

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 14, 2018
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. [18-12804](#)-A-7 **IN RE: MITCHELL MIRANDA**
[SAH-3](#)

MOTION FOR EXEMPTION FROM CREDIT COUNSELING REQUIREMENT
AND/OR MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
10-23-2018 [[31](#)]

MITCHELL MIRANDA/MV
SUSAN HEMB

Tentative Ruling

Motion: Exemption from Credit Counseling Requirement and Financial Management Course

Notice: LBR 9014-1(f)(2); no 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). 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).

SUBSTANTIVE LAW

Credit Counseling

Ordinarily, debtors must participate in pre-filing credit counseling prior to filing bankruptcy. 11 U.S.C. § 109(h)(1). That requirement may be excused in limited circumstances:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.** For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Debtor's counsel asserts that the debtor suffered from "cancer that affected the debtor's ability to speak and see clearly". Motion, ECF No. 31, 2:1-2. The court is convinced that a waiver of the credit counseling requirement is appropriate.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless
. . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). In this case, the debtor died on August 24, 2018. The court will grant the waiver of the requirement to complete a personal financial management course.

2. [18-12804](#)-A-7 **IN RE: MITCHELL MIRANDA**
[SAH-4](#)

AMENDED MOTION FOR SUBSTITUTION OF JEANNE MIRANDA AS THE SUCCESSOR TO THE DECEASED DEBTOR MITCHELL MIRANDA, AMENDED MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
10-26-2018 [[37](#)]

MITCHELL MIRANDA/MV
SUSAN HEMB

Tentative Ruling

Motion: Substitution of Representative

Notice: LBR 9014-1(f)(2); no 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). 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).

SUBSTANTIVE LAW

The debtor's widow, Jeanne Miranda seeks to be appointed as the successor for deceased debtor Mitchell Miranda.

Suggestion of Death

When a chapter 7 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, a copy of the death certificate was filed and served on October 19, 2018, 56 days from the decedent's date of death. ECF Nos. 24, 25.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

In this case, the debtor's widow seeks appointment as the successor. The court will substitute Jeanne Miranda, as representative for deceased debtor, Mitchell Miranda.

CIVIL MINUTE ORDER

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

Mitchell Miranda's motion has been presented to the court. Having entered the default of the respondents and having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted. Jeanne Miranda, is appointed as representative for deceased debtor, Mitchell Miranda.

3. [12-60306](#)-A-7 **IN RE: MATTHEW BLANTON**
[DMG-2](#)

MOTION TO AVOID LIEN OF J.R. SMEED
10-15-2018 [[41](#)]

MATTHEW BLANTON/MV
J. IRIGOYEN

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

PROCEDURAL DEFICIENCY: INSUFFICIENT SERVICE

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 on an individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1).

The record does not establish that the motion was served on the named respondent in compliance with Rule 7004. The certificate of service (ECF No. 45), indicates that the Debtor mailed the motion and supporting documents, by certified mail to "J.R. Smeed, National Charter Life Insurance Company, 3200 21st Street, Suite #401, Bakersfield, CA 93301". The court is unable to ascertain whether "J.R. Smeed" is an individual or an entity, and thus cannot determine compliance with Rule 7004.

SUBSTANTIVE DEFICIENCY: FAILURE TO EXEMPT PROPERTY

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th

Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. The debtor's exhibits include an Amended Schedule C reflecting that the subject property is exempt in the amount of \$3,000.00. Exhibit D, ECF No. 44. The problem, however, is that the purported Amended Schedule C, exempting the debtor's residence in that amount, was not filed in this case.

Accordingly, a prima facie case has not been made for relief under § 522(f).

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 debtor's motion to avoid lien of J.R. Smeed d/b/a National Charter Life Insurance Company has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

4. [18-12320](#)-A-7 **IN RE: JOHN TORICK**
[TMT-2](#)

MOTION TO EMPLOY GILMORE MAGNESS JANISSE AS SPECIAL COUNSEL
10-17-2018 [\[33\]](#)

TRUDI MANFREDO/MV
JOEL WINTER
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

Application: Approval of Employment of Special Counsel

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

Disposition: Approved

Order: From chambers

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has

been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person").

"Employment may be for a general or limited, specific purpose." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at *2-3 (Bankr. E.D. Cal. Sept. 12, 2013) (citing 11 U.S.C. § 327(a), (c), (e) and cases), *aff'd sub nom. In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

"A creditor's attorney may be employed by the trustee provided the attorney is 'disinterested,' 'do[es] not hold or represent an interest adverse to the estate,' and, if an objection is made, does not have an 'actual conflict of interest.'" *Id.* (alteration in original) (quoting 11 U.S.C. § 327(a), (c)). "When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the specific matter for which the attorney is to be employed." *Id.* (citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993)).

"Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full, candid, and complete." *Id.* (citing *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006)).

From the factual information provided in the motion and supporting papers, the court will approve the employment.

5. [18-13722](#)-A-7 **IN RE: DREW EDMONSON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-2018 [13]

TD AUTO FINANCE LLC/MV
SCOTT LYONS
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: 2016 Dodge Journey

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.

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 2016 Dodge Journey, 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.

6. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[SFR-4](#)

MOTION TO ENLARGE PREVIOUS ORDER
10-17-2018 [[873](#)]

SHARLENE ROBERTS-CAUDLE/MV
CECILY DUMAS
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.

Final Ruling

Motion: Enlarge Scope of Employment

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

Disposition: Approved

Order: From chambers

Unopposed applications 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).

This court previously approved the employment of Sharlene Roberts-Caudle as trustee's special counsel. Order, May 9, 2018, ECF # 635. The applicant met, and continues to meet, the standards for approval of special counsel and the scope of the proposed employment is consistent with the best interests of the estate. The motion will be granted and the court will issue an order from chambers.

7. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-39](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY,
HOFFELT, GOULD AND BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEES
ATTORNEY(S)

10-17-2018 [[866](#)]

CECILY DUMAS

Final Ruling

Application: Allowance of Third Interim 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, Wilke, Fleury, Hoffelt, counsel for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$97,707.50 and reimbursement of expenses in the amount of \$7,797.71.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CERTIFICATE OF SERVICE

Here, the applicant has used custom prepared Certificates of Service. Certificates of Service, October 17, 2018, ECF #s 871, 872. The court strongly prefers that counsel print the creditors matrix from the court website and append it to the Certificate of Service, rather than retyping the list of parties to whom notice is given.

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

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.

Wilke, Fleury, Hoffelt's application for allowance of interim 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. The court allows interim compensation in the amount of \$97,707.50 and reimbursement of expenses in the amount of \$7,797.71. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

8. [18-12827](#)-A-7 **IN RE: JOSE GALLEGOS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-24-2018 [10]

THOMAS GILLIS

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 November 26, 2018 at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the 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).

9. [18-14027](#)-A-7 **IN RE: JOSEPH CORDOVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-23-2018 [\[26\]](#)

Tentative Ruling

The filing fee not paid, the case will be dismissed.

10. [18-13533](#)-A-7 **IN RE: AMPARO CEBALLOS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-2018 [\[13\]](#)

SANTANDER CONSUMER USA INC./MV
LARS FULLER
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: 2012 Ford F150

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Ford F150, 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. [18-13439](#)-A-7 **IN RE: PETE RAMOS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-24-2018 [[18](#)]

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 November 26, 2018 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).

12. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[TMT-5](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
8-30-2018 [\[82\]](#)

TRUDI MANFREDO/MV
JUSTIN HARRIS
TRUDI MANFREDO/ATTY. FOR MV.

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

13. [18-13540](#)-A-7 **IN RE: ERIC KILIJANSKI**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-3-2018 [\[31\]](#)

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.

The U.S. Trustee Program's Handbook for Chapter 7 Trustees provides that rare circumstances, including a debtor's incarceration, may serve as a basis for allowing a debtor's telephonic appearance at the meeting of creditors. See U.S. Tr. Program, U.S. Dep't of Justice, *Handbook for Ch. 7 Panel Trustees* 3-9 (Oct. 1, 2012).

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 November 19, 2018 at 10:30 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).

14. [18-12544](#)-A-7 **IN RE: CONNIE HELZER**
[TCS-1](#)

PRETRIAL CONFERENCE RE: MOTION TO REDEEM
7-17-2018 [[11](#)]

CONNIE HELZER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the hearing will be dropped as moot.

15. [18-13545](#)-A-7 **IN RE: MARIA AGUILERA**
[RMP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-2018 [[11](#)]

DITECH FINANCIAL LLC/MV
NEIL SCHWARTZ
JAMES LEWIN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 601 Mount Vernon Avenue, Bakersfield

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.

Ditech Financial 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 601 Mount Vernon Avenue, Bakersfield, 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.

16. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-6](#)

MOTION TO AVOID LIEN OF CHRIS FRANKIAN PROPERTY MANAGEMENT
10-2-2018 [\[69\]](#)

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

PROCEDURAL ISSUES

Inadequate Notice

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (citations omitted).

Notice was insufficient. The notice of hearing contains an incorrect hearing date. Notice of Hearing, ECF No. 70, 1:20.

Violation of Local Bankruptcy Rules

Local Bankruptcy Rule 9014-1(e)(1) requires "service of all pleadings and documents filed in support of ... a motion ..."
LBR 9014-1(e)(1). Here, the movants failed to serve the Declaration of Doug Duggins. Certificate of Service, ECF No. 73.

SUBSTANTIVE ISSUE

Ownership of Real Property Unclear

The ownership of the real property is unclear. The record is replete with inconsistencies. The debtors indicate that they "purchased the property on May 12, 2005." Motion, ECF No. 69, ¶ 7, compare with Petition, ECF No. 1, Schedule A (debtors list residence, as community property). As part of this motion, the debtors filed an unsigned Grant Deed dated January 11, 2016, reflecting ownership in the name of "Marvin D. Duggins, an unmarried man and Matthew D. Duggins, a single man as joint tenants." Exhibit C, ECF No. 72. In a different motion, the debtors attach a copy of another Grant Deed dated May 12, 2005, conveying ownership in the name of "Marvin D. Duggins, an unmarried married [sic], as a [sic] and separate property." Exhibit D, ECF No. 28.

For each of these reasons, the motion will be denied without prejudice.

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 debtor's motion to avoid lien of Chris Frankian Property Management has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

17. [13-12450](#)-A-7 **IN RE: MARVIN/MONICA DUGGINS**
[GDB-7](#)

MOTION TO AVOID LIEN OF CHRYSLER FINANCIAL SERVICES AMERICAS
LLC
10-2-2018 [[64](#)]

MARVIN DUGGINS/MV
GREG BLEVINS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

PROCEDURAL ISSUES

Inadequate Notice

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (citations omitted).

Notice was insufficient. The notice of hearing contains an incorrect hearing date. Notice of Hearing, ECF No. 65, 1:20.

Violation of Local Bankruptcy Rules

Local Bankruptcy Rule 9014-1(e)(1) requires "service of all pleadings and documents filed in support of ... a motion ..."
LBR 9014-1(e)(1). Here, the movants failed to serve the Declaration of Doug Duggins. Certificate of Service, ECF No. 68.

SUBSTANTIVE ISSUE

Ownership of Real Property Unclear

The ownership of the real property is unclear. The record is replete with inconsistencies. The debtors indicate that they "purchased the property on May 12, 2005." Motion, ECF No. 64, ¶ 7, *compare with* Petition, ECF No. 1, Schedule A (debtors list residence, as community property). As part of this motion, the debtors filed an unsigned Grant Deed dated January 11, 2016, reflecting ownership in the name of "Marvin D. Duggins, an unmarried man and Matthew D. Duggins, a single man as joint tenants." Exhibit C, ECF No. 67. In a different motion, the debtors attach a copy of another Grant Deed dated May 12, 2005, conveying ownership in the name of "Marvin D. Duggins, an unmarried married [sic], as a [sic] and separate property." Exhibit D, ECF No. 28.

For each of these reasons, the motion will be denied without prejudice.

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 debtor's motion to avoid lien of Chrysler Financial Services Americas, LLC has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

18. [14-10260](#)-A-7 **IN RE: PETRA ENRIQUEZ**
[DRJ-7](#)

CONTINUED MOTION TO ENFORCE DEBTOR'S DISCHARGE IN BANKRUPTCY
CONCERNING LOBEL FINANCIAL CORPORATION
8-28-2018 [[67](#)]

PETRA ENRIQUEZ/MV
DAVID JENKINS

No Ruling

19. [14-10260](#)-A-7 **IN RE: PETRA ENRIQUEZ**
[DRJ-8](#)

CONTINUED MOTION TO ENFORCE DEBTOR'S DISCHARGE CONCERNING
WENCELASO HEREDIA, MARIA ELENA HEREDIA
8-30-2018 [[77](#)]

PETRA ENRIQUEZ/MV
DAVID JENKINS

No Ruling

20. [18-12461](#)-A-7 **IN RE: DONALD/CARYN SPRIGGS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-16-2018 [[15](#)]

WELLS FARGO BANK, N.A./MV
SCOTT LYONS
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 10/02/2018

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: 913 Don Medico Drive, Hanford, 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).

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

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 four 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.

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 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 913 Don Medico Drive, Hanford, California. 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.

21. [18-13467](#)-A-7 **IN RE: JAMES BRUMMETT**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-3-2018 [\[19\]](#)

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.

The U.S. Trustee Program's Handbook for Chapter 7 Trustees provides that rare circumstances, including a debtor's incarceration, may serve as a basis for allowing a debtor's telephonic appearance at the meeting of creditors. See U.S. Tr. Program, U.S. Dep't of Justice, *Handbook for Ch. 7 Panel Trustees* 3-9 (Oct. 1, 2012).

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 November 19, 2018 at 9:30 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).

22. [17-12272](#)-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
[17-1076](#)

CONTINUED PRE-TRIAL CONFERENCE RE: CROSSCLAIM BY JAMES
EDWARD SALVEN AGAINST THE UNITED STATES OF AMERICA,
DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE
9-7-2017 [7]

HUTCHINSON ET AL V. SALVEN ET
AL
RUSSELL REYNOLDS/ATTY. FOR PL.

[By agreement of counsel, this matter will be called at 1:00 p.m.]

No Ruling

23. [17-12272](#)-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
[US-2](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
8-20-2018 [53]

UNITED STATES OF AMERICA/MV
DAVID JENKINS
JONATHAN HAUCK/ATTY. FOR MV.

[By agreement of counsel, this matter will be called at 1:00 p.m.]

No Ruling

24. [18-12091](#)-A-7 **IN RE: HONG MOUA**
[FW-4](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR PEARSON
REALTY, REALTOR(S)
10-24-2018 [[49](#)]

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

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 5392 N. Zediker Avenue, Sanger, California

Buyer: Evelynna V Lim-shelly Liv

Sale Price: \$400,000.00

Sale Type: Private sale subject to overbid opportunity

Compensation: Pearson Realty

Amount: 6 percent (split with cooperating broker)

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).

SALE

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

BROKER COMPENSATION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

The court finds 6 percent of the sale price to be reasonable. Said amount may be split with buyer's cooperating broker.

25. [18-13398](#)-A-7 **IN RE: DENESHIA GARCIA**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-3-2018 [[13](#)]

JOEL WINTER

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 November 19, 2018 at 11:30 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).

26. [18-13699](#)-A-7 **IN RE: STEVEN/HOPE CAPRIOLA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-4-2018 [\[11\]](#)

GLOBAL LENDING SERVICES LLC/MV
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Nissan Altima

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.

Global Lending Services, 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 2014 Nissan Altima, 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.