

**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: AUGUST 2, 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. [17-10910](#)-A-7 JANET GREER
APN-1
WELLS FARGO BANK, N.A./MV
MARK ZIMMERMAN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-28-17 [[16](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2014 Nissan Sentra

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 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.

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.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2014 Nissan Sentra. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that 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. [17-11239](#)-A-7 CALVIN WYATT AND DEBORAH MOTION FOR RELIEF FROM
PPR-1 HUGGINS-WYATT AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 6-23-17 [[39](#)]
ROBERT WILLIAMS/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The chapter 7 trustee has not been served. Instead, the chapter 13 trustee was served. In this converted case, the chapter 7 trustee is the party that must have been served as the chapter 13 trustee has been removed from serving as trustee in this case.

3. [17-10841](#)-A-7 LLOYD HOLLINS
JMV-1
JEFFREY VETTER/MV

MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
7-4-17 [[30](#)]

D. GARDNER/Atty. for dbt.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to
Object to Discharge or File a Motion to Dismiss

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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 U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through September 3, 2017.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through September 3, 2017.

4. [17-11041](#)-A-7 TERRI RUSSELL
NES-1
TERRI RUSSELL/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF ALTAONE
FEDERAL CREDIT UNION
7-5-17 [[16](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

5. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION FOR COMPENSATION FOR
JMV-2 INC. JEFFREY M. VETTER, CHAPTER 7
JEFFREY VETTER/MV TRUSTEE(S)
7-4-17 [[232](#)]

LEONARD WELSH/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 \$60,128.28 and reimbursement of expenses in the amount of \$2,590.81.

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.

6.	17-11152 -A-7	JESSICA HERNANDEZ-RUIZ	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	WELLS FARGO BANK, N.A./MV		6-20-17 [14]
	OSCAR SWINTON/Atty. for dbt.		
	AUSTIN NAGEL/Atty. for mv.		

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 Chevrolet Cruze-4 Cyl.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Chevrolet Cruze-4 Cyl., 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. [17-11968](#)-A-7 GLOBAL MULTISOLUTION, MOTION TO EMPLOY GOULD AUCTION
RP-1 INC. & APPRAISAL COMPANY, LLC. AS
RANDELL PARKER/MV AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
7-5-17 [[14](#)]
- D. GARDNER/Atty. for dbt.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party

Property: Personal property described in the motion including a vehicle, steel doors, and electrical switchgear

Sale Type: Public auction

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

SECTION 363(b) PUBLIC-AUCTION SALE

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.

AUCTIONEER'S EMPLOYMENT

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

AUCTIONEER'S COMPENSATION AND EXPENSES

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

CHAVEZ'S EXPENSE REIMBURSEMENT

Frank Chavez was in possession of the vehicle, a 2015 Toyota Tundra, presumably on behalf of the debtor, before this bankruptcy. He has provided the trustee with evidence that he personally paid for upgrades to the vehicle that increase the value of the vehicle by about \$1000. If he has a claim against the estate based on a debt that the debtor owed him prepetition for these expenses, then his only remedy is to file a proof of claim against the estate.

If these expenses were incurred on the corporation's behalf postpetition, his remedy is to seek retroactive employment so that he can be reimbursed under § 330(a).

But the court cannot authorize reimbursement of expenses under § 330(a) for a person who has not been employed under § 327 or who is not otherwise described in § 330(a) (such as a trustee or examiner). 11 U.S.C. § 330(a).

8. [15-13569](#)-A-7 AMY PADILLA
KDG-3
JEFFREY VETTER/MV
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
6-14-17 [[31](#)]

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

BACKGROUND

This bankruptcy case was originally filed on September 10, 2015. The debtor has reopened this bankruptcy case to disclose an interest in a pending claim that is in litigation. The claim is based on the tragic death of the debtor's child.

Since reopening the case, the debtor amended her Schedule A/B and C. She scheduled "a pending wrongful death lawsuit for the death of her child." She has exempted this claim and listed its value as unknown. The debtor's exemption is claimed under § 704.150 of the C.C.P.

EXEMPTIONS IN BANKRUPTCY

General Exemption Standards

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Burden of Proof

Section 703.580(b) of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

DISCUSSION

Section 704.150 of the Cal. Civ. Proc. Code

The basis for the debtor's claim of exemption in this case is § 704.150 of the California Code of Civil Procedure. This statute provides in pertinent part:

(a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

Cal. Civ. Proc. Code § 704.150.

The Wrongful-Death Claim Falls Outside the Scope of § 704.150(b)

The trustee argues that the debtor has failed to satisfy her burden of proof that her wrongful death claim is within the scope of § 704.150. Subdivision (b) of § 704.150 limits the exemption to an award of damages or settlement arising out of the wrongful death of (1) the judgment debtor's spouse or (2) a person on whom the judgment debtor or judgment debtor's spouse was dependent. If the judgment debtor can satisfy this condition, then the judgment debtor is entitled to the exemption but only to the extent reasonably necessary for support of the judgment debtor, her spouse, or her dependents.

In this case, the debtor's child does not qualify for this provision. The record contains no evidence that the debtor was dependent on the child. The only evidence in the record (to which no objection was raised) indicates that the deceased child was a one-year-old. The court will not infer that the debtor was dependent on her child.

As a result, the court need not address the application of the second part of the statutory provision, i.e., "the extent to which the award is reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor." See Cal. Civ. Proc. Code § 704.150(b).

Section 704.150(a) Does Not Permit an Exemption in the Entire Claim but Permits the Exemption without a Formal Claim

One might plausibly argue that since the claim has not been reduced to an award of damages or settlement, that the entire claim is exempt under § 704.150(a). And until such claim has been reduced to damages or settlement, the claim is exempt in its entirety.

But the bankruptcy appellate panel in this circuit has interpreted virtually identical language in § 704.140(a) and reached a contrary conclusion. Section 704.140(a) provides that a personal injury claim "is exempt without making a claim." Cal. Civ. Proc. Code § 704.140(a). Subdivision (b) of § 704.140 then imposes limitations on the exemption that are similar to and different from the limitations of § 704.150(b). The panel held that "the California Legislature did not intend CCP § 704.140(a) to exempt personal injury claims in their entirety" without regard to the limitations imposed on such exemption in subdivision (b). *In re Gose*, 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004). Instead, the language of subsection (a) (that a personal injury claim is "exempt without making a claim") "merely allows a debtor to exempt personal injury claims without having to make a formal claim." *Id.* The B.A.P. further found that subdivision (b) defined the scope of the exemption in § 704.140(a).

The court finds that *In re Gose* is persuasive precedent here as to the interpretation of the interplay between subsection (a) and (b) of § 704.150. Section 704.150(a) does not exempt a wrongful death claim in its entirety but merely permits the exemption without making a formal claim. Subsection (b) then defines the scope of § 704.150. Applied to these facts, subsection (b) does not permit the debtor an exemption in the wrongful death claim she has scheduled.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtor's claim of exemption has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor may not claim an exemption in her wrongful death claim under § 704.150.

9. [17-12274](#)-A-7 ROBERT MELLAS
JCW-1
U.S. BANK NATIONAL
ASSOCIATION/MV
JENNIFER WONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-19-17 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 13407 Boticelli Court, 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.

U.S. Bank National Association, as Trustee, by and through its servicing agent Nationstar Mortgage LLC, has presented its motion for relief from the automatic stay 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 13407 Boticelli Court, 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.

10. [17-11685](#)-A-7 SICILY HENDERSON MOTION FOR RELIEF FROM
ABG-1 AUTOMATIC STAY
KINECTA FEDERAL CREDIT 6-27-17 [[12](#)]
UNION/MV
NEIL SCHWARTZ/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Chevrolet Impala

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.

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

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