

**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: TUESDAY
DATE: JANUARY 23, 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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. [17-13700](#)-A-7 **IN RE: ARMANDO/ROSARIO MORENO**
[JAD-1](#)

MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION
SERVICE, INC.
12-8-2017 [\[15\]](#)

ARMANDO MORENO/MV
JESSICA DORN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [17-13702](#)-A-7 **IN RE: JASMINE MENDOZA**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-5-2017 [\[10\]](#)

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 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 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
the required § 341 creditors' meeting has occurred only 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 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 no longer be set at 60 days following 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.

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 February 5, 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'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).

3. [17-14106](#)-A-7 **IN RE: ORLANDER STRICKLAND**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-5-2017 [[12](#)]

MARK ZIMMERMAN

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, 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 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 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 the required § 341 creditors' meeting has occurred only 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 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 no longer be set at 60 days following 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.

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 March 5, 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'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).

4. [16-12609](#)-A-7 **IN RE: BRENDA MELGAR**
[ALG-2](#)

TRUSTEE'S FINAL REPORT (TFR)
11-21-2017 [[26](#)]

JANINE ESQUIVEL
OBJECTION WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

5. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[CD-8](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
PILLSBURY WINTHROP SHAW PITTMAN LLP (FOR CECILY A. DUMAS,
DEBTORS ATTORNEY(S)
11-17-2017 [[392](#)]

CECILY DUMAS
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of First and Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Pillsbury Winthrop Shaw Pittman LLP, counsel for the debtor in possession, moves for first and final compensation of \$431,148.50 (discounted 10% from face value) and expenses of \$4,664.39. Creditors Haar Properties, Sandra Haar, Norman Haar, Kevin Price and Katie Harr object to the expense component, only, of the application.

COMPENSATION AND EXPENSES

In this Chapter 11 case, Pillsbury Winthrop Shaw Pittman LLP, counsel for the debtor in possession, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$431,148.50 and reimbursement of expenses in the amount of \$4,664.39.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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).

No party in interest has objected to the compensation component of the application and, upon review, the court finds the amount prayed reasonable within the meaning of § 330(a). Objection has been made to the expense component of the application. The court has reviewed the application, and the last three pages Exhibit B in particular. Exhibits in Support of First and Final Fee Application, November 17, 2017, ECF # 397. The court finds those expenses to be actual, necessary expenses. The court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Pillsbury Winthrop Shaw Pittman LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$431,148.50 and reimbursement of expenses in the amount of \$4,664.39. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

6. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[DMS-2](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE
10-31-2017 [[325](#)]

HAAR PROPERTIES/MV
CECILY DUMAS
DAVID SPIEKER/ATTY. FOR MV.
WITHDRAWN BY STIPULATION

Final Ruling

The motion withdrawn, the matter is dropped as moot. Order, January 9, 2018, ECF # 529.

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

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
PACHULSKI STANG ZIEHL & JONES LLP FOR TEDDY M. KAPUR,
TRUSTEES ATTORNEY(S)
11-17-2017 [[387](#)]

CECILY DUMAS
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Pachulski Stang, Ziehl & Jones, LLP, counsel for the Chapter 11 trustee, moves for first and final compensation of \$197,340.00 and expenses of \$1,946.79. Creditors Haar Properties, Sandra Haar, Norman Haar, Kevin Price and Katie Harr filed objection to this motion. But the body of the objection to the fees of Pillsbury Winthrop. As a consequence, the court gives the objection no weight.

COMPENSATION AND EXPENSES

In this Chapter 11 case, Pachulski Stang, Ziehl & Jones, LLP, counsel for the Chapter 11 trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$197,340.00 and reimbursement of expenses in the amount of \$1,946.79.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$197,340.00 and reimbursement of expenses in the amount of \$1,946.79.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

8. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-22](#)

MOTION FOR ADMINISTRATIVE EXPENSES AND/OR MOTION TO PAY
1-2-2018 [[495](#)]

JAMES SALVEN/MV
CECILY DUMAS
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Allowance and Payment of Administrative Expenses

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

Disposition: Granted

Order: Prepared by moving party

Description of Expenses: Administrative expense claim totaling \$3,116.17 for medical-billing (collections) services provided by Cal-Med Central Billing, Inc. The services were provided from October 1, 2017 through December 5, 2017.

Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

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

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and

substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

These expenses arose postpetition. They arose from transactions between the claimant and the estate.

And they directly and substantially benefited the estate as they were incurred in exchange for services of the claimant to collect amounts owed to the estate. Thus, the expenses described are actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A).

These expenses will be allowed as an administrative expense under § 503(b)(1)(A) and may be distributed in accordance with the priorities set forth in § 726(a)(1) and § 507(a) of the Bankruptcy Code.

9. [15-11936](#)-A-7 **IN RE: EVA PENA**
[MAZ-2](#)

MOTION TO AVOID LIEN OF KINGS CREDIT SERVICES
12-13-2017 [[23](#)]

EVA PENA/MV
MARK ZIMMERMAN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir.

2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

10. [17-13755](#)-A-7 **IN RE: LORENA ESQUIVEL**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2017 [\[28\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
MARK ZIMMERMAN
JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 212 N. Magnolia Ave., Farmersville, 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

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. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (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.*

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. In addition, the equity cushion is only 5.2%, which is significantly less than required for adequate protection. Together, 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.

Freedom Mortgage Corporation'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 212 N. Magnolia Ave., Farmersville, 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.

11. [17-14158](#)-A-7 **IN RE: RONALD/ADIA MAGSBY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-26-2017 [[27](#)]

SANTANDER CONSUMER USA,
INC./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: 2010 Jeep Patriot

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 2010 Jeep Patriot, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

12. [17-14261](#)-A-7 **IN RE: STACY FRANCKA**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2017 [[19](#)]

NATIONSTAR MORTGAGE LLC/MV
PETER BUNTING
DANE EXNOWSKI/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 5308 E. White 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). 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.

Nationstar Mortgage 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 5308 E. White Ave., Fresno, 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.

13. [17-12866](#)-A-7 **IN RE: KHALID CHAOU**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2017 [[94](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
JOEL WINTER
JAMIE HANAWALT/ATTY. FOR MV.

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, 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). A debtor in bankruptcy may be served before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b)(9).

Here, service of the motion was insufficient. The motion and supporting papers were not served on the debtor.

If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney, Joel Winter. It does indicate service on the debtor's former attorney. Before this motion was filed, a substitution of attorney was filed on November 27, 2017 and an order approving that substitution was filed on the same date.

14. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[WJH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-19-2017 [\[33\]](#)

SUNCREST BANK/MV
PETER FEAR
SCOTT LAIRD/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: All livestock born or unborn located at (1) Woody Ranch off Highway 155, approximately 10 miles east of Highway 65 in Woody, CA, and (2) Travoli Ranch at 14228 Ave. 364, Visalia, CA 93292

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.

RETROACTIVE RELIEF

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and

(2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay. The first two factors are not relevant in this case as the debtor has not filed previous bankruptcy cases. The third factor supports retroactive relief because third party buyers of the livestock sold at the Visalia Livestock Market would be prejudiced by retrieval of cattle they purchased in a good faith sale. Retrieval of the sold cattle may also prejudice the movant creditor severely because such cattle may have been further sold to subsequent buyers or may no longer exist in live form, and the motion does not discuss this point. For these reasons, the seventh factor as well supports retroactive relief because restoring the parties to the status quo ante would seem extremely difficult if not impossible when the collateral has been sold to third parties.

Though the fifth factor is not relevant, the sixth factor weighs heavily in favor of retroactive relief being granted. From the facts presented in the motion, the creditor did not know of the sale when the sale occurred. The sale occurred on October 4, 2017 at 12:00 p.m. But the written notice of the bankruptcy was received by the movant's attorneys several hours after the sale at 3:00 p.m.

The ninth and tenth factors also slightly support granting retroactive relief. After being notified of the debtor's bankruptcy, the movant creditor did not make any further repossession of livestock. They did not, for example, repossess or sell the livestock at Travoli Ranch at 14228 Ave. 364, Visalia, CA. The movant filed this motion about 40 days after the violative conduct. Though this motion could have been filed more expeditiously, the timing is not plainly unreasonable.

The court finds that the factors discussed are dispositive on the question whether to grant retroactive relief from stay. Retroactive stay relief will be granted to the date of the petition.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as all livestock born or unborn located at (1) Woody Ranch off Highway 155, approximately 10 miles east of Highway 65 in Woody, CA, and (2) Travoli Ranch at 14228 Ave. 364, Visalia, CA 93292, 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 stay relief is granted retroactively to the date of the petition, September 29, 2017.

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. [17-13680](#)-A-7 **IN RE: JAMES/CARLA COMPOS**
[RLF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-26-2017 [\[36\]](#)

ANNE JENNIFER/MV
JERRY LOWE
JEFF REICH/ATTY. FOR MV.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: state-court litigation having been designated Case No.
14CECG01882

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

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

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien

avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

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

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

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

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as state-court litigation having been designated Case No. 14CECG01882. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

16. [17-14396](#)-A-7 **IN RE: ANA MARTINEZ**
[PLG-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
1-9-2018 [\[12\]](#)

RABIN POURNAZARIAN

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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).

CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

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 convert this case from chapter 7 to chapter 13 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 granted. The court converts this case from chapter 7 to chapter 13.

17. [17-14904](#)-A-7 **IN RE: ARNOLDO MORENO AND CRUZ ORTIZ DE**
MORENO
[SL-1](#)

MOTION TO COMPEL ABANDONMENT
1-12-2018 [\[16\]](#)

ARNOLDO MORENO/MV
SCOTT LYONS
OST

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(3) and order shortening time; no written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: independent truck owner-operator, sole proprietorship

NOTICE

The notice of hearing incorrectly informs parties of whether and when to file written opposition. Because this matter was set for hearing pursuant to LBR 9014-1(f)(3), no written opposition should be required 14 days before the hearing. But the notice requires written opposition inconsistent with LBR 9014-1(f)(3). The court will waive this defect and allow opposition regardless of whether any written opposition was previously filed.

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).

ABANDONMENT

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 only the business and its assets that are described in the motion.