

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

THURSDAY

JULY 16, 2015

9:00 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. [15-11903](#)-A-7 HECTOR VILLAREAL MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
U.S. BANK NATIONAL 6-10-15 [[30](#)]
ASSOCIATION/MV
JONATHAN CAHILL/Atty. for mv.
DISMISSED

Final Ruling

The case has been dismissed. The motion will be denied as moot.

2. [15-12007](#)-A-7 DENISE HULSEY MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY/MV 6-4-15 [[14](#)]
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: 2011 Ford Escape

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. [15-11708](#)-A-7 LINDA BANTA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
GATEWAY ONE LENDING & 6-12-15 [[13](#)]
FINANCE/MV
MARIO LANGONE/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: 2007 Toyota Corolla

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, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

Here, the debtor has equity in the subject property. The valuation of the property is \$6932.00. The movant's lien secures debt totaling \$6229.43. The equity is \$702.57. This results in an equity cushion of 10.14%. This equity cushion is less than 20%, and is inadequate especially given that the debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. If the debtor misses any more payments the equity cushion will decrease to an amount lower than 10% even if the valuation of the vehicle does not change. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

THOMAS ARMSTRONG/Atty. for dbt.
ROBERT HAWKINS/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 \$2,500.00 and reimbursement of expenses in the amount of \$313.15.

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.

James E. Salven'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 \$2,500.00 and reimbursement of expenses in the amount of \$313.15.

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.

5. [15-12033](#)-A-7 MARIO BOGARIN

CONTINUED RE: ORDER TO SHOW
CAUSE - FAILURE TO PAY FEES
6-5-15 [[19](#)]

Tentative Ruling

The hearing on this order to show cause was continued from June 24, 2015, to allow the debtor time to pay the filing fee. At the continued hearing, if the full filing fee in the sum of \$335 has not been paid by the time of the hearing, the case will be dismissed.

6. [15-10635](#)-A-7 JOHN JANDA
RRM-2
RAYMOND MILLER/MV

CONTINUED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR, TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER
SEC. 707(B), TO EXTEND DEADLINE
TO FILE A COMPLAINT OBJECTING
TO DISCHARGEABILITY OF A DEBT
6-1-15 [[69](#)]

JERRY LOWE/Atty. for dbt.
RAYMOND MILLER/Atty. for mv.

Tentative Ruling

Motion: Extension of Deadlines for Filing Complaint under § 523(c),
Objecting to Discharge, and Filing a Motion to Dismiss under § 707

Notice: LBR 9014-1(f)(2); written opposition required

Disposition: Granted

Order: Civil minute order

FACTS

This case was filed February 24, 2015. The uncontested facts are as follows. The original meeting of creditors in this case was continued to May 14, 2015, for the debtor to file "all new schedules." The deadlines to file a § 523(c) complaint, or an objection to discharge, or a motion to dismiss under § 707(b) or (c), was June 1, 2015. Given that the debtor was to file all new schedules *after* May 14, 2015, about one-half a month before these deadlines, cause exists to extend the deadlines. Supporting this conclusion is that the meeting of creditors was again continued to May 28, 2015, 3 days before the deadlines above.

Moreover, the debtor has not cooperated in providing documents requested in a Rule 2004 examination. The examination has been continued to a date *after* provision of remaining documents requested. No further documents have been provided.

DEFAULTS

Debtor

At the initial hearing on this motion, the debtor and the debtor's attorney both failed to appear or otherwise defend in this matter. At that hearing, the default of the debtor was entered. No opposition at the continued hearing by the debtor will be considered absent a motion to vacate the entry of default.

Case Trustee and U.S. Trustee

The trustee and the U.S. Trustee were served with the motion pursuant to the civil minute order issued after the initial hearing. 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 these respondents is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the movant creditors' deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through and including July 31, 2015.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires. The deadline will be extended through July 3, 2014.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for movant creditors to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through and including July 31, 2015.

EXTENSION OF DEADLINE FOR FILING § 523(c) COMPLAINT

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4007(c). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through and including July 31, 2015.

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.

Creditors Jaswant S. Bawa, Uttam Jit Singh Bajwa, and LRS Collections & Court Services (as assignee of Jaswant S. Bawa and Uttam Jit Singh

Bajwa) has been presented to the court. Having entered the default of the debtor, the trustee and the U.S. Trustee, 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. Cause exists to extend the deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through and including July 31, 2015.

IT IS FURTHER ORDERED that the court finds cause exists to extend the movant creditors' deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through and including July 31, 2015.

IT IS FURTHER ORDERED that the court finds cause exists to extend the deadline for movant creditors to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through and including July 31, 2015.

7. [15-12240](#)-A-7 CHANG WOO MOTION FOR CONTEMPT
6-17-15 [[22](#)]
CHANG WOO/MV
CHANG WOO/Atty. for mv.
WITHDRAWN

Final Ruling

The motion has been withdrawn. The matter is dropped from calendar as moot.

8. [14-11941](#)-A-7 AVTAR/GURMEET SANDHU MOTION TO SELL
TMT-1 6-11-15 [[30](#)]
TRUDI MANFREDO/MV
JEFF REICH/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2006 Mercedes Benz

Buyer: Debtors

Sale Price: \$8325.54 (\$8000.00 cash plus \$325.54 exemption credit)

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.

9. [10-16342](#)-A-7 MANUEL/ENEDINA PEREZ MOTION FOR SANCTIONS FOR
DAC-5 VIOLATION OF THE DISCHARGE
MANUEL PEREZ/MV INJUNCTION
4-21-15 [[29](#)]
- DOROTHY CHANG/Atty. for dbt.
RANDY RISNER/Atty. for mv.

Final Ruling

At the suggestion of the parties, this matter is continued to September 30, 2015, at 9:00 a.m. Not later than September 16, 2015, the parties shall file a joint status report.

10. [15-11448](#)-A-7 WILFRED/NANCY WERNER MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 6-3-15 [[14](#)]
PETER BUNTING/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: Prepared by moving party

Subject: 39474 S Lilley Way, Coarsegold, 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.

11. [15-12148](#)-A-7 ROSS/LESLIE ROBERTS MOTION FOR RELIEF FROM
KDG-1 AUTOMATIC STAY
HABITAT FOR HUMANITY-GOLDEN 6-30-15 [[14](#)]
EMPIRE, INC./MV
R. BELL/Atty. for dbt.
JACOB EATON/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1812 Filson Street, 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). 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).

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

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. The debtor previously allowed 17 pre-petition payments to become delinquent. Together, these facts constitute cause for stay relief. The trustee has filed a non-opposition to the motion. The court does not address grounds for relief under § 362(d) (2) as relief is warranted under § 362(d) (1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

12. [14-11553](#)-A-7 MATTHEW/ANGELA KNOTT OPPOSITION RE: TRUSTEE'S MOTION
RHT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
5-28-15 [[71](#)]

JAMES MILLER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f) (1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to

Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for July 23, 2015, at 11:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R.

Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

13. [15-11553](#)-A-7 STEVEN JOHNSON MOTION TO COMPEL ABANDONMENT
LEH-1 6-1-15 [[13](#)]
STEVEN JOHNSON/MV
LAYNE HAYDEN/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Denied without prejudice

Order: Civil minute order

PARTIES RECEIVING NOTICE

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court will deny the motion without prejudice for lack of sufficient notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the

Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

CONTENT OF NOTICE

The content of the notice does not include information required by the Local Rules. Local Rule 9014-1(d)(4) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. Further, either the notice procedure under LBR 9014-1(f)(1) or (f)(2) should be used in this district. Neither has been unambiguously selected. Lastly, the court would prefer that the notice contain some information regarding the nature of relief requested in the motion.

CIVIL MINUTE ORDER

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

The Debtor Steven Johnson's motion to compel abandonment has been presented to the court. Given the procedural deficiencies noted by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

14. [15-12357](#)-A-7 MARIA PEREZ MOTION TO COMPEL ABANDONMENT
HDN-1 6-26-15 [9]
MARIA PEREZ/MV
HENRY NUNEZ/Atty. for dbt.

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: A day care business that is the debtor's 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). 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

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

17. [12-13067](#)-A-7 MICHAEL JOHANNES
THA-5
TRUDI MANFREDO/MV
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MICHAEL THOMAS
JOHANNES AND/OR MOTION FOR
COMPENSATION FOR STEPHEN DANZ &
ASSOCIATES, SPECIAL COUNSEL(S)
6-1-15 [[71](#)]
- JERRY LOWE/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

No tentative ruling

18. [15-12278](#)-A-7 MATTHEW GOMEZ
RCO-1
INTERSTATE INTRINSIC VALUE
FUND A LLC/MV
JONATHAN DAMEN/Atty. for mv.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-15 [[17](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 124 5 ½ Avenue, Corcoran, 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)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject 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.

19. [15-11283](#)-A-7 GLORIA ESTILLORE MOTION TO EXTEND DEADLINE TO
TMT-1 FILE A COMPLAINT OBJECTING TO
TRUDI MANFREDO/MV DISCHARGE OF THE DEBTOR
6-18-15 [[43](#)]
DAVID JENKINS/Atty. for mv.

Final Ruling

Motion: Extend Trustee's and U.S. Trustee's Deadline for Objecting to Discharge under § 727(a)

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).

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through October 31, 2015.

20. [15-12184](#)-A-7 JESUS/MARIA FIERRO MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
JESUS FIERRO/MV FEE
5-29-15 [[5](#)]
SCOTT LYONS/Atty. for dbt.

No tentative ruling

21. [15-11692](#)-A-7 MARY BARTELS OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-9-15 [[11](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for July 31, 2015, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

22. [15-11193](#)-A-7 BYRON DAVIS AND CANDICE MOTION TO DISMISS CASE
UST-1 HIGHTOWER 6-18-15 [[14](#)]
TRACY DAVIS/MV
SCOTT LYONS/Atty. for dbt.
TERRI DIDION/Atty. for mv.

Final Ruling

Motion: Dismiss Case Pursuant to 11 U.S.C. § 109(h)(1) and § 707(a)

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).

Subsection (h) of § 109 of Title 11 provides: "Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis."

The U.S. Trustee moves to dismiss this case for cause under § 707(a) because the debtors are ineligible to be debtors under § 109(h) as they did not complete their credit counseling requirement by the deadline fixed by § 109(h). The U.S. Trustee also moves to dismiss on the ground that the debtors have not complied with the U.S. Trustee's reasonable requests for proof of child support payments of \$1200 per month.

The debtors' petition date was March 27, 2015. The Bankruptcy Code imposes a technical, statutory requirement for eligibility as a debtor in bankruptcy. During the 180-day period ending on the petition date, an individual must meet the statutory credit-counseling requirement. Meeting the requirement outside the 180-day window will render a person ineligible to be a debtor in bankruptcy. Here, the debtors received their credit counseling on July 31, 2014. The 180-day period during which the debtors were required to fulfill the credit

counseling requirement was September 28, 2014 through the petition date. The debtors completed their credit counseling early but outside the requisite period established by Congress. The court cannot rewrite the technical requirements Congress has imposed as prerequisites to filing bankruptcy. Accordingly, cause under § 707(a) exists to dismiss this case, and the court will not consider the other factual grounds offered for dismissal.

23. [15-10295](#)-A-7 HERIBERTO SANCHEZ MOTION TO AVOID LIEN OF CACH,
GGL-2 LLC
HERIBERTO SANCHEZ/MV 6-8-15 [[38](#)]
GEORGE LOGAN/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.

24. [14-15598](#)-A-7 RALPH/ANNA GERKEN
JES-3
JAMES SALVEN/MV
JOHN BIANCO/Atty. for dbt.

MOTION TO SELL
6-3-15 [[34](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2008 Chevy HHR

Buyer: Debtors

Sale Price: \$4925 (\$2200 cash plus \$2725 exemption credit)

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.

25. [15-11283](#)-A-7 GLORIA ESTILLORE
GLORIA ESTILLORE/MV
GLORIA ESTILLORE/Atty. for mv.

MOTION TO SET ASIDE
7-2-15 [[54](#)]

Tentative Ruling

Motion: Set Aside Unlawful Detainer Eviction

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

Disposition: Denied

Order: Civil minute order

PROCEDURAL ISSUES

Use of Local Rule 9014-1(f) (1) Procedure

The notice of hearing relies on the notice procedure of Local Rule 9014-1(f) (1) because it requires objections (opposition) to be in writing and to be served and filed at least 14 calendar days preceding the date of the hearing. However, the motion and notice were filed on July 2, 2015. A proof of service (attached to the motion) indicates service of the motion was made on July 2, 2015. The motion was filed and served only 14 days prior to the hearing.

Notice of Hearing Not Served

The proof of service (attached to the motion) does not indicate that the notice of hearing was served. This violates the court's Local Rule 9014-1(d)(4), which states that the notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it. When a notice of hearing is not transmitted to a respondent, as here, the notice of hearing does not effectively communicate or advise the respondent of its procedural rights as provided in the local rules.

Lack of Proper Party

The declaration of Laurie Howell filed in support of the opposition to this motion indicates that a proper party has not been served or named as a respondent. Howell represents Lehman XS Trust Mortgage Pass-Through Certificates, Series 2007-15N, U.S. Bank National Association, as Trustee ("U.S. Bank / Lehman"). Local Rule 2017-1(b)(2) states that signing and filing an initial document or causing the attorney's name to be listed in the upper left hand corner of the first page of the initial document, constitutes an appearance as an attorney of record. Laurie Howell and TFLG's name appear on the motion for stay relief, which the court granted. Therefore, they are the attorney of record for U.S. Bank / Lehman. The court rejects the Debtor's argument, unsupported by admissible evidence, that TFLG does not represent U.S. Bank.

The declaration of Howell supports the conclusion that U.S. Bank / Lehman was the party who was awarded a judgment in the unlawful detainer proceeding. The relief sought by the motion would, if the court were able to consider it, affect only the respondent named, TFLG, and would not affect the actual holder of the judgment of possession as to the subject property, U.S. Bank / Lehman. Therefore, the motion is ineffective as against TFLG given the relief sought and ineffective as against U.S. Bank / Lehman given the respondent named. Given the non-joinder of the proper party as well as the other substantive and procedural reasons for denial of the motion, this motion should not proceed. Fed. R. Civ. P. 21.

SUBSTANTIVE ISSUES

Rule 60 Does Not Apply

The asserted legal basis for Debtor's motion to set aside the debtor's eviction is Rule 60(b) of the Federal Rules of Civil Procedure. The court infers this from the motion's statement that "[t]he Court has jurisdiction over this motion by virtue of Federal Laws 60 and 60B."

Rule 60 applies only to federal court orders or judgments. It does not permit a federal court to review state court judgments. "Rule 60(b) does not provide a basis for subject matter jurisdiction over a claim for relief from a state court judgment." *Holder v. Simon*, 384 F. App'x 669 (9th Cir. 2010). "Rule 60(b) applies only to federal court judgments and not to state court proceedings[.]" *de Mol v. Grand Canyon title Agency*, No. CV-10-1895-PHX-DGC, 2010 WL 4269534, at *1 (D. Ariz. Oct. 25, 2010) (internal quotation marks omitted) (quoting *McHenry v. Colgate-Palmolive Co.*, No. 08-CV-2622-KHV, at *6 (D. Kan. Oct.19, 2009)).

Although the judgment of possession that the Debtor challenges has not been attached to the motion, such a judgment would have been entered by a state court, not a federal court. In fact, Laurie Howell's declaration attaches a true and correct copy of the judgment as Exhibit A, and the judgment has been issued by the Fresno County superior court. The court will not use Federal Civil Rule 60 or 60(b) to review an order rendered by a state court. The proper forum for challenging a state court judgment is the state court that rendered the judgment.

Rooker-Feldman Precludes Consideration of the Merits

"The *Rooker-Feldman* doctrine is a well-established jurisdictional rule prohibiting federal courts from exercising appellate review over final state court judgments." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 858-59 (9th Cir. 2008) (citing *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007)); see also *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). The Ninth Circuit has "recognized that [t]he clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (alteration in original) (quoting *Henrichs*, 474 F.3d at 613 (9th Cir. 2007)) (internal quotation marks omitted).

The Ninth Circuit has further held that *Rooker-Feldman* applies to not only to claims directly contesting the merits of a state court judgment, but also to "de facto appeals" that in essence seek review of state court judgments. *Id.* at 859. A de facto appeal seeks adjudication of a claim or issue that would effectively "undercut the state ruling." *Id.* Thus, the *Rooker-Feldman* doctrine prevents a federal trial court from having subject matter jurisdiction over such adjudication. See *id.*

Ordinarily, the *Rooker-Feldman* doctrine has "little or no application to bankruptcy proceedings that invoke substantive rights under the Bankruptcy Code or that, by their nature, could arise only in the context of a federal bankruptcy case." See *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 871 (9th Cir. 2005). However, the bankruptcy court's determination of substantive rights under the Bankruptcy Code should be distinguished from a review of the merits of a state court judgment that would undercut the state court judgment. See *Roussos v. Michaelides (In re Roussos)*, 251 B.R. 86, 95 (B.A.P. 9th Cir. 2000).

Here, the Debtor effectively seeks this court's review of a state court judgment of possession in an unlawful detainer proceeding. This motion presents one of the clearest cases for which the *Rooker-Feldman* doctrine would warrant dismissal. The movant is a federal complainant and movant seeking relief from a state court eviction judgment on grounds that such judgment was erroneous or wrongfully entered. The court finds that the *Rooker-Feldman* doctrine precludes it from considering the merits of that judgment.

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.

Debtor Gloria Alcorde Estillore's motion to set aside an unlawful detainer judgment has been presented to the court. Given the procedural deficiencies noted by the court in its ruling, and given the court's conclusion that the motion is an improper attempt to obtain federal court review of a state court judgment,

IT IS ORDERED that the motion is denied.

26. [15-12691](#)-A-7 HARPREET SINGH MOTION TO COMPEL ABANDONMENT
PBB-1 7-6-15 [5]
HARPREET SINGH/MV
PETER BUNTING/Atty. for dbt.
OST 7/7/15

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(3) and order shortening time; 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: A truck-driving business that is 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). 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.

In the motion, the debtor states that \$135 balance on deposit in a business checking account is not exempt. But Schedule C shows that \$135.00 is in fact claimed exempt for this checking account. Accordingly, the court will treat the motion's statement that no exemption exists for this asset as an inadvertent error.

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

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court

given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f) (1).

27. [15-11521](#)-A-7 JAY/NORMA VILLARREAL OPPOSITION RE: TRUSTEE'S MOTION
RHT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-12-15 [[20](#)]

DISMISSED: 7/6/15

Tentative Ruling

Matter: Notice of Trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss

Notice: LBR 9014-1(f) (1) and Form Notice of Motion; written opposition filed

Disposition: Opposition Dropped from Calendar as Moot

Order: Civil minute order

OPPOSITION

The chapter 7 trustee filed a Notice of Trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss. This notice stated that an opposition to the motion must be filed and served no later than 14 days before the hearing date.

The notice further stated that "[i]n the absence of a timely opposition, no hearing will be held and the case will be dismissed." Notice at ECF No. 21.

To be timely an opposition must have been filed no later than July 2, 2015. The debtors filed an opposition on July 6, 2014. Notice Hr'g & Opp'n, ECF No. 27. The debtors' opposition was 4 days late.

Because the opposition had not been timely filed as of July 2, 2015, the court dismissed this case by order entered on July 6, 2015. Accordingly, the court will drop the opposition from calendar as moot.

CIVIL MINUTE ORDER

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

The debtors' opposition to the trustee's motion to dismiss for failure to appear at the § 341 meeting and motion to extend deadlines has been presented to the court. The opposition having been filed untimely and an order having been entered dismissing this case,

IT IS ORDERED that the opposition is dropped from calendar as moot.