

**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: AUGUST 28, 2019
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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

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

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

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

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2019 [\[12\]](#)

KINECTA FEDERAL CREDIT
UNION/MV
TIMOTHY SPRINGER
MARK BLACKMAN/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Nissan Frontier, VIN ending in 7024

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

STAY RELIEF

11 U.S.C 362(d) (1)

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 1 postpetition payment is past due. ECF No. 15.

The movant, Kinecta Federal Credit Union, argues it is in possession of the debtor's vehicle, which is consistent with Debtor's Statement of Intention indicating the vehicle will be surrendered. ECF No. 1.

Kinecta Federal Credit Union contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving

party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

11 U.S.C 362(d)(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. ECF No. 15.

Disposition

Based on the foregoing, cause exists to grant relief under 11 U.S.C. §§ 362(d)(1) and (d)(2). 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 2017 Nissan Frontier, VIN ending in 7024, 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. [19-12424](#)-A-7 **IN RE: MARY REGALADO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-19-2019 [\[16\]](#)

ACAR LEASING LTD/MV
ERIC ESCAMILLA
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 Chevrolet Cruze, VIN ending in 9740

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).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Here, the debtor Mary Esther Regalado was leasing the above described vehicle, but has voluntarily surrendered the vehicle to the movant. ECF No. 15. This constitutes cause for stay relief.

Cause exists to grant relief under 11 U.S.C. § 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.

ACAR Leasing LTD dba GM Financial Leasing'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 2016 Chevrolet Cruze, VIN ending in 9740, 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.

3. [19-13128](#)-A-7 **IN RE: CHANTHAY PHAKONEKHAM-MASON**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-5-2019 [\[12\]](#)

HONDA LEAST TRUST/MV
MARK ZIMMERMAN
VINCENT FROUNJIAN/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Honda Civic, VIN ending in 8042

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

STAY RELIEF

11 U.S.C 362(d) (1)

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 1 postpetition payment is past due. ECF No. 14.

The movant, Honda Lease Trust, argues it is in possession of the debtor's vehicle, which is consistent with Debtor's Statement of Intention indicating the vehicle will be surrendered. ECF Nos. 1, 14.

Honda Lease Trust contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a) (1) (C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

11 U.S.C 362(d) (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. ECF No. 14.

Disposition

Based on the foregoing, cause exists to grant relief under 11 U.S.C. §§ 362(d) (1) and (d) (2). 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.

Honda Lease Trust'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 2017 Honda Civic, VIN ending in 8042, 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.

4. [19-12861](#)-A-7 **IN RE: STEVEN THOMPSON**
 [JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-19-2019 [\[17\]](#)

AMERICREDIT FINANCIAL
SERVICES, INC./MV
STEPHEN LABIAK
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: 2013 Dodge Grand Caravan, VIN ending in 2173

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

11 U.S.C 362(d) (1)

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 1 postpetition payment is past due. ECF No. 20.

Debtor's Statement of Intention indicating the vehicle will be surrendered. ECF Nos. 1.

Americredit Financial Services, Inc. dba GM Financial contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

11 U.S.C 362(d) (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. ECF No. 20.

Disposition

Based on the foregoing, cause exists to grant relief under 11 U.S.C. §§ 362(d)(1) and (d)(2). 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.

Americredit Financial Services, Inc. dba GM Financial'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 2013 Dodge Grand Caravan, VIN ending in 2173, 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.

5. [19-12682](#)-A-7 **IN RE: THELMA MCCOLLUM**
 [RWR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-9-2019 [\[14\]](#)

PACIFIC SERVICE CREDIT
UNION/MV
JERRY LOWE
RUSSELL REYNOLDS/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Hyundai Elantra, VIN ending in 9922

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

STAY RELIEF

11 U.S.C 362(d) (1)

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 1 postpetition payment is past due. ECF No. 16.

The movant, Pacific Service Credit Union, argues it is in possession of the debtor's vehicle, which is consistent with Debtor's Statement of Intention indicating the vehicle will be surrendered. ECF Nos. 1, 16.

Pacific Service Credit Union contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a) (1) (C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

11 U.S.C 362(d) (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. ECF No. 16.

Disposition

Based on the foregoing, cause exists to grant relief under 11 U.S.C. §§ 362(d) (1) and (d) (2). 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.

Pacific Service 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 2018 Hyundai Elantra, VIN ending in 9922, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

6. [19-12195](#)-A-7 **IN RE: KEVIN CARTER**
[KXL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-2019 [\[15\]](#)

CARRINGTON MORTGAGE SERVICES,
LLC/MV
PETER BUNTING
KELSEY LUU/ATTY. FOR MV.
NON-OPPOSITION

Final Ruling

Motion: Stay Relief under § 362(d)(4)

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

Disposition: Granted

Order: Civil minute order

Subject: 331 South Sol Court, Visalia, California

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 362(d) (4)

Section 362(d) (4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d) (4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d) (4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d) (4).

APPLICATION

The Movant, Carrington Mortgage Services, LLC, argues the debtor's case was "hijacked" by the borrowers on the note secured by the property in a scheme to delay and hinder Movant's recovery of the property.

Exhibit E is a Grant Deed purporting to transfer an interest in the property to the debtor, Kevin Carter. ECF No. 19. That Grant Deed was not recorded until June 10, 2019, after this bankruptcy case was commenced.

The debtor, Kevin Carter, filed a Non-Opposition to the Motion on August 2, 2019. ECF No. 22. Debtor argues that he does not own an interest in the property, and testifies in his declaration that he has filed a police report for fraud with respect to the transfer. ECF No. 23.

Disposition

Here, the evidence shows that an interest in the property was purportedly transferred to debtor for the purpose of delaying and hindering Movant's recovery efforts. Based on the foregoing, cause exists to grant relief under 11 U.S.C. §§ 362(d)(4). 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

Carrington Mortgage Services, LLC's motion for relief from the automatic stay under § 362(d)(4) has been presented to the court. Having rendered findings of fact and conclusions of law orally on the record pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to real property commonly known as 331 South Sol Court, Visalia, California.

IT IS FURTHER ORDERED, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

7. [16-13315](#)-A-7 **IN RE: KASSANDRA HOELSCHER**
[FW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR PETER L. FEAR, TRUSTEES ATTORNEY(S)
7-30-2019 [\[140\]](#)

PETER BUNTING
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

8. [19-12415](#)-A-7 **IN RE: FRED BUNDY**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-16-2019 [\[12\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

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

In this case, the debtor has failed to appear at a scheduled meeting
of creditors required by 11 U.S.C. § 341. ECF No. 12. Because the
debtor's failure to attend this meeting has occurred once, the court
will not dismiss the case on condition that the debtor attend the
next creditors' meeting. But if the debtor does not appear at the
continued meeting of creditors, the case will be dismissed on
trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

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

CIVIL MINUTE ORDER

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

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

The Motion To Dismiss filed by the Chapter 7 Trustee, Peter L. Fear,
has been presented to the court. Having considered the well-pleaded
facts of the motion,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for September 16, 2019 at 9:00a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

9. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
GENERAL PARTNERSHIP**
[BMJ-6](#)

MOTION TO AUTHORIZE INSURANCE EXPENDITURE
8-12-2019 [\[181\]](#)

DAVID SOUSA/MV
JACOB EATON
JOHN WASTE/ATTY. FOR MV.

Tentative Ruling

Motion: Allow Administrative Expense [Insurance on Estate Assets]

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

Disposition: Granted

Order: Civil minute order

Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

After notice and a hearing, section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate" An expense is actual and necessary when it arises from a transaction with the bankruptcy estate and directly and substantially benefitted the estate. *Microsoft Corp. v. DAK Indus., Inc. (In re DAK Indus., Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995); 4 Collier on Bankruptcy P 503.06 (16th 2019)

Movant and Chapter 7 Trustee, David Sousa, seeks a determination that insurance premiums totaling \$3,524.39 are an administrative expense. The Movant argues the insurance is necessary to cover the risk of loss or damage on various farm equipment (identified fully in the Motion (ECF No. 181)) before it is sold at auction this November 2019.

A properly authenticated copy of the Coverage Schedule was filed as Exhibit A. ECF No. 184.

Movant has demonstrated that the insurance coverage is necessary, and directly and substantially benefits the Estate. The insurance expenses will be allowed as an administrative expense under § 503(b) (1) (A) and may distributed in accordance with the priorities set forth in § 726(a) (1) and § 507(a) of the Bankruptcy Code.

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 motion for allowance of administrative expense 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 allows insurance premiums totaling \$3,524.39 as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

10. [19-12932](#)-A-7 **IN RE: RONGHUA LIU**
[JES-1](#)

MOTION TO SELL
7-24-2019 [\[12\]](#)

JAMES SALVEN/MV
PETER BUNTING

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Lafayette Therapeutic Massage

Buyer: Ronghua Liu

Sale Price: \$4,000.00

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).

The Chapter 7 Trustee, James Edward Salven, filed this Motion seeking to sell the Estate's interest in Debtor's business, Lafayette Therapeutic Massage. Trustee argues the sale price of \$4,000.00 reflects the fair market value of the business, less \$10,400.00

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.

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 motion to sell 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 Chapter 7 Trustee, James Edward Salven, is authorized to sell pursuant to 11 U.S.C. § 363(b) to the debtor, Ronghua Liu, the Estate's interest in property identified as debtor's business, Lafayette Therapeutic Massage for \$4,000.00.

11. [18-11533](#)-A-7 **IN RE: RICARDO RODRIGUEZ FLORES AND**
 ESPERANZA VICTORIA CLEMENTE
 [PFT-2](#)

MOTION TO SELL
7-30-2019 [\[44\]](#)

PETER FEAR/MV
MICHAEL RIVERA
PETER FEAR/ATTY. FOR MV.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

12. [19-10334](#)-A-7 **IN RE: JOHN MASTRO PLUMBING, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-31-2019 [\[32\]](#)

JAMES SALVEN/MV
DAVID JENKINS

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, James Salven, a Certified Public Accountant 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 \$1,875.00 and reimbursement of expenses in the amount of \$262.41.

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.

James Salven'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 \$1,875.00 and reimbursement of expenses in the amount of \$262.41.

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.

13. [19-12435](#)-A-7 **IN RE: KENYA CAPERS**

NOTICE OF INTENT TO CLOSE CASE WITHOUT ENTRY OF DISCHARGE
7-1-2019 [\[27\]](#)

RESPONSIVE PLEADING

Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

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

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). 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 debtor, Kenya Capers, filed an Opposition on July 25, 2019, and accompanying Notice of Hearing on July 31, 2019. ECF Nos. 30, 33. Debtor requests allowance for a second discharge nine months early of the eight month period she is required to wait before receiving a second discharge.

The Clerk of the Court has moved for denial of discharge pursuant to § 727(a)(8). The debtor has received a chapter 7 discharge in a prior case. The prior case, No. 12-20251, was commenced January 6, 2012, which is within 8 years prior to the petition date in the current case. Pursuant to § 727(a)(8), the debtor is not entitled to receive a discharge in this case.

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 Clerk of the Court's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion is granted, and the instant case, Case No. 19-12435, shall be closed without the entry of a discharge.

14. [19-13038](#)-A-7 **IN RE: CONSUELO FLORES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-31-2019 [\[13\]](#)

ORDER GRANTING FEE WAIVER, FILED 8/16/19

Final Ruling

Matter: Order to Show Cause re Failure To Pay Filing Fees

An Order To Show Cause was issued on July 31, 2019, based on the debtor, Consuelo C. Flores's, failure to pay the filing fee of \$335.00.

On August 16, 2019, the court issued an Order granting Debtor's Application for Waiver of the filing fee.

Therefore, the Order To Show Cause is discharged.

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 Order to Show Cause has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

15. [19-12343](#)-A-7 **IN RE: GABRIEL SANTOS**
[VAG-1](#)

MOTION TO DISMISS DUPLICATE CASE
6-4-2019 [\[9\]](#)

GABRIEL SANTOS/MV
VINCENT GORSKI

Final Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

The present Motion seeks dismissal of this bankruptcy case on the basis that it was filed in error, and is duplicative of the debtor, Gabriel Santos's, other case, No. 19-12343.

Having demonstrated that the case was filed due to error, and no party in interest opposing the Motion, the Motion is granted.

CIVIL MINUTE ORDER

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

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

The Motion To Dimiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion to Dismiss is granted, it is determined that the documents in this case were electronically delivered to the court in error, and that the filing of Bankruptcy Case No. 19-12343 on May 31, 2019, is vacated. The filing being vacated due to the mechanical error, the court determines the filing to be a nullity and not a bankruptcy case filed by either of the two Debtors.

16. [19-12745](#)-A-7 **IN RE: ELIZABETH CORDOVA**
[SL-1](#)

MOTION TO COMPEL ABANDONMENT
8-9-2019 [\[27\]](#)

ELIZABETH CORDOVA/MV
SCOTT LYONS

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: Debtor's hairstylist sole proprietorship and the assets thereof

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

The debtor, Elizabeth Anne Cordova, filed this Motion seeking an order abandoning property identified as her hairstylist business and the assets thereof. The business and its assets have been listed on Amended Schedule B. ECF No. 26. On Amended Schedule C, Debtor claims exemptions in the business assets totaling \$350.00 pursuant to California Code of Civil Procedure sections 703.140(b)(5) and (b)(6). ECF No. 26.

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

Debtor argues, supported by her Declaration, the property described above does not have value above the claimed exemptions. ECF. 29.

The chapter 7 Trustee did not file a response or opposition to the Motion.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

CIVIL MINUTE ORDER

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

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

The Motion To Compel Abandonment has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion is granted, and the Property identified as the debtor, Elizabeth Anne Cordova's ("Debtor"), hairstylist business, and the assets thereof, and listed on Amended Schedule B (ECF No. 26) by Debtor is abandoned by the Chapter 7 Trustee, Peter L. Fear ("Trustee") to Debtor by this order, with no further act of the Trustee required.

17. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[DRJ-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-16-2019 [\[27\]](#)

RUSSELL FLETCHER/MV
DAVID JENKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Sustained
Order: Civil minute order

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). 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).

This Objection was filed by creditor Russel Remington Fletcher individually and in his capacity as successor trustee of the Marion D. And Thelma F. Fletcher Family Revocable Trust ("Objector") seeking disallowance of exemptions claimed by the debtor, Robert John Fletcher's ("Debtor"), pursuant to California Civil Code of Procedure sections 703.140(b).

Objector argues the exemptions claimed on Amended Schedule C should be disallowed for two reasons: (1) Debtor did not file a spousal waiver, and (2) Debtor claims an exemption in property that is not property of the Estate.

Debtor filed an Opposition on August 15, 2019. ECF No. 33. Debtor argues that a declaration of his nonfiling spouse, Dianne Fletcher, was filed to fulfill the requirement for spousal waiver.

Debtor argues further that proceedings regarding Debtor's interest in property were invalid for various reasons.

Disposition

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

The debtor is married but has not filed a joint petition with debtor's spouse. While a Declaration was filed as Exhibit 1 purporting to be a spousal waiver for Dianna Fletcher, nothing was filed for the Debtor.

Section 703.140(a)(2) requires both spouses to execute the spousal waiver. Therefore, the Objection is sustained.

Objector's second argument relies on a determination of Debtor and the Estate's interest in real property commonly known as 766 North Terrace Park St., Tulare, California. This determination would be the subject of an adversary proceeding, and not something brought up in passing during an objection to claimed exemptions.

However, because the Objection is sustained due to failure to file a spousal waiver, the court need not consider Objector's second argument.

CIVIL MINUTE ORDER

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

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

The Objection To Claim of Exemptions filed by creditor Russel Remington Fletcher has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Objection is sustained, and the claimed exemptions on Amended Schedule C (ECF No. 25) under California Code of Civil Procedure § 703.140(b) are disallowed in their entirety.

18. [09-62348](#)-A-7 **IN RE: DAVID/ROSALINA FERRER**
[FW-4](#)

MOTION TO EMPLOY MARK DAVIS AS SPECIAL COUNSEL AND/OR MOTION
TO EMPLOY VANCE ANDRUS AS SPECIAL COUNSEL
7-25-2019 [\[118\]](#)

JAMES SALVEN/MV
DAVID JENKINS
JOSEPH HORSWILL/ATTY. FOR MV.

Final Ruling

Application: Retroactive Employment of Special Counsel

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

Disposition: Approved

Order: Prepared by the applicant pursuant to the instructions below

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

In a previous case, this court has set forth the standards for retroactive approval of special counsel under § 327(e) of the Bankruptcy Code and Ninth Circuit decisional law:

"The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services." *Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir.1995) (citing *Halperin v. Occidental Fin. Grp. (In re Occidental Fin. Grp.)*, 40 F.3d 1059, 1062 (9th Cir.1994)). *Nunc pro tunc* approval of an attorney's unauthorized services under § 327(e) requires two distinct showings. First, a showing must be made that the applicant "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed," and that the employment is "in the best interest of the estate." 11 U.S.C. § 327(e); *see also Mehdi pour v. Marcus & Millichap (In re Mehdi pour)*, 202 B.R. 474, 479 (9th Cir. BAP 1996) ("Applying for *nunc pro tunc* approval does not alleviate the professional from meeting the requirements of § 327...."). The attorney must continually qualify under the statutory conflict-of-interest standards throughout the entire period of representation. *See* 11 U.S.C. §§ 327(e), 328(c); *see also Rome v. Braunstein*, 19 F.3d 54, 57-58, 60 (1st Cir.1994) (holding that compensation may be disallowed if at any time a disqualifying conflict arises and recognizing the need for counsel to avoid such conflicts throughout their tenure).

Second, the applicant must show "exceptional circumstances" that justify *nunc pro tunc* approval. *Atkins*, 69 F.3d at 974; *Mehdi pour*, 202 B.R. at 479. "To establish the presence of exceptional

circumstances, professionals seeking retroactive approval must ... (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Atkins*, 69 F.3d at 975-76; *accord Occidental Fin. Grp.*, 40 F.3d at 1062; *In re Gutterman*, 239 B.R. 828, 830 (Bankr.N.D.Cal.1999).

In re Grant, 507 B.R. 306, 309-10 (Bankr. E.D. Cal. 2014).

For the reasons discussed in the application, the court will approve the employment of special counsel. Special counsel satisfies the standards of § 327(e). Further, special counsel has shown exceptional circumstances that justify retroactive employment.

The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

CIVIL MINUTE ORDER

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

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

The Motion To Employ filed by the Chapter 7 Trustee, James Salven, has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to employ Andrus Wagstaff and Davis & Crump, P.C. as Special Counsel for the Estate on the terms and conditions as set forth in the Attorney/Client Contingency Fee Agreement filed as Exhibit A, ECF No. 124.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

19. [19-11058](#)-A-7 **IN RE: ALFRED GALVAN**
[PFT-1](#)

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES
FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS
4-30-2019 [\[11\]](#)

BENNY BARCO
PETER FEAR/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

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

This Motion was initially filed after Debtor failed to appear at the
Meeting of Creditors on April 30, 2019. ECF No. 11. The court
continued the hearing on the Motion to allow Debtor to appear at the
continued Meeting of Creditors. ECF Nos. 23, 32. Subsequently,
Debtor failed to appear at the continued Meeting of Creditors on
July 9, 2019. ECF No. 35.

On August 20, 2019, the Debtor filed a "withdrawal of Opposition" to
the present Motion.

Based on Debtor's failure to appear, and Debtor's withdrawal of
opposition, cause exists to dismiss the case. The Motion is granted.

CIVIL MINUTE ORDER

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

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

The Motion To Dismiss filed by the Chapter 7 Trustee, Peter L. Fear,
has been presented to the court. Having considered the well-pleaded
facts of the motion,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is
dismissed.

20. [19-11469](#)-A-7 **IN RE: PAMALA HENRY**
[GT-1](#)

MOTION TO EXTEND TIME TO FILE REAFFIRMATION AGREEMENT
7-24-2019 [\[24\]](#)

PAMALA HENRY/MV
GRISELDA TORRES
DISCHARGED 7/15/19

Tentative Ruling

Motion: To Extend Time To File Reaffirmation Agreement

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

Disposition: denied

Order: Civil minute order

The debtor, Pamala Henry ("Debtor"), filed this Motion seeking to have the court "enlarge the time period set forth in Rule 4008 to 60 days after the granting of the Order, to allow the Reaffirmation Agreement to be filed."

Debtor argues that Debtor signed a reaffirmation agreement with AIS Portfolio Services, LP on July 9, 2019, but that the agreement was not filed before discharge was entered. Debtor argues further that AIS Portfolio Services, LP will sign and file the agreement if this Motion is granted.

11 U.S.C. 524(c)(1) requires that an affirmation agreement be filed "before the granting of discharge." Federal Rule of Bankruptcy Procedure 4008(a) provides that a reaffirmation agreement "shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a) of the Code."

Here, the first Meeting of Creditors was held May 10, 2019. ECF No. 7. Further, a discharge was entered on July 15, 2019. ECF No. 16.

Debtor failed to file the reaffirmation agreement no later than 60 days after the first Meeting, and failed to file the agreement before discharge was entered.

Debtor has not explained what authority the court has to overwrite the provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

The Motion is denied.

CIVIL MINUTE ORDER

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

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

The Motion To Extend Time To File Reaffirmation Agreement filed by the debtor, Pamala Henry, has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion is denied.

21. [19-13073](#)-A-7 **IN RE: MICHAEL/MARINA OLIVERA**
[NES-1](#)

MOTION TO DISMISS DUPLICATE CASE
7-23-2019 [\[8\]](#)

MICHAEL OLIVERA/MV
NEIL SCHWARTZ

Final Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

The present Motion seeks dismissal of this bankruptcy case on the basis that it was filed in error, and is duplicative of the debtors, Michael Evan Olivera and Marina Marie Olivera's, other case, No. 19-13070.

Having demonstrated that the case was filed due to error, and no party in interest opposing the Motion, the Motion is granted.

CIVIL MINUTE ORDER

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

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

The Motion To Dimiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion to Dismiss is granted, it is determined that the documents in this case were electronically delivered to the court in error, and that the filing of Bankruptcy Case No. 19-13073 on July 19, 2019, is vacated. The filing being vacated due to the mechanical error, the court determines the filing to be a nullity and not a bankruptcy case filed by either of the two Debtors.

22. [19-10185](#)-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL**
INC.
[MAZ-2](#)

CONTINUED MOTION BY MARK ZIMMERMAN TO WITHDRAW AS ATTORNEY
7-11-2019 [\[62\]](#)

MARK ZIMMERMAN

Tentative Ruling

Motion: Attorney's Withdrawal from Representation of a Client

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

Disposition: Granted

Order: Prepared by movant pursuant to the instructions below

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

Under California Rule of Professional Conduct 1.16(c), "[i]f permission for termination of a representation is required by the rules of a tribunal,* a lawyer shall not terminate a representation before that tribunal* without its permission."

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

California Rule of Professional Conduct 1.16(b)(4) provides for permissive withdrawal if "the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively." The facts asserted in the motion and supporting papers show that continued, effective representation of the client will be unreasonably difficult for the attorney to undertake.

The court finds that the attorney's withdrawal from the representation is proper. In the order's recitals, the order shall state the client's last known address and, if known, the client's phone number. The order's substantive provisions shall include a provision requiring the attorney to comply with California Rule of Professional Conduct 1.16(e)(1), (2) upon the withdrawal.

23. [19-13287](#)-A-7 **IN RE: GERARDO BERMUDEZ**
[ALG-1](#)

MOTION TO COMPEL ABANDONMENT
8-1-2019 [8](#)

GERARDO BERMUDEZ/MV
JANINE ESQUIVEL OJI
JANINE ESQUIVEL/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: Debtor's hairstylist sole proprietorship and the assets thereof

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

The debtor, Gerardo Hernandez Bermudez, filed this Motion seeking an order abandoning Debtor's business, Blue Turtle Express, and the assets thereof. The business and its assets have been listed on Schedule B. ECF No. 6. On Schedule C, Debtor claims exemptions in the business assets totaling \$33,616.73 pursuant to California Code of Civil Procedure sections 703.140(b)(5) and (b)(6). ECF No. 6.

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

Debtor argues, supported by his Declaration, the property described above does not have value above the claimed exemptions and unavoidable liens. ECF. 10.

The chapter 7 Trustee, James Edward Salven, did not file a response or opposition to the Motion.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

CIVIL MINUTE ORDER

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

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

The Motion To Compel Abandonment has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Motion is granted, and the Property identified as the debtor, Gerardo Hernandez Bermudez's ("Debtor"), hairstylist business, and the assets thereof, and listed on Amended Schedule B (ECF No. 26) by Debtor is abandoned by the Chapter 7 Trustee, Peter L. Fear ("Trustee") to Debtor by this order, with no further act of the Trustee required.