

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JANUARY 6, 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.

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. [15-14006](#)-A-7 JOSEPH/CYNTHIA LETZKUS MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 11-20-15 [[11](#)]
NEIL SCHWARTZ/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 4744 Willard Street, Bakersfield, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 4744 Willard Street, Bakersfield, CA, 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.

2. [15-14006](#)-A-7 JOSEPH/CYNTHIA LETZKUS MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 12-4-15 [[18](#)]
NEIL SCHWARTZ/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2003 Keystone Springdale

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

STAY RELIEF

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

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

"[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.*

Given that the property described above has a value of \$6965, the equity cushion available to the movant is only about 7.43%. This is significantly below the 20% threshold required for an equity cushion to provide adequate protection. Further, the debtor has missed 1 post-petition payments due on the debt secured by the moving party's lien. These facts constitute 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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2003 Keystone Springdale 268BHLGL, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

3. [15-14506](#)-A-7 CYNTHIA GONZALEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-4-15 [[11](#)]

WILLIAM OLCOTT/Atty. for dbt.
\$335 FILING FEE PAID 12/7/15

Final Ruling

The fee paid, the order to show cause is discharged.

4. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR SANCTIONS
HTK-8 12-9-15 [[449](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
DENIED BY ORDER #453

Final Ruling

The motion denied by order, ECF #453, the matter is dropped as moot.

5. [07-12925](#)-A-7 TIMOTHY/JOANNE KUBELKA MOTION FOR CONTEMPT AND/OR
MRE-1 MOTION TO DISMISS CIVIL
TIMOTHY KUBELKA/MV COLLECTION ACTION , MOTION FOR
SANCTIONS
11-18-15 [[74](#)]

STEVEN STANLEY/Atty. for dbt.
CONTINUED TO 2/3/16, ORDER
#91

Final Ruling

On the stipulation of the parties and order of this court, this matter is continued to February 3, 2016, at 10:00 a.m.

6. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION TO AUTHORIZE TRUSTEE TO
JMV-1 INC. PAY ADMINISTRATIVE EXPENSE TAX
JEFFREY VETTER/MV TO THE FRANCHISE TAX BOARD
12-7-15 [[208](#)]

LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

Order: Civil minute order

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

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see

id. § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, state and federal taxes in the amounts specified in the motion are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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 chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows the following state taxes owed to the California Franchise Tax Board: \$824.00 for tax due for the tax year ending December 31, 2012, \$822.00 for tax due for the tax year ending December 31, 2013, \$800.00 for tax due for the tax year ending December 31, 2014, and \$822.02 for tax due for the tax year ending December 31, 2015. These amounts are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

7. [15-13853](#)-A-7 ROBERTO OCHOA AND LETICIA MEJIA
RP-1
OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-30-15 [[10](#)]

VINCENT GORSKI/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

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

DISMISSAL

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

The court finds that the debtor has failed to appear at the continued date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued 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 requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for January 26, 2016, at 2:30 p.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's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

8. [10-11054](#)-A-7 RONALD/SUSAN SMITH
KDG-5

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIEB AND KIMBALL,
LLP FOR LISA HOLDER, TRUSTEES
ATTORNEY(S)
9-1-15 [[84](#)]

NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

9. [10-11054](#)-A-7 RONALD/SUSAN SMITH
KDG-6
RANDELL PARKER/MV
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-25-15 [[107](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Prepared by objecting party

FACTS

The chapter 7 trustee has filed an objection to the debtors' claim of exemption in a settlement award arising from joint debtor's tort action, which is now evidenced by a proof of claim filed in a religious entity's chapter 11 bankruptcy estate in the District of Montana. The claim was originally pursued as part of a class action lawsuit that joint debtor joined in 2011 after signing a contingency fee agreement with Joseph A. Blumel III, under which Blumel would prosecute joint debtor's "tort claims" against the religious entity named in the Objection to Claim of Exemptions.

The trustee contends that the debtor failed to schedule his tort claim initially or claim it exempt. Given the absence of an objection based on authenticity of the schedules appearing on the court's docket, the court concludes that they are authentic. The court takes judicial notice of the debtors' schedules filed in this case, and the amended schedules, as well as their contents. Fed. R. Evid. 201. Schedules B and C filed in 2010 in the case at ECF No. 1 do not show the tort claim or settlement. On October 15, 2015, joint debtor amended Schedule C to claim an exemption in the settlement award under California Code of Civil Procedure § 703.140(b)(11)(A). The court does not address any of the factual issues relating to this amendment of the debtors' exemptions.

CLAIM OF EXEMPTION IN THE SETTLEMENT AWARD

Joint debtor has claimed the settlement award (received under the aforementioned religious entity's chapter 11 plan in Montana) exempt in its entirety under § 703.140(b)(11)(A) of the California Code of

Civil Procedure. This statute authorizes an exemption in "[t]he debtor's right to receive, or property that is traceable to, . . . [a]n award under a crime victim's reparation law." Cal. Civ. Proc. Code § 703.140(b)(11)(A). Notably, the exemption was not claimed under § 703.140(b)(11)(D) (limiting exemption to \$25,575) or (E) (limiting exemption to amount reasonably necessary for support of the debtor or debtor's dependents).

The debtors' opposition brief fails to address the trustee's argument that the joint debtor's settlement award falls outside the scope of § 703.140(b)(11)(A). As a result, the court will consider the debtors to have waived any argument that the exemption claimed is permitted under § 703.140(b)(11)(A).

Additionally, the debtors' opposition does not object to any of the exhibits of the trustee on evidentiary grounds. Their failure to object to evidence presented in support of the motion, or to move to strike such evidence, effectively waived any objection to the evidence. See *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1003 (9th Cir. 2002) ("In order to preserve a hearsay objection, a party must either move to strike the affidavit or otherwise lodge an objection with the district court."). Here, the court will consider the exhibits, though portions are apparently incomplete (See Exhibit B for example).

Scope of § 703.140(b)(11)(A)

A somewhat recent case addresses the federal counterpart to Cal. Civ. Proc. Code § 703.140(b)(11)(A). See *In re Soares*, 471 B.R. 20 (2012). This case was a bankruptcy court decision, so it is not binding. And its decision on the issue of whether the criminal restitution award in that case is dicta given that the court had already ruled that the trustee's objection to debtor's claim of exemption in the award under a crime victim's reparation law. *Id.* at 32-33.

However, the *Soares* court has some persuasive value regarding the interpretation of 11 U.S.C § 522(d)(11)(A) and in turn, the interpretation of the nearly identical language in § 703.140(b) of the California Code of Civil Procedure.

In *Soares*, the debtor claimed an exemption in a criminal restitution award that arose out of an individual's criminal conduct toward the debtor. *In re Soares*, 471 B.R. at 24 (noting that the defendant was sentenced to probation for a term of 5 years "with restitution."). But the amount of the award had not been decreed pursuant to a restitution hearing in the criminal proceeding, although a docket notation indicated that the restitution hearing was to be scheduled. *Id.*

The court found "that, if an when, [the criminal defendant] was required to pay restitution, such an award would fall within the purview and plain language of § 522(d)(11)(A)." *Id.* at 34. The crime victim's reparation law in that case was Mass. Gen. Laws ch. 258B § 3(o), a statute that authorized recovery by criminal victims, or their family members when the victim is deceased, in the form of restitution that should be made an element of the final disposition of a case. *Id.* at 33. The Massachusetts "crime victim's reparation law" further provides for assistance from the prosecutor in documentation of the victim's losses. *Id.*

Similar to the law at issue in *In re Soares*, California's crime victim's reparation laws are codified both in the Constitution and statutes. The California Constitution provides that criminal victims suffering losses as a result of criminal activity are entitled to restitution from the convicted wrongdoer causing their loss. Cal. Const. art. I, § 28(b)(13). "A victim's right to restitution is, therefore, a constitutional one; it cannot be bargained away or limited, nor can the prosecution waive the victim's right to receive restitution." *People v. Gross*, 238 Cal. App. 4th 1313, 1318, 190 Cal. Rptr. 3d 472, 475 (2015).

And an example of a crime victim's reparation statute in California is Cal. Penal Code § 1202.4, providing for restitution directly from criminal defendants in cases in which their criminal victims have suffered economic losses as a result of the commission of a crime. See Cal. Pen. Code § 1202.4(a), (f) (providing for restitution orders that require criminal defendants to make payments directly to the victims of their crimes and providing for restitution fines).

Additionally, California Government Code § 13950 *et seq.* provides for the procedures by which crime victims may obtain compensation from the state's Restitution Fund. See Cal. Gov't Code § 13950(a)-(b), § 13955(e)-(f) (conditioning compensation of victims and derivative victims on various requirements including that the injury or death be the direct result of a crime, with some exceptions, and defining the types of losses that are compensable).

Settlement Award in this Case

The exhibits in support of the objection reveal that settlement award was paid as a result of joint debtor's *tort claims* brought against the religious entity that filed chapter 11 in the District of Montana. A copy of an email from Brandy Herrick at the Law Office of Joseph A. Blumel III (the attorney who represented joint debtor in his pursuit of his tort action), states that the claims are "personal injury claims" and that the amounts received are for "pain, suffering, anxiety, and general non-economic damages suffered by the claimants." Tr.'s Obj. to Claim of Exemption Ex. H, ECF No. 112. The email further states, "as in other similar tort claim recoveries, I believe these awards are exempt from taxation." *Id.* Exhibit C is titled "Class 4 Tort Claim Ballot and Releases." This exhibit appears to be a ballot for accepting the tort defendant's chapter 11 plan's treatment of joint debtor's claim. This ballot refers to the claim as a "tort claim." The ballot includes a release of "any and all Claims . . . that, directly or indirectly, relate to the Tort Claims, the injuries or damages alleged by any of the Tort Claimants, or the Policies, whether known or unknown . . . in law or equity." Tr.'s Obj. to Claim of Exemption Ex. C at 13, ECF No. 112.

These exhibits reveal that the award transferred to the estate constitutes a monetary settlement of a tort claim rather than property traceable to an award under a crime victim's reparation statute. No party has offered evidence of a criminal proceeding in which joint debtor was awarded reparation or restitution as a crime victim. No party has identified a crime victim's reparation statute that provided the basis for the settlement award. Nor has a proceeding been referenced whereby joint debtor has sought restitution from a fund as a result of a crime adjudicated by a court of record.

The court acknowledges that the facts constituting the basis for the

EQUITABLE ESTOPPEL

CONCLUSION

IT IS ORDERED that the objection is sustained. This ruling is without prejudice to the debtors' right to amend their Schedule C to file an exemption in the settlement award under a different exemption provision under California law. It is further without prejudice to the trustee's right to file an objection to the exemption.

- VINCENT GORSKI/Atty. for dbt.

Order: Civil minute order

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

DISMISSAL

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

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

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for January 8, 2016, at 2:30 p.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's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

11. [15-13269](#)-A-7 ARMENAK BASHIAN
UST-1
TRACY DAVIS/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B)
12-8-15 [[11](#)]

SEVAG NIGOGHOSIAN/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge or File a Motion to Dismiss

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through March 7, 2016.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

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

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to

file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through March 7, 2016.

12. [15-14276](#)-A-7 MIKE/LEANNA QUINTANA MOTION TO COMPEL ABANDONMENT
GT-2 12-18-15 [[23](#)]
MIKE QUINTANA/MV
GRISELDA TORRES/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Quintana Insurance located at 7098 N. Gregory Ave., Fresno, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

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

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

13. [14-11478](#)-A-7 LANCE/JANICE ST PIERRE MOTION FOR COMPENSATION FOR D.
DMG-1 MAX GARDNER, DEBTORS
ATTORNEY(S)
11-25-15 [[95](#)]

VINCENT GORSKI/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Disapproved without prejudice

Order: Civil minute order

The application requests approval of fees for "D. Max Gardner, Attorney at Law." The order of employment, however, specifically employs "Young Wooldridge." When compensation is requested, the court strictly construes the prior employment order in determining the recipient for whom compensation may be authorized. In this case, the application is deficient because it requests compensation for a person who was not named as the person employed in the employment order.

In addition, the application is confusing about whether the application is an interim or final application. The title of the application states that it is final as does paragraph 7. The prayer for relief, a significant component of every application or motion, indicates that it is interim. The notice is confusing as well. It states that the application is interim in the first sentence but the title states that it is final.

Lastly, the notice states that "D. Max Gardner" is the attorney for the debtor. This statement creates ambiguity for parties in interest about the status of the attorney to be compensated.

14. [14-11478](#)-A-7 LANCE/JANICE ST PIERRE MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
SETERUS, INC./MV 11-10-15 [[89](#)]
VINCENT GORSKI/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
DISCHARGED

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: 1000 Sioux Creek Drive, 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 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 18 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.

Federal National Mortgage Association, by and through its subservicer Seterus, Inc., has filed a motion for relief from the automatic stay. 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 1000 Sioux Creek Drive, 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.

15. [15-14681](#)-A-7 MARY SMITH

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-14-15 [[11](#)]

WILLIAM EDWARDS/Atty. for dbt.
\$335 FILING FEE PAID

Final Ruling

The fee paid, the order to show cause is discharged.

16. [15-14387](#)-A-7 CHRISTOPHER/SARAH FERRIS
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
NEIL SCHWARTZ/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-11-15 [[11](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 Honda CRF250XC

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.

American Honda Finance Corp.'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 Honda CRF250XC, 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.