

**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:** FEBRUARY 13, 2019  
**CALENDAR:** 9:00 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. [18-14801](#)-A-7    **IN RE: MEDI/ASIA JIROUDI**  
[PSB-1](#)

MOTION TO COMPEL ABANDONMENT  
1-17-2019    [[14](#)]

MEDI JIROUDI/MV  
PHILIP BIANCO

**Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted only as to the business and such business assets described in the motion  
**Order:** Prepared by moving party pursuant to the instructions below

**Business Description:** Cosmetology sole proprietorship business

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 only the business and its assets that are described in the motion.

2. [18-13311](#)-A-7    **IN RE: MELINDA MARTINDALE**  
[DMG-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER  
13  
12-4-2018    [[26](#)]

D. GARDNER  
RESPONSIVE PLEADING

**No Ruling**

3. [16-13315](#)-A-7     **IN RE: KASSANDRA HOELSCHER**  
[FW-4](#)

MOTION TO EMPLOY BRIAN PANISH AS SPECIAL COUNSEL  
1-30-2019    [[101](#)]

JAMES SALVEN/MV  
PETER BUNTING  
TRUDI MANFREDO/ATTY. FOR MV.

**No Ruling**

4. [18-13623](#)-A-7     **IN RE: GARY/CRYSTAL RIOS**  
[DVW-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-18-2018    [[23](#)]

21ST MORTGAGE CORPORATION/MV  
VINCENT GORSKI  
DIANE WEIFENBACH/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2), opposition filed

**Disposition:** granted in part, denied in part

**Order:** Civil minute order

21st Mortgage Corporation ("21st Mortgage") moves for stay relief with respect to a 2007 Fleetwood manufactured home located at 27955 Dustin Acres Road, Taft, California. 21st Mortgage contends that the stay terminated when Gary Rios and Crystal Rios ("debtors") stated that they wanted to "Pay Pursuant (sic) to Contract" in their Statement of Intention and did not reaffirm their debt in a timely fashion. Debtors oppose the motion.

**FACTS**

In 2007, the debtors signed an Installment Contract-Security Agreement for \$80,153 in favor of 21st Mortgage for the purchase of a 2007 Fleetwood manufactured home.

That home rests on real property owned by the debtors' parents. At the first hearing on this motion the debtors contended that the manufactured home was affixed to the real property by means of a foundation, but there is no admissible evidence of that fact.

In September 2018, the debtors filed a chapter 7 bankruptcy. Their timely Statement of Intention declared an intention to "retain the property" and pay under the terms of their contract.

In October 2018, the trustee convened the meeting of creditors.

The debtors have not redeemed the property or reaffirmed their debt to 21st Mortgage.

#### **LAW**

This motion is governed by interlocking sections of the bankruptcy code. In the pertinent part, § 521 provides:

The debtor shall . . .

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, **file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;** and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h);

11 U.S.C. § 521(a)(2) (emphasis added).

Summarily stated, § 521 requires the debtor to state an intention to surrender or retain the property and, if the latter, to also state an intention to redeem the property, 11 U.S.C. § 722, or reaffirm the debt, 11 U.S.C. § 524. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Scope of the Automatic Stay, Duration of the Automatic Stay § 8:808.1 (Rutter Group December 2018).

For personal property owned by the debtors § 362(h) is also applicable. It provides:

(h)(1) In a case in which the debtor is an individual, **the stay provided by subsection (a) is terminated** with respect to personal property of the estate or of the

debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate **if the debtor fails within the applicable time set by section 521(a)(2)--**

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or **to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property,** or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; **and**

(B) **to take timely the action specified in such statement,** as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 521(h) (emphasis added).

The creditor carries the burden of proof by a preponderance of the evidence that the debtor has not (1) made a proper election in the Statement of Intention; and (2) performed the intention in a timely manner. *In re Heflin*, 464 B.R. 545, 552 (Bankr. D. Conn. 2011)

## **DISCUSSION**

### Manufactured Home as Personal Property

Mobiles homes are personal property unless affixed to real property by foundation and an appropriate recordation made with the county recorder. Cal. Health & Safety Code § 18551(a); Miller & Starr, *Cal. Real Estate, Mobiles Homes, Manufactured Housing and Mobile Home Parks, Historical and Legislative Framework* § 27:3 (4th ed.)

Here, the creditor has made a prima facie showing that the manufactured home is personal property. Williamson decl. ¶ 4,

December 18, 2018, ECF # 25. Though given the opportunity to rebut that finding, the debtors have not done so. Their unsworn statements at the first hearing are not evidence. Nor have they offered evidence that they have recorded a certificate of occupancy. As a result, the court finds the manufactured home to be personal property within the meaning of § 521(h).

#### Statement of Intention

Here, the debtors properly declared an intention to retain the property. Statement of Intention, September 4, 2018, ECF # 1. But they did not declare their intention to redeem or reaffirm the debt. *Id.* Their attempt to retain under the term of the original contract is not a valid election. Their time to make such an election has expired. As a result, the court agrees that the stay has terminated and the court will issue an order confirming that fact.

#### Performance: Redemption and Reaffirmation

Here, the debtors have neither redeemed, nor reaffirmed. Williamson decl. ¶ 9, December 18, 2018, ECF # 25. Their time to do so has expired. As a result, the court agrees that the stay has terminated and the court will issue an order confirming that fact.

#### Other Matters

Two other matters merit comment. First, argument might be interposed that stay has terminated as a matter of law and that any request for an order so indicating must be sought by adversary proceeding. Fed. R. Bankr. P. 7001. No party has raised the issue and, as a result, the court will not on its own interpose this procedural objection.

Second, the court is not clear whether the debtors are, in fact, in default of their obligations to 21st Mortgage. The Relief from Stay Summary Sheet suggests they are delinquent on one post-petition payment. Summary Sheet, December 18, 2018, ECF #26. The declaration of Josh Williamson does not so state. Moreover, the Installment Contract-Security Agreement does not appear to contain an ipso facto clause. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Scope of the Automatic Stay, Duration of the Automatic Stay § 8:809.5 (Rutter Group December 2018) ("The debtor's failure to file or perform under a Statement of Intention revives the effectiveness of so-called "ipso facto" contractual clauses (provisions triggering a default based upon the debtor's filing of a bankruptcy petition) that are otherwise unenforceable in bankruptcy ([11 USC § 521(d); *In re Jones*, *supra*, 591 F3d at 312; *In re Dumont*, *supra*, 581 F3d at 1115]"). As a consequence, this ruling merely confirms that the stay has been terminated and makes no ruling on whether the debtors have defaulted such that 21st Mortgage may exercise its rights.

## 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.

21st Mortgage Corporation's motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted to the extent that it seeks confirm that the stay has been terminated as to the debtors' 2007 Fleetwood manufactured home; and

IT IS FURTHER ORDERED that except as expressly provided herein the motion is denied.

5. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-47](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LANDMARK AMERICAN INSURANCE COMPANY  
1-23-2019    [[967](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
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:** Civil minute order

**Parties to Compromise:** The bankruptcy estate and the debtor's E&O insurer, Landmark American Insurance Company (resolving claims against the debtor's former officers, directors, agents, representatives, and/or employees (excluding the parties to the estate's settlement with the Haar family)).

**Dispute Compromised:** Business tort claims against the debtor's former officers, directors, agents, representatives, and/or employees (excluding the parties to the estate's settlement with the Haar family), made against the debtor's Landmark insurance policy.

**Summary of Material Terms:** Landmark will pay \$750,000 to the estate in full satisfaction of the tort and insurance policy claims; the settlement includes general releases with Cal. Civ. Code § 1542 waiver.

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).

#### **APPROVAL OF COMPROMISE**

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.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. ECF No. 970. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **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 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 970.

6. [17-11824](#)-A-7    **IN RE: HORISONS UNLIMITED**  
[WFH-48](#)

MOTION TO SELL  
1-23-2019    [[972](#)]

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1241 Paseo Verde Drive Merced, California 95348

**Buyer:** Mexi Properties, Inc.

**Sale Price:** \$235,000

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

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property for the benefit 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 sale will be approved. The sale is approved subject to any liens, interests, or other encumbrances against the property. The motion does not ask for approval of a sale free and clear of encumbrances. The court will authorize payment of the real estate commissions, consistent with the estate's broker's court-approved terms of employment.

7. [17-11824](#)-A-7     **IN RE: HORISONS UNLIMITED**  
[WFH-49](#)

MOTION TO AMEND  
1-30-2019    [\[985\]](#)

JAMES SALVEN/MV  
CECILY DUMAS  
PETER FEAR/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Amend Order (ECF No. 955)

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

**Disposition:** Granted

**Order:** Prepared by the 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).

### **AMENDING ORDERS OR JUDGMENTS UNDER FED. R. CIV. P. 60(b)**

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider a judgment, order, or proceeding for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

The motion asks for the court to amend an omnibus objection to claims order (ECF No. 955), entered on December 26, 2018, providing the trustee with conflicting instructions about the payment of the \$17,473 proof of claim # 57-1 of Bryan Blew.

On one hand, the order says that the claim should be paid as follows: \$12,850 as a priority claim and \$4,623 as a general unsecured claim. ECF No. 955 at 2. On the other hand, the order says that the claim should be paid as follows: \$8,650.98 as a priority claim and \$8,822.02 as a general unsecured claim. ECF No. 955 at 5.

The error resulted from the trustee's erroneous objection to the claim on the basis of section 507, as exceeding the amounts set by the court's pre-petition priority claims order (ECF No. 954).

The incorrect amounts in the omnibus objection to claims order are: \$12,850 as a priority claim and \$4,623 as a general unsecured claim. ECF Nos. 955 at 2. The order should be amended to remove these amounts. The correct amounts in the omnibus objection to claims order are: \$8,650.98 as a priority claim and \$8,822.02 as a general unsecured claim, as they are consistent with the amounts of the court's priority claims order. ECF Nos. 955 at 5 & 954.

This motion is timely. It was filed on January 30, 35 days after the court entered the order. ECF Nos. 955 & 985.

The court finds the existence of mistake, inadvertence, surprise, or excusable neglect, and it will grant the motion to amend the order. The moving party shall lodge an order with the court, consistent with this ruling.

8. [18-10627](#)-A-7    **IN RE: MICHAEL YANCEY**  
[TGM-4](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES  
ATTORNEY(S)  
1-15-2019    [64]

D. GARDNER

**Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

**COMPENSATION AND EXPENSES**

In this Chapter 7 case, Trudi Manfredo, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,510 and reimbursement of expenses in the amount of \$65.63.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

#### **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.

Trudi Manfredo's application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,510 and reimbursement of expenses in the amount of \$65.63.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. [18-14937](#)-A-7     **IN RE: MANUEL RONQUILLO**  
[DMG-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.  
1-14-2019    [[12](#)]

MANUEL RONQUILLO/MV  
D. GARDNER

#### **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.

10. [18-14937](#)-A-7     **IN RE: MANUEL RONQUILLO**  
[DMG-2](#)

MOTION TO AVOID LIEN OF BARCLAYS BANK DELAWARE  
1-14-2019    [\[17\]](#)

MANUEL RONQUILLO/MV  
D. GARDNER

### **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.

11. [18-14242](#)-A-7     **IN RE: ELIZABETH FRANCO**  
[SL-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
1-28-2019    [\[19\]](#)

SCOTT LYONS

#### **Final Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Notice:** LBR 9014-1(f)(2); Fed. R. Bankr. P. 2002(a)(4); no written opposition required

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests conversion of this chapter 7 case to chapter 13. See 11 U.S.C. § 706; Fed. R. Bankr. P. 2002(a)(4).

#### **NON-COMPLIANCE WITH NATIONAL RULES**

The court will deny the motion without prejudice on grounds of insufficient notice. Notice of a motion to convert a case from chapter 7 to chapter 13 shall comply with Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days' notice prior to the hearing. In this case, only 16 days' notice was provided. Certificate of service, filed January 28, 2019, ECF No. 22.

## CIVIL MINUTE ORDER

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

The debtor's motion to convert the case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

12. [18-14748](#)-A-7    **IN RE: JOSE LEMUS**  
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT  
1-10-2019    [[20](#)]

JOSE LEMUS/MV  
MARK ZIMMERMAN

### 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:** Personal service business (nature unspecified), appearing to be 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 only the business and its assets that are described in the motion.

13. [18-14882](#)-A-7    **IN RE: JENNIFER LUND**  
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-2-2019    [[12](#)]

PACIFIC UNION FINANCIAL,  
LLC/MV  
R. BELL  
NANCY LEE/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** Real property in Bakersfield, 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).

### **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, but for \$179.22, meaning that the debtor has virtually no equity in the property. At a minimum, the movant's claim is without adequate protection. Accordingly, 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.

Pacific Union Financial, 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 7217 Hilton Head Way Bakersfield, California, 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.

14. [10-13783](#)-A-7    **IN RE: SUSAN VARELA**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
1-11-2019    [[112](#)]

RATZLAFF, TAMBERI & WONG/MV  
TRUDI MANFREDO

### **Final Ruling**

**Application:** Allowance of First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Ratzlaff Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,701.50 and reimbursement of expenses in the amount of \$17.64.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. §

330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

**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.

Ratzlaff Tamberi & Wong's application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,701.50 and reimbursement of expenses in the amount of \$17.64.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

15. [19-10185](#)-A-7    **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED  
1-23-2019    [[6](#)]

MARK ZIMMERMAN

**No Ruling**

16. [18-14099](#)-A-7    **IN RE: RONALD OSBURN**

MOTION TO DISMISS MOVANT'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
1-14-2019    [[37](#)]

RONALD OSBURN/MV

**No Ruling**

17. [18-14099](#)-A-7    **IN RE: RONALD OSBURN**  
[RAS-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-4-2018    [[21](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
SEAN FERRY/ATTY. FOR MV.  
DISCHARGED 1/22/19. RESPONSIVE PLEADING

**No Ruling**

18. [18-13854](#)-A-7    **IN RE: NAVDEEP SINGH**  
[HLF-2](#)

MOTION BY JUSTIN D. HARRIS TO WITHDRAW AS ATTORNEY  
2-5-2019    [[53](#)]

JUSTIN HARRIS  
OST 2/5/19

**No Ruling**