

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: JANUARY 25, 2017**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**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.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [16-13301](#)-A-7 ERIC/RONDA KOZLOWSKI CONTINUED MOTION TO EXTEND  
JLG-1 DEADLINE TO FILE A COMPLAINT  
FRESNO FIRST BANK/MV OBJECTING TO DISCHARGE OF THE  
DEBTOR  
12-9-16 [[36](#)]  
  
THOMAS ARMSTRONG/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

2. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-29-16 [[43](#)]  
  
ADRIAN WILLIAMS/Atty. for dbt.  
\$31.00 AMENDMENT FEE PAID  
12/29/16

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

3. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA MOTION TO AVOID LIEN OF FORD  
ASW-1 MOTOR CREDIT COMPANY, LLC  
EMANUEL SILVA/MV 12-15-16 [[16](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re*

*Goswami*), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f) (2) (A).

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

4. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA MOTION TO AVOID LIEN OF FIA  
ASW-2 CARD SERVICES, N.A.  
EMANUEL SILVA/MV 12-15-16 [21]  
ADRIAN WILLIAMS/Atty. for dbt.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

5. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA MOTION TO AVOID LIEN OF HSBC  
ASW-3 BANK NEVADA, N.A.  
EMANUEL SILVA/MV 12-15-16 [[26](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

6. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA MOTION TO AVOID LIEN OF  
ASW-4 AMERICAN EXPRESS BANK, FSB  
EMANUEL SILVA/MV 12-15-16 [[31](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

7. [16-13903](#)-A-7 EMANUEL/CHRISTINE SILVA MOTION TO AVOID LIEN OF FIRST  
ASW-5 RESOLUTION INVESTMENT  
EMANUEL SILVA/MV CORPORATION  
12-15-16 [[36](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

8. [15-13412](#)-A-7 BASILA CONSTRUCTION, OBJECTION TO CLAIM OF JONATHAN  
FW-2 INC. W. BASILA, CLAIM NUMBER 5  
ROBERT HAWKINS/MV 12-12-16 [[158](#)]  
RILEY WALTER/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained in part, overruled in part

**Order:** Prepared by objecting party

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

The trustee objects to claim no. 5 of Jonathan W. Basila on grounds that several of portions of the claim are not enforceable. Basila filed this unsecured claim in the amount of \$147,155.10. The claim attaches redacted copies of 21 claim purchase agreements. The trustee's objection is directed at the lack of consideration for some of these purchase agreements. In particular, the claims that the claimant purchased from the following creditors are not supported by a purchase price: Tom Baird Painting, S&J Lumber, Inc, and Associated Design & Engineering. The amounts of each of these claims are, respectively, \$4,150.00, \$231.95, and \$4,655.00.

The trustee also objects to the failure of consideration for a claim purchased from "Jon Basila" in the amount of \$300. The objection is that there is no evidence of any claims purchase agreement. However, a chart attached to the claim indicates that this \$300 claim was not purchased and is "per schedules filed." Therefore, the ground given for objection is not valid as this portion of the Claim No. 5 was not purchased.

Accordingly, the court will sustain the objection in part. The court will allow Claim No. 5 as a general unsecured claim in the amount of \$138,118.15 [ $\$147,155.10 - (\$4,150 + \$231.95 + \$4655)$ ]. The balance of the claim will be disallowed.

9. [15-13412](#)-A-7 BASILA CONSTRUCTION, OBJECTION TO CLAIM OF BASILA  
FW-3 INC. FAMILY TRUST, CLAIM NUMBER 6  
ROBERT HAWKINS/MV 12-12-16 [[162](#)]  
RILEY WALTER/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The trustee objects to Claim No. 6 of Basila Family Trust because the claim includes amounts that are unenforceable under the applicable statute of limitation under California law. The claim includes unpaid rent from December 1, 2010 through August 1, 2015 in the total amount of \$114,618.25. The amount of \$8,361.95 was due and owing prior to August 28, 2011 (4 years before the petition date on August 28, 2015).

The trustee objects to any amounts that accrued before the 4-year statute of limitations period. The objection will be sustained. The claim will be disallowed in the amount of \$8,361.95 and allowed as an unsecured claim as to the balance of the claim, \$106,256.30.

10. [15-13412](#)-A-7 BASILA CONSTRUCTION, OBJECTION TO CLAIM OF JONATHAN  
FW-4 INC. W. BASILA, CLAIM NUMBER 7  
ROBERT HAWKINS/MV 12-12-16 [[166](#)]  
RILEY WALTER/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

Under California Code of Civil Procedure § 338(a), the statute of limitations for an action upon a liability created by statute, other than a penalty or forfeiture, is three years.

The trustee objects to Claim No. 7, filed by Jonathan W. Basila, because the claim includes amounts that are unenforceable under the applicable statute of limitation under California law, § 338(a) of the C.C.P. The claim was filed for "2011, 2012 and 2015 deferred wages."

The petition was filed on August 28, 2015, and three years before the petition is August 28, 2012. The statute of limitations has passed for any wages earned more than 3 years before the petition date. The total sum of \$78,301.90 was due and owing to the claimant prior to August 28, 2011, so more than 3 years passed on this amount before the petition was filed. Accordingly, the court will disallow the claim in the amount of \$78,301.90, and allow the balance of the claim as an unsecured claim in the amount of \$35,000.

11. [16-13428](#)-A-7 MATTHEW WILLIAMS  
NES-1  
MATTHEW WILLIAMS/MV  
NEIL SCHWARTZ/Atty. for dbt.

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
11-23-16 [[12](#)]

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Notice:** Continued hearing date; no written opposition required

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

**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Williams Welding, a sole proprietorship business in which the debtor is self-employed (and all tools referenced on Schedule C)

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

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

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

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

12. [16-11036](#)-A-7 ROCCO FAZIO  
RHT-2  
ROBERT HAWKINS/MV  
HILTON RYDER/Atty. for dbt.  
GABRIEL WADDELL/Atty. for mv.

MOTION TO SELL AND/OR MOTION TO  
PAY  
12-21-16 [[27](#)]

**Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 659 North Bundy Avenue, Clovis, CA

**Buyer:** Dino Distefano and Diana Distefano

**Sale Price:** \$229,950

**Sale Type:** Private sale subject to overbid opportunity

**Commission:** 6% commission to broker employed to sell this property

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

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

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.

13. [16-13737](#)-A-7 KERRY HANSON

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-30-16 [[27](#)]

\$31.00 FILING FEE PAID  
1/10/17

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

14. [16-13454](#)-A-7 MARVIN/MAUREKA DAVIS  
UST-1  
TRACY DAVIS/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR  
MOTION TO EXTEND TIME TO FILE A  
MOTION TO DISMISS CASE UNDER  
SEC. 707(B)  
12-27-16 [[34](#)]

PETER BUNTING/Atty. for dbt.  
GREGORY POWELL/Atty. for mv.

### **Final Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to  
Object to Discharge or File a Motion to Dismiss

**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).

### **EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE**

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 U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through March 15, 2017.

### **EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS**

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through March 15, 2017.

15. [11-17165](#)-A-7 OAKHURST LODGE, INC., A MOTION TO VACATE DISMISSAL OF  
AJM-1 CALIFORNIA CORPORATION CASE  
FIRST-CITIZENS BANK & TRUST 12-28-16 [[258](#)]  
COMPANY/MV  
PETER FEAR/Atty. for dbt.  
AARON MALO/Atty. for mv.  
RESPONSIVE PLEADING

*[This motion will be called on the adversary proceeding calendar at 10:00 a.m. in conjunction with First-Citizens Bank & Trust's motions to dismiss and to strike, AJM-4, AJM-5, NLG-5, & NLG-6.]*

### **Tentative Ruling**

**Motion:** Motion to Vacate Order Dismissing Case and Appoint Chapter 7 trustee

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

**Disposition:** First-Citizen's Bank & Trust's motion: granted in part, denied in part; Oakhurst Lodge, Inc.'s countermotion: granted.

**Order:** Civil minute order

First-Citizens Bank & Trust ("FCB"), a creditor in this case and a defendant in a related adversary proceeding, moves to vacate the order dismissing this case, Order, June 1, 2013, ECF # 220, and to appoint a Chapter 7 trustee. FCB argues that the language of Rule 60(b)(6), i.e., "any other reason that justifies relief," allows this court to vacate the dismissal order to allow the court to enforce a written stay settlement of \$850,000 negotiated between FCB and OLI (which OLI now disavows) and to administer that asset for the benefit of creditors. Oakhurst Lodge Inc. ("OLI") supports vacating the dismissal order but also wants the court to vacate its order converting the case from Chapter 11 to Chapter 7. Order, January 10, 2013, ECF # 174. The court deems OLI's opposition a countermotion for relief. No creditor or other party in interest has opposed the motion.

### **LAW**

Rule 60(b) allows this court to vacate an order "for any other reason that justifies relief." Fed. R. Civ. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9024. Such a motion must be presented within a reasonable time. *Id.* Rule 60(b)(6) requires a showing of extraordinary circumstances. *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993).

### **DISCUSSION**

This case started as a Chapter 11. A plan was confirmed. OLI alleges FCB violated the stay, 11 U.S.C. § 362(a), and the plan by foreclosing its only income earning asset, a hotel. The case then was converted to Chapter 7 and later was dismissed.

#### Timeliness

Relief under Rule 60(b)(6) must be sought within a reasonable time. The use of the word reasonable indicates that the trial court has wide discretion on the issue.

The motion and the countermotion are timely, though barely so. The order dismissing the case was entered three and one-half years ago and the order converting the case four years ago. While at the outer edges of reasonableness, the court notes that in 2015, the debtor filed an adversary proceeding against First-Citizens Bank & Trust and others for stay violations that occurred between July and December 2012. With the assistance of a court appointed mediator, approximately seven months ago the parties negotiated a settlement of the adversary proceeding for \$850,000. OLI has disavowed the settlement, and FCB wishes to enforce it. Among the issues to be solved is whether the compromise complies with Rule 9019 and whether the settlement works a material modification of the plan, requiring treatment under 11 U.S.C. § 1127. Because the events giving rise to the motion, e.g. the settlement and OLI's refusal to consummate it, occurred less than one year ago, the court finds the motion timely.

#### Order Dismissing

Extraordinary circumstances that justify Rule 60(b) relief are the existence of an asset, i.e. a cause of action or settlement, that needs to be administered for the benefit of creditors. This court believes that the foreclosure of OLI's hotel precluded the debtor from performing its plan, that the plan binds, and that the proceeds of the adversary proceeding need to be paid to creditors consistent with the terms of the plan, Civil minutes, January 27, 2016, ECF 3 107, or of such modification as may be necessary. 11 U.S.C. § 1127. OLI has refused to proceed with the settlement, apparently because it believed that the settlements did not need to be paid to creditors. Status Report, July 12, 2016, ECF # 207 (Oakhurst Lodge settled the case "under the belief the bankruptcy was closed and without any Trustee in place, any funds received would be net to the Oakhurst Lodge, Inc., and not subject to the debt of the plan."). While ordinarily the court would leave enforcement of the plan to impacted creditors, given the convoluted history of this case, the lack of notice to the creditors of the existence of funds from which payment can be made, and the suggestion that the debtor may not voluntarily comply with the terms of the confirm plan, the court finds the existence of extraordinary circumstances to vacate the dismissal order.

#### Order Converting Case from Chapter 11 to Chapter 7

The more difficult question is whether to allow a Chapter 7 trustee to administer the case or to also vacate the order converting the case from Chapter 11 to Chapter 7.

The court finds that Chapter 7 is likely an ineffective remedy and, thus, finds the extraordinary circumstances required to also vacate the conversion order.

The first reason that Chapter 7 is not an adequate remedy to address the problem is the conflict nature of a confirmed plan, which compels distribution as specified in the plan, and 11 U.S.C. § 726, which ordinarily controls distribution in Chapter 7. In this court's view, the plan binds, even though the case was converted and even though the case was later dismissed. *In re Laing*, 31 F.3d 1050, 1051 (10th Cir. 1994). As one commentator notes, "Most courts hold a confirmed plan is *res judicata* as to debtor and creditor rights under the plan, even where the Chapter 11 case is not consummated and is subsequently converted to another Chapter. [*In re Laing* (10th Cir. 1994) 31 F3d 1050, 1051 (conversion to Chapter 7)]; but see *Matter of Silver Mill*

*Frozen Foods, Inc.* (BC WD MI 1982) 23 BR 179, 183—where plan provided for conversion upon default, creditors not limited to plan provisions but were entitled to all Chapter 7 rights and protections].” March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, §§ 5:1962, 5:2294 (Rutter Group 2016). In contrast, a Chapter 7 trustee must make distribution under 11 U.S.C. § 726. Allowing the case to remain in Chapter 7 puts the trustee in the awkward position of choosing between a distribution scheme mandated by the plan and a scheme mandated by the code.

Second, this court questions whether a Chapter 7 trustee has the power to administer this asset. *In re Adair*, 253 B.R. 85, 91 (9th Cir. BAP 2000) (deliberate and informed decision to abandon an asset a basis to deny reopening). As set forth in this court’s ruling on First-Citizens Bank & Trust and Total Lender Solutions motion to dismiss, AJM-4 and NLG-5, it appears that the trustee, but not the debtor, has relinquished its rights to pursue FCB’s stay violation.

“In a Chapter 11 bankruptcy, the stay arises on the filing of a petition. 11 U.S.C. §§ 362(a), 103(a). The stay has two distinct parts: (1) an in personam component, which protects the debtor, 11 U.S.C. § 362(a)(1), (6)-(7); and (2) an in rem component, which protects property of the estate, 11 U.S.C. § 362(a)(2)-(5)..” Civil minutes \* 6, January 27, 2016, ECF # 107. In this case, both the estate and OLI’s rights under 11 U.S.C. § 362(a) were impinged.

The bankruptcy code defines the duration of the stay. “Except as provided in subsections (d), (e), (f), and (h) of this section--(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;(2) the stay of any other act under subsection (a) of this section continues until the earliest of--(A) the time the case is closed;(B) the time the case is dismissed; or(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.” 11 U.S.C. § 362(c).

#### *As to the estate*

The estate’s rights were injured. Notwithstanding confirmation, the hotel that was the subject of the foreclosure remained property of the estate. That is true because the plan specifically provided that property remain in the estate until such date as discharge was entered (which never occurred). The plan provided: “Revesting of Assets. *Subject to the provisions of the Plan and the Confirmation Order, the property of the Estate shall not vest in the Reorganized Debtor until discharge is entered. As of the Discharge Date, all such property shall be free and clear of all Claims, Liens and Equity Interest, except as otherwise provided in the Plan or the Confirmation Order. From and after the Discharge Date, the Reorganized Debtor shall be free of any restriction imposed by the Bankruptcy Court, the Bankruptcy Code and the Bankruptcy Rules, other than the obligations set forth in this Plan.*” Plan § 15.01, November 9, 2011, ECF # 79. After plan confirmation but before conversion to Chapter 7, FCB foreclosed its liens against the hotel. Doing so violated 11 U.S.C. § 362(a)(3), which precludes creditors from “acts to obtain possession of property of the estate. . . .or to exercise control over property of the estate.” While OLI originally held these rights, when the case converted to Chapter 7, the trustee Robert Hawkins succeeded to the rights of the debtor in possession to estate property, including the

(wrongfully foreclosed) hotel. 11 U.S.C. § 323(a) (trustee is the estate representative). But soon thereafter, the trustee abandoned any interest he had in the hotel. Notice of Intent to Abandon, February 14, 2013, ECF # 182. When the trustee did so, it lost its rights to administer the hotel as an asset of the estate. 11 U.S.C. 554(a).

But the trustee's abandonment was limited to the 60 unit hotel, fixtures and equipment. *Id.* Because the trustee held no other rights with respect to the hotel foreclosure, the trustee did not, and could not, abandon any other stay violation rights. As a consequence, insofar as the hotel (which was estate property) is concerned, the estate appears to have lost its right to administer the asset, and the Chapter 7 trustee would not now have standing to recover it.

*As to the debtor*

The debtor in possession, OLI, was also injured by the foreclosure. The stay arose on the date OLI filed its petition, June 22, 2011, and lifted when the Chapter 7 trustee forced dismissal of the case, June 1, 2013. 11 U.S.C. 362(c)(2).

Between those dates, FCB foreclosed OLI's hotel. Foreclosure of the hotel that remained part of the estate, Plan § 15.01, November 9, 2011, ECF # 79, and formed the basis of the debtor's plan of reorganization plan violated not only the estate's rights but also the debtor's right to be left alone during the bankruptcy process. Title 11 U.S.C. § 362(a)(1), (6). Those subsections provide, "[A] petition filed under section 301 . . . .of this title . . . .operates as a stay, applicable to all entities, of--(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. . . .(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." These rights are separate and apart from the estate's rights and protect the debtor's right to be free of collection efforts.

These rights belong exclusively to the debtor in possession and not to the estate. Stay violations for collection activities are not property of the estate because they occur postpetition. 11 U.S.C. § 541(a)(1), (2). And none of the provisions of § 541(a) that capture property acquired by the debtor after the petition or by the estate are implicated here. 11 U.S.C. § 541(a)(5)-(7); *In re Neidorf*, 534 B.R. 369 (9<sup>th</sup> Cir. 2015) (declining to include in the estate the debtor's right to a post-petition mortgage settlement that did not arise until years after her Chapter 7 was filed). Moreover, conversion from Chapter 11 to Chapter 7 did not alter the date of the commencement of the case, allowing the trustee to augment the estate with these rights. 11 U.S.C. 348(a). The simple point is that the Chapter 7 trustee never held these rights and they have always belonged to OLI.

More importantly, OLI took the necessary affirmative steps to preserve these rights to itself. The confirmed plan provided, "Preservation of Claims and Rights. Except as expressly set forth herein, nothing in this Plan shall be deemed to constitute a waiver of the powers of the Debtor as a debtor in possession under the Bankruptcy Code, the

Bankruptcy rules [sic] or the Local Rules and *the Debtor and the Reorganized Debtor as applicable shall retain after the Confirmation Date and after the Effective Date all powers granted by the Bankruptcy Code, the Bankruptcy Rules and Local Rules . . . .* **Except as otherwise provided in the Plan or the Confirmation Order, the Debtor and the Reorganized Debtor reserve any and all of their Claims and rights against any and all third parties, whether such Claims arose before, on or after the Petition Date, the Confirmation Date, the Effective Date and/or the Distribution Date.** (emphasis added). " Plan § 7.03, November 9, 2011, ECF # 79. And it is these rights, that have never belonged to the Chapter 7 trustee, that OLI now properly asserts.

#### **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.

First-Citizens Bank & Trust's motion to vacate order dismissing the case and Oakhurst Lodge's countermotion to vacate the order converting the case from Chapter 11 to Chapter 7 have been presented to the court.

Having considered the pleadings and documents filed in support of the motions,

IT IS ORDERED that the order dismissing the case, Order, June 1, 2013, ECF # 220, is vacated;

IT IS FURTHER ORDERED that the order converting the case from Chapter 11 to Chapter 7, Order, January 10, 2013, ECF # 174, is vacated;

IT IS FURTHER ORDERED that Oakhurst Lodge, Inc.'s Chapter 11 case is reinstated.

IT IS FURTHER ORDERED that a continued status conference is scheduled for March 1, 2017, at 1:30 p.m.; counsel for the debtor and a representative of Oakhurst Lodge, Inc. shall attend; and

IT IS FURTHER ORDERED that not later than February 1, 2017, Oakhurst Lodge Inc. shall file and serve on the U.S. Trustee, all creditors and all parties in interest a notice of continued status conference. That notice shall specify the date, time and place of the continued status conference and shall include in 11 bold font the following verbiage:

"In June 2011, Oakhurst Lodge, Inc. filed a Chapter 11 bankruptcy. You were identified as a creditor or other interested party. In November 2011, Oakhurst Lodge, Inc. proposed a plan of reorganization. That plan provided for payment of Oakhurst Lodge, Inc.'s debts over time from the monies generated by continued operations of Oakhurst Lodge, a 60 unit motel located at 40302 Highway 41, Oakhurst, California.

In February 2012, First-Citizens Bank & Trust foreclosed on the motel. Foreclosure of the motel precluded Oakhurst Lodge, Inc. from making the payments promised by the plan of reorganization.

Oakhurst Lodge, Inc. brought a lawsuit against First-Citizens Bank & Trust Company and others. *Oakhurst Lodge, Inc. V. First-Citizens Bank & Trust Company*, No. 15-1017 (Bankr. E.D. Cal. 2015). Oakhurst Lodge, Inc. contends that First-Citizens Bank & Trust Company's foreclosure was unlawful. First-Citizens Bank & Trust Company denies that it acted unlawfully. But it has offered to settle the lawsuit by allowing First-Citizens Bank & Trust Company to keep the hotel but pay damages of \$850,000.00. Acceptance of the settlement would effectively put Oakhurst Lodge, Inc. out of business and the settlement funds would not be enough to pay all or even most creditors the monies promised them under the plan.

On March 1, 2017, at 1:30 p.m. in Department A, Courtroom 11, Fifth Floor, United States Courthouse, 2500 Tulare Street, Fresno, California, the court has scheduled a status conference to discuss, among other things, whether Oakhurst Lodge, Inc. should (1) accept the settlement offered by First-Citizens Bank & Trust Company or (2) should continue the lawsuit to recover the motel. Your rights under the plan or otherwise may be affected.

You are invited to appear, either personally or by telephone (telephone appearances arranged by CourtCall by calling 866-582-6878) and to make your views on these and other matters pertinent to this case known."

IT IS FURTHER ORDERED that the Certificate of Service described in the preceding paragraph shall be supported by a current copy of the ECF master address list, accessible through PACER, which shall be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

16. [15-14567](#)-A-7 RODNEY/JUDITH NEW  
EAT-1  
THE BANK OF NEW YORK MELLON/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
DARLENE VIGIL/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-20-16 [[62](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 15197 Mark Road, 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).

### **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.

### **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 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.

The Bank of New York Mellon, as Trustee, has filed a motion for relief from the automatic stay that 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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 15197 Mark Road, Madera, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that 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.

17.	<a href="#">16-12468</a> -A-7	NAAZIM HAMED	MOTION FOR RELIEF FROM
	NLG-2		AUTOMATIC STAY
	DEUTSCHE BANK NATIONAL TRUST		12-14-16 [ <a href="#">61</a> ]
	COMPANY/MV		
	PETER BUNTING/Atty. for dbt.		
	NICHOLE GLOWIN/Atty. for mv.		
	DISCHARGED		

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 7358 N. Price Avenue, Fresno, 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).

**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.

#### **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 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.

Deutsche Bank'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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 7358 N. Price Avenue, Fresno, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that 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.

18. [16-13168](#)-A-7 ARTURO MADRIGAL  
EMM-1  
360 MORTGAGE GROUP, LLC/MV  
R. BELL/Atty. for dbt.  
ERIN MCCARTNEY/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-19-16 [[17](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 137 Candy St., Bakersfield, 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).

### **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).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. 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.

### **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.

360 Mortgage Group, 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 137 Candy St., Bakersfield, CA, 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.

19. [16-14181](#)-A-7 CHRISTOPHER MILLS MOTION FOR RELIEF FROM  
EMM-1 AUTOMATIC STAY  
FREEDOM MORTGAGE 12-22-16 [[11](#)]  
CORPORATION/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
ERIN MCCARTNEY/Atty. for mv.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1032 Don Miguel St., 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).

### **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.

Freedom Mortgage Corporation'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 1032 Don Miguel St., Madera, CA, 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.

20. [16-11289](#)-A-7 IMELDA AVILA MOTION FOR RELIEF FROM  
AP-1 AUTOMATIC STAY  
JPMORGAN CHASE BANK, NATIONAL 12-12-16 [[32](#)]  
ASSOCIATION/MV  
THOMAS GILLIS/Atty. for dbt.  
ALEXANDER LEE/Atty. for mv.  
DISCHARGED

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 1311 Armstrong Drive, Hanford, 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).

#### **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.

#### **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 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.

JPMorgan Chase Bank, N.A.'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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 1311 Armstrong Drive, Hanford, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that 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.