

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** AUGUST 14, 2019  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-12201](#)-A-7     **IN RE: ERNESTO/SARA FLORES**  
[WDO-2](#)

MOTION TO DISMISS CASE  
7-15-2019    [\[13\]](#)

ERNESTO FLORES/MV  
WILLIAM OLCOTT

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

The debtors are asking the court to dismiss the case because the "case was filed inadvertently before the allowable time to file and receive a discharge under Chapter [sic] bankruptcy." ECF No. 13.

The debtors seek dismissal then because they are not eligible for discharge in this case.

However, while this may be true as to the debtors, this does not automatically constitute cause for dismissal under section 707(a). Ineligibility for discharge by itself does not make the case eligible for dismissal.

That is, despite the ineligibility for discharge, the debtor's bankruptcy estate can still be administered. Ineligibility for discharge also does not disqualify the debtors from being debtors in chapter 7. And, while not entitled to discharge, the debtors may still have the protections and benefits of the automatic stay, exemptions, and lien avoidances.

**"Nothing in the [section 727(a)] provision suggests it is intended to preclude such a debtor from becoming a debtor under Chapter 7.** Instead, if an individual's eligibility to receive a Chapter 7 discharge had been intended to be a prerequisite to being a Chapter 7 debtor, the restriction would have been placed in § 109 instead of § 727, which becomes applicable only after the individual has already become a Chapter 7 debtor."

2009 WL 161625, at \*2 (emphasis added). *See also In re Smith*, 133 B.R. 467, 469 (Bankr.N.D.Ind.1991) (reasoning that Congress knew how to restrict the availability of bankruptcy relief and that if Congress had intended to prevent multiple or serial filings, the prohibition against it would "be found in § 109[.]").

As the authors of Collier on Bankruptcy observe "[e]ven in a proceeding in which the debtor is not entitled to a discharge, a debtor may still obtain protection for property, since the exemptions and lien avoidance powers provided by section 522 of the Code would still apply as in any other case." 6 Collier on Bankruptcy ¶ 727.11[a], at 727-53 (15th ed rev.).

*In re Harkins*, 445 B.R. 414, 416-17 (Bankr. E.D. Pa. 2009) (quoting *In re Rogers*, No. 08-21487-13, 2009 WL 161625 (Bankr. D. Kan. Jan. 14, 2009)) (emphasis added).

In other words, the debtors' ineligibility for discharge is not by itself cause for dismissal under section 707(a).

Yet, besides their ineligibility for discharge, the debtors have not advanced any other reason for dismissal of the case.

Moreover, dismissal should be denied if it would prejudice the debtors' creditors. *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004).

This case has been pending since May 24, 2019. The creditors have been prevented from enforcing claims and/or collecting on debt for approximately three months now. The trustee has conducted two meetings of creditors. The debtors have failed to appear in both meetings. It appears that the trustee has been unable to conclude the meeting of creditors. With the protracted movements in the case, the debtors have benefited from the automatic stay for approximately three months now. As such, dismissal of the case without conclusion of the meeting of creditors and administration of the estate would prejudice the creditors of the estate. Dismissal is not appropriate.

The motion will be denied.

#### **CIVIL MINUTE ORDER**

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtors' motion to dismiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.

2. [19-12510](#)-A-7     **IN RE: EDWARD/APRIL VALADAO**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-16-2019    [\[21\]](#)

SANTANDER CONSUMER USA INC./MV  
RILEY WALTER  
JENNIFER WANG/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** leased 2017 Fiat 500 vehicle

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

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement with the moving party, and one postpetition payment is past due. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default.

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

## CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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 2017 Fiat 500 vehicle, 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.

3. [19-12511](#)-A-7     **IN RE: FAULKNER TRUCKING, INC.**  
[BP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-31-2019    [\[14\]](#)

NATIONWIDE AGRIBUSINESS  
INSURANCE COMPANY/MV  
RILEY WALTER  
CALVIN STEAD/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Pending state-court litigation described in the motion  
(against the debtor to recover from insurance)

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).

## STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Nationwide Agribusiness Insurance Company'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

4. [19-12511](#)-A-7     **IN RE: FAULKNER TRUCKING, INC.**  
[BP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-31-2019    [\[21\]](#)

NATIONWIDE AGRIBUSINESS  
INSURANCE COMPANY/MV  
RILEY WALTER  
CALVIN STEAD/ATTY. FOR MV.

### **Final Ruling**

This motion has been dismissed voluntarily by the movant. ECF No. 35.

5. [19-11013](#)-A-7     **IN RE: ELDA RAMIREZ**  
[JES-1](#)

MOTION TO SELL  
7-11-2019    [\[20\]](#)

JAMES SALVEN/MV  
TIMOTHY SPRINGER

### **No Ruling**

6. [19-12513](#)-A-7     **IN RE: RONALD/SALLY FAULKNER**  
[LLE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-17-2019    [\[20\]](#)

BANK OF THE SIERRA/MV  
RILEY WALTER  
LORI ENRICO/ATTY. FOR MV.  
STIPULATION, ECF NO. 43

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 24134 Road 208 Lindsay, CA

This motion will be denied as moot because the court already granted on July 29, 2019 the relief requested by the motion, in conjunction with the parties' submission of a stipulation about such relief. See ECF No. 45.

**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.

Bank of the Sierra's motion for relief from the automatic stay has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied.



7. [19-12513](#)-A-7     **IN RE: RONALD/SALLY FAULKNER**  
[LLE-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC  
STAY  
7-26-2019    [\[41\]](#)

BANK OF THE SIERRA/MV  
RILEY WALTER  
LORI ENRICO/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Approval of Stipulation Granting Stay Relief  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Denied as moot  
**Order:** Civil minute order

**Subject:** 24134 Road 208 Lindsay, CA

This motion will be denied as moot because the court already granted on July 29, 2019 the relief provided for by the stipulation. See ECF No. 45.

**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.

Bank of the Sierra's motion for approval of stipulation has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied.

8. [19-11714](#)-A-7     **IN RE: ADAM CARTER**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-8-2019    [\[18\]](#)

FORD MOTOR CREDIT COMPANY/MV  
GRISELDA TORRES  
AUSTIN NAGEL/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 2017 Ford Transit Connect vehicle

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**

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on April 26, 2019 and a meeting of creditors was first convened on June 3, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 26. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the property.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will

redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the property, the debtor did not do so timely. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 3, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a no asset report on June 4, indicating no interest to administer the vehicle.

Therefore, without this motion being filed, the automatic stay terminated on July 3, 2019.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

#### **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.

Ford Motor Credit Company'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 denied as moot as the automatic stay is no longer in existence.

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.

9. [18-14415](#)-A-7     **IN RE: ANTONIO LOPEZ**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
PC FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)  
7-12-2019    [\[63\]](#)

JEFFREY ROWE

**Final Ruling**

This motion has been voluntarily dismissed by the movant. ECF No. 70.

10. [19-12224](#)-A-7     **IN RE: CHARLENE O'KEEFE**  
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-12-2019    [\[12\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
ROBERT WILLIAMS  
SEAN FERRY/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1908 Spring Way 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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause."

The debtor has indicated in the statement of intention an intent to surrender the property. ECF No. 1. And, the trustee filed a no asset report on July 18, 2019, indicating that he will not be administering the property. This is cause for the granting of relief from stay as to both the debtor and the estate. Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1). 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.

U.S. Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1908 Spring Way Bakersfield, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

11. [17-10152](#)-A-7     **IN RE: CURTIS DAVIS**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
7-11-2019    [\[41\]](#)

JAMES SALVEN/MV  
TIMOTHY SPRINGER

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,300 and reimbursement of expenses in the amount of \$210.50.

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.

Accountant James Salven's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to

appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,300 and reimbursement of expenses in the amount of \$210.50.

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.

12. [19-12360](#)-A-7     **IN RE: ANTONIO/CONCEPCION MARISCAL**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
7-9-2019     [\[12\]](#)

R. BELL

### **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

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtors have failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtors' failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtors attend the next creditor meeting. But, if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on the trustee's declaration without further notice or hearing.

### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b)

or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

#### **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.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtors attend the next continued § 341(a) meeting of creditors scheduled for August 26, 2019 at 12:00 p.m. If the debtors do not appear at this continued meeting, the case will be dismissed on the trustee's declaration without further notice or hearing.

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

13. [11-10664](#)-A-7     **IN RE: VALENTE MARTINEZ AND ROSA FARIAS**  
[TOG-2](#)

MOTION TO AVOID LIEN OF THE CLAIMS CENTER, LLC  
7-10-2019    [\[40\]](#)

VALENTE MARTINEZ/MV  
THOMAS GILLIS

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent



authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. ECF No. 45. The motion was mailed to the attention of someone named Luke Milano. The court cannot tell from the motion document who is Luke Milano.

14. [17-14468](#)-A-7     **IN RE: BRUCE GREER**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI AND WONG,  
ACCOUNTANT(S)  
7-12-2019    [[164](#)]

JANZEN, TAMBERI & WONG/MV  
DAVID JENKINS

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Ratzlaff Tamberi & Wong, accountant for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,498.50 and reimbursement of expenses in the amount of \$29.50.

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.

Accountant Ratzlaff Tamberi & Wong's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,498.50 and reimbursement of expenses in the amount of \$29.50.

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

15. [19-11770](#)-A-7     **IN RE: THOMAS/AMBER BEACH**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
6-24-2019     [\[20\]](#)

MARK ZIMMERMAN

### **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, denied in part

**Order:** Civil minute order

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtors have failed to appear at a scheduled continued meeting of creditors required by 11 U.S.C. § 341. Because the debtors' failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtors attend

the next creditor meeting. But, if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on the trustee's declaration without further notice or hearing.

#### **EXTENSION OF DEADLINES**

The court will deny extension of the section 707(b) and 727 deadlines, as those deadlines run from the initial meeting of creditors, which the debtors attended on June 3.

#### **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.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtors attend the next continued § 341(a) meeting of creditors scheduled for August 26, 2019 at 9:00 a.m. If the debtors do not appear at this continued meeting, the case will be dismissed on the trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that extension of the section 707(b) and 727 deadlines is denied.

16. [19-12573](#)-A-7     **IN RE: MARCELINO GAMINO AND SOCORRO AYALA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-9-2019    [\[13\]](#)

TD AUTO FINANCE LLC/MV  
THOMAS GILLIS  
JENNIFER WANG/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2013 Toyota Scion vehicle

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."

The debtor has indicated in the statement of intention an intent to surrender the vehicle. ECF No. 1. And, the trustee filed a no asset report on July 29, 2019, indicating that he will not be administering the vehicle. This is cause for the granting of relief from stay as to both the debtor and the estate. Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1). 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.

TD Auto Finance, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Toyota Scion vehicle, 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.

17. [17-14385](#)-A-7     **IN RE: GOLDEN EAGLE ENTERPRISES, INC.**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
7-8-2019    [\[94\]](#)

JAMES SALVEN/MV  
DAVID JENKINS

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, James Salven, accountant for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,900 and reimbursement of expenses in the amount of \$600.31.

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.

Accountant James Salven'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 \$4,900 and reimbursement of expenses in the amount of \$600.31.

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.

18. [19-10185](#)-A-7     **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**  
[MAZ-2](#)

MOTION BY MARK ZIMMERMAN TO WITHDRAW AS ATTORNEY  
7-11-2019    [[62](#)]

MARK ZIMMERMAN

#### **Final Ruling**

The Motion is continued to August 28, 2019 AT 9:00 A.M.

19. [17-12886](#)-A-7     **IN RE: HENRY/MICHELLE RESENDEZ**  
[JDR-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.  
7-30-2019    [[27](#)]

HENRY RESENDEZ/MV  
JEFFREY ROWE

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$5,569.33

**All Other Liens (non-avoidable):** \$420,169.53

**Exemption:** \$22,705

**Value of Property:** \$197,642

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

20. [17-12886](#)-A-7     **IN RE: HENRY/MICHELLE RESENDEZ**  
[JDR-3](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC  
7-30-2019    [\[32\]](#)

HENRY RESENDEZ/MV  
JEFFREY ROWE

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$12,500.14

**All Other Liens (non-avoidable):** \$420,169.53

**Exemption:** \$22,705

**Value of Property:** \$197,642

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

21. [10-15491](#)-A-7     **IN RE: JOSEPH/DAWN MEDIATI**  
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DAWN L. MEDIATI  
7-12-2019    [\[81\]](#)

PETER FEAR/MV  
TRUDI MANFREDO/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy Over Medical Device Claims

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

**Disposition:** Granted

**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 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).

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party



proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The material terms and conditions of the compromise include:

(1) a cash payment of \$142,500 in full satisfaction of the debtors' claims;

(2) after a 5% holdback for MDL fees (\$7,125), attorney's fees in the amount of \$51,300, attorney's costs in the amount of \$683.21, lien resolution fees in the amount of \$75, and the debtors' exemption of \$41,658.40 (1/2 of net exempt funds), the estate will receive \$41,658.40.

Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **CIVIL MINUTE ORDER**

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to approve a compromise has been presented to the court. Having 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 court approves the parties' compromise, which settles a dispute involving issues with a medical device. The material terms and conditions of the compromise include: (1) a cash payment of \$142,500 in full satisfaction of the debtors' claims; (2) after various charges, fees, and costs, the estate will receive \$41,658.40.

22. [19-11393](#)-A-7     **IN RE: XUE LEE**  
[RJC-1](#)

MOTION TO EXTEND TIME AND/OR MOTION TO DELAY DISCHARGE  
7-9-2019    [\[18\]](#)

XUE LEE/MV  
ROBERT CERVANTES

### **Tentative Ruling**

**Motion:** Delay Discharge and/or Extend Time to File Reaffirmation Agreements

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

**Disposition:** Denied

**Order:** Civil minute order

The debtor is asking the court to delay entry of discharge and/or extend the time for filing reaffirmation agreements, as the debtor has negotiated reaffirmation agreements with Wells Fargo Bank and Capital One Auto Finance but will need more time to file those agreements. The debtor asks until August 23 to file the agreements.

However, section 524(c)(1) requires the debtor and creditor only to agree on the reaffirmation of a debt before entry of discharge. The debtor does not have to file or obtain approval of the reaffirmation agreement before entry of the discharge. Section 524(c)(3), which addresses filing of the agreement, does not require that it be filed "before the granting of the discharge," as required by section 524(c)(1).

The motion admits that the "Debtor has negotiated" the two reaffirmation agreements. The motion was filed on July 9, as of which date the debtor had not received a discharge. As such, there is nothing for the court to extend. The motion will be denied as unnecessary.

### **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 debtor's motion for delay of entry of discharge and/or extension of the time to file reaffirmation agreements has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.

23. [19-12193](#)-A-7     **IN RE: DYLAN TOLMASOFF**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
7-1-2019    [\[12\]](#)

ROBERT CERVANTES

### **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

### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.  
11 U.S.C. § 343. A continuing failure to attend this meeting may be  
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,  
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.  
2014) ("Some courts have ruled that the failure to attend the § 341  
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting  
of creditors required by 11 U.S.C. § 341. Because the debtor's  
failure to attend this meeting has occurred once, the court will not  
dismiss the case on condition that the debtor attend the next  
creditors' meeting. 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 asks for an  
extension of deadlines. The court extends the following deadlines  
to 60 days after the next continued date of the creditors' meeting:  
(1) the trustee and all creditors' deadline to object to discharge  
under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and  
all creditors' deadline to bring a motion to dismiss under § 707(b)  
or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P.  
1017(e). These deadlines are no longer set at 60 days after the  
first creditors' meeting.

### **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.

IT IS ORDERED that the Motion to Dismiss is denied on the condition  
that the debtor attend the next continued § 341(a) meeting of

creditors scheduled for August 26, 2019 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 next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

24. [19-11394](#)-A-7      **IN RE: GURDEEP/RANJODH BILLAN**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-12-2019    [\[63\]](#)

7184 WEST DOVEWOOD, LLC/MV  
RILEY WALTER  
WENDY LOCKE/ATTY. FOR MV.  
DISCHARGED 7/8/2019

#### **Final Ruling**

**Motion:** Stay Relief

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

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

**Order:** Civil minute order

**Subject:** 7184 W. Dovewood Lane, Fresno, CA

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

#### **AS TO THE DEBTOR**

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

#### **AS TO THE ESTATE**

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 debtors' 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.

#### **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.

7184 West Dovewood, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the estate in the property described in the motion, commonly known as 7184 W. Dovewood Lane, Fresno, CA.

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case.

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.

25. [18-14099](#)-A-7     **IN RE: RONALD OSBURN**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-12-2019    [\[49\]](#)

JPMORGAN CHASE BANK, N.A./MV  
WENDY LOCKE/ATTY. FOR MV.  
DISCHARGED 1/22/2019

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part and denied in part

**Order:** Civil minute order

**Subject:** 2015 Chevrolet Silverado vehicle

### **NO AUTOMATIC STAY**

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On September 28, 2017, the debtor filed a chapter 13 case (case no. 17-13730). That case was dismissed on October 27, 2017 due to the debtor's failure to file bankruptcy schedules, statements, and a plan. On November 30, 2017, the debtor filed another chapter 13 case (case no. 17-14566). That case was dismissed on February 24, 2018 due to the debtor's failure to provide the trustee with required documents. The debtor filed the instant chapter 7 case on October 9, 2018.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the request for relief from stay as to the debtor and the estate will be denied as moot, as the automatic stay did not go into effect upon the filing of the instant case on October 9, 2018.

Nevertheless, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on October 9, 2018. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

### **DEBTOR'S OPPOSITION**

The debtor's opposition to the motion will be overruled. First, whether or not the movant filed a proof of claim is not relevant to standing for the bringing of this motion. The movant may bring this motion even if it did not file a proof of claim.

Actually, proofs of claim are filed only when there are assets to be liquidated for the benefit of the estate. Here, the trustee filed a no asset report on July 30, 2019.

On the other hand, it is the debtor here who is without standing to oppose the motion because the motion implicates the automatic stay and the stay never went into effect in this case, given the debtor's prior dismissed filings. The motion is being denied as moot.

Further, the entry of the debtor's discharge is not relevant to resolving this motion because, once again, no stay went into effect when this case was filed. The debtor's discharge has not been implicated by this motion.

The court notes in the abstract that the entry of a bankruptcy discharge does not prevent a secured creditor from enforcing its claim against its collateral. A discharge only protects the debtor from personal liability on account of the creditor's claim.

The court is making no determinations in this case about the debtor's discharge and the effect it may have on the movant's claim and the enforcement of its claim. Such declaratory relief requires an adversary proceeding, aside from a motion for violation of the discharge injunction. See Fed. R. Bankr. P. 7001(9).

This ruling also does not determine the extent, validity, or priority of anyone's interest in any property. See Fed. R. Bankr. P. 7001(2).

#### **CIVIL MINUTE ORDER**

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

JPMorgan Chase Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part. The court confirms that the automatic stay did not go into effect with respect to the debtor or the bankruptcy estate upon the filing of this case.

IT IS FURTHER ORDERED that the motion is denied in part. The court denies the requests for relief from the automatic stay with respect to the bankruptcy estate and the debtor.

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.