

**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: MAY 22, 2019
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. [19-10913](#)-A-7 **IN RE: THOMAS PEREZ AND GUADALUPE SILGUERO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-11-2019 [\[15\]](#)

TD AUTO FINANCE LLC/MV
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2017 Dodge Grand Caravan vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on March 13, 2019 and a meeting of creditors was first convened on April 15, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 12, 2019. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the property.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or

fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the property, the debtor did not do so timely. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on May 15, 2019, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on May 15, 2019.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

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 denied as moot as the automatic stay is no longer in existence.

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

2. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
GENERAL PARTNERSHIP
[BMJ-2](#)**

MOTION TO EMPLOY RONALD CLIFFORD AS SPECIAL COUNSEL
5-6-2019 [\[117\]](#)

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/ATTY. FOR MV.

Tentative Ruling

Application: Approval of Employment of Special Counsel
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Approved
Order: Civil Minute Order

Unopposed applications 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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining "disinterested person").

"Employment may be for a general or limited, specific purpose." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at *2-3 (Bankr. E.D. Cal. Sept. 12, 2013) (citing 11 U.S.C. § 327(a), (c), (e) and cases), *aff'd sub nom. In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

"A creditor's attorney may be employed by the trustee provided the attorney is 'disinterested,' 'do[es] not hold or represent an interest adverse to the estate,' and, if an objection is made, does not have an 'actual conflict of interest.'" *Id.* (alteration in original) (quoting 11 U.S.C. § 327(a), (c)). "When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the specific matter for which the attorney is to be employed." *Id.* (citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993)).

"Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full,

candid, and complete.” *Id.* (citing *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006)).

From the factual information provided in the motion and supporting papers, the court will approve the employment. The proposed special counsel, the Blakeley, LLP law firm, represented the Official Committee of Unsecured Creditors in the debtor’s prior 2012 chapter 11 case. The creditors from that case make up only some of the creditors in this case. The court perceives no actual conflict of interest however because Blakeley, LLP is being retained to prosecute claims and objections to claims only with respect to former and current insiders, and actual and alleged secured creditors.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee’s motion for employment of special counsel has been presented to the court in this case. Having considered the motion, supporting documents, the supporting declaration, Fed. R. Bankr. P. 2014(a), oppositions, responses, replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted to the extent provided herein. Blakeley, LLP is eligible to be employed and its employment is hereby approved as provided in this order. The chapter 7 trustee is authorized under 11 U.S.C. § 327(c) to employ Blakeley, LLP as special counsel for the bankruptcy estate in this case, only in regard to prosecuting claims and objections to claims with respect to former and current insiders, actual and alleged secured creditors, and corresponding ancillary matters;

IT IS FURTHER ORDERED that Blakeley, LLP’s employment is authorized under 11 U.S.C. § 327(a) and its entitlement to, and the amount of, compensation for services rendered and reimbursement for actual, necessary expenses incurred shall be on an hourly fee basis;

IT IS FURTHER ORDERED that Blakeley, LLP’s employment is subject to the applicable terms and conditions of 11 U.S.C. § 329-331. Blakeley, LLP shall not request or accept compensation for services rendered or reimbursement for costs incurred, except by application pursuant to 11 U.S.C. §§ 330 and 331 and order thereon;

IT IS FURTHER ORDERED that any funds received by Blakeley, LLP in connection with this matter: (A) regardless of whether denominated a retainer or are said to be nonrefundable, are deemed an advance payment of fees and are property of the estate, except to the extent that Blakeley, LLP demonstrates otherwise, 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(a); and (B) shall be maintained in a trust

account, subject to withdrawal only after receipt of a court order, as prescribed in this order;

IT IS FURTHER ORDERED that except as expressly provided otherwise in this order: (A) the terms and conditions of any agreement between the chapter 7 trustee and Blakeley, LLP, including terms pertaining to Blakeley, LLP's compensation, are disapproved; and (B) all other relief requested in the motion for employment is denied;

IT IS FURTHER ORDERED that the nothing contained herein shall be construed to approve any provision of any agreement between Blakeley, LLP and the trustee of the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision; and

IT IS FURTHER ORDERED that the effective date of this order is April 5, 2019. This order applies to services rendered and costs incurred on or after April 5, 2019.

3. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
GENERAL PARTNERSHIP
[BMJ-3](#)

MOTION TO EMPLOY SOUSA AND COMPANY LLP AS ACCOUNTANT(S)
5-6-2019 [\[121\]](#)

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/ATTY. FOR MV.

Final Ruling

This motion will be dismissed as duplicative of a later, identical motion filed by the chapter 7 trustee, ECF No. 126.

4. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
GENERAL PARTNERSHIP
[BMJ-3](#)

MOTION TO EMPLOY SOUSA AND COMPANY LLP AS ACCOUNTANT(S)
5-7-2019 [\[126\]](#)

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/ATTY. FOR MV.

No Ruling

5. [19-10724](#)-A-7 **IN RE: ANDREW RODRIGUEZ**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-2019 [\[29\]](#)

AMERICAN HONDA FINANCE
CORPORATION/MV
ERIC ESCAMILLA
VINCENT FROUNJIAN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2017 Honda Civic vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on February 28, 2019 and a meeting of creditors was first convened on April 8, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 30, 2019. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the property.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention,

or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the property, the debtor did not do so timely. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on May 8, 2019, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on May 8, 2019.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied as moot as the automatic stay is no longer in existence.

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. [18-11533](#)-A-7 **IN RE: RICARDO RODRIGUEZ FLORES AND**
 ESPERANZA VICTORIA CLEMENTE
 [GT-1](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK
4-12-2019 [\[36\]](#)

RICARDO RODRIGUEZ FLORES/MV
MICHAEL RIVERA

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [19-10533](#)-A-7 **IN RE: RONALD/MICHELLE RUSH**
 [KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-18-2019 [\[15\]](#)

GATEWAY ONE LENDING &
FINANCE/MV
D. GARDNER
KAREL ROCHA/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: 2010 Honda Accord vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors,

whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on February 15, 2019 and a meeting of creditors was first convened on April 5, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 17, 2019. The debtor filed a statement of intention on the petition date, but without indicating any intent with respect to the property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention, the debtor failed to indicate any intent with respect to the property. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on March 17, 2019, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a no asset report on April 8, indicating an intent not to administer the vehicle.

Therefore, without this motion being filed, the automatic stay terminated on March 17, 2019.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

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.

Gateway One Lending & Finance'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 as the automatic stay is no longer in existence.

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. [19-10434](#)-A-7 **IN RE: MARIA QUIROZ**
[TOG-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
4-17-2019 [\[27\]](#)

THOMAS GILLIS

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, if any,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

9. [18-15037](#)-A-7 **IN RE: JEFFREY/ANTOINETTE DESPLAINES**
[JRL-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
4-1-2019 [\[16\]](#)

JEFFREY DESPLAINES/MV
MARIO LANGONE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

10. [18-11439](#)-A-7 **IN RE: BRANDON/LESLIE SMART**
[MBW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-2019 [\[93\]](#)

PENTAGON FEDERAL CREDIT
UNION/MV
TIMOTHY SPRINGER
DANIEL BURBOTT/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: 2015 Audi S4 vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the

filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The case here was filed on April 12, 2018 as a chapter 13 petition. The case was converted to chapter 7 on March 7, 2019 and a meeting of creditors with the chapter 7 trustee was first convened on April 15, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 6. The debtor has not filed a statement of intention.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, the debtor has not filed a statement of intention, before or after conversion of the case from chapter 13 to chapter 7. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 6, 2019, 30 days after the conversion of the case.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee has filed a no asset report, indicating an intent not to administer the property.

Therefore, without this motion being filed, the automatic stay terminated on April 6.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of

rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

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.

Pentagon 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 denied as moot as the automatic stay is no longer in existence.

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. [19-10942](#)-A-7 **IN RE: JOAQUIN LOPEZ**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-10-2019 [\[13\]](#)

FIRST TECH FEDERAL CREDIT
UNION/MV
THOMAS GILLIS
NICHOLE GLOWIN/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 Dodge Ram vehicle (voluntary surrendered)

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. In addition, the debtor has indicated an intent to surrender the property to the movant. 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.

First Tech 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 2018 Dodge Ram vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

12. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[LNH-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIRE
HATHAWAY HOMESERVICES CALIFORNIA REALTY, REALTOR(S)
4-24-2019 [\[37\]](#)

PETER FEAR/MV
SCOTT LYONS
LISA HOLDER/ATTY. FOR MV.

Tentative Ruling

The trustee seeks approval to sell the estate's 100% interest in a real property. The property is not owned by the debtor, though. It is owned by a family trust of which the debtor is a trustee. However, the motion gives little to no information about the trust. It states only that the debtor is a trustee of the trust and that the chapter 7 trustee has the authority to revoke the trust. While this appears to be a revocable inter-vivos trust of the debtor, the motion should spell this out unequivocally, including the chapter 7 trustee's authority to sell property of the trust. It does not. Is the trust inter-vivos? Who is the beneficiary of the trust? What are the specific terms of the trust permitting the chapter 7 trustee to sell property owned by the trust?

Subject to the movant satisfactorily addressing these questions, the ruling on the motion will be the one below.

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 2411 West Sweet Court, Visalia, CA

Buyer: Pepita Real Estate, LP

Sale Price: \$179,000

Encumbrances: \$133,053 (mortgage held by Wells Fargo Bank)

Exemption: None

Capital Gain Tax: Yes (13.3% to 28.3%)

Net to Estate: ~\$30,784 minus capital gain taxes

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

13. [19-11048](#)-A-7 **IN RE: RONALD/AMANDA MOON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-9-2019 [\[11\]](#)

FORD MOTOR CREDIT COMPANY/MV
JEFFREY ROWE
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2018 Ford Explorer vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on March 19, 2019 and a meeting of creditors was first convened on April 25. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 18. The debtor filed a statement of intention on the petition date, but without indicating any intent with respect to the property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention, the debtor did not indicate any intent with respect to the property. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 18, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a no asset report on April 29, indicating an intent not to administer the property.

Therefore, without this motion being filed, the automatic stay terminated on April 18, 2019.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

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.

Ford Motor Credit Company'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 as the automatic stay is no longer in existence.

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. [18-14559](#)-A-7 **IN RE: CAROL DAVIS-MADISON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-17-2019 [\[63\]](#)

AMERICREDIT FINANCIAL
SERVICES, INC./MV
BENNY BARCO
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: 2013 Hyundai Sonata vehicle (voluntary surrendered)

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. In addition, the debtor has indicated an intent to surrender the property to the movant and the trustee has filed a no asset report. 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2013 Hyundai Sonata vehicle, 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.

15. [19-11169](#)-A-7 **IN RE: SALVADOR/JOSEFINA MARTINEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-23-2019 [\[20\]](#)

\$335.00 FILING FEE PAID 4/29/19

Final Ruling

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

16. [19-11074](#)-A-7 **IN RE: SHARALLE JOHNSON**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-20-2019 [\[5\]](#)

SHARALLE JOHNSON/MV

No Ruling

17. [19-10877](#)-A-7 **IN RE: GLORIA ROBERTS**

MOTION TO REDEEM
4-29-2019 [\[17\]](#)

GLORIA ROBERTS/MV
GLORIA ROBERTS/ATTY. FOR MV.

Tentative Ruling

Motion: Redeem Personal Property
Disposition: Denied without prejudice
Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to redeem personal property under § 722 is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. See Fed. R. Bankr. P. 6008 advisory committee's note; Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations must be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

An additional reason for denying the motion is that the notice of hearing violates Local Bankruptcy Rule 9014-1(f)(2), pursuant to which this motion was noticed. The motion was noticed on less than 28 days' notice. It was noticed on 26 days' notice, as permitted by LBR 9014-1(f)(2). ECF No. 18. Nevertheless, the notice of hearing requires written opposition to the motion at least 14 days prior to the hearing, which is required by LBR 9014-1(f)(1), prescribing notice for motions giving at least 28 days' notice. *Id.* This motion is not being brought pursuant to LBR 9014-1(f)(1) however. It was brought pursuant to LBR 9014-1(f)(2), which requires no written opposition prior to the hearing. Oppositions under LBR 9014-1(f)(2) may be brought at the hearing on the motion. As such, the notice for this motion violates LBR 9014-1(f)(2).

18. [19-10981](#)-A-7 **IN RE: JOSEPH/JOANNA RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-25-2019 [\[25\]](#)

Final Ruling

The \$31 amendment fee having been paid, the order to show cause is discharged.

19. [19-11285](#)-A-7 **IN RE: NORMA ARAMBULA**
[EPE-1](#)

MOTION TO COMPEL ABANDONMENT
4-4-2019 [\[9\]](#)

NORMA ARAMBULA/MV
ERIC ESCAMILLA

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Hairdressing business (\$1,000 in goodwill and \$2,000 in tools of trade; fully exempt)

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

20. [19-11086](#)-A-7 **IN RE: BONNIE STARLIN**
[GT-1](#)

MOTION TO REDEEM
4-17-2019 [\[12\]](#)

BONNIE STARLIN/MV
GRISELDA TORRES
RESPONSIVE PLEADINGS

Tentative Ruling

Motion: Authorize Redemption of Tangible Personal Property

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

Disposition: Denied without prejudice

Order: Civil minute order

Property: 2012 Infinity G37 vehicle

Proposed Redemption Value: \$9,054

Secured Claim Amount: \$18,454

Pursuant to § 722, an individual debtor in Chapter 7 may redeem tangible personal property from a lien on such property by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722. The tangible personal property must be "intended primarily for personal, family, or household use." *Id.*

Additionally, the property must have been exempted under § 522 or abandoned under § 554. *Id.* And the lien on the property must "secur[e] a "dischargeable consumer debt." *Id.*

The redemption price is the amount of the allowed secured claim, which amount is "determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing." *Id.* § 506(a)(2).

The replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor requests authority to redeem tangible personal property, described in the motion as a 2012 Infinity G37 vehicle, from the lien on such property of Wells Fargo Dealer Services. See Fed. R. Bankr. P. 6008. The property has been claimed exempt (or abandoned).

Wells Fargo opposes the motion, contending that the debtor has not established the replacement value of the vehicle. It disputes the debtor's qualifications to give an opinion on the value of the vehicle.

The court agrees with Wells Fargo.

The court does not have admissible evidence of the vehicle's replacement value, *i.e.*, the price a retail merchant would charge

for property of that kind considering the age and condition of the property at the time value is determined. The only evidence of value is in the sole supporting declaration of the debtor, where she states that "I am of the opinion that the Vehicle was worth \$9,054.00 as of the date of the filing of my petition." She further states that her opinion of value is "based upon [her] personal knowledge of the value of four door sedans based on today's market ad valuations found online for the same type of vehicle." ECF No. 14.

However, the debtor is not providing a value based on what retail merchant would charge for the vehicle. She is merely giving her opinion about the value of the vehicle.

The debtor has not been qualified with the adequate expertise of knowing what a retail merchant would charge for the vehicle. The debtor is not a retail merchant or a vehicle appraiser. See Fed. R. Evid. 702 & 703. The declaration does not qualify the debtor as anything other than a lay witness. See Fed. R. Evid. 701; see ECF No. 14.

The debtor's consulting of online ads does not make her an expert on testifying on what a retail merchant would charge for the vehicle.

More, her reference to consulting online ad valuations to form her opinion begs the question of what she consulted and why such ads are not delineated in her declaration.

The debtor revealing this information in the reply to the opposition to the motion is disingenuous. It prevents the respondent from responding to this information. The information should have been submitted with the motion.

On the other hand, as the debtor has not been qualified as an expert, her quoting of ad valuations in giving her opinion of value is inadmissible hearsay. See Fed. R. Evid. 801(c), 802.

Specifically, in the debtor's reply, she submits a vehicle condition report prepared by someone named Craig Stone. ECF No. 25 Ex. 1. But, the court has no authenticating declaration from Mr. Stone about the report. And, the debtor's quoting of the report is inadmissible hearsay.

The court also notes that the base value for the vehicle condition report submitted by the debtor uses the vehicle's average trade-in value. Retail merchants do not charge trade-in value for the vehicles they sell. Retail merchants charge retail value. The report's conclusion then is based on an improper basis. ECF No. 25 Ex. 2.

The debtor also has not established having personal knowledge about her valuation of the vehicle. Fed. R. Evid. 602. There is nothing in the record indicating that she actually inspected the vehicle. See ECF No. 14.

Moreover, the debtor does not address in her valuation the condition of the vehicle. Section 506(a)(2) specifically refers to "considering the age and condition of the property at the time value is determined." Her declaration is silent on these points. The debtor provides no information on the condition of the vehicle. See ECF No. 14. This is important because to a retail merchant the cost of correcting blemishes in the condition of the vehicle will be less than what a consumer would have to pay to correct the blemishes.

In short, the debtor has not carried her burden of persuasion on establishing the replacement value of the vehicle. Accordingly, the motion will be denied without prejudice.

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 redeem a vehicle has been presented to the court. Having considered the motion, responses, and their respective supporting documents,

IT IS ORDERED that the motion is denied without prejudice. Redemption of the 2012 Infinity G37 vehicle is hereby disallowed.

21. [16-12287](#)-A-7 **IN RE: GUADALUPE SERRATO**
[NES-2](#)

MOTION TO AVOID LIEN OF CAVALRY PORTFOLIO SERVICES, LLC
4-11-2019 [\[32\]](#)

GUADALUPE SERRATO/MV
NEIL SCHWARTZ

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

22. [19-10788](#)-A-7 **IN RE: SARAH COOPER**
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-30-2019 [\[27\]](#)

KINECTA FEDERAL CREDIT
UNION/MV
JERRY LOWE
MARK BLACKMAN/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: 2013 Kia Optima vehicle (repossessed pre-petition)

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. In addition, the movant has possession of the vehicle already. The court also notes that the trustee filed a no asset report on April 9, 2019. 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.

Kinecta 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 2013 Kia Optima vehicle, 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.

23. [19-11391](#)-A-7 **IN RE: IMANI WILSON**
[RW-101](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-2019 [\[17\]](#)

RIKA WARREN/MV
RYAN WOOD/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part

Order: Civil minute order

Subject: 602 John Ct. Merced, California real property

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 WITH RESPECT TO THE DEBTOR AND THE BANKRUPTCY ESTATE

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On March 19, 2018, the debtor filed a chapter 7 case (case no. 18-90175-E-7). That case was dismissed on May 17, 2018. On December 26, 2018, the debtor filed another chapter 7 case (case no. 18-90961-E-7). That case was dismissed on April 4, 2019. The debtor filed the instant chapter 7 case on April 5, 2019.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the request for relief from stay as to the debtor and the estate will be denied as moot, as the automatic stay did not go into effect upon the filing of the instant case on April 5, 2019.

Nevertheless, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on April 5, 2019. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

STAY RELIEF WITH RESPECT TO OTHERS

The movant seeks relief from stay also as to two co-occupants of the debtor at the subject property, Andrew Lopez and Anthony Lopez. The court is not aware of a co-occupant stay upon the filing of a bankruptcy case. This request will be denied.

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.

Rika Warren'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. The court confirms that the automatic stay did not go into effect with respect to the debtor or the bankruptcy estate upon the filing of this case.

IT IS FURTHER ORDERED that the motion is denied in part. The court denies the requests for relief from the automatic stay with respect to the bankruptcy estate, the debtor, and the debtor's co-occupants of the subject property.

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.

24. [18-14193](#)-A-7 **IN RE: SHEILA/DOUGLAS CHESLIK**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-8-2019 [\[21\]](#)

WELLS FARGO BANK, N.A./MV
ERIC ESCAMILLA
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2016 Dodge Journey vehicle

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

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement

whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on October 15, 2018 and a meeting of creditors was first convened on November 15, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 14. The debtor filed a statement of intention on October 29, 2018, indicating an intent to reaffirm the debt secured by the property.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the property, the debtor did not do so timely. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 15, 2018, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on December 15, 2018.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of

rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank'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 as the automatic stay is no longer in existence.

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.

25. [19-11394](#)-A-7 **IN RE: GURDEEP/RANJODH BILLAN**
[WJH-2](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
4-26-2019 [\[32\]](#)

COMMUNITY WEST BANK/MV
RILEY WALTER
KURT VOTE/ATTY. FOR MV.

Tentative Ruling

Motion: Approval of Stipulation for Relief from the Automatic Stay

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

Disposition: Granted

Order: Prepared by the movant pursuant to the instructions below

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).

The movant has filed a motion to approve a stipulation for relief from the automatic stay of 11 U.S.C. § 362(a) with the debtors. The stipulation does not involve the trustee.

Federal Rule of Bankruptcy Procedure 4001(d)(3) authorizes the court to approve or disapprove a stipulation for relief from the automatic

stay. Under this rule, the court hereby approves the stipulation for relief from stay.

The stipulation prescribes that the debtors' stay with respect to several real properties (APN 031-091-031-000; 031-091-032-000; 031-091-033-000) is lifted to allow the movant to notice and conduct foreclosure on the properties. Under the stipulation, the parties also agree that there is no equity in the property. The court also notes that the trustee filed a no asset report in this case on May 13, 2019.

The movant shall attach the stipulation to the proposed order as an exhibit. The motion will be granted as prescribed in this ruling.