

**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 29, 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. [19-11600](#)-A-7 **IN RE: JOSE JIMENEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-30-2019 [\[15\]](#)

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

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Ford Focus 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

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 (\$24,743) exceeds the value of the collateral (\$17,457) 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.

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 granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Ford Focus 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.

2. [14-12905](#)-A-7 **IN RE: MARIE ABD-ELAAL**
[DJH-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) NA
4-26-2019 [\[88\]](#)

MARIE ABD-ELAAL/MV
D. HARELIK

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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 avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. See ECF Nos. 93-97. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

3. [14-12905](#)-A-7 **IN RE: MARIE ABD-ELAAL**
[DJH-3](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
4-26-2019 [[78](#)]

MARIE ABD-ELAAL/MV
D. HARELIK

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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 avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. See ECF Nos. 83-87. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h) (1)-(3).

4. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[JES-2](#)

MOTION TO SELL
4-12-2019 [[40](#)]

JAMES SALVEN/MV
JERRY LOWE
RESPONSIVE PLEADING

Tentative Ruling

Motion: Sell (Law Practice)

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

Disposition: Withdrawn

Order: Civil minute order

Chapter 7 trustee James E. Salven has moved to sell debtor Elmer Leroy Falk's interest in a law practice to the Moore Law Firm for \$25,000. One of Falk's major creditors Fatemah Saniefar opposes the sale. After considering creditor Saniefar's opposition, the trustee filed a reply, which this court deems a request to withdraw the motion. The Moore firm wants the sale to proceed.

LAW

Federal Rule of Civil Procedure 41 is applicable to motions, including motions to sell, before the bankruptcy court. Fed. R. Civ. P. 41, incorporated by Fed. R. Bankr. P. 7041, 9014(c).

Rule 41(a) provides two species of voluntary dismissals: (1) of right, and (2) by leave of court.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. **Except as provided in Rule 41(a) (1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper.** If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 41 (emphasis added).

Summarized, once a motion has been opposed, it may not be withdrawn as a matter of right. A movant seeking to withdraw the motion must seek leave of court.

Whether to allow the dismissal and, if so, whether that dismissal should be conditioned is committed to the sound discretion of the court.

Whether to allow dismissal rests in the court's sound discretion. [*Hamilton v. Firestone Tire & Rubber Co., Inc.* (9th Cir. 1982) 679 F2d 143, 145; *Holiday Queen Land Corp. v. Baker* (5th Cir. 1974) 489 F2d 1031, 1032]

(1) [16:345] **Policy favoring dismissal:** The primary purpose of requiring a court order is "to prevent

voluntary dismissals which unfairly affect the other side and to permit the imposition of curative conditions." [Alamance Indus., Inc. v. Filene's (1st Cir. 1961) 291 F2d 142, 146; Arias v. Cameron (11th Cir. 2015) 776 F3d 1262, 1268-1269]

Thus, courts generally allow dismissal, even dismissal without prejudice, unless defendant will suffer "some plain legal prejudice" as a result. [Hamilton v. Firestone Tire & Rubber Co., Inc., supra, 679 F2d at 145; Fisher v. Puerto Rico Marine Mgmt., Inc. (11th Cir. 1991) 940 F2d 1502, 1503; Brown v. Baeke (10th Cir. 2005) 413 F3d 1121, 1123]

(2) [16:345.1] **Matters that may prevent dismissal:** A voluntary dismissal without prejudice may be denied where defendant will suffer "some cognizable prejudice greater than the mere prospect of a second lawsuit." [Hartford Acc. & Indem. Co. v. Costa Lines Cargo Services, Inc. (5th Cir. 1990) 903 F2d 352, 360]

[16:345.2] In determining whether to allow a dismissal without prejudice, courts may consider whether it would result in the loss of a federal forum, or the right to a jury trial, or a statute of limitations defense. [Westlands Water Dist. v. United States (9th Cir. 1996) 100 F3d 94, 97; see Thatcher v. Hanover Ins. Group, Inc. (8th Cir. 2011) 659 F3d 1212, 1215—dismissal of class action without prejudice abuse of discretion where district court did not address subject matter jurisdiction and possibility of forum shopping; Elbaor v. Tripath Imaging, Inc. (5th Cir. 2002) 279 F3d 314, 318—dismissal might deprive defendant of valid statute of limitations defense by allowing plaintiff to refile in forum with longer statute of limitations; but see also Wojtas v. Capital Guardian Trust Co. (7th Cir. 2007) 477 F3d 924, 927—loss of statute of limitations defense not legal prejudice unless a complete bar to second suit; Arias v. Cameron (11th Cir. 2015) 776 F3d 1262, 1272—loss of statute of limitations defense does not alone amount to per se prejudice requiring denial of voluntary dismissal without prejudice]

[16:345.3] Prejudice is also shown where the dismissal would render the remaining parties unable to conduct sufficient discovery to untangle complex fraud claims and to adequately defend themselves against charges of fraud. [See Hyde & Drath v. Baker (9th Cir. 1994) 24 F3d 1162, 1169; Westlands Water Dist. v. United States, supra, 100 F3d at 97]

Phillips and Stevenson, *Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions*, Other Motions and Procedures, Voluntary Dismissals § 16:343-16:345.3 (Rutter Group April 2019) (emphasis original and added).

DISCUSSION

Here, the trustee has indicated his desire to withdraw the motion and this court is unable to articulate a sufficient reason to deny his request. Among other things, the court notes long-standing law vesting in the trustee the decision to sell property of the estate. 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). And in most cases the court should grant the trustee's judgment as to whether, and on what terms, to sell property of the estate great deference. There is no indication of prejudice to the Moore Law Firm or other parties. The motion will be withdrawn.

CIVIL MINUTE ORDER

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

James E. Salven's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is withdrawn.

5. [19-10638](#)-A-7 **IN RE: ANTHONY NUDSON**
[NLL-1](#)

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

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
MARK ZIMMERMAN
NANCY LEE/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 103 Horace Court Raeford, NC

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 (\$132,830) exceeds the value of the collateral (\$114,400), meaning that the debtor has no equity in the property. At a minimum, the movant's claim is without adequate protection. Accordingly, 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 103 Horace Court Raeford, NC, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

6. [19-11242](#)-A-7 **IN RE: BERNARDO/LINDA MAREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-8-2019 [\[26\]](#)

MARK ZIMMERMAN

Final Ruling

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

7. [19-11242](#)-A-7 **IN RE: BERNARDO/LINDA MAREZ**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
4-24-2019 [\[15\]](#)

BERNARDO MAREZ/MV
MARK ZIMMERMAN

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: Daycare business (2005 GMC Envoy vehicle with value of \$3,789; EECU bank account with a balance of \$1,177.52; and office equipment, various furniture, kitchen appliances, and toys with value of \$1,578 (Ex. A to Schedule A/B))

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.

In adjudicating this motion, the court has reviewed the bankruptcy schedules with the motion, as well as Exhibit A that is attached to Schedule A/B, which is not found within this record, but it is found on the case docket as part of the debtors' schedules. See ECF No. 1 at 18.

8. [19-10947](#)-A-7 **IN RE: ERIC/MARIAH CHAMBLEE**
[KL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-17-2019 [[16](#)]

DITECH FINANCIAL LLC/MV
LAUREN RODE
KELSEY LUU/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 212 Thunder Gulch Drive, Bakersfield, CA

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

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens (\$235,972) exceeds the value of the collateral (\$183,990), meaning that the debtor has no equity in the property. At a minimum, the movant's claim is without adequate protection. Accordingly, 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.

Ditech Financial, 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 212 Thunder Gulch Drive, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

9. [17-10152](#)-A-7 **IN RE: CURTIS DAVIS**
[FW-2](#)

MOTION TO SELL
4-30-2019 [[30](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Claims to one-half interest in the probate estate of Barbara Ann Davis

Buyer: Nikki Tyler, the debtor's sister and co-beneficiary of the same probate estate

Sale Price: \$29,547.94

Sale Type: Private sale

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 for the benefit 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 sale will be approved. The sale is approved subject to any liens, interests, or other encumbrances against the property. The motion does not ask for approval of a sale free and clear of encumbrances. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

10. [18-10061](#)-A-7 **IN RE: MAYRA ALVAREZ**
[JES-2](#)

MOTION TO SELL
4-15-2019 [43]

JAMES SALVEN/MV
RICHARD STURDEVANT

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 BMW vehicle

Buyer: The debtor

Sale Price: \$6,050 (\$3,000 payment plus claimed exemption of \$3,050)

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 for the benefit 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 sale will be approved. The sale is approved subject to any liens, interests, or other encumbrances against the property. The motion does not ask for approval of a sale free and clear of encumbrances.

11. [19-10763](#)-A-7 **IN RE: ENRIQUE ENCISO**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-9-2019 [\[9\]](#)

OSCAR SWINTON

Tentative Ruling

Motion: Dismiss Case or Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors.
11 U.S.C. § 343. A continuing failure to attend this meeting may be
cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,
707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir.
2014) ("Some courts have ruled that the failure to attend the § 341
meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled initial
meeting of creditors required by 11 U.S.C. § 341. Because the
debtor's failure to attend this meeting has occurred once, the court
will not dismiss the case on condition that the debtor attend the
next creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an
extension of deadlines. The court extends the following deadlines
to 60 days after the next continued date of the creditors' meeting:
(1) the trustee and all creditors' deadline to object to discharge
under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and
all creditors' deadline to bring a motion to dismiss under § 707(b)
or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P.
1017(e). These deadlines are no longer set at 60 days after the
first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil
Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition
that the debtor attend the next continued § 341(a) meeting of

creditors scheduled for June 3, 2019 at 10:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that the following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

12. [19-10369](#)-A-7 **IN RE: CURTIS EVANS**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
3-4-2019 [\[12\]](#)

No Ruling

13. [19-10770](#)-A-7 **IN RE: ADELA AGUNDEZ**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2019 [\[23\]](#)

U.S. BANK, NATIONAL
ASSOCIATION/MV
DIANE WEIFENBACH/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 3129 E. Pine Fresno, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 (\$190,976) exceeds the value of the collateral (\$135,000), meaning that the debtor has no equity in the property. At a minimum, the movant's claim is without adequate protection. Accordingly, 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.

US 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 3129 E. Pine Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

14. [18-13182](#)-A-7 **IN RE: WANDA CLEMMONS**
[PVR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-2019 [[99](#)]

SCHOOLSFIRST FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS
PAUL REZA/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied

Order: Civil minute order

Subject: 2012 Cadillac SRX vehicle

The motion will be denied. The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. ECF No. 100. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2).

However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. ECF No. 103. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(B). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

In addition, the movant has not filed and served completed Form EDC 3-468, "Relief from Stay Summary Sheet." But this was required by LBR 4001-1(a)(3). In the future, counsel for the movant must file this summary sheet or risk sanctions for noncompliance.

Given the foregoing, the motion will be denied.

Even if the court were to ignore the above deficiencies, however, the motion would still be denied.

RULING ON MERITS

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 August 1, 2018 as a chapter 13 proceeding. The case was subsequently converted to chapter 7 on December 12, 2018 and a meeting of creditors was first convened on January 17, 2019. Therefore, a statement of intention that refers

to the movant's property and debt was due no later than January 11, 2019. The debtor filed a statement of intention on December 13, 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 February 18, 2019, 30 days after the initial meeting of creditors in the chapter 7 case (plus two days added pursuant to Fed. R. Bankr. P. 9006(a)(1)(C)).

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 February 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.

SchoolsFirst Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied. No other relief is awarded.

15. [19-10185](#)-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**
[JES-2](#)

MOTION TO ABANDON
4-11-2019 [\[24\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

The trustee is seeking abandonment of approximately 4,000 electronic patient records of the debtor, alleging that they are burdensome to the estate because he does not have the funds to comply with 11 U.S.C. § 351.

The court will continue the hearing on this motion in order for the trustee to provide a more complete record on the estate's inability to fund compliance with section 351. Specifically, the court expects information - in the form of evidence - about the cost of compliance with section 351, about what funds, if any, the estate has on hand at this time, and about what funds, if any, the estate expects or may expect to receive in the future.

The hearing on the motion will be continued to June 26, 2019 at 9:00 a.m. The additional evidence from the trustee shall be served on the debtor and filed with the court no later than June 5, 2019. Any opposition to such evidence may be filed no later than June 12. Replies, if necessary, may be filed no later than June 19.

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 trustee's motion to abandon has been presented to the court. Having considered the motion, oppositions, responses and replies, if any,

IT IS ORDERED that the hearing on the motion is continued to June 26, 2019 at 9:00 a.m., in order for the trustee to supplement the record in accordance with the minutes for the motion's May 29 hearing. The trustee shall supplement the record no later than June 5, 2019. Any opposition to the trustee's supplement may be filed no later than June 12. Replies, if necessary, may be filed no later than June 19.

16. [19-10185](#)-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL
INC.
[JES-3](#)**

MOTION TO DISMISS CASE
4-11-2019 [[28](#)]

JAMES SALVEN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

The trustee is seeking dismissal of the case because he states that the estate does not have funds to dispose of approximately 4,000 electronic patient records of the debtor in compliance with 11 U.S.C. § 351.

The court will continue the hearing on this motion in order for the trustee to provide a more complete record on the estate's inability to fund compliance with section 351. Specifically, the court expects information - in the form of evidence - about the cost of compliance with section 351, about what funds, if any, the estate has on hand at this time, and about what funds, if any, the estate expects or may expect to receive in the future.

The hearing on the motion will be continued to June 26, 2019 at 9:00 a.m. The additional evidence from the trustee shall be served on the debtor and filed with the court no later than June 5, 2019. Any opposition to such evidence may be filed no later than June 12. Replies, if necessary, may be filed no later than June 19.

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 trustee's motion to dismiss has been presented to the court. Having considered the motion, oppositions, responses and replies, if any,

IT IS ORDERED that the hearing on the motion is continued to June 26, 2019 at 9:00 a.m., in order for the trustee to supplement the record in accordance with the minutes for the motion's May 29 hearing. The trustee shall supplement the record no later than June 5, 2019. Any opposition to the trustee's supplement may be filed no later than June 12. Replies, if necessary, may be filed no later than June 19.

17. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WW-12](#)

MOTION BY MICHAEL L. WILHELM TO WITHDRAW AS ATTORNEY
4-30-2019 [[958](#)]

RILEY WALTER

Final Ruling

Motion: Attorney's Withdrawal from Representation of a Client

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

Disposition: Granted

Order: Prepared by 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). 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).

An attorney's withdrawal from representing a client is governed by LBR 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. LBR 2017-1(e) provides that "an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared." This local rule also mandates that the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw.

California Rule of Professional Conduct 3-700(C)(1)(d) provides for permissive withdrawal if the client "by other conduct renders it unreasonably difficult for the member to carry out the employment effectively." Cal. R. Prof'l Conduct 3-700(C)(1)(d). The facts asserted in the motion and supporting papers show that continued, effective representation of the client will be unreasonably difficult for the attorney to undertake.

California Rule of Professional Conduct 3-700(C)(5) provides for permissive withdrawal if "[t]he client knowingly and freely assents to termination of the employment." Cal. R. Prof'l Conduct 3-700(C)(5). This provision has been satisfied.

The court finds that the attorney's withdrawal from the representation is proper. In the order's recitals, the order shall state the client's last known address and, if known, the client's phone number. The order's substantive provisions shall include a provision requiring the attorney to comply with California Rule of Professional Conduct 3-700(D) after the withdrawal.