

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** MARCH 30, 2016  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

**GENERAL DESIGNATIONS**

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

**ORAL ARGUMENT**

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

**COURT'S ERRORS IN FINAL RULINGS**

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

1. [16-10028](#)-A-7 ARTHUR MARTINEZ  
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
2-15-16 [[22](#)]

### **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 a scheduled meeting of creditors under 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 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 April 8, 2016, 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).

2. [15-12344](#)-A-7      TRAVIS/CHARITY GODDEN      MOTION TO DEFER DISCHARGE  
SAH-2      3-14-16 [[62](#)]  
TRAVIS GODDEN/MV  
SUSAN HEMB/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Defer Discharge Nunc Pro Tunc

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

**Disposition:** Denied

**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).

### **RELIEF SOUGHT**

The debtors request a deferral of their discharge nunc pro tunc (retroactively) to the date the discharge was entered. They also seek this deferral to operate prospectively to August 17, 2017 or until the trustee files her notice of final account and distribution.

## **RULE 4004 (c) (2)**

Federal Rule of Bankruptcy Procedure 4004(c)(2) governs motions by the debtor to defer discharge. The rule provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain." Fed. R. Bankr. P. 4004(c)(2).

"The decision to defer the entry of discharge is entrusted to the discretion of the bankruptcy court." *In re Rich*, 544 B.R. 436, 441 (Bankr. E.D. Cal. 2016) (citing *In re Petrone*, 498 B.R. 1, 3 (1st Cir. BAP 2013)).

## **ANALYSIS**

In this case, although the rule permits only *deferral* of the *entry* of the discharge, the debtors seek to apply the rule to undo or revoke the discharge that has already been entered and additionally to defer the entry of a *subsequent* discharge to a date certain. The debtors have not cited provisions of the Bankruptcy Code or the Rules that would authorize such action. The debtors admit that they received their discharge on October 8, 2015. (The court's docket shows that the discharge was entered on this date. ECF No. 49.)

The court is unwilling to apply Rule 4004(c)(2) to undo a discharge that has already been entered. Such an application of the rule is not a deferral of discharge despite the debtors' casting the relief sought in such terms; instead, this application is in essence a revocation of a discharge entered combined with a request for another discharge to be deferred to a date certain. Rule 4004(c)(2) plainly does not authorize deferral retroactively to vacate a discharge order already entered. The word "defer" means to put off an action to a future time, and this term cannot refer to an action already taken: actions already taken cannot logically be deferred.

Lastly, although the court has discretion to defer entry of a discharge order, this discretion is constrained by the limits defined in Rule 4004(c)(2). The rule permits only a deferral, and not a revocation, of the entry of a discharge order, and it does not permit a deferral of discharge to a date certain unless a motion seeking deferral was filed within the 30-day period during which the discharge had been previously deferred by a prior motion.

Moreover, it appears that an adversary proceeding would be required under these circumstances. Fed. R. Bankr. P. 7001(4).

## **CIVIL MINUTE ORDER**

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

The debtors' motion to defer discharge (nunc pro tunc and prospectively to a date certain) has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

3. [15-12548](#)-A-7 ANNA PARTIDA  
BANK OF AMERICA, N.A./MV  
JEFFREY ROWE/Atty. for dbt.  
WILLIAM MCDONALD/Atty. for mv.

MOTION FOR CONSENT TO ENTER  
INTO LOAN MODIFICATION  
AGREEMENT  
2-18-16 [[24](#)]

### **Final Ruling**

**Motion:** Approval of Mortgage Loan Modification in Chapter 7 Case

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

**Disposition:** Granted

**Order:** Civil minute order

### **LOAN MODIFICATION**

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. See *In re Roderick*, 425 B.R. 556, 563-65 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. See *Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

Here, the loan is secured by a first deed of trust on residential property owned by the debtor. But the debtor received her discharge as of October 5, 2015. Accordingly, the modification will not preserve the personal liability of the debtor as that has already been discharged. Thus, the movant is not seeking in essence a reaffirmation that does not require court approval.

Instead, to the extent the first deed of trust to be modified remains attached to the property, the loan remains non-recourse. The loan modification, if entered, would then affect the terms under which the lien would be released.

Accordingly, the court will authorize such a modification so long as it does not affect the debtor's personal liability.

### **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 for authority to enter into a loan modification agreement 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 debtor is authorized to enter into a loan modification agreement with Bank of America, N.A., which agreement is not a reaffirmation agreement. The loan modification agreement will affect only the non-recourse debt secured by the debtor's real property located at 536 M. Street, Merced, CA, and the terms under which the lien on the debtor's real property will be released. Such agreement shall not affect the debtor's personal liability on such debt.

4. [15-12957](#)-A-7 STEVEN HAUGHT MOTION TO SELL  
RHT-1 2-25-16 [[21](#)]  
ROBERT HAWKINS/MV  
MARK ZIMMERMAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2001 Ford F150 Crew Cab

**Buyer:** Debtor

**Sale Price:** \$4400 (\$1500 cash plus \$2900 exemption credit)

**Sale Type:** Private sale subject to overbid opportunity

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).

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

5. [15-14263](#)-A-7 JOE/SHERRY BARRAZA  
AP-1  
NATIONSTAR MORTGAGE LLC/MV  
PATRICK KAVANAGH/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-1-16 [[17](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 9803 Gold Dust Dr., Bakersfield, CA

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

### **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 9803 Gold Dust Dr., 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.

6. [15-14567](#)-A-7      RODNEY/JUDITH NEW      MOTION TO SELL  
JES-1      3-2-16 [[32](#)]  
JAMES SALVEN/MV  
THOMAS ARMSTRONG/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2008 Cargo trailer and 1998 Flatbed trailer

**Buyer:** Debtor

**Sale Price:**

-2008 Cargo trailer: \$2500 cash

-1998 Flatbed trailer: \$1500 cash

**Sale Type:** Private sale subject to overbid opportunity

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



7. [16-10271](#)-A-7 HEATH/NICKI MACKEY  
MDE-1  
MEDALLION BANK/MV  
R. BELL/Atty. for dbt.  
MARK ESTLE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-29-16 [[11](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2005 Gearbox 295Fw

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.

Medallion 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 a 2005 Gearbox 295Fw, 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.

8. [15-14573](#)-A-7 SONIA GUERRA MOTION TO DELAY DISCHARGE  
TCS-1 2-17-16 [[13](#)]  
SONIA GUERRA/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

9. [14-13881](#)-A-7 RAQUEL FLORES MOTION FOR RELIEF FROM  
MDE-1 AUTOMATIC STAY  
NATIONSTAR MORTGAGE LLC/MV 2-17-16 [[42](#)]  
SCOTT LYONS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.  
DISCHARGED  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the debtor has an equity in the property located at 1600 Ponderosa St., Tulare, CA, see § 362(d)(2), or (ii) whether cause exists under § 362(d)(2) to grant stay relief as to the real property, including the lack of adequate protection .

The court notes that the motion is moot as to the debtor, given that the discharge has been entered. The stay still exists as to the subject property, however, so the motion can proceed as to the property so long as it remains property of the estate.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;

(4) whether discovery is necessary or waived;  
(5) the deadline for Rule 26(a)(1)(A) initial disclosures;  
(6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);  
(7) the deadline for the close of discovery;  
(8) whether the alternate-direct testimony procedure will be used;  
(9) the deadlines for any dispositive motions or evidentiary motions;  
(10) the dates for the evidentiary hearing and the trial time that will be required;  
(11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

10.	<a href="#">15-14882</a> -A-7     GORDON LEONARD AP-1 HSBC BANK USA, NATIONAL ASSOCIATION/MV ROBERT WILLIAMS/Atty. for dbt. JONATHAN CAHILL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-19-16 [ <a href="#">14</a> ]
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**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 12108 Ne 40th Circle, Vancouver, WA

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.

HSBC Bank USA, National Association'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 12108 Ne 40th Circle, Vancouver, WA, 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. [15-14589](#)-A-7 BRITTANY ROSS MOTION TO EMPLOY BERKSHIRE  
TMT-1 HATHAWAY HOMESERVICES  
TRUDI MANFREDO/MV CALIFORNIA REALTY AS BROKER(S)  
2-24-16 [\[25\]](#)
- MARK ZIMMERMAN/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.  
WITHDRAWN

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [15-14992](#)-A-7 CARRIE GRISSOM MOTION TO DISMISS CASE  
GGL-1 2-29-16 [\[20\]](#)
- CARRIE GRISSOM/MV  
GEORGE LOGAN/Atty. for dbt.

### Final Ruling

**Motion:** Dismiss Chapter 7 Case

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

**Disposition:** Granted

**Order:** Prepared by the movant

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).

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal . . . ." 11 U.S.C. § 305(a)(1); see e.g., *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The debtor seeks dismissal of her case due to an unanticipated lack of cooperation between her and her non-filing spouse regarding exemptions. Despite his agreement prepetition to the contrary, the non-filing spouse will not sign a spousal waiver to allow the debtor to use the more suitable exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure. The debtor desires to dismiss the case, finalize a divorce, and then re-file. These facts constitute cause for dismissal under § 707(a).

13.	<u>15-14598</u> -A-7      CARLOS/MARTHA MORALES AP-1 WILMINGTON SAVINGS FUND SOCIETY, FSB/MV GREGORY SHANFELD/Atty. for dbt. JONATHAN CAHILL/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-17-16 [ <a href="#">15</a> ]
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### **Final Ruling**

**Motion:** Stay Relief

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

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

**Order:** Civil minute order

**Subject:** 219 San Felipe Drive, Imperial, CA

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

## **AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

## **AS TO ESTATE**

"[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 2 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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 219 San Felipe Drive, Imperial, 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.

14. [16-10151](#)-A-7 JOSE GUEVARA GOMEZ  
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
2-23-16 [[18](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

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

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

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 a scheduled meeting of creditors under 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 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 April 11, 2016, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee'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).

15. [15-13290](#)-A-7 JOSE/SUSAN MORENO MOTION TO DELAY DISCHARGE  
SAH-2 3-18-16 [[60](#)]  
JOSE MORENO/MV  
SUSAN HEMB/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Defer Discharge Nunc Pro Tunc

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

**Disposition:** Denied

**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).

### **RELIEF SOUGHT**

The debtors request a deferral of their discharge nunc pro tunc (retroactively) to the date the discharge was entered. They also seek this deferral to operate prospectively to August 1, 2017, or until such date as the trustee files her notice of final account and distribution.

### **RULE 4004 (c) (2)**

Federal Rule of Bankruptcy Procedure 4004(c)(2) governs motions by the debtor to defer discharge. The rule provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain." Fed. R. Bankr. P. 4004(c)(2).

"The decision to defer the entry of discharge is entrusted to the discretion of the bankruptcy court." *In re Rich*, 544 B.R. 436, 441



(Bankr. E.D. Cal. 2016) (citing *In re Petrone*, 498 B.R. 1, 3 (1st Cir. BAP 2013)).

## **ANALYSIS**

In this case, although the rule permits only *deferral* of the *entry* of the discharge, the debtors seek to apply the rule to undo or revoke the discharge that has already been entered and additionally to defer the entry of a *subsequent discharge* to a date certain. The debtors have not cited provisions of the Bankruptcy Code or the Rules that would authorize such actions.

The court takes judicial notice of the order, entered on December 8, 2015, discharging both debtors.

The court is unwilling to apply Rule 4004(c)(2) to undo a discharge that has already been entered. Such an application of the rule is not a deferral of discharge despite the debtors' casting the relief sought in such terms; instead, this application is in essence a revocation of a discharge entered combined with a request for another discharge to be deferred to a date certain. Rule 4004(c)(2) plainly does not authorize deferral retroactively to vacate a discharge order already entered. The word "defer" means to put off an action to a future time, and this term cannot refer to an action already taken: actions already taken cannot logically be deferred.

Lastly, although the court has discretion to defer entry of a discharge order, this discretion is constrained by the limits defined in Rule 4004(c)(2). The rule permits only a deferral, and not a revocation, of the entry of a discharge order, and it does not permit a deferral of discharge to a date certain unless a motion seeking deferral was filed within the 30-day period during which the discharge had been previously deferred by a prior motion.

Moreover, it appears that an adversary proceeding would be required under these circumstances. Fed. R. Bankr. P. 7001(4).

## **CIVIL MINUTE ORDER**

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

The debtors' motion to defer discharge (nunc pro tunc and prospectively to a date certain) has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

16. [15-13655](#)-A-7 LEE BROGGI  
DRJ-2  
TRUDI MANFREDO/MV  
PETER BUNTING/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO SELL  
2-24-16 [[42](#)]

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.