

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** SEPTEMBER 27, 2017  
**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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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

1. [17-11704](#)-A-7 JULIE MENDOZA  
FJG-1  
JULIE MENDOZA/MV  
F. GIST/Atty. for dbt.

MOTION TO AVOID LIEN OF BARBARA  
BLADE  
8-9-17 [[37](#)]

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Continued to November 1, 2017, at 9:00 a.m.

**Order:** Civil minute order

### **SERVICE INSUFFICIENT**

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).

Service of the motion was insufficient. No proof of service has been filed on the docket showing that the motion and supporting papers were served.

*[At the continued hearing, if the motion has been served properly and if no opposition is presented, the court will adopt the following as the ruling.]*

### **LIEN AVOIDANCE**

#### Attachment Liens Generally

Title 6.5 of the California Code of Civil Procedure (Attachment) is titled "The Attachment Law." Cal. Civ. Proc. Code § 482.010. This law contains highly detailed procedures and requirements for a plaintiff to obtain both a "right to attach order" and an attachment lien on the defendant's property.

#### Creation of Attachment Lien

The Attachment Law defines the method for (1) creation of an attachment lien, (2) its duration, and (3) its extension. *Id.* §§ 488.500-488.510.

To obtain a writ of attachment, the plaintiff must first obtain a "right to attach order." *See* Hon. Alan M. Ahart, *California Practice Guide: Enforcing Judgments and Debts* ¶ 4:129, at 4-32 (rev. 2016); *see also* Cal. Civ. Proc. Code § 484.010. Such an order operates as declaratory relief, and it determines "that the plaintiff's claim is one for which a [writ of attachment] may issue, then or later." Ahart, *supra*, ¶ 4:129. The right to attach order requires a hearing on a noticed application, or in rare instances, may be obtained by an ex parte application. *Id.* ¶¶ 4:130-4:131.

Although a right to attach order is a necessary condition to creation of an attachment lien, it is not sufficient by itself. The attachment lien is created only after a proper levy occurs under a writ of attachment. "A levy on property under a writ of attachment creates an attachment lien on the property from the time of levy until the expiration of the time provided by Section 488.510." *Id.* § 488.500(a)

(emphasis added); see also Hon. Alan M. Ahart, *California Practice Guide: Enforcing Judgments and Debts* ¶ 4:493, at 4-106 (rev. 2016).

### Methods of Levy

For various types of property, the attachment-lien statutes incorporate the method of levy under a writ of execution in Article 4, Chapter 3, Division 2, of Title 9 (Enforcement of Judgments) of the Code of Civil Procedure. When such cross-referencing appears in the attachment levy provisions, the term *writ of execution* means *writ of attachment*, the term *notice of levy* means *notice of attachment*, the term *judgment creditor* means the attachment *plaintiff*, and the term *judgment debtor* means the attachment *defendant*. See *id.* § 488.300(a)-(d).

### *Tangible Personal Property*

To levy on tangible personal property in the possession or under the control of the defendant, the levying officer must take the property into custody. Cal. Civ. Proc. Code § 488.335 ("Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of the defendant, the levying officer shall take the property into custody."). For tangible personal property in a third party's possession, the levy occurs in the same manner as under a writ of execution. "[T]o levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person." *Id.* § 700.040.

### *Real Property*

To levy on real property of the defendant, "the levying officer shall comply with Section 700.015 and the recorder shall index the copy of the writ of attachment and a notice of attachment as provided in that section." Cal. Civ. Proc. Code § 488.315. Complying with § 700.015 of the California Code of Civil Procedure means that "the levying officer shall record with the recorder of the county where the real property is located a copy of the writ [of attachment] and a notice of [attachment] that describes the property levied upon and states that the [attachment defendant's] interest in the described property has been levied upon." *Id.* §§ 700.015, 488.315.

### *Equipment*

To levy on equipment, there are different procedures depending on the status of ownership of the equipment and also depending on the type of equipment. For "equipment of a *going business* in the possession or under the control of the defendant, the levying officer shall file with the office of the Secretary of State a notice of attachment, in the form prescribed by the Secretary of State . . . ." *Id.* § 488.375(a) (emphasis added). The contents of this notice of attachment are statutorily prescribed, *id.* § 488.375(a)(1)-(5), and a filing fee must also be tendered to the Secretary of State, *id.* § 488.375(b). The notice of attachment is then filed, marked and indexed in the same way as a financing statement. For equipment that constitutes a vehicle or vessel, however, this method of levy does not apply. See *id.* §§ 488.375(a), 488.385.

For non-business equipment (including equipment not used by a business that is a going concern), the levying officer must take the equipment

into custody. *Ahart, supra*, ¶ 4:470 (citing the comment to Cal. Civ. Proc. Code § 488.375). Equipment levied by this method of custody includes equipment owned by a business that has failed or ceased to operate. See *id.*

### Section 522(f) Lien Avoidance

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).

### Application

What constitutes a judicial lien is defined in § 101 of the Bankruptcy Code. "The term 'judicial lien' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101. This definition is broad enough to include attachment liens, which are created by legal process set forth in California's attachment law under Title 6.5 of the California Code of Civil Procedure.

### *Real Property*

In this case, the debtor has offered evidence of the existence of an attachment lien on her real property in Merced County, California. The Merced County Sheriff, the levying officer, filed with the Merced County Recorder a notice of attachment and a writ of attachment. The notice of attachment recorded in the real property records indicates that the property attached by recording the notice is "Julie Mendoza's interest in real property located at 1947 Fall Brook Court, Merced, CA 95340."

### *Personal Property and Other Tangible and Intangible Property*

The writ of attachment directs that the levying officer attach real property, personal property, equipment, motor vehicles, chattel paper, securities, and other forms of tangible and intangible property. But no evidence is in the record showing the existence of a levy on any property other than the debtor's real property. Without a levy, no attachment lien is created. Therefore, the order shall avoid a lien only on the real property.

### Conclusion

The responding party's judicial lien (approximately \$668,652.63), all other liens (\$307,671.14) and the exemption amount (\$500.00) together

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 2016 BMW 4 Series Sedan 4D 428i I4 Turbo, 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.

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| 4. | <a href="#">17-13213</a> -A-7    MARTHA ARTEAGA<br>BPC-1<br>THE GOLDEN 1 CREDIT UNION/MV<br>TIMOTHY SPRINGER/Atty. for dbt.<br>JEANNIE KIM/Atty. for mv. | MOTION FOR RELIEF FROM<br>AUTOMATIC STAY<br>9-7-17 [ <a href="#">11</a> ] |
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#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 3950 East Lyell Avenue, Fresno, CA

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**

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.

Golden 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 3950 East Lyell Avenue, Fresno, 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.

5.	<a href="#">17-11618</a> -A-7     JOE/NATALIE NINO RCO-1 WELLS FARGO BANK, N.A./MV PETER BUNTING/Atty. for dbt. JASON KOLBE/Atty. for mv. DISCHARGED	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-28-17 [ <a href="#">35</a> ]
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#### **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:** 1234 W. Palo Alto Avenue, Fresno, 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).

## **AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

## **AS TO ESTATE**

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

## **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 1234 W. Palo Alto Avenue, Fresno, CA. 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.



6. [17-13018](#)-A-7 HENRY KIMBELL  
APN-1  
SANTANDER CONSUMER USA,  
INC./MV  
ROBERT WILLIAMS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-29-17 [[11](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2007 Lincoln MKZ

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

### **STAY RELIEF**

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2007 Lincoln MKZ, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

7. [17-11824](#)-A-7      HORISONS UNLIMITED      MOTION TO EMPLOY FEAR WADDELL,  
FW-1      P.C. AS SPECIAL COUNSEL  
JAMES SALVEN/MV      8-28-17 [[179](#)]  
CECILY DUMAS/Atty. for dbt.

### **Final Ruling**

**Application:** Approval of Employment of Special Counsel

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

**Disposition:** Approved

**Order:** Prepared by applicant pursuant to the instructions below

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).

### **EMPLOYMENT UNDER § 327(c) AND (e)**

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").

"Employment may be for a general or limited, specific purpose." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at \*2-3 (Bankr. E.D. Cal. Sept. 12, 2013) (citing 11 U.S.C. § 327(a), (c), (e) and cases), *aff'd sub nom. In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

"A creditor's attorney may be employed by the trustee provided the attorney is 'disinterested,' 'do[es] not hold or represent an interest adverse to the estate,' and, if an objection is made, does not have an 'actual conflict of interest.'" *Id.* (alteration in original) (quoting 11 U.S.C. § 327(a), (c)). "When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the specific matter for which the attorney is to be employed." *Id.* (citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993)).

"Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full, candid, and complete." *Id.* (citing *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006)).

## DISCUSSION AND INSTRUCTIONS FOR ORDER

Fear Waddell, P.C. provided a consultation with creditor M&W Construction, Inc. (M&W) post-petition. M&W is listed in the Statement of Financial Affairs as having received a transfer within the 90 days before the petition. After this consultation, M&W did not engage Fear Waddell, P.C., and Fear Waddell, P.C. and M&W mutually agreed that no attorney-client relationship would ensue.

Because of this consultation that Fear Waddell, P.C. provided to M&W, the court will analyze the representation under § 327(c). The scope of services as set forth in the application expressly excludes any matters involving M&W.

Having applied the conflicts and eligibility analysis under § 327 to the specific matters for which the Fear Waddell, P.C. is to be employed, the court finds that Fear Waddell, P.C. is eligible to represent the trustee as special counsel for the matters indicated in the application. The court will approve the employment. The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [special counsel's name] and the trustee of the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed or the petition date, whichever is earlier.

8. [17-11824](#)-A-7    HORISONS UNLIMITED  
JTW-1  
JAMES SALVEN/MV

MOTION TO EMPLOY JANZEN,  
TAMBERI AND WONG AS  
ACCOUNTANT(S)  
8-22-17 [[167](#)]

CECILY DUMAS/Atty. for dbt.  
ORDER, ECF NO. 210

### Final Ruling

The matter is dropped as moot. The applicant's employment has previously been approved by this court. Order, August 30, 2017, ECF #210.

9. [17-11824](#)-A-7    HORISONS UNLIMITED  
WFH-1  
JAMES SALVEN/MV  
CECILY DUMAS/Atty. for dbt.

MOTION TO EMPLOY DANIEL L. EGAN  
AS ATTORNEY(S)  
8-30-17 [[189](#)]

### Final Ruling

**Application:** Approval of Employment

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

**Disposition:** Approved

**Order:** Prepared by applicant pursuant to the instructions below

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.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the trustee of the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed or the petition date, whichever is earlier.

10. [17-12631](#)-A-7 JEFFREY MAZE  
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-7-17 [[10](#)]

TIMOTHY SPRINGER/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 debtor has failed to appear at a scheduled meeting of creditors required by 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 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 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.

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 October 10, 2017. 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).

11. [17-12435](#)-A-7 JENNEFER POMEROY  
RAS-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
KARNEY MEKHITARIAN/Atty. for dbt.  
SEAN FERRY/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-24-17 [[14](#)]

## **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 823-825 NE Lafayette Avenue, McMinnville, OR

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.

Deutsche Bank National Trust Company'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 823-825 NE Lafayette Avenue, McMinnville, OR, 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.

12. [11-63440](#)-A-7 TROY JACQUES  
RHT-2  
ROBERT HAWKINS/MV  
JANINE ESQUIVEL/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

AMENDED MOTION TO SEAL  
9-8-17 [[69](#)]

### **No Ruling**

13. [11-63440](#)-A-7 TROY JACQUES  
RHT-3  
ROBERT HAWKINS/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH CONFIDENTIAL  
DEFENDANTS AND/OR MOTION FOR  
COMPENSATION BY THE LAW OFFICE  
OF CORNWELL & SAMPLE SPECIAL  
COUNSEL(S)  
9-5-17 [[61](#)]

JANINE ESQUIVEL/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**No Ruling**

14. [15-12047](#)-A-7 CHARLES/MIRIAM BALDWIN  
DWE-1  
NATIONSTAR MORTGAGE LLC/MV  
ROBERT WILLIAMS/Atty. for dbt.  
DANE EXNOWSKI/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-24-17 [[69](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 28410 Delaware Drive, Tehachapi, 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.

Nationstar Mortgage 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 28410 Delaware Drive, Tehachapi, 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.

15. [17-12960](#)-A-7      STEPHANIE PETERS      MOTION TO COMPEL ABANDONMENT  
DRJ-1      9-8-17 [[11](#)]  
STEPHANIE PETERS/MV  
DAVID JENKINS/Atty. for dbt.

### **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:** sole proprietorship insurance agency

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 only the business and its assets that are described in the motion.



16. [17-12765](#)-A-7 MARIA BARBOSA  
DWE-1  
WELLS FARGO BANK, N.A./MV  
DANE EXNOWSKI/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-24-17 [[18](#)]

**Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief. The motion will be denied as moot.

17. [10-61970](#)-A-7 BRIAN ENNIS  
RH-14

MOTION FOR COMPENSATION FOR  
ROBERT HAWKINS, TRUSTEES  
ATTORNEY(S)  
8-30-17 [[434](#)]

RILEY WALTER/Atty. for dbt.

**Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Denied

**Order:** Civil minute order

Applicant seeks final fees and expenses of \$22,110.00 and \$1,656.03, representing that no prior fee applications were made or approved. It appears that the applicant has overlooked a prior interim fee application and order approving fees. Application for Interim Fees and Expenses, January 8, 2014, ECF # 253; Order, February 5, 2014, ECF #268. If that is accurate, it appears appropriate to deny the motion without prejudice.

18. [16-14476](#)-A-7 RAUL GUTIERREZ  
MSK-1  
EAGLE HOME MORTGAGE, LLC/MV  
THOMAS GILLIS/Atty. for dbt.  
MARK KRAUSE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-23-17 [[93](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 3720 West Brown Avenue, Fresno, 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**

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 missed 7 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

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

### **CIVIL MINUTE ORDER**

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

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

Eagle Home Mortgage, 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 3720 West Brown Avenue, Fresno, 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.

19. [17-12781](#)-A-7 DALIP NIJJAR  
FW-10  
JAMES SALVEN/MV  
JEFFREY ROWE/Atty. for dbt.  
PETER FEAR/Atty. for mv.  
OST 9/12/17

MOTION TO PAY  
9-12-17 [[183](#)]

### **Tentative Ruling**

**Motion:** Allowance and Payment of Administrative Expenses

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

**Disposition:** Granted

**Order:** Prepared by moving party

### **Description of Expenses:**

-\$21,865.00 paid to the Sam and Margie Esraelian Family Trust (EFT) for costs of harvesting crops on property located at 8625 East Saginaw Avenue, Selma, CA (East Saginaw property).

-\$24,000.00 paid to EFT for post-petition rent due for the East Saginaw property

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

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

These expenses arose postpetition. They arose from transactions between the claimant and the estate. And they directly and substantially benefited the estate. Thus, the expenses described are

actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A).

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

20. [17-12781](#)-A-7 DALIP NIJJAR  
FW-11  
JAMES SALVEN/MV  
JEFFREY ROWE/Atty. for dbt.  
PETER FEAR/Atty. for mv.  
OST 9/12/17

MOTION TO PAY  
9-12-17 [[191](#)]

### **Tentative Ruling**

**Motion:** Allowance and Payment of Administrative Expenses

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

**Disposition:** Granted

**Order:** Prepared by moving party

#### **Description of Expenses:**

-\$21,865.00 paid to Tateosian Farms for costs of harvesting crops on property located at 13350 South Highland Avenue, Selma, CA (South Highland property).

-\$31,000.00 paid to Tateosian Farms for post-petition rent due for the South Highland property

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

"A creditor claiming administrative expense treatment under § 503(b)(1)(A) must show that the claim: [1] arose postpetition; [2] arose from a transaction with the trustee or DIP (as opposed to the preceding [prepetition] entity) or that the claimant gave consideration to the trustee or DIP; and [3] directly and substantially benefited the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

These expenses arose postpetition. They arose from transactions between the claimant and the estate. And they directly and substantially benefited the estate. Thus, the expenses described are actual and necessary costs or expenses of preserving the estate under § 503(b)(1)(A).

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

21. [17-11585](#)-A-7 TOM DOYLE  
RHT-1  
ROBERT HAWKINS/MV  
MARK ZIMMERMAN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL  
8-30-17 [[20](#)]

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2005 Lexus RX 330

**Buyer:** Debtor

**Sale Price:** \$4726 (\$3000 cash plus \$1726 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.