

**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: JUNE 24, 2020
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

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

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

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

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

1. [20-11321](#)-A-7 **IN RE: SENAIDA GONZALES**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-14-2020 [[12](#)]

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Nissan Maxima

Value of Collateral: \$15,225.00

Aggregate of Liens: \$21,585.01

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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. As a consequence, 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Nissan Maxima, 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. [17-11824](#)-A-7 **IN RE: HORISONS UNLIMITED**
[WF-64](#)

OBJECTION TO CLAIM OF DEEBA ABEDI, CLAIM NUMBER 76
5-1-2020 [\[1184\]](#)

JAMES SALVEN/MV
CECILY DUMAS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Granted in part, denied in part

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

The trustee objects to Claim No. 76-1 in its entirety. The court rules on the trustee's objection under the following analysis.

CREDITOR'S CONTENTIONS

Claim No. 76-1 asserts a claim against the debtor's bankruptcy estate in the amount of \$247,559.69 for "violations of California Law." Claim No. 76-1. The claimant further alleges that \$12,850.00 of her claim constitutes wages, salaries, or commissions earned within 180 days before the debtor's bankruptcy petition, and is therefore entitled to priority under 11 U.S.C. § 507(a)(4).

FACTS

The debtor Horisons Unlimited commenced this case by filing a Chapter 11. This case then converted to a Chapter 7, ECF 143.

The claimant Deeba Abedi subsequently filed Claim No. 76-1 against the debtor's bankruptcy estate in the amount of \$247,559.69 for "violations of California Law explained more fully in attachment." Claim No. 76-1. The claimant's attachment to the claim contains a superior court complaint from before the debtor filed bankruptcy. The complaint asserts 10 separate civil causes of action against the debtor. The complaint's prayer is requests damages "in accordance with California law" or some variation thereof. Attachment to Claim No. 76-1.

The claimant further alleges that \$12,850.00 of her claim constitutes wages, salaries, or commissions earned within 180 days

before the debtor's bankruptcy petition, and is therefore entitled to priority under 11 U.S.C. § 507(a)(4).

LAW

"A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under Chapter 7 of title, objects." 11 U.S.C. § 502(a).

The burden of proof for claims brought in the bankruptcy court under 11 U.S.C. § 502(a) rests on different parties at different times. *In re Allegheny Int'l, Inc.*, 954 F.2d 167,173 (3rd Cir. 1992).

Initially, the burden is on the claimant to allege facts sufficient to support the claim. *Id.* "...[A] claimant that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation going forward." *Id.*

ANALYSIS

The Claim Amount

The trustee objects to the claim, stating the creditor's complaint that the debtor is liable to the creditor for \$247,559.69 lacks specific facts that would allow the estate to evaluate the veracity of the claimant's allegations. The trustee stated the claimant does not articulate facts that would allow for a reasonable calculation for damages, despite articulating that the debtor violated her rights under California overtime laws.

The court finds the claimant has made a sufficient showing of facts as to the amount owed by the debtor to the claimant in the State Court Complaint. Attachment to Claim No. 76-1, para. 24-80. The claimant articulated that she was an hourly employee upon hiring, and specified her hourly pay rate. Attachment, para. 29-30. Her work as a scribe for the debtor required that she work over 8 hours a day. *Id.*, at 58. The debtor was responsible for keeping track of the claimant's regular and overtime hours and minutes spent on breaks. *Id.*, at para. 38-43. The debtor hadn't given her assurances for when her breaks were cut short and when her overtime hours were unpaid. *Id.* The claimant stated the defendants knew or should have known the California Labor Code rules for giving employees breaks and for compensating employees who worked through breaks. *Id.*, at 73. The debtor attempted to have the claimant sign a letter acknowledging that she is a salaried (and not an hourly) employee. *Id.*, at 46. For the remainder of the claimant's employment with the debtor, the debtor did not provide the claimant employee breaks in accordance with company or California labor policies, and copies of accurate wage statements reflecting the true number of hours worked and rest periods lost. *Id.*, at 80.

For these reasons, the court finds the claimant's facts alleged in the complaint were sufficient under § 502(a), and will deny the trustee's ground for objection that the claim lacks specific facts that would allow the estate to evaluate the veracity of the claimant's allegations.

507(a)(4) Priority

The trustee objects to the priority of Claim No. 76. 11 U.S.C. § 507(a)(4) provides priority status to claim constituting wages, salaries, or commissions earned within 180 days before the debtor filed its bankruptcy petition. Here, the 10-day period prior to the debtor's petition begins on November 11, 2016. The claimant stated that "From on or about September 2015 until May 2016, Plaintiff had been employed by the Defendants." ECF 1184. The facts alleged by the claimant demonstrate that the alleged wages owed by the debtor to the claimant do not qualify for priority under 507(a)(4).

The court agrees with the trustee that the last date in the state court complaint was over 180 days prior to the debtor's filing date and will grant the trustee's objection to claim.

CIVIL MINUTE ORDER

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

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

James Salven's objection to claim 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 objection,

IT IS ORDERED that the objection is overruled as to the trustee's objection to the claim amount, and granted as to the trustee's objection to the claim's priority under 11 U.S.C. § 507(a)(4).

3. [18-12535](#)-A-7 **IN RE: JOSE CARILLO AND JUANA RIVERA**
[PFT-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH EXAMONE AND/OR MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KERSHAW & FANUCCHI, LLP FOR DAVID M. MOECK,
SPECIAL COUNSEL(S)
5-26-2020 [[21](#)]

PETER FEAR/MV
THOMAS GILLIS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

Final Ruling

Matter: (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

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

Disposition: (1) Motion to approve compromise granted; and (2) Application for compensation and expense reimbursement 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 motion and application 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).

COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a medical malpractice claim for \$150,000.00. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 25. Based on the motion and supporting papers, the court finds that the compromise presented for the court's

approval is fair and equitable considering the relevant A & C Properties factors. The compromise or settlement will be approved.

COMPENSATION AND EXPENSES

In this Chapter 7 case, Quinlan, Kershaw & Fanucchi, LLP, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$34,173.11 and reimbursement of expenses in the amount of \$57,480.67.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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

CIVIL MINUTE ORDER

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

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

Peter L. Fear's motion to approve the present compromise and application for allowance of final compensation and reimbursement of expenses have 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 motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 25

IT IS FURTHER ORDERED that the application for compensation and reimbursement of expenses of Quinlan, Kershaw & Fanucchi, LLP is approved on a final basis. The court allows final compensation in the amount of \$34,173.11 and reimbursement of expenses in the amount of \$57,480.67.

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

4. [18-12535](#)-A-7 **IN RE: JOSE CARILLO AND JUANA RIVERA**
[PFT-3](#)

MOTION FOR ORDER APPROVING STIPULATION BETWEEN DEBTOR AND
TRUSTEE REGARDING EXEMPTION AND SETTLEMENT OF MEDICAL
MALPRACTICE ACTION
5-26-2020 [[29](#)]

PETER FEAR/MV
THOMAS GILLIS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily

attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit, i.e., resolves and liquidates the debtor's claim of exemption to medical malpractice proceeds. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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.

Peter L. Fear's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 32.

5. [20-10473](#)-A-7 **IN RE: MATTHEW/ELIZABETH PRICKETT**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-18-2020 [\[18\]](#)

GATEWAY MORTGAGE GROUP/MV
ASHTON DUNN/ATTY. FOR DBT.
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: 1215 South Forest Knoll Street, Ridgecrest, CA 93555

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

STAY RELIEF

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

The debtor has missed 6 pre-petition payments totaling \$6,764.46 and three post-petition payments totaling \$3,292.14 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Gateway Mortgage Group'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 1215 South Forest Knoll Street, Ridgecrest, CA 93555, 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. [20-11480](#)-A-7 **IN RE: JOHANNA GUTIERREZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-22-2020 [[10](#)]

SANTANDER CONSUMER USA INC./MV
JERRY LOWE/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2019 Jeep Cherokee

Lessor/Creditor: Santander Consumer USA Inc.

Statement of Intention

(11 U.S.C. § 521(a)(2)(A)-Filing/Declaring):

-Deadline (earlier of 30 days after petition or before meeting of creditors): May 23, 2020

-SOI filed on: April 23, 2020

-Timely: Yes

-Lease listed in the Statement of Intention: No

-Stated Intention: N/A

Chapter 7 trustee's motion

(11 U.S.C. § 362(h)(2)-Retain Stay):

-Chapter 7 trustee filed motion (consequential value or benefit): No

-Was trustee's motion timely under 11 U.S.C. § 362(h)(2): N/A

-Result of trustee's motion: N/A

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated*

by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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

Filing a Chapter 7 petition imposes the stay, protecting the debtor, the debtor's property and property of the estate. 11 U.S.C. § 362(a). The stay terminates: (1) when the case has run its course, i.e., as to the debtor, when debtor is granted or denied a discharge and as to the estate, when the property leaves the estate, 11 U.S.C. § 362(c); (2) by order of the court after noticed motion, 11 U.S.C. § 362(d); or (3) by operation of law, see e.g., § 362(c)(3),(4). Among the operative provisions of law that lift the stay as § 362(h). That subdivision provides:

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)–

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after

notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 362(h) (emphasis added).

In the pertinent part, § 521 provides:

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)...

11 U.S.C. § 521(a)(2) (emphasis added).

Failure to file the Statement of Intent in a timely manner or to specify the treatment of that loan or to perform the Statement of Intention terminates the stay as to the property. *In re Jones*, 591 F.3d 308, 311 (4th Cir. 2010); *In re Dumont*, 581 F.3d 1104, 1110 (9th Cir. 2009).

Here, the debtor did not timely declare an intention to assume this loan in the Statement of Intention. The Chapter 7 trustee has not retained the stay in the manner specified in § 362(h)(2). As a consequence, the stay has already lifted and the property is no longer property of the estate. 11 U.S.C. § 362(h)(1). The motion will be denied as moot.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied as moot with respect to the property of the debtor described in the motion, commonly known as 2019 Jeep Cherokee.

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.