

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** SEPTEMBER 7, 2016  
**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. [16-10802](#)-A-7 WILLIAM AITCHISON  
WDO-1  
WILLIAM AITCHISON/MV

CONTINUED MOTION TO AVOID LIEN  
OF STATE FARM GENERAL INSURANCE  
COMPANY  
6-2-16 [[12](#)]

WILLIAM OLCOTT/Atty. for dbt.  
OPPOSITION

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

William Aitchison moves to avoid a lien in favor of State Farm Insurance company because, he contends, it impairs a \$1,415.00 exemption he claims against his residence at 30574 Fox Ridge Court, Tehachapi, California. State Farm opposes contending (1) the debtor has not shown entitlement to claim the exemption; (2) the motion is unsupported by evidence of the amount of the consensual liens; and (3) movant has not provided "definitive evidence" of its value.

### **EVIDENTIARY ISSUES**

#### William Aitchison

State Farms has objected to movant's lack of evidence in the original motion as to amount of consensual liens and valuation of the property. Both objections are overruled. As to the amount of the consensual liens, after the original motion was filed, movant supplemented the record with a declaration as to the amount of the consensual lien (\$320,585.00). Aitchison decl. ¶ 1, August 23, 2016, ECF # 31. This is sufficient.

As to the value of the property, the debtor (who owns the residence) has valued it at \$322,000.00. Aitchison decl. ¶ 3, June 2, 2016, ECF # 14. An owner may value his or her own real property. *Christopher Phelps & Assoc., LLC v. Galloway*, 477 F.3d 128, 138, (4th Cir. 2007); see also, 4-701 Weinstien's Federal Evidence § 701.03 (2015). As a consequence, the debtor has offered admissible evidence as to the value of the property.

#### State Farm

State Farms' opposition is not supported by declaration. Opposition, June 15, 2016, ECF # 19. It does attach copies of a Trans Union estimate of value of \$442,299 and a Zillow estimate of value of \$480,000. Each was retrieved from the internet. Neither is admissible. Fed. R. Evid. 901(a). And the court gives no weight to either estimate.

### **EXEMPTION**

Debtor William Aitchison has claimed entitlement to an exemption in the amount of \$1,415.00 in 30574 Fox Ridge Court, Tehachapi, California, under California Code of Civil Procedure 703.140(b) (1). That section provides, "The following exemptions may be elected as provided in subdivision (a):(1) The debtor's aggregate interest, not

to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence." Cal. Code of Civ. Proc. § 703.140(b)(1). Consistent with recent decision law within the Ninth Circuit, the court presumes that the debtor bears the burden of proof on the issue. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (9th Cir. BAP 2016); *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015).

Unlike the more exacting homestead requirements of California's regular exemption scheme, Cal. Code of Civ. Proc. 704.010, California's bankruptcy exemptions applicable to homestead exemptions is available, within the amount specified, to (1) real or personal property, and (2) that the debtor or dependent "uses as a residence." This property clearly meets each element. It is real property. And the debtor uses the property as a residence. Voluntary Petition Part 1, Item 5, March 15, 2016, ECF # 1; Aitchison dec. ¶ 3, June 2, 2016, ECF # 14. As a consequence, the debtor has sustained his burden of entitlement to claim the exemption.

#### **SECTION 522(f)**

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 (\$35,947.45), all other liens (\$320,585.00), and the exemption amount (\$1,415.00) together exceed the property's value (\$322,000.00) by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the debtor has made a prima facie case for avoidance and responding party's judicial lien will be avoided entirely.

2. [16-12403](#)-A-7 CHRISTINA GUEVARA  
APN-1  
BMW BANK OF NORTH AMERICA/MV  
PHILLIP GILLET/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-18-16 [[10](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Acura ILX

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.

BMW Bank of North America'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 2014 Acura ILX, 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. [16-11904](#)-A-7 GURTEJ SINGH AND RANJIT MOTION TO EMPLOY MICHAEL J.  
FRB-1 KAUR GOMEZ AS ATTORNEY(S)  
JEFFREY VETTER/MV 8-4-16 [[24](#)]  
JACOB EATON/Atty. for dbt.

#### **Final Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by moving party

Unopposed applications 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 court may approve employment of attorneys or professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

4. [16-11904](#)-A-7 GURTEJ SINGH AND RANJIT MOTION TO EMPLOY LICENSE  
FRB-2 KAUR LOCATORS, INC. AS BROKER(S)  
JEFFREY VETTER/MV 8-4-16 [[29](#)]  
JACOB EATON/Atty. for dbt.

#### **Final Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by moving party

Unopposed applications 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 court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are

disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

5. [16-12404](#)-A-7      RODOLFO/SANDRA MACIAS      MOTION FOR RELIEF FROM  
APN-1      AUTOMATIC STAY  
BMW BANK OF NORTH AMERICA/MV      7-18-16 [[10](#)]  
PHILLIP GILLET/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:** 2010 Acura MDX

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.

BMW Bank of North America'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 2010 Acura MDX, 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. [16-11212](#)-A-7 SUSAN SUH  
SUSAN SUH/MV  
DANA DOUGLAS/Atty. for dbt.

MOTION TO AVOID LIEN OF  
CITIBANK, N.A.  
8-3-16 [[21](#)]

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h)(1)-(3).

In addition, no evidence has been provided in support of the motion. LBR 9014-(d)(7).

7. [16-12020](#)-A-7     STEPHEN/KAREN MCKINZIE     MOTION FOR RELIEF FROM  
KAZ-1     AUTOMATIC STAY  
MIDFIRST BANK/MV     8-8-16 [[21](#)]  
WILLIAM EDWARDS/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2824 Park Way, 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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2824 Park Way, 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.

8. [16-12420](#)-A-7 MARTHA GARCIA MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
TD AUTO FINANCE LLC/MV 7-21-16 [[13](#)]  
R. BELL/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2016 Dodge Ram 1500

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Dodge Ram 1500, 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.

9. [16-11327](#)-A-7 ARLANA LYNN MOTION TO DISMISS CASE PURSUANT  
UST-1 TO 11 U.S.C. SECTION 707(B)  
TRACY DAVIS/MV 8-5-16 [[19](#)]  
JOSEPH PEARL/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.  
OPPOSITION

**No tentative ruling.**

10. [16-11434](#)-A-7 LORRETTA WILLIAMS MOTION TO SELL  
JMV-1 8-16-16 [[13](#)]  
JEFFREY VETTER/MV  
VINCENT GORSKI/Atty. for dbt.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2009 Toyota Camry

**Buyer:** Debtor

**Sale Price:** \$5400 (\$2500 cash plus \$2900 exemption credit)

**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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

11. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION TO CLAIM OF AERA  
RSW-10 ENERGY LLC, CLAIM NUMBER 19  
JAMES CANNON/MV 8-8-16 [[550](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

Debtors object to this claim because they do not believe there was any personal guarantee for this obligation, and the obligation was incurred by the debtors' LLC. Absent opposition, the court will sustain the objection and disallow the claim on the ground that the claim is unenforceable against the debtor and property of the debtor under applicable law. 11 U.S.C. § 502(b).

12. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION TO CLAIM OF BUSTOS  
RSW-8 INSURANCE AGENCY, CLAIM NUMBER  
JAMES CANNON/MV 24  
8-8-16 [[543](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

The objection resolved by stipulation and order, ECF #582, the matter is dropped as moot.

13. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION TO CLAIM OF SHEFFIELD  
RSW-9 FINANCIAL, CLAIM NUMBER 4  
JAMES CANNON/MV 8-8-16 [[547](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

14. [16-12153](#)-A-7 SHANTILL CASTRO  
APN-1  
WELLS FARGO BANK, N.A./MV  
VINCENT GORSKI/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-14-16 [[11](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Kia Optima

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 2014 Kia Optima, 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.

15. [16-11458](#)-A-7 WILLIAM/PHYLLIS STANE MOTION FOR RELIEF FROM  
SSW-1 AUTOMATIC STAY  
CITIZENS BANK, N.A./MV 7-27-16 [[15](#)]  
VINCENT GORSKI/Atty. for dbt.  
SCOTT WELTMAN/Atty. for mv.  
DISCHARGED

### **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:** 2007 Dolphin 5355

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.

Citizens 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 2007 Dolphin 5355. 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.

16. [16-11559](#)-A-7      MICHAEL/ANN FERGUSON      MOTION TO AVOID LIEN OF POOL  
KDG-1      AND ELECTRICAL PRODUCTS, INC.  
MICHAEL FERGUSON/MV      8-10-16 [\[23\]](#)  
JACOB EATON/Atty. for dbt.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

17. [16-11261](#)-A-7 CHRISTOPHER/CHANDA WEEMS MOTION TO CONVERT CASE FROM  
RSW-2 CHAPTER 7 TO CHAPTER 13  
CHRISTOPHER WEEMS/MV 8-10-16 [[23](#)]  
MARSHALL MOUSHIGIAN/Atty. for dbt.  
ASHTON DUNN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Notice:** LBR 9014-1(f)(2); no 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). 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 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

18. [16-11261](#)-A-7 CHRISTOPHER/CHANDA WEEMS MOTION TO DISMISS CASE PURSUANT  
UST-1 TO 11 U.S.C. SECTION 707(B)  
TRACY DAVIS/MV 8-5-16 [[17](#)]  
MARSHALL MOUSHIGIAN/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

**No tentative ruling.**

19. [16-12063](#)-A-7 TIMOTHY CLARK MOTION TO COMPEL ABANDONMENT  
RSW-2 8-25-16 [[30](#)]  
TIMOTHY CLARK/MV  
ROBERT WILLIAMS/Atty. for dbt.  
OST #31

**Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below

**Real Property:** 18417 Buckaroo Court, Bakersfield, CA

**Business Description:** Stock in RM & T, Inc.

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).

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.

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 the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).



20. [16-12663](#)-A-7      STEPHEN/JOANNA OZENBAUGH      MOTION FOR RELIEF FROM  
JDM-1      AUTOMATIC STAY  
SAFE 1 CREDIT UNION/MV      8-24-16 [[10](#)]  
DAVID JENKINS/Atty. for dbt.  
JOHN MENDONZA/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:** 2013 Toyota Corrola

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**

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.*

The debtor has failed to maintain insurance on the vehicle. This constitutes cause for stay relief.

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

### **CIVIL MINUTE ORDER**

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

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

Safe 1 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 2013 Toyota Corrola, 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.

21.	<u>16-12065</u> -A-7     JEREMY/TAMI ROWELL KAZ-1 PNC BANK, NATIONAL ASSOCIATION/MV ROBERT WILLIAMS/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-10-16 [ <u>10</u> ]
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**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 3700 Marjal Ave., 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.

PNC 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 3700 Marjal Ave., 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.

22. [16-11673](#)-A-7      MAVERICK/CRISTAL ANDERSON      OPPOSITION RE: TRUSTEE'S MOTION  
JMV-1      TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-8-16 [[12](#)]

NEIL SCHWARTZ/Atty. for dbt.

### **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 is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at \*2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued 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 requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will no longer be set at 60 days following the first date set for the

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for September 9, 2016, at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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