

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JULY 12, 2017
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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. [17-10608](#)-A-7 JOHN ANTONGIOVANNI
KDG-2
JEFFREY VETTER/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
6-6-17 [[25](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Extend Trustee and U.S. Trustee's Deadline for Objecting to Discharge under § 727(a)

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).

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through September 1, 2017.

2. [16-13234](#)-A-7 GREYS QUINONEZ
RP-1
RANDELL PARKER/MV
R. BELL/Atty. for dbt.

MOTION TO SELL
6-14-17 [[20](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Three vehicles described below

Buyer: Debtor

Sale Price: \$2000 cash for these 3 vehicles:

—1997 Nissan Altima with 244,000 miles

—2008 Nissan Versa with 100,000 miles

—2000 Chrysler Town and Country with 180,000 miles

Sale Type: Private sale subject to overbid opportunity

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 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

3. [17-10240](#)-A-7 DENISE DARBY CONTINUED MOTION TO AVOID LIEN
SL-4 OF CALIFORNIA PUBLIC EMPLOYEES'
DENISE DARBY/MV RETIREMENT SYSTEM
5-4-17 [[33](#)]

STEPHEN LABIAK/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

4. [16-13443](#)-A-7 R.L. SURGENER, INC. MOTION FOR ADMINISTRATIVE
KDG-7 EXPENSES
JEFFREY VETTER/MV 6-20-17 [[89](#)]
LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Allowance and Payment of Administrative Expenses

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

Disposition: Granted

Order: Prepared by moving party

Description of Expenses:

-\$1000.53 owed to Gould Auction and Appraisal Company for services rendered in selling property of the estate

-\$774.51 owed to M&S Security Services for security services

Statutory Basis for Administrative Priority: § 503(b) and §330(a)

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).

The trustee seeks an order allowing administrative expenses and for approval of payment of such expenses. The expenses described are

actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A). These expenses will be allowed as an administrative expense under § 503(b)(1)(A) and may be distributed in accordance with the priorities set forth in § 726(a)(1) and § 507(a) of the Bankruptcy Code.

5. [17-12048](#)-A-7 MARCI MARQUARDT MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC/MV 6-9-17 [[13](#)]
R. BELL/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 700 Hewlett St., 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 exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Bayview Loan Servicing, 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 700 Hewlett St., 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.

6. 17-11060 -A-7 ABIGAIL RODRIGUEZ JHW-1 SUNTRUST BANK/MV WILLIAM OLCOTT/Atty. for dbt. JENNIFER WANG/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-12-17 [12]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Hyundai Accent

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2009 Hyundai Accent, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

7. [17-11765](#)-A-7 FERNANDO BARBOZA
NLG-1
FIRST TECH FEDERAL CREDIT
UNION/MV
OSCAR SWINTON/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-13-17 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Nissan Pathfinder

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Nissan Pathfinder, 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.

8. [15-10869](#)-A-7 RAMIRO/CECILIA CELEDON MOTION FOR COMPENSATION BY THE
KDG-2 LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB AND
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
5-31-17 [[38](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, Klein DeNatale Goldner ("KDG"), counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$6162.00 and reimbursement of expenses in the amount of \$841.93.

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

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

CIVIL MINUTE ORDER

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

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

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$6162.00 and reimbursement of expenses in the amount of \$841.00.

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.

9. [15-10869](#)-A-7 RAMIRO/CECILIA CELEDON
KDG-3
RANDELL PARKER/MV

MOTION TO SURCHARGE IRS'S
COLLATERAL UNDER 11 U.S.C.
506(C)
6-14-17 [[54](#)]

SCOTT LYONS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No tentative ruling.

10. [15-10869](#)-A-7 RAMIRO/CECILIA CELEDON
RP-1
RANDELL PARKER/MV

MOTION FOR COMPENSATION FOR
RANDELL PARKER, CHAPTER 7
TRUSTEE(S)
6-14-17 [[49](#)]

SCOTT LYONS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

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 chapter 7 trustee has applied for an allowance of final compensation and reimbursement of expenses. A trustee's compensation is considered in accordance with § 326(a) and § 330(a)(1), (7). Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

"[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *Id.* at 896 (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, Congress intended to establish trustee's compensation for the "vast majority of cases" at the commission rates set forth in § 326. *Id.* at 897.

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.

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 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 \$3,426.92 and reimbursement of expenses in the amount of \$342.52.

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.

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| 11. <u>15-13569</u> -A-7 AMY PADILLA
KDG-2
JEFFREY VETTER/MV

NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv. | MOTION TO EMPLOY PETER
STEINBERG AND DAVID REINARD AS
SPECIAL COUNSEL
6-16-17 [<u>36</u>] |
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No tentative ruling.

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| 12. <u>15-13569</u> -A-7 AMY PADILLA
KDG-3
JEFFREY VETTER/MV
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv. | OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-14-17 [<u>31</u>] |
|--|---|

Final Ruling

The objection was not served on the debtor at the correct address. The zip code shown on the proof of service is incorrect. All other parties have been properly served. The court continues the hearing to August 2, 2017 to permit service of the objection on the debtor. A supplemental proof of service may be filed before July 26, 2017.

13. [17-11875](#)-A-7 OSCAR/EVA SOSA
APN-1
SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-17 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Jeep Patriot

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

STAY RELIEF

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

CIVIL MINUTE ORDER

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

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

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 granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Jeep Patriot, 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. [17-10384](#)-A-7 NICHOLAS BRISTER
UST-1
TRACY DAVIS/MV
VINCENT GORSKI/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
5-15-17 [[23](#)]

Tentative Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)

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

Disposition: Granted

Order: Prepared by the movant

The debtor has filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code. The U.S. Trustee has moved to dismiss the debtor's case under § 707(b). The motion is brought on grounds that the presumption of abuse arises under § 707(b)(2) and, alternatively, on grounds that the totality of the circumstances warrants dismissal under § 707(b)(3)(B). The debtor opposes the motion.

LEGAL STANDARDS

Section 707(b)(2)(A) of the Bankruptcy Code contains a statutory means test that determines whether the court should presume that the granting of relief would be an abuse of Chapter 7. See 11 U.S.C. § 707(b)(2)(A); see also *Blausey v. U.S. Tr.*, 552 F.3d 1124, 1132 (9th Cir. 2009). "The means test is applied only if the debtor's CMI [current monthly income] is above the safe harbor amount set forth in 11 U.S.C. § 707(b)(7)." *Blausey*, 552 F.3d at 1132 (citing 11 U.S.C. § 707(b)(7)). Stated differently, the means test applies only to debtors with above-median income.

The means test is a statutory formula designed to calculate disposable income and compare it to a statutory threshold. "If the debtor's CMI minus certain expenses specified in the Internal Revenue Service's collection standards multiplied by 60" ("disposable income") is greater than or equal to the lesser of the amounts specified in § 707(b)(2)(A)(i)(I) and (II), "then the case is presumed to be an abuse and the bankruptcy court may either dismiss it under § 707(b) or, with the debtor's consent, convert it to Chapter 13." *Id.* (citing 11 U.S.C. § 707(b)(1), (b)(2)(A)).

DISCUSSION

The court takes judicial notice of the voluntary petition, schedules, and statements filed in this case, as well as judicial notice of their contents. Fed. R. Evid. 201. The contents of the schedules and statements are non-hearsay admissions of the debtor to the extent they are offered against the debtor in this matter. Fed. R. Evid. 801(d)(2)(A), (D).

Section 707(b)(1) and (7)

The voluntary petition shows the nature of the debts in this case. They are primarily consumer debts. 11 U.S.C. § 707(b)(1).

Further, the debtor's Form 122A-1 shows that the debtor is above-median income for the debtor's applicable state and household size. See *id.* § 707(b)(7)(A).

Section 707(b)(2)

The U.S. Trustee has offered evidence that the presumption of abuse arises under § 707(b)(2). The U.S. Trustee's expert, a certified public accountant, has offered her declaration based on personal knowledge. In her declaration, she offers testimony about her experience, education, and skill that qualifies her as an expert under Fed. R. Evid. 702.

The U.S. Trustee's expert has reviewed all the materials filed by the debtor in this case including the petition, the schedules, the Statement of Financial Affairs, and Forms 122A. She has also reviewed and analyzed the debtor's tax liability considering the debtor's pay advices, prior-year tax return, and tax tables for the current year. She prepared an analysis of the Debtor's 2017 tax liability using information she reviewed.

The U.S. Trustee's audit of the debtor's bank statements revealed a number of miscellaneous deposits, other than payroll, into the bank accounts. These deposits total about \$26,345, and \$15,000 of this amount is for the sale of the debtor's interest in a family business.

The U.S. Trustee contends that the deposits would increase CMI by about \$4391, which results in a total monthly CMI of \$12,391. The debtor's Form 122A-1 shows \$8,000 monthly CMI.

The debtor disputes the U.S. Trustee's calculation of his current monthly income. But the only evidence offered by the debtor is a declaration of the debtor's attorney, which is inadmissible as factual evidence. The attorney lacks personal knowledge. Fed. R. Evid. 602.

The first 2 paragraphs of the attorney's declaration do not, however, offer counter evidence regarding monthly income. Instead, paragraph 1 states that the "miscellaneous deposits" do not constitute income within the scope of § 101(10A) of the Code. 11 U.S.C. § 101(10A). No authority is cited for this contention, and the broad reach of the phrase "income from all sources that the debtor receives" is not discussed. See *id.* Paragraph 2 objects to the characterization of "expense reimbursements" received through regular employment as income, an objection that appears logical, but the objection has not been proven by facts showing that the miscellaneous deposits were expense reimbursements.

But the court need not address the dispute about these miscellaneous deposits. The U.S. Trustee has helpfully prepared a supplemental means test analysis that excludes such deposits that would otherwise increase the debtor's income. See McAbee Decl. ¶ 14; U.S. Tr.'s Ex. 6. In this supplemental means test, the U.S. Trustee has relied on the exact same dollar amount for CMI that the debtor has used, which is \$8000 per month.

The U.S. Trustee's expert has made several adjustments to the debtor's deductions from income. Two of these adjustments are in the debtor's favor and increase the amount of the deduction for Line 19 (court ordered alimony / support) and Line 36 (chapter 13 administrative expenses). One adjustment eliminates the Line 12 deduction for vehicle operation expense of \$213 because the vehicle was repossessed prepetition. Line 16 for tax liability has been reduced from \$2849.26 to \$1294.00.

The debtor has offered no counter evidence or arguments to the U.S. Trustee's analysis of the debtor's deductions from income. Nor has the debtor contested the result of the U.S. Trustee's supplemental means test that excludes the miscellaneous deposits.

After accounting for these adjustments to the debtor's deductions from income, the debtor's monthly disposable income for purposes of Form 122A-2, multiplied by 60, is \$33,808.00. This exceeds the applicable statutory limit under § 707(b)(2)(A)(i). The presumption of abuse arises under § 707(b)(2).

CONCLUSION

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

15. [17-11489](#)-A-7 EFRAIN NAVARRETTE
APN-1
SANTANDER CONSUMER USA INC./MV
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-26-17 [[13](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Honda Accord

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

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada*,

Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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 granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2009 Honda Accord, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

16. [17-12463](#)-A-7 RDX, INC.
FRB-1
TBK BANK, SSB/MV
H. KHARAZI/Atty. for dbt.
ANDREW ALPER/Atty. for mv.
OST

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-6-17 [[15](#)]

No tentative ruling.