

**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:** OCTOBER 4, 2017  
**CALENDAR:** 10:00 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. [17-12802](#)-A-7      DAWN WOLTZ      CONTINUED MOTION TO COMPEL  
[RSW-1](#)      ABANDONMENT  
DAWN WOLTZ/MV      8-17-17 [[12](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
NON-OPPOSITION

**Final Ruling**

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

**Notice:** Continued hearing date; written non-opposition filed by the trustee

**Disposition:** Granted

**Order:** Prepared by moving party

**Real Property Description:** 923 Devore Avenue, 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). 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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

2. [17-13108](#)-A-7      LILIA CORNEJO      MOTION FOR RELIEF FROM  
[SC-1](#)      AUTOMATIC STAY  
HOLLYVALE RENTAL HOLDINGS,      8-21-17 [[14](#)]  
LLC/MV  
SAM CHANDRA/Atty. for mv.  
DISMISSED

[The hearing on this matter will be concurrent with the hearing on the motion for stay relief in case no. 17-13098, which is number 14 on this court's calendar.]

**Tentative Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

**MOOTNESS STANDARDS**

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. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing

#### **RELIEF UNDER SECTION 362(d) (1) AND (2)**

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.

#### **RELIEF UNDER SECTION 362(d) (4)**

The movant requests relief from the automatic stay under § 362(d)(4). The basis for this request is the debtor's filing of 4 bankruptcy petitions in the previous year, including the present one. These petitions have all been dismissed.

Section 362(d)(4) authorizes binding, in rem relief from stay with to respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.* The motion will be denied as moot.

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a) of this section*, such as by terminating, annulling, modifying, or conditioning such stay-(4) with respect to a *stay of an act against real property under subsection (a) . . .*, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors . . . ." 11 U.S.C. § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4), once granted, may be effective in a subsequent bankruptcy case if the order granting relief is properly recorded, such relief requires as prerequisite an effective automatic stay under § 362(a).

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 this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay. The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

3. [17-13115](#)-A-7 JAVIER/MARIA SANCHEZ MOTION TO AVOID LIEN OF VINCENT  
[LKW](#)-1 ROY HERRON/COMMERICAL TRADE,  
JAVIER SANCHEZ/MV INC.  
LEONARD WELSH/Atty. for dbt. 8-22-17 [[10](#)]

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien “on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled.” 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is

statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

4. [10-61725](#)-A-7      PAMELA ENNIS      MOTION FOR COMPENSATION FOR  
RP-1      RANDELL PARKER, CHAPTER 7  
RANDELL PARKER/MV      TRUSTEE(S)  
9-6-17 [[312](#)]  
  
RILEY WALTER/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, the chapter 7 trustee has applied for an allowance of final compensation of \$90,808.84 and reimbursement of expenses of \$556.60. By agreement, that amount is to be divided between Sheryl Strain (the former trustee) and Randell Parker (the current trustee) \$53,411.17 and \$37,397.67, respectively. The motion also requests that the court finalize the interim distribution to trustee Stain in the amount of \$99,750.00.

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

"[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that

extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *Id.* at 896 (second alteration in original) (citations omitted) (internal quotation marks omitted).

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

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustees additional compensation in the amount of \$90,808.84 and reimbursement of expenses in the amount of \$556.60. Of said compensation, Sheryl Strain will receive \$53,411.17 and Randell Parker will receive \$37,397.67. Randell Parker will receive the entire amount of expenses prayed. The interim distribution to Sheryl Strain is finalized. Order, October 3, 2013, ECF # 145.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

5. [17-11239](#)-A-7 CALVIN WYATT AND DEBORAH MOTION FOR RELIEF FROM  
[PPR-1](#) HUGGINS-WYATT AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 8-30-17 [[50](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
MELISSA VERMILLION/Atty. for mv.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2325 Terrace Way, (Area of) 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.

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 2325 Terrace Way, (Area of) Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing

may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

6.     [17-10841](#)-A-7     LLOYD HOLLINS                     MOTION FOR RELIEF FROM  
          [MUZ](#)-2   AUTOMATIC STAY  
          RICHGROVE COMMUNITY SERVICES             8-16-17 [[38](#)]  
          DISTRICT/MV  
          D. GARDNER/Atty. for dbt.  
          MARIO ZAMORA/Atty. for mv.  
          RESPONSIVE PLEADING

**No Ruling**

7.     [17-12849](#)-A-7     FAUSTO PASCUAL                     MOTION FOR RELIEF FROM  
          [VVF](#)-1   AUTOMATIC STAY  
          AMERICAN HONDA FINANCE                   8-23-17 [[10](#)]  
          CORPORATION/MV  
          STEVEN STANLEY/Atty. for dbt.  
          VINCENT FROUNJIAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Relief from Stay

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 2012 Honda Accord

**STAY RELIEF UNDER § 362(d)(1)**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate



protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

In this case, the property has an equity cushion, based on the movant's figures, of approximately 29% (or \$2,178.34). This is more than adequate to protect secured creditors security interest at this point in the case.

In addition, the motion asserts that only 1 postpetition payment has been missed, and 1.5 payments prepetition. This is not sufficient to constitute cause for stay relief. The court also factors into its decision the fact that the debtor's statement of intention indicates that the debtor intends to retain the subject property, and the time for a reaffirmation agreement has not yet expired. See 11 U.S.C. § 362(h) (1), 521(a) (2) (B).

#### **STAY RELIEF UNDER § 362(d) (2)**

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due on the movant's secured debt is \$5,371.66. The value of the property as alleged by the movant is \$7,550. There is equity in the property, so relief cannot be granted under § 362(d) (2).

#### **CIVIL MINUTE ORDER**

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

American Honda Finance Corp.'s motion for relief from the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

8. [12-18860](#)-A-7 ERNESTO/CAREY ROSALES  
RP-1  
RANDELL PARKER/MV  
VINCENT GORSKI/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-6-17 [[28](#)]

## **Final Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Civil minute order

## **BACKGROUND**

This bankruptcy case was originally filed on October 19, 2012. The debtors reopened this case to schedule a previously undisclosed asset—a tort claim—on Schedule A/B. The tort claim appears to be related to a medical issue suffered by joint debtor, who is party to a class action lawsuit related to this issue.

The debtors have exempted this claim and listed its value as unknown. The debtor's exemption is claimed under § 704.140 of the California Code of Civil Procedure. The trustee objects to this claim of exemption.

## **EXEMPTIONS IN BANKRUPTCY**

### General Exemption Standards

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

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

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

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

see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

### Burden of Proof

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

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

### **DISCUSSION**

#### Section 704.140 of the Cal. Civ. Proc. Code

The basis for the debtor’s claim of exemption in this case is § 704.140 of the California Code of Civil Procedure. This statute provides in pertinent part:

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

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Cal. Civ. Proc. Code § 704.140(a)-(b).

Section 704.140(a) provides that a personal injury claim “is exempt without making a claim.” Cal. Civ. Proc. Code § 704.140(a). Subdivision (b) of § 704.140 then imposes limitations on the exemption. The bankruptcy appellate panel in *In re Gose* held that “the California Legislature did not intend CCP § 704.140(a) to exempt personal injury claims in their entirety” without regard to the limitations imposed on such exemption in subdivision (b). *In re Gose*, 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004). Instead, the language of subsection (a) (that a personal injury claim is “exempt without making a claim”) “merely allows a debtor to exempt personal injury claims without having to make a formal claim.” *Id.* And subdivision (b) defines the scope of the exemption in § 704.140(a).

Section 704.140(b) exempts the personal injury claim only *to the extent* that the award of damages or a settlement arising out of the claim is “necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.” Cal. Civ. Proc. Code § 703.140(b).

In this case, the debtor has the burden of proving, by a preponderance of the evidence, that the proceeds of the personal injury claim are necessary for her support or for her spouse or dependents' support. No opposition has been filed. Therefore, the debtor has not satisfied her burden of proof and shown that any portion of the personal injury claim is necessary for the debtors or their dependents' support. The objection will be sustained.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's objection to the debtor's claim of exemption has been presented to the court. Having entered the default of respondent debtors for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. The debtors may not claim an exemption in joint debtor's personal injury claim under § 704.140.

9. [17-12966](#)-A-7 CRYSTAL HOLMAN  
[ABG](#)-1  
KINECTA FEDERAL CREDIT  
UNION/MV  
PHILLIP GILLET/Atty. for dbt.  
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-21-17 [[12](#)]

#### **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 Quad Cab Truck

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

## STAY RELIEF

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

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Dodge Ram 1500 Quad Cab Truck, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

10.	<a href="#">17-11968</a> -A-7	GLOBAL MULTISOLUTION,	MOTION FOR RELIEF FROM
	<a href="#">MUZ</a> -1	INC.	AUTOMATIC STAY
		RICHGROVE COMMUNITY SERVICES	9-12-17 [ <a href="#">38</a> ]
		DISTRICT/MV	
		D. GARDNER/Atty. for dbt.	
		MARIO ZAMORA/Atty. for mv.	

**No Ruling**

11. [15-13569](#)-A-7 AMY PADILLA  
[KDG](#)-4  
JEFFREY VETTER/MV  
NEIL SCHWARTZ/Atty. for dbt.  
LISA HOLDER/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-15-17 [[67](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

**Notice:** LBR 9014-1(f)(2); written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

### **BACKGROUND**

This bankruptcy case was originally filed on September 10, 2015. The debtor reopened this case to schedule a previously undisclosed asset on Schedule A/B. The undisclosed asset is described as "a pending wrongful death lawsuit for the death of [debtor's] child." Schedule B, ECF No. 65. The debtor lists the value of the claim as "unknown."

The debtor previously exempted this claim under § 704.150. The trustee objected, and the court ruled in favor of the trustee. The court ordered that the debtor could not claim an exemption in her wrongful death claim under § 704.150 because the debtor's claim did not arise out of the wrongful death of the debtor's spouse or a person on whom the debtor or debtor's spouse was dependent.

Following the court's ruling on the exemption under § 704.150, the debtor amended her Schedule C again. This time, she has exempted the wrongful death claim under § 704.140 of the California Code of Civil Procedure. The trustee objects to this amended exemption claim.

### **EXEMPTIONS IN BANKRUPTCY**

#### General Exemption Standards

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

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

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

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

### Burden of Proof

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

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

## **DISCUSSION**

### Section 704.140 of the Cal. Civ. Proc. Code

The basis for the debtor’s claim of exemption in this case is § 704.140 of the California Code of Civil Procedure. This statute provides in pertinent part:

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

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Cal. Civ. Proc. Code § 704.140(a)-(b).

Section 704.140(a) provides that a personal injury claim “is exempt without making a claim.” Cal. Civ. Proc. Code § 704.140(a). Subdivision (b) of § 704.140 then imposes limitations on the exemption. The bankruptcy appellate panel in *In re Gose* held that “the California Legislature did not intend CCP § 704.140(a) to exempt personal injury claims in their entirety” without regard to the limitations imposed on such exemption in subdivision (b). *In re Gose*, 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004). Instead, the language of subsection (a) (that a personal injury claim is “exempt without making a claim”) “merely allows a debtor to exempt personal injury claims

without having to make a formal claim." *Id.* And subdivision (b) defines the scope of the exemption in § 704.140(a).

Section 704.140(b) exempts the personal injury claim only to the extent that the award of damages or a settlement arising out of the claim is "necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." Cal. Civ. Proc. Code § 703.140(b).

#### Lack of Personal Injury Claim

In this case, the debtor has the burden of proving, by a preponderance of the evidence, that her claim is a personal injury claim. The court takes judicial notice of the debtor's amended Schedule C, that the debtor has filed that Schedule on the court's docket, and that the debtor's amended Schedule C characterizes the subject claim as a "wrongful death" claim based on tragic death of the debtor's child. Fed. R. Evid. 201(b)-(c).

A wrongful death claim is not a personal injury claim. "At common law, personal tort claims expired when either the victim or the tortfeasor died. . . . The statutorily created 'wrongful death cause of action does not effect a survival of the decedent's cause of action[. Instead,] it 'gives to the representative a totally new right of action, on different principles.' The cause of action 'for wrongful death belongs not to the decedent [or prospective decedent], but to the persons specified [by statute].' It is a new cause of action that arises on the death of the decedent and it is vested in the decedent's heirs." *Quiroz v. Seventh Ave. Ctr.*, 45 Cal. Rptr. 3d 222, 226 (Ct. App. 2006) (citations omitted) (alterations in original). "A cause of action for wrongful death is thus a statutory claim. (Code Civ. Proc., §§ 377.60-377.62.) Its purpose is to compensate specified persons-heirs-for the loss of companionship and for other losses suffered as a result of a decedent's death." *Id.*

In short, a personal injury claim abates with the death of the tort victim. Wrongful death statutes create a statutory claim to compensate a certain class of persons, often with some relationship to the tort victim, for losses suffered as a result of the tort victim's death. Survival statutes, by contrast, do not create a new cause of action that vests in the heirs of the tort victim on the tort victim's death. Instead, survival statutes establish "a separate and distinct cause of action which belonged to the decedent before death but, by statute, survives that event. The survival statutes do not create a cause of action. Rather, "[t]hey merely prevent the abatement of the cause of action of the injured person, and provide for its enforcement by or against the personal representative of the deceased." *Id.* at 227.

In this case, the debtor's Schedule C constitutes an admission that the claim at issue is a claim for the wrongful death of a person other than the debtor, the debtor's child. The debtor, therefore, by definition cannot hold a personal injury claim for the death of a relative. Simply stated, a wrongful death claim is not a personal injury claim. Therefore, the debtor does not have a claim that falls within the scope of § 704.140. The exemption will be overruled on



this ground.

#### Lack of Evidence of Necessity for Support

In this case, the debtor has the burden of proving, by a preponderance of the evidence, that the proceeds of the personal injury claim are necessary for her support or for her spouse or dependents' support. The debtor's opposition contains no evidence to support the position that the claim's proceeds—even if the claim were for personal injury—are necessary for her support or for her spouse or dependents' support. Therefore, the debtor has not satisfied her burden of proof and shown that any portion of the claim is necessary for the debtors or their dependents' support. The objection will be sustained on this independent, alternative ground as well.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection is sustained. The debtors may not claim an exemption in debtor's wrongful death claim under § 704.140.

12. <a href="#">11-14271</a> -A-7    PATRICK/ALISA LEMONS <a href="#">RP-1</a> RANDELL PARKER/MV FRANK SAMPLES/Atty. for dbt. RESPONSIVE PLEADING	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 9-6-17 [ <a href="#">27</a> ]
---	---

#### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Overruled

**Order:** Civil minute order

#### **BACKGROUND**

This bankruptcy case was originally filed on April 13, 2011. The trustee administered the case and it was closed as a no asset case. The U.S. Trustee reopened this case to schedule a previously undisclosed asset—a tort claim—on Schedule A/B. The tort claim appears to be related to the implantation of a bio-medical device in

the joint debtor that has since caused injury.

The debtors have exempted this claim and listed its value as unknown. The debtor's exemption is claimed under § 703.140(b)(11)(D) of the California Code of Civil Procedure. Amended Schedule C, August 14, 2017, ECF # 25. The trustee objects to this objection claim. Objection, September 6, 2017, ECF # 27 (incorrectly describing the exemption claimed as § 704.140 Cal. Code of Civ. Proc.)

## **EXEMPTIONS IN BANKRUPTCY**

### General Exemption Standards

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

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

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

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

### Burden of Proof

Section 703.580(b) of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof. Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

## **DISCUSSION**

## Equitable Defenses

### *Judicial Estoppel*

"[J]udicial estoppel is an equitable doctrine invoked by a court at its discretion. *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S. Ct. 1808, 1815 (2001). The purpose of the doctrine is "to protect the integrity of the judicial process." *Id.*

The Supreme Court has established factors that "inform the decision whether to apply the doctrine in a particular case." *Id.* These factors are as follows: "[1] First, a party's later position must be clearly inconsistent with its earlier position. [2] Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. [3] A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 750-51 (citations omitted) (internal quotation marks omitted).

These three factors are not exclusive and inflexible. In *New Hampshire*, the Supreme Court clarified that "[i]n enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. *Additional considerations* may inform the doctrine's application in specific factual contexts." *Id.* (emphasis added).

In the context of disclosing claims in bankruptcy, the application of judicial estoppel may require additional considerations. Under the default rule, a debtor's omitting a claim from the bankruptcy schedules combined with the debtor's obtaining discharge (or plan confirmation) results in judicial estoppel barring the claim. *Ah Quin v. Cty. of Kauai Dep't of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013). But recognizing that judicial estoppel is a "discretionary doctrine" that is "applied on a case-by-case basis," the Ninth Circuit has held that "[a] court is not 'bound' to apply judicial estoppel, particularly when a party's prior position was based on inadvertence or mistake." *Id.* at 272.

The Ninth Circuit identified both a narrow and a broad exception for inadvertence or mistake. See *id.* at 272-73. The essential, distinguishing factor is whether the debtor's claim of inadvertence or mistake in omitting the claim from the schedules is supported by the debtor's reopening the bankruptcy case and filing amended schedules to list the previously undisclosed assets. See *id.* "When a plaintiff-debtor has not reopened bankruptcy proceedings, a narrow exception for good faith is consistent with *New Hampshire* and with the policies animating the doctrine of judicial estoppel." *Id.* at 272.

By contrast, "when the plaintiff-debtor has reopened the bankruptcy proceedings and has corrected the initial filing error, the narrow interpretations of 'mistake' and 'inadvertence' do not apply. If [the debtor's] bankruptcy omission was mistaken, the application of judicial estoppel . . . would do nothing to protect the integrity of the courts, would enure to the benefit only of an alleged bad actor, and would eliminate any prospect that [the debtor's] unsecured creditors might have of recovering." *Id.* at 276. "In these circumstances, rather than applying a presumption of deceit, judicial estoppel requires an inquiry into whether the plaintiff's bankruptcy filing was, in fact, inadvertent or mistaken, as those terms are commonly understood. Courts must determine whether the omission occurred by accident or was made without intent to conceal. The relevant inquiry is not limited to the [debtor's] knowledge of the pending claim and the universal motive to conceal a potential asset—though those are certainly factors. The relevant inquiry is, more broadly, the [debtor's] subjective intent when filling out and signing the bankruptcy schedules." *Id.* at 276-77.

Judicial estoppel is an affirmative defense. *Reed v. City of Arlington*, 650 F.3d 571, 576 (5th Cir. 2011) (en banc). Therefore, the party asserting judicial estoppel as an affirmative defense has the burden of proof. *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1170 (9th Cir.2012).

Here, the court will exercise its discretion not to apply judicial estoppel for two reason. First, other than the debtors' original non-disclosure, the trustee offers no reason that the court should exercise its discretion in this manner. Second, the court finds that the debtor was unaware of her injury or its cause until after the fact. This finding flows both from the nature and source of the injury (implanted bio-medical device) and from her declaration in opposition to the motion. As a result, the trustee has not sustained his burden of persuasion, even under the narrow version of inadvertence or mistake.

#### *Equitable Estoppel*

"Trustee had the burden to prove that equitable estoppel applied with respect to Debtors amending their exemptions. *Domarad v. Fisher & Burke, Inc.*, 270 Cal. App. 2d 543, 556 (1969). To invoke equitable estoppel under California law, a party must show: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it. *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584 (2008)." *In re Smith*, 2017 WL 1457942 at \* 5 (9th Cir. BAP 2017) (citation omitted) (internal quotation marks omitted).

Here, the debtor contends she was unaware of her injury or its cause. As a result, the trustee cannot satisfy the second element described in *Simmons*. As a result, the debtor is not equitably estopped.

## Statutory and Rule-Based Defenses

### *11 U.S.C. § 522(g)*

"Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property **that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title**, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if--(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and (B) the debtor did not conceal such property; or (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section." 11 U.S.C. s 522(g) (emphasis added).

As a result, transfer of estate property and recovery by the trustee is a predicate to application of § 522(g).

Here, no such transfer exists. The gravamen of the trustee's argument is that the debtors did not disclose the existence of this asset in their original schedules. The trustee does not argue that the debtor voluntarily transferred the asset, e.g., the cause of action, or that a creditor involuntarily took it from them. As a consequence, the trigger event for application of § 522(g) has not occurred and that section is no impediment to the debtor's current claim of exemption.

### *Federal Rule of Bankruptcy Procedure 1009*

Rule 1009(a) allows a debtor to amend schedules as a matter of course at any time, even after a case has been reopened. See *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003). This includes the right to amend the list of property claimed as exempt. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998). The trustee's argument that the right to amend the claim of exemptions ends at case closure is contrary to well-established law. *Goswami*, 304 B.R. at 393.

### Application of Section 703.140(b)(11)(D)

"The debtor's right to receive, or property that is traceable to, any of the following . . . . A payment, not to exceed twenty-six thousand eight hundred dollars (\$26,800), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent." Cal. Code of Civ. Proc. 703.140(b)(11)(D).

Unlike California Code of Civil Procedure § 704.140, § 703.140(b)(11)(D) contains no requirement of necessity for the settlement proceeds. Rather, it simply caps the exemption at \$26,800.00. Here, the debtor claims an exemption of \$11,000, which is far under the statutory cap.

As a result, the objection will be overruled.

## **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.

Randell Parker's objection has been presented to the court. Having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is overruled.

13. [17-13098](#)-A-7 LILIA CORNEJO ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-24-17 [[26](#)]  
  
DISMISSED

### **Final Ruling**

The case dismissed, the matter is dropped as moot.

14. [17-13098](#)-A-7 LILIA CORNEJO MOTION FOR RELIEF FROM  
[SC-1](#) AUTOMATIC STAY  
HOLLYVALE RENTAL HOLDINGS, 8-21-17 [[15](#)]  
LLC/MV  
SAM CHANDRA/Atty. for mv.  
DISMISSED

*[The hearing on this matter will be concurrent with the hearing on the motion for stay relief in case no. 17-13108, which is number 2 on this court's calendar.]*

### **Tentative Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

### **MOOTNESS STANDARDS**

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)).

### **RELIEF UNDER SECTION 362(d) (1) AND (2)**

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.

#### **RELIEF UNDER SECTION 362(d)(4)**

The movant requests relief from the automatic stay under § 362(d)(4). The basis for this request is the debtor's filing of 4 bankruptcy petitions in the previous year, including the present one. These petitions have all been dismissed.

Section 362(d)(4) authorizes binding, in rem relief from stay with to respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.* The motion will be denied as moot.

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language:

"On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay-(4) with respect to a *stay of an act* against real property *under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors . . . ." 11 U.S.C. § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4), once granted, may be effective in a subsequent bankruptcy case if the order granting relief is properly recorded, such relief requires as prerequisite an effective automatic stay under § 362(a).

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 this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay. The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

15. [17-11824](#)-A-7    HORISONS UNLIMITED  
WFH-6  
JAMES E. SALVEN, TRUSTEE/MV  
DANIEL EGAN/Atty. for mv.  
CECILY DUMAS/Atty. For dbt.  
OST 9/26/17

MOTION TO EMPLOY CAL-MED  
CENTRAL BILLING, INC. AS  
MEDICAL BILLING PROVIDER  
9-26-17 [[251](#)]

**No Ruling**