

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 3, 2017
CALENDAR: 10:00 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. [12-14300](#)-A-7 ARTURO/BERNICE HERNANDEZ CONTINUED MOTION TO AVOID LIEN
MHR-1 OF JONATHAN NEIL & ASSOCIATES,
ARTURO HERNANDEZ/MV INC.
3-13-17 [[34](#)]

MICHAEL RAICHELSON/Atty. for dbt.

Final Ruling

Motion: Avoid a Judicial Lien Based Discharged Judgment Debt

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

Disposition: Granted

Order: Prepared by the movant

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).

The debtor has moved to avoid a judicial lien based on an abstract of judgment that was recorded before the debtor's bankruptcy case was filed. In general, an abstract of judgment may be recorded with a county recorder, creating a lien on all of the judgment debtor's real property in the county. Cal. Civ. Proc. Code §§ 697.310(a); 697.340(a). Further, "[i]f any interest in real property in the county on which a judgment lien could be created . . . is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired." Cal. Civ. Proc. Code § 697.340(b).

In this case, the debtor owned no real property as of the petition date on May 11, 2012. The debtor also did not own or acquire any real property during the pendency of the bankruptcy case until discharge was entered.

Accordingly, at the time of discharge, the judgment debt underlying the abstract of judgment was discharged. In the absence of an obligation created by an underlying judgment, a lien cannot exist as against the debtor. See *Alliance Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235 (1995) ("A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien."). "The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation." *In re Thomas*, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989).

After discharge, the debtor acquired real property located at 9201 Camargo Way, Bakersfield, CA. Facially, the abstract of judgment purports to create a lien on this real property. But because the abstract of judgment is based on a discharged debt, no lien can exist. As a result, the court will issue an order avoiding the apparent lien based on the respondent's abstract of judgment.

2. [16-14108](#)-A-7 ROGER FRAPPIED
JLC-3
ROGER FRAPPIED/MV
JAMES CONKEY/Atty. for dbt.

MOTION TO AVOID LIEN OF EDWIN
K. NILES
4-19-17 [[62](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$200,000

Property Value: \$100,000

Judicial Lien Avoided: \$25,000

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 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.

3. [12-17364](#)-A-7 JOSUE HARO
RSW-3
JOSUE HARO/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK SOUTH DAKOTA
4-11-17 [[32](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$125,820.85

Property Value: \$117,600.00

Judicial Lien Avoided: \$8220.85

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 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. [16-14465](#)-A-7 MATTHEW ESCALANTE
UST-1
TRACY DAVIS/MV
D. GARDNER/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
3-22-17 [[17](#)]

Tentative Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)

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

Disposition: Granted

Order: Prepared by the movant

The debtor has filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code. The U.S. Trustee has moved to dismiss the debtor's case under § 707(b). The motion is brought on grounds that the presumption of abuse arises under § 707(b) (2) and, alternatively, on grounds that the totality of the circumstances warrants dismissal under § 707(b) (3) (B). The debtor opposes the motion.

PRELIMINARY COMMENTS

The court has reviewed the motion and opposition papers. The parties devote the majority of their arguments to the dispute about whether § 707(b) (2)'s presumption of abuse arises and whether special circumstances warrant a departure from the means test. The court will not address any of the facts and arguments relevant to § 707(b) (2). Instead, this ruling is grounded solely on the totality of the circumstances, § 707(b) (3) (B).

TOTALITY OF THE CIRCUMSTANCES

"Section 707(b) (3) provides that even if no presumption of abuse arises under § 707(b) (2) [applying the means test], the bankruptcy court may consider dismissal of a bankruptcy case as an abuse if either (1) the case was filed in bad faith, or (2) "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse.'" *In re Stubblefield*, 430 B.R. 639, 644 (Bankr. D. Or. 2010) (alteration in original). "The means test is not conclusive, the presumption is rebuttable, and a court may still find abuse even if there is no presumption. Indeed, § 707(b) (3) describes precisely that situation and provides considerations for determining abuse when the presumption does not arise or is rebutted. *Calhoun v. U.S. Tr.*, 650 F.3d 338, 342 (4th Cir. 2011) (citation omitted).

Section 707(b) (3) provides:

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2) (A) (i) does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's *financial situation* demonstrates abuse.

11 U.S.C. § 707(b)(3) (emphasis added).

Even though pre-BAPCPA factors are often considered in determining whether abuse arises under § 707(b)(3)(B), § 707(b)(3)(B) establishes a more "relaxed standard" for dismissal compared to the pre-BAPCPA standard of "substantial abuse." See *In re Stubblefield*, 430 B.R. at 644.

The Ninth Circuit's decision in *Price v. U.S. Trustee (In re Price)*, 353 F.3d 1135, 1139-40 (9th Cir. 2004) contains the non-exclusive factors courts ordinarily consider in evaluating whether a chapter 7 case should be dismissed based on the totality of the debtor's financial circumstances. These factors include the following:

- (1) Whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12 or 13 plan which would pay a substantial portion of the unsecured claims;
- (2) Whether the debtor's petition was filed as a consequence of illness, disability, unemployment, or some other calamity;
- (3) Whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them;
- (4) Whether the debtor's proposed family budget is excessive or extravagant;
- (5) Whether the debtor's statement of income and expenses is misrepresentative of the debtor's financial condition; and
- (6) Whether the debtor has engaged in eve-of-bankruptcy purchases.

In re Stubblefield, 430 B.R. 639 at 645 (citing *Price v. U.S. Trustee (In re Price)*, 353 F.3d 1135, 1139-40 (9th Cir. 2004)).

Among the six *Price* factors, the Ninth Circuit determined that the first factor, the debtor's ability to pay a substantial portion of his or her unsecured debts, was of primary importance. [A] debtor's ability to pay his debts will, standing alone, justify a section 707(b) dismissal. The first *Price* factor retains its importance in determining whether a chapter 7 case should be dismissed as an abuse under current § 707(b)(3). *Id.* (citations omitted) (internal quotation marks omitted).

The language of the statute supports giving primary importance to the debtor's ability to pay a substantial portion of his or her unsecured debts. Section 707(b)(3)(B) expressly limits the analysis to the debtor's "financial situation." 11 U.S.C. § 707(b)(3)(B). Moreover, "the ability to repay standing alone justifies dismissal." *In re Boyce*, 446 B.R. 447, 452 (D. Or. 2011).

In evaluating the debtor's ability to repay unsecured creditors, [c]ourts are free to examine the debtor's *actual income* (as opposed to the income stated on the 'means test' form) under the § 707(b)(3)(B) . . . test." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 5:2230, at 5(II)-69 (rev. 2016) (citing cases). This means, the court may consider the debtor's Schedule I and J and other data available on the schedules.

APPLICATION

Judicial Notice

The court takes judicial notice of the voluntary petition, schedules, and statements filed in this case, as well as judicial notice of their contents. Fed. R. Evid. 201. The contents of the schedules and statements are non-hearsay admissions of the debtor to the extent they are offered against the debtor in this matter. Fed. R. Evid. 801(d)(2)(A), (D).

Nature of Debts and Standing

The voluntary petition shows the nature of the debts in this case. They are primarily consumer debts. 11 U.S.C. § 707(b)(1).

Further, the debtor's Form 122A-1 shows that the debtor is above-median income for the debtor's applicable state and household size. See *id.* § 707(b)(7)(A). Therefore, the U.S. Trustee has standing to bring this motion.

Totality of the Circumstances of the Debtor's Financial Situation

The court will only consider the first factor under *Price v. U.S. Trustee (In re Price)*, 353 F.3d 1135, 1139-40 (9th Cir. 2004) because that factor is dispositive. And when a debtor has the ability to pay his debts, this will, standing alone, justify a section 707(b) dismissal.

By debtor's own admission on amended Schedule I, see Form 106Dec, ECF No. 1, the debtor's monthly income after payroll deductions is \$3,837.34. Am. Schedule I, ECF No. 11. The debtor also admitted on Schedule I that his ex-girlfriend makes the \$239.00 car payment. But, as the U.S. Trustee has indicated, this \$239.00 car payment does not appear on Schedule I and it has also been deducted on Schedule J. Accordingly, the court will remove the \$239.00 car payment from Schedule J. The remainder of expenses on Schedule J are also debtor's admissions about his monthly expenses.

In short, the monthly disposable income on Schedule J after removing the \$239.00 car payment is approximately \$621.34. The debtor's monthly disposable income multiplied by 60 months equals approximately \$37,280.40. The debtor has the ability to pay approximately \$37,280.40, or approximately 34% of his unsecured debt, which totals about \$110,512. The debtor mentions in his declaration that student loan payments of about \$350 per month are going to be coming due. No specific date has been provided as to when this payment will be coming due. Nor has this loan amount been factored into the debtor's own Schedule J. However, for the sake of argument, the court will assume that the amount is \$350 and reduce \$621 by that amount, which equals \$271.34. When multiplied by 60, this amount is \$16,280.40, which is approximately 15% of the debtor's unsecured debt. By this measure as well, the debtor has the ability to pay a significant dividend to unsecured creditors over the life of a 5-year plan.

CONCLUSION

For the reasons stated, the court will dismiss this chapter 7 case based on the totality of the circumstances of the debtor's financial situation. 11 U.S.C. § 707(b)(3). The debtor has the ability to pay a significant portion of his unsecured debt over a 60-month period based on his current disposable income.

5. [12-13570](#)-A-7 MITCHELL JONES MOTION TO AVOID LIEN OF CITIBANK
RSB-6 (SOUTH DAKOTA) N.A.
MITCHELL JONES/MV 4-5-17 [[62](#)]
R. BELL/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.

6. [12-13570](#)-A-7 MITCHELL JONES
RSB-7
MITCHELL JONES/MV
R. BELL/Atty. for dbt.

MOTION TO AVOID LIEN OF
DEPARTMENT STORES NATIONAL BANK
4-5-17 [[67](#)]

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.

7. [12-13570](#)-A-7 MITCHELL JONES
RSB-8
MITCHELL JONES/MV
R. BELL/Atty. for dbt.

MOTION TO AVOID LIEN OF GE
MONEY BANK
4-5-17 [[72](#)]

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.

8. [12-13570](#)-A-7 MITCHELL JONES
RSB-9
MITCHELL JONES/MV
R. BELL/Atty. for dbt.

MOTION TO AVOID LIEN OF WELLS
FARGO FINANCIAL BANK
4-5-17 [[77](#)]

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.

9. [16-13478](#)-A-7 RAMON/MILLIE ZAMORA
RP-1
RANDELL PARKER/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO SELL
4-5-17 [[18](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 3 Vehicles

-2006 GMC Envoy

-2007 Chevrolet Malibu

-2006 GMC Sierra

Buyer: Debtors

Sale Price: \$8933 for all three vehicles (\$3050 exemption credit in the 2006 GMC Sierra and the sale of the 20026 GMC Envoy is subject to a lien of \$2383)

Sale Type: Private sale subject to overbid opportunity

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

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

10. [17-10681](#)-A-7 GABRIEL/STEPHANIE MOTION FOR RELIEF FROM
APN-1 BENAVIDEZ AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 3-27-17 [[11](#)]
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Fiat 500L

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.

Santander Consumer USA INC.'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 a 2014 Fiat 500L, 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.

11. [16-14096](#)-A-7 ERIK/LISA RIDDICK MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 3-27-17 [[32](#)]
CORPORATION/MV
NEIL SCHWARTZ/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Toyota Tundra

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.

Toyota Motor Credit'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 a 2016 Toyota Tundra, 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.