

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street  
Department A, Courtroom 11  
Fresno, California

**WEDNESDAY**

**JUNE 24, 2015**

**9:00 A.M. CHAPTER 7 CASES**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-10701](#)-A-7 RANDALL/MARCIA FRENCH MOTION TO AVOID LIEN OF L.A.  
THA-1 COMMERCIAL GROUP, INC.  
RANDALL FRENCH/MV 5-20-15 [[15](#)]  
THOMAS ARMSTRONG/Atty. for dbt.

**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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [15-11520](#)-C-7 SEAN GJERDE MOTION FOR ISSUANCE OF ORDER  
SPG-1 DISCHARGING DEBTOR'S STUDENT  
SEAN GJERDE/MV LOANS  
4-24-15 [[15](#)]  
SEAN GJERDE/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [15-11425](#)-A-7 ANGELICA JAUREGUI  
JES-1  
JAMES SALVEN/MV  
DAVID JENKINS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-27-15 [[14](#)]

**Tentative Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File  
Spousal Waiver

**Disposition:** Overruled as moot

**Order:** Civil minute order

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

In this case, the trustee objected because the waiver was conditionally made. But after the trustee's objection, a waiver was filed at docket no. 20 on June 6, 2015. The court will not consider the issues raised by the trustee as the debtor has filed a spousal waiver that appears proper. The objection will be overruled as moot.

4. [15-12033](#)-A-7 MARIO BOGARIN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-5-15 [[19](#)]

**Tentative Ruling**

If the full filing fee in the sum of \$335 has not been paid by the time of the hearing, the case will be dismissed.

5. [15-10635](#)-A-7 JOHN JANDA  
RRM-2  
RAYMOND MILLER/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR, MOTION  
TO EXTEND TIME TO FILE A MOTION  
TO DISMISS CASE UNDER SEC.  
707(B), MOTION TO EXTEND  
DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGEABILITY  
OF A DEBT  
6-1-15 [[69](#)]

JERRY LOWE/Atty. for dbt.  
RAYMOND MILLER/Atty. for mv.

### **Tentative Ruling**

**Motion:** Extend Deadlines to Object to Discharge, File  
Nondischargeability Complaint, and File Motion to Dismiss

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

**Disposition:** Continued to July 16, 2015, at 9:00 a.m. with additional  
papers filed by the deadlines specified below

**Order:** Civil minute order

### **DEFAULT OF DEBTOR ENTERED**

The debtor and the debtor's attorney have been served and have not  
filed written opposition. 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 debtor is hereby  
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).

### **CONTINUED HEARING**

However, the trustee and U.S. Trustee have not been served with the  
motion as required. Fed. R. Bankr. P. 9013(a), 9034(j). The hearing  
on the motion is continued to July 16, 2015 at 9:00 a.m. No later  
than July 2, 2015, the movant creditors shall serve the motion on the  
trustee in this case and file a notice of continued hearing pursuant  
to LBR 9014-1(f)(2), and the notice of hearing shall also state that  
the default of debtor has been entered and that the trustee and U.S.  
Trustee may oppose the motion orally at the continued hearing.

At the continued hearing, if the trustee and U.S. Trustee do not  
object or oppose the relief requested, the court will grant the motion  
for the reasons stated in the motion.

### **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.

Creditors Jaswant S. Bawa and Uttam Jit Singh Bajwa and LRS  
Collections & Court Services, as assignee of Bawa and Bajwa, have  
presented their motion to extend deadlines for objecting to the  
debtor's discharge in this case, to file a nondischargeability

proceeding, and to bring a motion to dismiss under § 707.

IT IS ORDERED that the hearing on the motion is continued to July 16, 2015, at 9:00 a.m. No later than July 2, 2015, the movant creditors shall serve the motion on the trustee in this case and file a notice of continued hearing pursuant to LBR 9014-1(f)(2), and the notice of hearing shall also state that the default of debtor has been entered and that the trustee and U.S. Trustee may oppose the motion orally at the continued hearing.

6. [15-10635](#)-A-7 JOHN JANDA  
TGM-1  
PARMINDER JANDA/MV

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
5-27-15 [[62](#)]

JERRY LOWE/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

### **Final Ruling**

**Motion:** Extend Deadline for Filing Nondischargeability Complaint under section 523(c)

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

**Disposition:** Granted

**Order:** Prepared by the movant; a copy of the stipulation attached as Exhibit 1 shall be attached as an exhibit to the proposed 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).

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4007(c). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through and including September 15, 2015.

7. [15-11235](#)-A-7 MARTIN/TAMBRA VALADOA  
SAH-1  
MARTIN VALADOA/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO AVOID LIEN OF WELLS  
FARGO BANK, NA  
5-15-15 [[20](#)]

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **INSUFFICIENT SERVICE**

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 made to an "agent authorized to receive service of process." An agent may or may not be an officer. A corporate agent for service of process does not constitute an officer. In any event, the proof of service facially does not comply with Rule 7004(h). No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h)(1)-(3).

#### **EXEMPTION CLAIMED**

The movant's papers state that the movant *could claim* an exemption of \$100,000. But the actual exemption claimed by the movant on Schedule C, ECF No. 17, is \$19,879.70. However, this issue may be immaterial given that the value of the property (\$180,667.00) equals the sum of the exemption as actually claimed (\$19,879.70) plus the amount of the consensual lien (\$160,787.30). Thus, the judicial lien, plus the consensual lien plus the exemption amount actually claimed, exceeds the value of the real property by the full amount of the judicial lien. In any event, lien-avoidance motions should properly state the amount of the exemption *actually* claimed in the future.

8. [15-11235](#)-A-7 MARTIN/TAMBRA VALADOA  
SAH-2  
MARTIN VALADOA/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO AVOID LIEN OF TARGET  
NATIONAL BANK  
5-15-15 [[24](#)]

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

## **INSUFFICIENT SERVICE**

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 made to an "agent authorized to receive service of process." An agent may or may not be an officer. Target National Bank is listed in the FDIC records. However, Target National Bank is shown as being inactive and having been involved in a voluntary liquidation or closing. Whether or not it remains FDIC insured after becoming inactive or liquidated is unclear to the court. Nevertheless, if Target National Bank is to be named as a party, the court prefers that it be served in compliance with Rule 7004(h). Moreover, a corporate agent for service of process does not constitute an officer.

TD Bank USA, National Association was also listed on the proof of service. But this entity was not named as a party in the motion. Any attempt at service on this entity is ineffective to constitute service on the respondent to the motion. In any event, TD Bank USA, National Association appears to have been served improperly under Rule 7004(h) as well, given that this entity appears in the FDIC records with active status.

## **RESPONDENT**

Given that the attachments to the proof of service show that Target National Bank is inactive and has been involved in a voluntary liquidation and closing, the court is uncertain whether the proper respondent has been named. While it may be possible that Target National Bank has been carefully selected as the respondent after counsel's due diligence, the court would prefer that counsel provide additional information in any future motion to avoid the subject lien which describes any due diligence counsel used in choosing Target National Bank as the party holding the interest affected by the motion.

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| 9. | <a href="#">15-11235</a> -A-7     MARTIN/TAMBRA VALADOA<br>SAH-3<br>MARTIN VALADOA/MV<br>SUSAN HEMB/Atty. for dbt. | MOTION TO AVOID LIEN OF MIDLAND<br>FUNDING LLC<br>5-15-15 [ <a href="#">28</a> ] |
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## **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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

10. <a href="#">15-11235</a> -A-7     MARTIN/TAMBRA VALADOA SAH-4 MARTIN VALADOA/MV  SUSAN HEMB/Atty. for dbt.	MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT 5-15-15 [ <a href="#">32</a> ]
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### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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).

Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), *incorporated by* Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction



of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6). Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." *Id.* § 416.50(b).

Alternatively, service may be made pursuant to Federal Rule of Civil Procedure 4(j)(2). Fed. R. Civ. P. 4(j)(2), *incorporated by* Fed. R. Bankr. P. 7004(a). This rule allows service to be made by delivering a copy of the summons and of the complaint to the public entity's chief executive officer or by following state law requirements for serving process on such a defendant. *Id.*

Here, service has not been made according to Rule 4(j)(2) because service was made by certified mail not by delivery. Service was not made on the clerk, secretary, president, presiding officer, or other head of its governing body. The addresses provided may assist the movant in accomplishing sufficient notice for constitutional purposes, but they do not satisfy the standards of Rule 7004(b)(6). The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party.

Any proof of service for matter in which a state or local government agency or entity is named as a respondent shall contain either one of the following affirmative statements: (i) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 7004(b)(6) of the Federal Rules of Bankruptcy Procedure"; or (ii) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 4(j)(2) of the Federal Rules of Civil Procedure."

11. [15-11240](#)-A-7 RITA CELLURA  
SAA-1  
RITA CELLURA/MV  
STEVEN ALPERT/Atty. for dbt.  
ORDER APPROVING STIPULATION,  
ECF NO. 34

CONTINUED MOTION TO REDEEM  
5-15-15 [[12](#)]

### **Final Ruling**

The parties have resolved the matter by stipulation. The stipulation has been approved by the court. The matter will be dropped from calendar as moot.

12. [15-10141](#)-A-7 EULALIA GARCIA  
BHT-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
JERRY LOWE/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.  
DEBTOR DISCHARGED:  
05/07/2015

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
4-17-15 [[15](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** Continued hearing date (original hearing noticed under LBR 9014-1(f)(1)); written opposition required

**Disposition:** Granted

**Order:** Prepared by the movant

**Subject:** 2741 North Piedro Road, Sanger, 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).

### **SERVICE OF PROCESS**

The movant has addressed the concerns raised by the court at the initial hearing. The debtor's attorney has been served. Pursuant to the court's civil minutes from the May 20, 2015, hearing, the court will adopt the following as the ruling in this matter in the absence of opposition at the hearing.

### **STAY RELIEF AS TO DEBTOR**

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

### **STAY RELIEF AS TO ESTATE**

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

13. [15-11241](#)-A-7 PAULA HARPER  
CJO-1  
JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
TRUDI MANFREDO/Atty. for dbt.  
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-10-15 [[12](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 6109 N. 19<sup>th</sup> Ave., Ozark, Missouri

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

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

14. [13-16457](#)-A-7 DES BANGAR  
JES-2  
GARY HUSS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

TRUSTEE'S FINAL REPORT  
2-13-15 [[92](#)]

**Final Ruling**

**Application:** Allowance of Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

## COMPENSATION AND EXPENSES

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$9,375.00 and reimbursement of expenses in the amount of \$237.36.

## CIVIL MINUTE ORDER

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

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

James E. Salven's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$9,375.00 and reimbursement of expenses in the amount of \$237.36.

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

15. [15-11061](#)-A-7 HELIODORO TOVAR

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
4-28-15 [[11](#)]

## Tentative Ruling

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

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

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

**Order:** Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

## **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

## **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

## **CIVIL MINUTE ORDER**

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for June 26, 2015, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

16. [15-11561](#)-A-7 RAUL PICHE  
JES-1  
JAMES SALVEN/MV  
PATRICIA CARRILLO/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-27-15 [[15](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions [Filed § 703.140(a)(2)  
Waiver Precludes Claim of Exemptions under § 704.010 *et seq.*]

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

**Disposition:** Continued to August 19, 2015 at 9:00 a.m.

**Order:** Civil minute order

### **PROCEDURAL ISSUES**

"California offers resident bankrupts a choice from two different, mutually exclusive exemption schemes. Under California law, debtors may elect either the set of special exemptions under section 703.140(b) available only to debtors in bankruptcy ('special bankruptcy exemptions') or the set of regular exemptions under sections 704.010-704.995 of the California Code of Civil Procedure available to judgment debtors generally outside of bankruptcy ('regular exemptions'). But they may not elect both." *In re Gomez*, --- B.R. ---, No. 14-12107-A-7, 2015 WL 2152817, at \*2 (Bankr. E.D. Cal. May 5, 2015) (citations omitted).

Debtor claimed exemptions under § 704.010 *et seq.* The chapter 7 trustee objects to the debtor's claiming the regular exemptions because the debtor previously had signed and filed a waiver of the right to claim the regular exemptions described in § 703.140(a)(2). The debtor's opposition to the objection contends that the waiver was a product of a mistake. "[A]bsent relief for mistake (of fact or otherwise), inadvertence, surprise, or excusable neglect, or similar showing, a properly executed spousal waiver may not be withdrawn." *In re Gomez*, --- B.R. at ---, 2015 WL 2152817, at \*4. "Moreover, binding the debtor to the spousal waiver is wholly consistent with California's longstanding use of the doctrines of equity to preclude debtors from asserting inconsistent exemption claims over time when doing so will prejudice the opposing party." *Id.*

In the opposition to the trustee's objection, the debtor asks that the court provide the debtor relief from the consequences of this waiver. Such affirmative relief may be sought only by a written motion. See Fed. R. Bankr. P. 9013.

This objection is continued to August 19, 2015. The debtor may bring a motion for relief from a proceeding under Federal Rule of Civil Procedure 60(b)(1) and the hearing on such motion must be concluded no later than the date of the next continued hearing on the trustee's objection to exemptions. If the debtor brings this motion, the debtor shall use the notice procedure under Local Rule 9014-1(f)(1) and transmit notice of the hearing to the case trustee, the U.S. Trustee, and all creditors. For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address

list should indicate a date near in time to the date of service of the notice.

#### **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 objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection and the opposition filed in response, and having found that the opposition contains a request for relief that is procedurally inappropriate in the absence of a motion,

IT IS ORDERED that the objection is continued to August 19, 2015. The debtor may bring a motion for relief from a proceeding under Federal Rule of Civil Procedure 60(b)(1) and the hearing on such motion must be concluded no later than the date of the next continued hearing on the trustee's objection to exemptions. If the debtor brings this motion, the debtor shall use the notice procedure under Local Rule 9014-1(f)(1) and transmit notice of the hearing to the case trustee, the U.S. Trustee, and all creditors.

17. [10-12576](#)-A-7 SHERMAN FUJIOKA  
SAS-1  
SHERYL STRAIN/MV  
RICHARD HARRIS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.
- CONTINUED MOTION FOR  
COMPENSATION FOR SHERYL A.  
STRAIN, CHAPTER 7 TRUSTEE(S)  
5-8-15 [[89](#)]

**No tentative ruling.**

18. [15-11380](#)-A-7 LEN LANKHAM  
APN-1  
WELLS FARGO BANK, N.A./MV  
NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.
- MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-27-15 [[15](#)]

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2006 Ford Ranger

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien and the equity cushion available to the movant is 22.37%. Although 20% equity cushion would tend to be adequate, if a trend of missed prepetition is likely to continue postpetition, then a barely adequate equity cushion will likely not be adequate in the near future. Here, the debtor missed 4 pre-petition payments that remain past due. This is sufficient to establish a trend, which would soon cause the equity cushion to be inadequate if the trend continues postpetition. Given that 1 payment has already become past due, and this case was filed on April 8, 2015, the court finds a likelihood that the trend of past due payments will continue. No opposition has been filed by the debtor to indicate that the trend will not continue, or to dispute whether such payments are delinquent. These facts constitute cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.



19. [11-61984](#)-A-7 JAIMIE PERCIVAL

MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS, FSB  
5-20-15 [[62](#)]

JAIMIE PERCIVAL/MV  
MARK ZIMMERMAN/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by the moving party

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

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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

20. [15-10795](#)-A-7 KARINA GONZALEZ  
TJS-1  
JPMORGAN CHASE BANK, N.A./MV  
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-21-15 [[20](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted as to estate, denied as to debtor

**Order:** Prepared by moving party

**Subject:** 2012 Mazda Mazda3

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

### **AS TO THE DEBTOR**

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

### **AS TO THE ESTATE**

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

21. [15-12196](#)-A-7 LIBERTY ANIMAL CONTROL  
TMT-1 SERVICES, LLC  
TRUDI MANFREDO/MV  
RILEY WALTER/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO REJECT LEASE OR  
EXECUTORY CONTRACT  
6-5-15 [[7](#)]

### **Tentative Ruling**

**Motion:** For Authority to Reject Executory Contract (Animal Control Services Contract)

**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).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶¶ 16:1535-1536, 16:515 (rev. 2011). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the [DIP / trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670. The assumption or rejection of an unexpired lease or executory contract should be approved absent a finding that the decision is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

The trustee has moved to reject an animal control services contract between the debtor and the County of Fresno, California. The subject contract is scheduled to terminate on September 30, 2015. The trustee also asserts that the contract should be rejected retroactively to the date of the filing of the motion on June 5, 2015.

The trustee has exercised her business judgment and believes the subject contract confers no benefit to the estate and is burdensome to the estate. The trustee has stated that the contract is costly to perform and could subject the estate to liability. For these reasons, the court will authorize the rejection of the contract.

The order shall attach the subject contract as an exhibit to the order. The order shall state that the contract is rejected as of June 5, 2015. The order shall also state that the County of Fresno is authorized to file a proof of claim consistent with § 365(g) and § 502(g)(1) no later than the date that is 180 days after the date of service of the order on this motion. Fed. R. Bankr. P. 3002(c)(4).

22. [15-11535](#)-A-7 JOHN HALOPOFF  
KDG-3  
TRUDI MANFREDO/MV  
JUSTIN HARRIS/Atty. for dbt.  
HAGOP BEDOYAN/Atty. for mv.

MOTION TO EXTEND TIME  
6-15-15 [[43](#)]

### **Tentative Ruling**

**Motion:** Enlarge time to assume or reject executory leases and an executory sale contract

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted

**Order:** Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 trustee, Trudi Manfredo, moves the court for an order extending the time within which the trustee may assume or reject twelve real property leases ("Leases") described in the motion under which the debtor is named as the lessor. She also moves the court for an order extending the time within which to assume or reject a real estate sale contract for property located at 667 East River Avenue, Porterville, CA 93257 ("Sale Contract"). The trustee seeks to extend the time to assume or reject to November 20, 2015, pursuant to the provisions of § 365(d)(1).

The trustee explains that the Leases may add value to the sales of the real properties leased. Innocent lessees, moreover, may be harmed by a decision to reject that would cancel the trustee's obligations to perform under the Leases pending the real property sales. The nature of the Sale Contract is unknown, and further time is required for the trustee to evaluate any benefit this Sale Contract may have to the estate. Little risk of prejudice to parties in interest or creditors arises if the extension is allowed and no assumption or rejection is required at this time. The risk of administrative liability exists if the leases contracts are prematurely assumed and then rejected, *see* §§ 365(g)(2), 503(b), and the risk of loss of valuable assets exists if the leases and contracts are prematurely rejected.

The movant cites *In re Victoria Station*, 840 F.2d 682 (9th Cir. 1988) and *In re Southwest Aircraft Servs., Inc.*, 831 F.2d 848 (9th Cir. 1987) as support for the conclusion that the motion and hearing are timely. The court agrees based on these authorities, which interpret very similar language from a prior version (1985) of § 365(d)(4). In fact, the relevant language from this 1985 version of paragraph (1) of subsection (d) of section 365 is exactly the same as the relevant language in § 365(d)(1): "or within such additional time as the court, for cause, within such 60-day period, fixes . . . ."

Here, the motion was timely filed on June 15, 2015, before the end of the 60-day period after the order for relief (petition date) on June 20, 2015. The court may hear the motion outside the 60-day period. *See In re Southwest Aircraft Servs., Inc.*, 831 F.2d 848, 850-52 (9th Cir. 1987); *In re Victoria Station*, 840 F.2d 682, 684 (9th Cir. 1988) ("We have construed section 365(d)(4) in this circuit and have held that a proper interpretation of section 365(d)(4) supports the

conclusion that there is no express limit to the time within which the bankruptcy court must hear and decide the motion to assume where the trustee, or debtor as in this case, timely files." ).

23. [15-11535](#)-A-7 JOHN HALOPOFF MOTION FOR ORDER AUTHORIZING  
KDG-2 TRUSTEE TO OPERATE BUSINESSES  
TRUDI MANFREDO/MV ON INTERIM BASIS UNTIL NOVEMBER  
20, 2015, EFFECTIVE AS OF APRIL  
21, 2015  
6-15-15 [[48](#)]
- JUSTIN HARRIS/Atty. for dbt.  
HAGOP BEDOYAN/Atty. for mv.

**No tentative ruling.**

24. [15-11283](#)-A-7 GLORIA ESTILLORE MOTION TO DISMISS CASE  
6-11-15 [[41](#)]
- GLORIA ESTILLORE/MV  
GLORIA ESTILLORE/Atty. for mv.

**Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Debtor Gloria Estillore moves to dismiss her Chapter 7 case, citing "health problems due to the stress of Bankruptcy. Insurmountable procedural problems preclude the court from granting this motion.

**DISCUSSION**

Insufficient Amount of Notice

Absent an order shortening time, motions in the Bankruptcy Court for the Eastern District of California must be filed and served at least 28 or 14 days' notice. LBR 9014-1(f)(1),(2)&(3). The difference is whether written opposition is required. *Id.* Motions set on at least 28 days' notice require written opposition. LBR 9014-1(f)(1). Motions set on 14 days' notice do not require written opposition; opposition maybe presented at the hearing. LBR 9014-1(f)(2). LBR 9014-1(f)(2) provides, "Motions Set on 14 Days' Notice. Alternatively, unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, the moving party may file and serve the motion at least fourteen (14) days prior to the hearing date." No order shortening time was signed in this case. The notice of hearing was filed June 16, 2015, and the hearing set for June 24, 2015, only 8 days later. This is insufficient.

But the Federal Rules of Bankruptcy Procedure 2002(a)(4) modify LBR 9014-1(f)(2) to require 21 days' notice. That rule provides, "Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least

21 days' notice by mail of...(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee. . . ." Fed. R. Bankr. P. 2002(a)(4). The exceptions not applicable at least 21 days' notice of such a motion is required. Since only the notice was filed only 8 days prior to the hearing, the amount of notice is insufficient.

#### Lack of Service

More importantly, the motion was not served. A debtor's motion to dismiss must be served on the United States Trustee, the case trustee and on all creditors. Fed. R. Bankr. P. 2002(a)(4),(k). And it is the debtor's responsibility to do so. LBR 9014-1(f)(1),(2). The docket does not reflect service of the motion.

#### **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.

Debtor Gloria Estilloire's motion to dismiss chapter 7 case 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 without prejudice.