

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MARCH 6, 2019
CALENDAR: 9:45 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. [18-15102](#)-A-7 **IN RE: GREGORY COONTZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-2019 [\[10\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
NEIL SCHWARTZ
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: 2017 Toyota Tacoma

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

STAY RELIEF

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

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

In addition, in the statement of intention, the debtor has stated an intent to surrender the vehicle.

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

CIVIL MINUTE ORDER

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

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

Toyota Motor Credit 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 2017 Toyota Tacoma, 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. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
GENERAL PARTNERSHIP**
[LKW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2019 [\[35\]](#)

CREAM OF THE CROP AG SERVICE,
INC./MV
JACOB EATON
LEONARD WELSH/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

3. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WFH-52](#)

MOTION TO RECONSIDER
2-4-2019 [[992](#)]

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

Final Ruling

Motion: Amend Order (ECF No. 955)
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the 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).

AMENDING ORDERS OR JUDGMENTS UNDER FED. R. CIV. P. 60(b)

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider a judgment, order, or proceeding for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

The motion asks for the court to amend an omnibus objection to claims order (ECF No. 955), entered on December 26, 2018, providing the trustee with conflicting instructions about the payment of the \$11,000 proof of claim # 47-2 of Roxanne Rodriguez.

The order says that the claim should be paid as follows: \$9,922.90 as a priority claim and \$1,077.10 as a general unsecured claim. ECF No. 955 at 6. However, the correct payment ratio under the court's

priority claims order should be as follows: \$2,472.72 as a priority claim and \$8,527.28 as a general unsecured claim. ECF No. 954 at 5.

The error resulted from the trustee's erroneous objection to the claim on the basis of section 507, as exceeding the amounts set by the court's pre-petition priority claims order (ECF No. 954).

The incorrect amounts in the omnibus objection to claims order are: \$9,922.90 as a priority claim and \$1,077.10 as a general unsecured claim. ECF Nos. 955 at 6. The order should be amended to remove these amounts. The correct amounts in the omnibus objection to claims order are: \$2,472.72 as a priority claim and \$8,527.28 as a general unsecured claim, as they are consistent with the amounts of the court's priority claims order. ECF Nos. 955 at 6 & 954 at 5.

This motion is timely. It was filed on February 4, 2019, 40 days after the court entered the order on December 26, 2018. ECF Nos. 955 & 992.

The court finds the existence of mistake, inadvertence, surprise, or excusable neglect, and it will grant the motion to amend the order. The moving party shall lodge an order with the court, consistent with this ruling.

4. [18-13854](#)-A-7 **IN RE: NAVDEEP SINGH**
[HLF-2](#)

CONTINUED MOTION BY JUSTIN D. HARRIS TO WITHDRAW AS ATTORNEY
2-5-2019 [[53](#)]

JUSTIN HARRIS

No Ruling

5. [19-10295](#)-A-7 **IN RE: DEIADRE ANDREWS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-12-2019 [[12](#)]

WILLIAM EDWARDS
\$335.00 FILING FEE PAID IN FULL 2/13/19

Final Ruling

The filing fee paid in full, the order show cause is discharged. The case will remain pending.