

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JULY 8, 2015

10:30 A.M. CHAPTER 7 CASES

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-11700](#)-A-7 GINA ROSALES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-3-15 [[47](#)]

PATRICK KAVANAGH/Atty. for dbt.
\$176 FILING FEE PAID 6/4/15

Final Ruling

The filing fee has been paid. The order to show cause is discharged.

2. [15-11700](#)-A-7 GINA ROSALES MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 5-19-15 [[21](#)]
PATRICK KAVANAGH/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Dodge Grand Caravan

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR PROTECTIVE ORDER
HTK-6 6-10-15 [[387](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling

4. [15-11518](#)-A-7 DANIEL/JESSICA FELIX MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 5-22-15 [[12](#)]
WILLIAM OLCOTT/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Dodge Grand Caravan

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause." 11 U.S.C. § 362(d)(1). Debtors entered into a Retail Installment Purchase Contract for the purchase of a 2011 Dodge Grand Caravan. The contract was assigned to movant. Movant has held a lien on the vehicle. The vehicle was involved in a collision on January 8, 2015, and was declared a total loss by Debtors' insurer. Movant is named as the loss payee Debtors' policy of insurance for the vehicle. These facts constitute cause for stay relief to recover the insurance proceeds to the extent of the debt secured by movant's lien.

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.

5. [15-11518](#)-A-7 DANIEL/JESSICA FELIX MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
WELLS FARGO BANK, NA/MV 6-10-15 [[21](#)]
WILLIAM OLCOTT/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1526 Abrazo 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).

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.

6. [14-12821](#)-A-7 DANIEL/JUDEE SWAINSTON MOTION TO SELL
RP-1 6-9-15 [[63](#)]
RANDELL PARKER/MV
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 05 Honda Quad 350, 05 Honda Quad 250, 02 GEM Golf Cart

Buyer: Debtors

Sale Price: \$3400 (aggregate price for the subject property)

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.

7. [15-11721](#)-A-7 ARTURO VEGA MOTION FOR RELIEF FROM
RDN-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 5-11-15 [[14](#)]
RANDALL NAIMAN/Atty. for mv.
DISMISSED

Final Ruling

The case has been dismissed. The motion is denied as moot.

8. [13-15431](#)-A-7 MOBILE EQUIPMENT MOTION FOR COMPENSATION FOR M.
MKK-2 COMPANY, INC. KATHLEEN KLEIN, ACCOUNTANT(S)
M. KLEIN/MV 5-28-15 [[22](#)]
D. GARDNER/Atty. for dbt.

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, M. Kathleen Klein, 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 \$1415.00 and reimbursement of expenses in the amount of \$333.65.

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.

M. Kathleen Klein'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 \$1415.00 and reimbursement of expenses in the amount of \$333.65.

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. [15-10537](#)-A-7 ALFREDO/JULITA PASCUA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-3-15 [[22](#)]

WILLIAM OLCOTT/Atty. for dbt.
\$30 FILING FEE PAID 6/10/15

Final Ruling

The filing fee has been paid. The order to show cause is discharged.

10. [15-11637](#)-A-7 CANDICE SEUELL MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 5-20-15 [[9](#)]
CURTIS FLOYD/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: Prepared by moving party

Subject: 2014 Mitsubishi Outlander

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

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

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

11. [14-10241](#)-A-7 KHAULA KASSAS MOTION FOR ENLARGEMENT OF TIME
RSW-2 TO FILE REAFFIRMATION AGREEMENT
KHAULA KASSAS/MV 6-10-15 [[34](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling

12. [14-12654](#)-A-7 ROGELIO RIOS MOTION TO EMPLOY LISA HOLDER AS
KDG-1 ATTORNEY(S) AND/OR MOTION TO
VINCENT GORSKI/MV EMPLOY LISA HOLDER AS SPECIAL
COUNSEL
6-17-15 [[59](#)]

PHILLIP GILLET/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling

13. [14-12654](#)-A-7 ROGELIO RIOS MOTION TO SELL FREE AND CLEAR
KDG-2 OF LIENS AND/OR MOTION TO PAY
VINCENT GORSKI/MV 6-17-15 [[62](#)]
PHILLIP GILLET/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling

14. [15-11457](#)-A-7 LESLIE CARLSON MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 5-28-15 [[10](#)]
LEONARD WELSH/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1540 Rodriguez Road, 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).

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.

15. [13-13866](#)-A-7 SCOTT MONROE MOTION FOR COMPENSATION FOR
JMV-1 JEFFREY M. VETTER, CHAPTER 7
JEFFREY VETTER/MV TRUSTEE(S)
6-7-15 [[52](#)]

ROBERT WILLIAMS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Final Ruling

Application: Allowance of 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, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, *see In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$3,550.00 and reimbursement of expenses in the amount of \$14.12.

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.

Jeffrey M. Vetter's application for allowance of 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 to the trustee compensation in the amount of \$3,550.00 and reimbursement of expenses in the amount of \$14.12.

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.

16. [15-11769](#)-A-7 DERRICK PRESSON MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY/MV 6-9-15 [[9](#)]
ROBERT WILLIAMS/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: Prepared by moving party

Subject: 2012 Ford F-350

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

17. [12-13577](#)-A-7 STEVEN/CAROLYN CAMARGO MOTION TO AVOID LIEN OF
RSB-2 CITIBANK, N.A.
STEVEN CAMARGO/MV 5-15-15 [[20](#)]
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

Subject Properties: 2621 Eric Ct., Bakersfield, California and 3300 Moss Street, 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).

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.

18. [14-10199](#)-A-7ALVARO JUAREZ AND MARIVEL MOTION TO SELL
RP-1 MARTINEZ 6-10-15 [[16](#)]
RANDELL PARKER/MV
VINCENT GORSKI/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 04 Nissan Quest SE and 01 Lincoln Navigator

Buyer: Debtors

Sale Price: \$6278.75 (\$3,378.75 aggregate cash for both vehicles plus \$2900 exemption credit for the 04 Nissan Quest)

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.