCE LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Chevrolet Silverado

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).

STAY RELIEF

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, Debtor has filed a Statement of Intent to surrender the vehicle. Official Form 108, ECF #1. This constitutes cause for stay relief under § 362(d)(1).

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

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.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

TD Auto Finance LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2017 Chevrolet Silverado, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

6. [19-15060](#)-A-7 **IN RE: IRMA DURAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-17-2019 [\[13\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

7. [19-12988](#)-A-7 **IN RE: CHARANJI LAL AND KAMALJIT KAILA**
[RS-2](#)

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP
12-12-2019 [\[42\]](#)

CHARANJI LAL/MV
RICHARD STURDEVANT/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

8. [19-14292](#)-A-7 **IN RE: LOUISE DESHORE**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
10-10-2019 [\[5\]](#)

LOUISE DESHORE/MV

No Ruling

9. [19-14856-A-7](#) **IN RE: ANDREW RIOS AND JESSICA GONZALES**
 [KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2019 [\[14\]](#)

LOGIX FEDERAL CREDIT UNION/MV
R. BELL/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Mazda 3

Value of Collateral: \$8,200.00

Liens Encumbering Collateral: \$11,558.79

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).

STAY RELIEF

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

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Logix Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2014 Mazda 3, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

10. [19-14772-A-7](#) **IN RE: ELECTRICAL POWER SERVICES, INC.**
[LNH-2](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL CO., LLC AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
12-19-2019 [[18](#)]

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.

No Ruling

11. [19-14772-A-7](#) **IN RE: ELECTRICAL POWER SERVICES, INC.**
[LNH-3](#)

MOTION FOR ADMINISTRATIVE EXPENSES
12-19-2019 [\[25\]](#)

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.

No Ruling

12. [19-14440-A-7](#) **IN RE: JEFFREY LUFF**
[LKW-1](#)

MOTION TO AVOID LIEN OF TD BANK USA N.A.
12-20-2019 [\[15\]](#)

JEFFREY LUFF/MV
LEONARD WELSH/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$ 1,628.95

All Other Liens: \$ 191,750.60

Exemption: \$ 100,000.00

Value of Property: \$ 257,000.00

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).

LIEN AVOIDANCE

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 respondent'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 judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

CLAIMED HOMESTEAD EXEMPTION

The court notes that Debtor has claimed an exemption on the real property under C.C.P. § 704.730 of 100% of the fair market value, up to the applicable statutory limit. Schedule C, ECF 1. Having reviewed C.C.P. § 704.730(a) and the Debtor's household size, it appears that Debtor is entitled to at least \$100,000.00 in exemptions, which is consistent with the Motion filed. For the purposes of this motion, the court will therefore deem Debtor to have claimed an exemption on the property of \$100,000.00.

DISCREPANCIES NOTED BUT NOT DISPOSITIVE

Having considered the motion and all documents filed in support of the motion, the court notes discrepancies as to who the holder of the First Deed of Trust is, and what amount the First Deed of Trust secures. Compare Schedule D, ECF 10 (InterCap Lending Inc., with claim of \$186,964.00) with Motion to Avoid Lien, para. 5, ECF 15 (Flagship Financial Group, LLC, with claim of \$204,579.00). But Debtor will be entitled to avoid the lien regardless of the which is the correct amount of the First Deed of Trust or who is the correct holder of the First Deed of Trust. The court will therefore grant the motion to avoid judicial lien, deeming that the noted discrepancies are not dispositive.