

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: APRIL 15, 2020
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [20-10112](#)-A-7 **IN RE: JUAN/MAIRA BERMUDEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-2020 [[19](#)]

TD AUTO FINANCE LLC/MV
BENNY BARCO/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Chevrolet Camaro

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).

The debtors indicated their intent to surrender the vehicle. ECF 1. On February 27, 2020, the debtors contacted the movant advising of their intent to surrender the vehicle.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Chevrolet Camaro, 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. [20-10013](#)-A-7 **IN RE: ANDREA EYRE**
[LSY-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-2020 [[24](#)]

SAN DIEGO COUNTY CREDIT
UNION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LISA YUN/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 Ford Mustang

Value of Collateral: \$26,000.00

Liens Encumbering Collateral: \$37,320.44

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 exceed 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.

San Diego County Credit Union'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 Ford Mustang, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

3. [10-16018](#)-A-7 **IN RE: JOHN/TINA SALATINO**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
3-11-2020 [[79](#)]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Salven, accountant for the 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 \$1,225.00 and reimbursement of expenses in the amount of \$425.49.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

James Salven'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 \$1,225.00 and reimbursement of expenses in the amount of \$425.49.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

4. [20-10224](#)-A-7 **IN RE: SCNRG, LLC**
[MLG-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-3-2020 [[6](#)]

CALECO, LLC/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
DOUGLAS MAHAFFEY/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This motion for stay relief having been denied without prejudice (ECF 23), the court will drop this matter from the calendar as moot.

5. [19-13827](#)-A-7 **IN RE: SARKIS WAKIMIAN**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-2020 [[34](#)]

TOYOTA LEASE TRUST/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 12/09/2019

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. §

362(c)(1). 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).

Prior to this motion, the debtor filed a motion to abandon the subject property. ECF 9. The court having signed an order granting a motion to abandon the subject property (ECF 24), the subject property is no longer property of the estate. The automatic stay no longer exists as to the subject property.

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)). As a result of the subject property no longer being property of the estate, the court will deny this motion as moot.

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 Lease Trust'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 denied as moot. No relief will be awarded.

6. [20-11137](#)-A-7 **IN RE: KC BISTO AND SARAH KLINGLER**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-2020 [[12](#)]

THE GOLDEN 1 CREDIT UNION/MV
R. BELL/ATTY. FOR DBT.
MICHAEL MYERS/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: 2017 Nissan Murano

Value of Collateral: \$20,140.00

Liens Encumbering Collateral: \$36,869.13

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

The Golden 1 Credit Union'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 Nissan Murano, 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.

7. [17-12750](#)-A-7 **IN RE: BRIAN/LOURIE FOLLAND**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-2020 [[118](#)]

CIT BANK, NA/MV
DAVID JENKINS/ATTY. FOR DBT.
DIANA TORRES-BRITO/ATTY. FOR MV.
DISCHARGED 11/09/2017

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: 1530 E La Quinta Drive, Fresno, CA 93730

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

AS TO THE DEBTOR

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

AS TO THE ESTATE

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash

payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The debtor has missed 96 pre-petition payments totaling \$254,333.61 and 31 post-petition payments totaling \$85,653.93 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.

CIT 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 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 1530 E La Quinta Drive, Fresno, CA 93730. 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.

8. [20-10553](#)-A-7 **IN RE: PAUL MONTES**
[PBB-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
3-12-2020 [\[14\]](#)

PETER BUNTING/ATTY. FOR DBT.

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Civil minute order

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

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.

9. [20-10154](#)-A-7 **IN RE: RANASUKHPAL JOHAL**
[CH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-11-2020 [[25](#)]

VFS US LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
BRADFORD HUGHES/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 properly on the debtor.

10. [20-10558](#)-A-7 **IN RE: SAMUEL AGUILERA**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-2020 [\[9\]](#)

NASA FEDERAL CREDIT UNION/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
DIANA TORRES-BRITO/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2007 Toyota Tundra

Value of Collateral: \$15,750.00

Liens Encumbering Collateral: \$17,425.95

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.

NASA Federal Credit Union'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 2007 Toyota Tundra, 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. [19-12461](#)-A-7 **IN RE: GREGORY NELSON**
[DRJ-2](#)

CONTINUED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE,
CLAIM NUMBER 4
1-18-2020 [\[58\]](#)

GREGORY NELSON/MV
DAVID JENKINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim No. 4

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled

Order: Civil minute order

Debtor objects to the allowance of Claim No. 4 filed by the claimant. The claimant IRS opposes the objection. The court will overrule the objection for the reasons discussed.

FACTS

The bulk of the liabilities asserted in the IRS Claim are Trust Fund Recovery Penalties (TFRP) stemming from the debtor Gregory Nelson's role as the owner and the only corporate officer (President) of American Drywall Service, Inc. (American Drywall). American Drywall failed to pay over to the United States trust fund taxes for Social Security and Medicare contributions withheld from its employees' wages 2012 through 2017. Additionally, it failed to timely file its returns for many of these periods. Thornton-Wiatt Dec. ¶¶ 6-7, ECF No. 72.

Nelson's TFRP liabilities fall into two large groups: the 2012-15 Periods and the 2016-17 periods.

PROCEDURE

Nelson filed this bankruptcy case in 2019 under Ch. 13. *In re Gregory M. Nelson*, Case No. 19-12461-A-7F, ECF No. 1. The IRS timely filed its proof of claim for over \$1,190,000 in unsecured priority claims, consisting of over \$1,150,000 in Trust Fund Recovery Penalties, and about \$30,000 for unfiled income tax returns for 2016, 2017, and 2018. Claim 4-1.

The Ch. 13 trustee moved to dismiss the case, citing the debtor's (1) failure to file tax returns for years 2016, 2017 and 2018 and (2) ineligible, 11 U.S.C. §109(e) (unsecured debt totals \$1,524,259.26, which is over the eligibility limit by \$1,104,984.26). Mot. To Dismiss, ECF No. 19. In response, Nelson stated that the income tax returns for 2016-2018 were filed and requested the case be converted to Ch. 7, alleging that the tax liabilities at issue were untimely assessed. Debtor's Response, ECF No. 25. The case was converted to Ch. 7. Order, ECF No. 30.

The IRS subsequently amended its Proof of Claim to reflect the new income tax liabilities for 2016-2018, but left the Trust Fund Recovery Penalties unchanged. Claim 4-2. As of now, the status of this case is a "no asset" Ch. 7, awaiting entry of Nelson's discharge. Notice of No Distribution, ECF No. 56.

Nelson's objection to the IRS's claim seeks disallowance of the claim in full. Nelson stated he intends to convert the Ch. 7 case back to Ch. 13 once this claim, which caused his obligations to exceed the debt limits to Ch. 13, has been disallowed. Objection ¶¶ 1-2, ECF No. 58. Nelson stated, "The Debtor's best estimate is that at least half of the obligations asserted were not timely assessed and are not owed. Debtor believes he may qualify as an innocent party whose liability is excused." *Id.*

The objection is solely supported by a declaration from Nelson's attorney stating that the IRS Claim "fails to provide sufficient information to enable me to determine whether the amount claimed is accurate or the taxes were assessed within the 3 year statute of limitations provided for in 26 USC § 6501." Jenkins Dec. ¶ 2, ECF No. 60.

JURISDICTION

This court has jurisdiction. See 28 U.S.C. §§ 1334, 157(a), (b)(1); General Order No. 182 of the U.S. District Court for the Eastern District of California. This is a core proceeding in which this court may enter final orders. See 28 U.S.C. § 157(b)(2)(B),(O).

LAW

Standing

A Ch. 7 debtor generally does not have standing to object to a claim. *In re Wellman*, 378 B.R. 416 (B.A.P. 9th Cir. 2007), citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442 (9th Cir.1983) (stating that "a hopelessly insolvent debtor does not have standing to appeal orders affecting the size of the estate"). However, a "Chapter 7 debtor may have standing to object to a claim if the outcome of the objection would affect his or her rights; e.g., if a surplus estate exists or the outcome of the objection would affect the amount paid on nondischargeable claims." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Determination of Disputed Claims and Interests, § 17:1362 (Rutter Group December 2019), citing *In re 60 East 80th Street Equities, Inc.* 218 F.3d 109, 115-116 (2nd Cir. 2000); *Mulligan v. Sobiech* 131 BR 917, 920 (S.D. NY 1991); *In re Toms* 229 BR 646, 650-652 (E.D. PA 1999)]. The burden is on the debtor to show standing. See *An-Tze Cheng v. K & S Diversified Invs., Inc. (In re An-Tze Cheng)*, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004) (placing burden on objecting party to demonstrate standing), *aff'd*, 160 F. App'x 644 (9th Cir. 2005).

Regarding the second part of the standing standard, a debt can be nondischargeable because of a judgment denying or revoking a debtor's discharge, 11 U.S.C. § 727(a), (d), or because of a judgment determining that a debt is nondischargeable under § 523(a).

11 U.S.C. 523(a) states that a discharge under 11 U.S.C. § 727, 1141, 1228(a), 1228(b), or 1328(b) does not discharge an individual debtor from any debt "for a tax or a customs duty for periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not such a claim for such tax was filed or allowed." 11 U.S.C. 523(a). A discharged debtor would therefore not be discharged from a debt involving "a tax required to be collected or withheld and for which the debtor is liable in whatever capacity." See 11 U.S.C. § 507(a)(8)(C). *In re Carpenter*, 540 B.R. 691, 694 (B.A.P. 9th Cir. 2015) (stating that trust fund taxes fall within § 507(a)(8)(C).) As a result, a Ch. 7 debtor has standing to object to a claim involving a trust fund tax under § 507(a)(8)(C), as long as the debtor shows the outcome of the objection would affect his obligation to pay on the claims. The cases reveal, moreover, that the disallowance of a claim has the capacity to affect a nondischargeable debt in distinct ways.

Regardless of an estate's solvency, a nondischargeable debt is affected by a claim objection when it is reduced by a successful objection to the claim evidencing that debt. See *In re Toms*, 229 B.R. 646, 651 (Bankr. E.D. Pa. 1999); *In re Parsons*, No. 09-02937, 2014 WL 1329541, at *1 (Bankr. D. Haw. Mar. 19, 2014) (stating a three-part standard for standing, in which one alternative is that

the debtor will remain liable for all allowed claims against the estate).

Furthermore, an order disallowing a claim has preclusive effect under the principles of res judicata. *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 529-30 (9th Cir. 1998) ([W]e have held that a bankruptcy court's allowance or disallowance of a claim is a final judgment."). If the debtor succeeds in bringing an objection to a claim evidencing a nondischargeable debt, then the disallowance of all or part of such claim has a concrete effect on the debtor's legal rights post-bankruptcy. The debtor has a pecuniary interest in the outcome of a claim objection that, if successful, would constitute a final, preclusive judgment reducing the debtor's own personal liability.

POC Legal Standards

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

Also, "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express*

Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

Trust Fund Recovery Penalties (TFRP) Assessments

An employer is required to withhold from an employee's wages and then pay over to the I.R.S. federal income tax and the employees' share of Social Security taxes and Medicare tax. 26 U.S.C. §§ 3101(a), 3101(b)(1), 3201(a), 3402(a)(1), and 3403. "Federal taxes that an employer withholds from an employee's wages are known as 'trust fund taxes.'" *Davis v. United States*, 961 F.2d 867, 869 (9th Cir. 1992). Pursuant to 26 U.S.C. § 6672(a), "[a]ny person required to collect, truthfully account for, and pay over any tax ... who willfully fails to collect such tax, or truthfully account for and pay over such tax ... shall ... be liable to a penalty equal to the total amount of the tax ... not collected, or not accounted for, and paid over." Liability for Trust Fund Recovery Penalty (TFRP) may be imposed upon any responsible person who acted willfully in failing to collect or pay over withheld taxes. *Davis*, at 869-70.

In general, the IRS has a three-year statute of limitations for making TFRP assessments under 26 U.S.C. § 6672. The limitations period runs from the date of the filing of the tax return or the due date of the return, whichever is later. See 26 U.S.C. § 6501(a). IRS has an additional 30 days from when it makes a "final administrative determination" on the taxpayer's pre-assessment protest to assess the taxpayer. 26 U.S.C. § 6672(b)(3)(B).

DISCUSSION

Standing

If the court determines "at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Federal Rule of Civil Procedure 12(h)(3), incorporated by Fed. R. Bankr. Proc. 7012(b). Standing is a critically important jurisdictional limitation. It is "an essential and unchanging part of the case-or-controversy requirement of Article III." [*Lujan v. Defenders of Wildlife* 504 US 555, 560 (1992)]. Therefore, even if the parties of the case do not raise standing issues, the court must raise such issues sua sponte.

The debtor may have standing to object to the claim if he demonstrates a surplus estate exists or if the outcome of the objection would affect his amounts to be paid on a nondischargeable claim. A trust fund tax is considered nondischargeable under 11 U.S.C. § 523(a)(1), incorporating 507(a)(8)(C); *In re Carpenter* at 694. Regardless of an estate's solvency, a nondischargeable debt is affected by a claim objection when it is reduced by a successful objection to the claim evidencing that debt. See *In re Toms* at 651. Furthermore, an order disallowing a claim has preclusive effect

under the principles of res judicata. *Siegel v. Fed. Home Loan Mortg. Corp* at 529-30.

The IRS claim here involves trust fund taxes, and is thus nondischargeable. The claim would follow the debtor post-bankruptcy. If the debtor successfully challenges the claim, the debtor's legal interests in the claim will be affected. It appears to the court that the debtor has sufficient interest in the outcome of the claim objection. The court therefore concludes that the debtor has standing to object to the IRS claim.

Prima facie validity

The IRS's claim was executed with the attachment form to Official Form 410, containing the amount of the debtor's liability for each involved tax period. No other supporting document had been attached to the claim. An official bankruptcy form does not evidence validity of the IRS's claim under Fed. R. Bankr. P. 3001(c). The court does not deem the claim prima facie valid under Fed. R. Bankr. P. 3001(c), (f) and *Campbell*.

However, the IRS's timely response addresses the debtor's inquiries in his objection in detail as to whether the TFRP assessments of the debtor's liability were timely. IRS Opposition, ECF No. 71. A timely-filed supporting declaration of an IRS Insolvency Specialist confers the timeliness and accuracy of the TFRP assessments. Thornton-Wiatt Dec., ECF No. 72. The IRS's response and the declaration evidence the otherwise unsupported aspects of the claim. The court deems the IRS to have adequately responded to the debtor's objection under *Heath*.

In contrast, the debtor's objection to claim only states that the debtor "believes he may qualify as an innocent party whose liability is excused." Objection, ECF No. 58. The debtor did not make legal or factual arguments as to why he should not be liable for the assessed tax claims.

Also, the only support to the objection has been the declaration of the debtor's attorney. Jenkins Dec., ECF No. 60.

An attorney's affidavit is treated like all other affidavits and is not sufficient unless it is based on personal knowledge. *Postscript Enterprises v. City of Bridgeton*, 905 F.2d 223, 225 (8th Cir. 1990). The court, however, may infer an affiant has the requisite personal knowledge and competence to testify by considering the affiant's position or participation in the matters at hand. See *Barthelemy v. Air Line [Lines] Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990).

Attorneys generally participate in and, therefore, have personal knowledge of only those matters that occurred during the course of litigation such as when and where a deposition took place. Under most circumstances, an attorney has no personal knowledge of and is

not competent to testify to the authenticity of documents generated before the litigation began or merely produced by his client. In other words, an attorney cannot acquire personal knowledge based on hearsay from his client. See *U.S. v. Dibble*, 429 F.2d 598, 602 (1970) (testimony that an affiant works with or for someone who has personal knowledge of the authenticity of a document does not establish the affiant also has the requisite personal knowledge to authenticate it); *Garcia v. Fannie Mae*, 794 F. Supp. 2d 1155, 1162 (D. Or. 2011)

Here, the declaration of the debtor's attorney restates the law requiring the IRS's tax assessments to be timely, and does not state facts as to how the IRS's assessments were untimely or inaccurate. The declaration restates the debtor's opinion of the accuracy of the amount claimed. The declaration does not provide evidence as to why the debtor's liability for the unpaid trust fund taxes may be excused. The attorney has not demonstrated personal knowledge of these matters.

TFRP Assessments

2012-2015 Periods

The assessments for the 2012-15 periods were timely under 26 U.S.C. § 6672(b)(3)(B). IRS Opposition, ECF No. 71; see Thorton-Wiatt Dec., ECF No. 72. On November 23, 2015, after an investigation, the IRS timely mailed Nelson an initial TFRP determination that Nelson willfully failed to pay the trust fund taxes for the 2012-15 periods. On January 22, 2016, Nelson timely protested the determination. Nelson's protests extended the assessment statute until 30 days after the final determination. The IRS mailed the debtor the final determination of Nelson's failure to pay the trust fund taxes on April 13, 2017. The IRS assessed the tax on April 25, 2017, within thirty days after making the final determination as required by § 6672(b)(3)(B).

2016-2017 Periods

The assessments for the 2016-2017 periods were timely under 26 U.S.C. § 6672(b)(3)(B). IRS Opposition, ECF No. 71; see Thorton-Wiatt Dec., ECF No. 72. On December 12, 2018, after an investigation, the IRS timely mailed Nelson an initial TFRP determination that Nelson willfully failed to pay the trust fund taxes for the 2016-2017 periods. Nelson did not protest the determination. The TFRP assessments for the 2016-17 Periods were made on March 11, 2019, within the three-year limitation required by 26 U.S.C. § 6672(b)(3)(B).

The court regards the TFRP assessments against Nelson as timely for all relevant periods.

CONCLUSION

The debtor did not sufficiently contest his liability to the IRS, the amount of the claim, or the adequacy of the IRS's response to his inquiries. The debtor has not even contested the validity of the claim under FRBP 3001(c), (f). The debtor has failed to offer any evidence to support his objection to the IRS's claim. The court will therefore overrule debtor's objection to claim.

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 objection to claim has been presented to the court. Having considered the objection, oppositions, responses and replies, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled.

12. [20-10961](#)-A-7 **IN RE: ROBERT/NEVA IEST**
[KLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-2020 [[28](#)]

METLIFE INVESTMENT
MANAGEMENT/MV
RILEY WALTER/ATTY. FOR DBT.
MICHAEL LUBIC/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 7500 Avenue 14, Madera CA and Milk checks and Retains

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).

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

STAY RELIEF

Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). 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).

Upon the court signing the order granting the motion to abandon the subject property (Item 13), the subject property will no longer be property of the estate. The automatic stay will no longer exist as to the subject property. Once the court signs and the clerk files the order granting the motion to abandon, this matter will be moot. As a result, the court will deny this motion as moot.

CIVIL MINUTE ORDER

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

13. [20-10961](#)-A-7 **IN RE: ROBERT/NEVA IEST**
[LKW-1](#)

MOTION TO COMPEL ABANDONMENT
3-24-2020 [[10](#)]

OVERLAND STOCK YARDS/MV
RILEY WALTER/ATTY. FOR DBT.
LEONARD WELSH/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by debtor's counsel, to be filed not later than April 29, 2020.

Real Property and Personal Property Description: 7500 Avenue 14, Madera, CA and Milk Checks and Retains

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

14. [20-10961](#)-A-7 **IN RE: ROBERT/NEVA IEST**
[LKW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2020 [\[19\]](#)

OVERLAND STOCK YARDS/MV
RILEY WALTER/ATTY. FOR DBT.
LEONARD WELSH/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 7500 Avenue 14, Madera CA and Milk checks and Retains

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).

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

STAY RELIEF

Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). 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).

Upon the court signing the order granting the motion to abandon the subject property (Item 13), the subject property will no longer be property of the estate. The automatic stay will no longer exist as to the subject property. Once the court signs and the clerk files the order granting the motion to abandon, this matter will be moot. As a result, the court will deny this motion as moot.

CIVIL MINUTE ORDER

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

15. [20-10362](#)-A-7 **IN RE: JESUS GARCIA AND BEATRIZ MARTINEZ DE GARCIA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-2020 [[16](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
JEFFREY ROWE/ATTY. FOR DBT.
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: 2015 Toyota Sienna

Value of Collateral: \$21,400.00

Liens Encumbering Collateral: \$26,819.48

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.

Toyota Motor Credit'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 2015 Toyota Sienna, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

16. [19-13870](#)-A-7 **IN RE: MARTIN/ANTONIA AMEZCUA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2020 [\[34\]](#)

JPMORGAN CHASE BANK, N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Chrysler Pacifica

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).

The debtor has missed 2 pre-petition payments totaling \$1,044.48 and 6 post-petition payments totaling \$3,133.44 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Chrysler Pacifica, 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.

17. [20-10389](#)-A-7 **IN RE: ANABEL HERNANDEZ**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-2020 [[17](#)]

VW CREDIT LEASING, LTD./MV
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Volkswagen Atlas

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).

The debtor has missed 6 pre-petition payments totaling \$3,139.27 and 1 post-petition payment of \$532.19 due on the lease subject to the moving party's interest. This lease has not been scheduled in Schedules A/B, D, or Schedule G. 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.

VW Credit Leasing, Ltd.'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 2018 Volkswagen Atlas, 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.

18. [20-10696](#)-A-7 **IN RE: CARLOS/ADRIANA ALEXANDRE**
[EPE-1](#)

MOTION TO COMPEL ABANDONMENT
3-2-2020 [9](#)

CARLOS ALEXANDRE/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Assets Description: Office desk, laptop computer, small couch, office chair

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).

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 assets described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business assets is warranted. The order will compel abandonment of only the business assets that are described in the motion.