

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** **WEDNESDAY**  
**DATE:** **OCTOBER 5, 2016**  
**CALENDAR:** **10:00 A.M. CHAPTER 7 CASES**

**GENERAL DESIGNATIONS**

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

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

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

1. 16-11212-A-7 SUSAN SUH  
KAZ-1  
BANK OF AMERICA, N.A./MV  
DANA DOUGLAS/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-17-16 [24]

### **Final Ruling**

**Motion:** Stay Relief

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

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

**Order:** Civil minute order

**Subject:** 10315 Starlight Peak Dr., Bakersfield, CA

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

### **AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

### **AS TO ESTATE**

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

### **CIVIL MINUTE ORDER**

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

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

Bank of America, 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 and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 10315 Starlight Peak Dr., Bakersfield, CA. 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. 11 U.S.C. § 362(c) (2) (C).

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.

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.

2. 16-12318-A-7 RUSSELL WILKINS MOTION TO DISMISS CASE PURSUANT  
UST-1 TO 11 U.S.C. SECTION 707(B)  
TRACY DAVIS/MV 9-6-16 [[20](#)]  
JULIE MORADI-LOPES/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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

**Disposition:** Granted

**Order:** Prepared by moving party

#### **STANDARDS FOR DISMISSAL BASED ON PRESUMED ABUSE UNDER SECTION 707(b)(2)**

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8).

Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$7,700.00, whichever is greater, or (2) \$12,850.00. 11 U.S.C. § 707(b)(2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(I).

Current monthly income is defined in Bankruptcy Code § 101(10)(A).

"The term 'current monthly income'--

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income,

derived during the 6-month period ending on-- (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and (B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism."

11 U.S.C. § 101(10A).

## **DISCUSSION**

### Judicial Notice and Admissions

The court takes judicial notice of the debtor's Forms 122A on its docket, and the contents of these forms. Fed. R. Evid. 201. The Forms 122A also contain the debtor's statements, made under penalty of perjury, and are offered against the Debtor, so the statements in these forms constitute party admissions. Fed. R. Evid. 801(d)(2).

### Individual with Primarily Consumer Debt

Section 707(b) does not apply unless a debtor is an individual under chapter 7 whose debts are primarily consumer debts. The debtor here is plainly an individual debtor in chapter 7. Further, the debtor has admitted in his opposition that his debts are consumer debts. And the petition at Part 6 indicates the debtor's affirmative answer to the question whether his debts are primarily consumer debts.

### Above-Median Income

The debtor does not dispute that he is above median-income. Moreover, debtors own Form 122A-1 admits that he is above median income. Line 12b exceeds the median income figure (Line 13) for California, for debtor's applicable household size of 5. This issue is not in dispute.

### Current Monthly Income

The petition in this case was filed on June 28, 2016. Therefore, the relevant 6-month period for determining CMI is the 6-month period ending on May 31, 2016, the last day of the calendar month immediately preceding the date of the commencement of the case.

### *Improper Inclusion of Corporate Revenue and Expenses on Forms 122A*

The U.S. Trustee contends that the debtor's Forms 122A contain a number of inaccuracies and problems. For example, the debtor's form 122A-1 includes gross receipts from an operating business. These gross receipts are from a corporation owned by the debtor, Allnet

Services, Inc., a separate entity not in bankruptcy. The debtor admits that his Form 122A-2 deducts for Allnet's operating expenses in the amount of \$3,276.96. See Debtor's Decl. Ex. 1 ¶ 19 (containing debtor's admission that Line 17 of Form 122A-2 in the amount of \$3,276.96 for involuntary payroll deductions "are Allnet Services Inc[.] business expenses off of a November 2015 through April 2016 P&L," equal to the expenses for 6 months divided by 6).

Debtor's inclusion of gross corporate receipts and corporate expenses on his Forms 122A is improper, because Allnet is a separate entity, not a sole proprietorship. In addition, Line 17 of Form 122A-2 states plainly that this deduction is for involuntary payroll deductions that one's job requires, such as retirement contributions, union dues, and uniform costs. Use of this line for corporate expenses is directly inconsistent with the form's instructions, which are based on the expenses permitted under the IRS's National Standards, § 707(b) (2) (A) (ii) (I).

As a result, the court will subtract \$3,136.83 shown on line 5 and 11 (net income from operating a business) on debtor's Form 122A-1. The court will also subtract \$3,276.96 from Debtor's Form 122A-2, Line 17.

#### *Undisclosed Sources of Income*

The U.S. Trustee has also pointed out that the debtor has undisclosed sources of income. McAbee Decl. 4, ¶ 10, ECF No. 23. These three sources include (1) personal expenses paid directly by Allnet, (2) transfers of cash and unidentified deposits into the Debtor's bank account at Kern Schools Federal Credit Union, and (3) regular monthly payments to the debtor from his in-laws to pay for private school tuition for three of his children. The U.S. Trustee has identified a fourth income-reporting problem contending that: (4) the debtor has significantly under-reported his non-filing spouse's income. McAbee Decl. 4, ¶ 11.

The court will only address income problems (1) and (3). The court need not reach the issues regarding the transfers of cash and unidentified deposits into the debtor's bank account or the under-reporting of the non-filing spouse's income, because addressing only these two sources of income, and the improper deductions from income, results in a presumption of abuse.

#### *Personal Expenses Paid by Debtor's Corporation*

Based on information the debtor provided to the U.S. Trustee, the U.S. Trustee's analyst, McAbee, attests that debtor's corporation Allnet paid debtor's personal expenses in the amount of \$2,809 / month during the CMI period, and that this amount was not disclosed by the debtor.

The debtor responds to this argument by admitting that he pays personal expenses from his business account, though he does not draw a paycheck from this entity. As argued by the U.S. Trustee in her reply, the debtor has admitted that the corporation does pay for his personal expenses, but fails to provide any details about what those expenses are and in what amount. U.S. Tr.'s Reply at 2, ECF No. 30.

Because the debtor has not disputed the U.S. Trustee's factual assertion that the debtor's corporation pays \$2809 per month of his personal expenses, the court finds that this amount should be included as income at Line 10 of Form 122A-1.

### *Private School Tuition*

The debtor declaration indicates that the debtor's Exhibit 1 is a true and correct copy of correspondence sent to the UST and documents submitted to the UST. Debtor's Decl. ¶ 5, ECF No. 27.

Exhibit 1 contains the following question: "Confirm whether or not another individual or entity contributes towards any of the household expenses of the Debtor." The debtor's response is: "My in-laws pay for our kids private school tuition . . ." The debtor then admits, "We received \$2118 in financial help each month for the past 11 months from Jennifer's parents; the funds are earmarked to pay only for private school tuition for three of our four kids. . ." Debtor's Decl. Ex. 1, ¶ 10.

The debtor does not dispute the amount of the tuition assistance. Instead, the Debtor argues that the tuition assistance is strictly for private school tuition. He reasons that the tuition is not included in his expenses, so they should not be included in income.

The debtor's private school costs are plainly a household expense of the debtor. The court interprets the debtor's argument to mean that the debtor has not included the private school tuition in income on Form 122A-1 because he has not deducted the private school tuition as an expense on Form 122A-2.

The debtor cites no authority for the proposition that amounts paid by a third party other than the debtor on a regular basis for the household expenses of the debtor or the debtor's dependents need not be included in income when it cannot be deducted in full on Form 122A-2. Line 20 only permits a limited deduction for education expenses required by one's employment or required for a physically or mentally challenged dependent child if no public education is available for similar services. See Official Form 122A-2. Line 29 permits some education expenses for dependent children under 18 years of age to be deducted (not more than \$160.42 per child) for public or private school, so long as documentation of actual expenses is provided to the trustee.

Under the plain language of 11 U.S.C. § 101(10A), a debtor must include in current monthly income "any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents" regardless of whether such amounts are also deductible as expenses under the means test of § 707(b)(2). This includes the debtor's private school tuition received from the debtor's parents-in-law.

As a result, the court finds that \$2118 should be included in the debtor's CMI for purposes of determining whether the presumption of abuse arises in this case. The court will include \$2118 on Line 10 of the debtor's Form 122A-1.

### *Marital Deduction*

As recommended by the U.S. Trustee, the court finds that \$870 should be subtracted from the Debtor's CMI based on a marital deduction. This deduction is for the non-filing spouse's separate secured debt obligations for her 2015 VW Beetle (\$457) and 2016 VW Passat (\$413).

*Summary of Adjustments to Form 122A-1 / Lines 3-4 of Form 122A-2*

After these two sources of undisclosed income are factored in at Line 10 on Form 122A-1, and after the corporate revenue of \$3,136.83 is removed from Line 5 and 11, the debtor's Line 11 of Form 122A-1 is \$9,452.53. After the marital deduction of \$870 is subtracted at Line 3 of Form 122A-2, the debtor's Adjusted CMI is \$8,582.53. Line 39a (which duplicates line 4) is also deemed \$8582.53.

Deductions from Income

The U.S. Trustee reviewed the debtor's income and expenses to determine whether they were consistent with the National and Local Standards issued by the Internal Revenue Service and § 707(b)(2)(A)(ii). The U.S. Trustee found a number of items that required adjustment, some unfavorably to the debtor and others favorably to the debtor.

In his opposition, the debtor failed to address any of these arguments regarding the debtor's deductions and the corresponding adjustments to them made by the U.S. Trustee. A party's failure in an opposition to address an issue results in a waiver of that issue. "Arguments not raised in opposition to summary judgment or in the opening brief before this court are waived." *Samica Enterprises LLC v. Mail Boxes Etc., Inc.*, 460 F. App'x 664, 666 (9th Cir. 2011); *Yonemoto v. McDonald*, No. CIV. 11-00533 JMS, 2015 WL 1863033, at \*7 (D. Haw. Apr. 22, 2015) ("It is well-established that a party's failure to raise an issue in opposition to a motion for summary judgment operates as a waiver of that issue."). By failing to discuss the issue, the debtor has waived any argument on these grounds.

The court finds that the U.S. Trustee's adjustments to the amounts of the debtor's deductions should be made.

The items on Form 122A-2 that should be adjusted include Line 13f, Line 16, Line 17, Line 25, Line 29, Line 33c, Line 36. And the court will permit a deduction of \$25 for chapter 13 trustee's attorney's fees. (The adjustment to Line 17 has already been discussed above and the amount of \$3,276.96 has been determined as improper. But the court will allow \$942 for this deduction in accordance with the U.S. Trustee's recommendation.)

Adding up all of the deductions for these enumerated items on the debtor's form 122A-2 equals \$4263. After the U.S. Trustee's adjustments, the deductions for the same items total \$1809, resulting in a decrease of \$2454. Accordingly, debtor's total deductions (including IRS expense allowances, additional expense deductions, and deductions for debt) must be reduced by \$2454.

In short, the debtor's Line 38 of Form 122A-2 shows total deductions of \$9441.74. After reducing \$9441.74 by \$2454, the correct amount should be \$6987.74. Line 39b (which duplicates Line 38's Total Deductions) is also \$6987.74.

Monthly Disposable Income

After the above adjustments, Adjusted CMI is \$8,582.53. Total deductions equal \$6987.74. The debtor's monthly disposable income shown at Line 39c is \$1594.79, and when multiplied by 60, equals

\$95,687.40.

#### Alternative Basis for Dismissal

Considering the U.S. Trustee's reply to the debtor's opposition, and declaration in support, the court notes that the U.S. Trustee has identified additional nondisclosures and financial irregularities. Two of them alone would suffice to raise the debtor over the applicable statutory limit of § 707(b)(2)(A)(i) even if the court were to adopt only the debtor's figures on Form 122A-1/2. Unknown deposits totaling \$10,800 were received during the CMI period and not included on Form 122A. This results in an addition of \$1800 per month on Forms 122A. McAbee Decl. ¶ 10, ECF No. 31. Also, the U.S. Trustee has identified a deposit of \$15,000 from Charles Schwab on January 21, 2016. This amount results in an increase in CMI of about \$2500 per month. McAbee Decl. ¶ 11, ECF No. 31.

These two items together result in an increase in CMI of approximately \$4300. Disregarding all other issues raised by the U.S. Trustee, including the adjustments to income and deductions above, and relying solely the debtor's Forms 122A-1/2, these two items alone would result in a monthly disposable income of \$2,520.62 (\$7662.36 Adjusted CMI + 4300 = \$11,962.36; 11,962.36 - \$9441.74 = \$2520.62).

Multiplied by 60, this monthly disposable income figure totals \$151,237.20, which also exceeds the statutory limit of § 707(b)(2)(A)(i)(II).

#### **CONCLUSION**

The debtor has monthly disposable income of \$95,687.40 over a 60-month period. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income on Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i). (Because 25% of the debtor's nonpriority, unsecured debt under § 707(b)(2)(A)(i)(I) equals approximately \$31,907, the applicable statutory limit is \$12,850, which is the lesser of the two limits provided).

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

3. 16-12332-A-7 MANSOOR ALAWGAREY  
UST-1  
TRACY DAVIS/MV  
WILLIAM OLCOTT/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT  
TO 11 U.S.C. SECTION 707(B)  
9-2-16 [16]

#### **Final Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

**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 motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b) (2), which creates a presumption of abuse, and § 707(b) (3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b) (2) is triggered when the debtor's current monthly income less specified expenses, § 707(b) (2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$7,700.00, whichever is greater, or (2) \$12,850.00. 11 U.S.C. § 707(b) (2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b) (2)(B)(I).

This case involves an above-median income debtor whose debts are primarily consumer debts. The debtor has monthly disposable income of \$55,313 over a 60-month period, or if averaging debtor's pay over a 12 month period (assuming he is an 11-month employee), \$23,520 over a 60-month period. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income on Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b) (2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

4. 15-11835-A-7 JAMES/JAMIE CANNON  
RSW-10  
JAMES CANNON/MV  
  
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED OBJECTION TO CLAIM OF  
AERA ENERGY LLC, CLAIM NUMBER  
19  
8-8-16 [550]

**Final Ruling**  
  
At the suggestion of the parties, this matter is continued to November 2, 2016, at 10:00 a.m. Not later than October 26, 2016, the parties will file a joint status report.

5. 15-11835-A-7 JAMES/JAMIE CANNON  
RSW-6  
JAMES CANNON/MV  
  
ROBERT WILLIAMS/Atty. for dbt.

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF TOBY  
CURTIS, CLAIM NUMBER 12  
3-21-16 [[419](#)]

**No tentative ruling.**

6. 15-11835-A-7 JAMES/JAMIE CANNON  
RSW-7  
JAMES CANNON/MV  
  
ROBERT WILLIAMS/Atty. for dbt.

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF TOBY  
CURTIS, CLAIM NUMBER 13  
3-21-16 [[422](#)]

**No tentative ruling.**

7. 16-11440-A-7 IRENE TERRAZAS  
EAT-1  
OCWEN LOAN SERVICING, LLC/MV  
VINCENT GORSKI/Atty. for dbt.  
DARLENE VIGIL/Atty. for mv.  
DISCHARGED

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-25-16 [[17](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

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

**Order:** Civil minute order

**Subject:** 1322 Keyser Road, Ramona, 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 DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

### **AS TO ESTATE**

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).

"[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 4 post-petition payments due on the debt secured by the moving party's lien. 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.

#### **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.

Ocwen Loan Servicing, 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 trustee in the property described in the motion, commonly known as 1322 Keyser Road, Ramona, CA. 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. 11 U.S.C. § 362(c)(2)(C).

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.

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.

8. 16-11543-A-7 FRANK NAPLES AND MARY LOPEZ REAFFIRMATION AGREEMENT WITH EVANGELINA ROBLES  
RAJ WADHWANI/Atty. for dbt. 8-29-16 [20]

**No tentative ruling.**

9.	<u>16-11543-A-7</u>	FRANK NAPLES AND MARY KDG-2 LOPEZ RANDELL PARKER/MV RAJ WADHWANI/Atty. for dbt. LISA HOLDER/Atty. for mv.	MOTION TO SELL 9-14-16 [ <a href="#">32</a> ]
10.	<u>16-11543-A-7</u>	FRANK NAPLES AND MARY SRF-1 LOPEZ  RAJ WADHWANI/Atty. for dbt. STEVEN FOX/Atty. for mv.	OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION 8-1-16 [ <a href="#">13</a> ]
11.	<u>16-12755-A-7</u>	ESTEBAN/MIRIAM LOPEZ APN-1 WELLS FARGO BANK, N.A./MV NEIL SCHWARTZ/Atty. for dbt. AUSTIN NAGEL/Atty. for mv. WELLS FARGO BANK, N.A. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-24-16 [ <a href="#">9</a> ]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2006 BMW X5

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

### **STAY RELIEF**

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

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

#### CIVIL MINUTE ORDER

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

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

Wells Fargo 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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2006 BMW X5, 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.

12. <u>16-13193-A-7</u> MICHAEL GUTTIERREZ DJP-1 EDUCATIONAL EMPLOYEES CREDIT UNION/MV MARK ZIMMERMAN/Atty. for dbt. DON POOL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-13-16 [ <u>12</u> ]
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#### Tentative Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Ram 2500 Crew Cab Tradesman Pickup

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)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada*,

*Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

**CIVIL MINUTE ORDER**

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

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

Educational Employees Credit Union'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,