

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: October 18, 2021
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-24200](#)-A-7 **IN RE: WILLIAM DRESSLER**
[AP-1](#)

MOTION TO COMPEL ABANDONMENT
9-15-2021 [\[18\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DEBTOR DISCHARGED: 12/23/2020

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Subject: 850 Mallard Street, Redding, CA

Value: \$247,000.00

1st Trust Deed: \$118,059.15

Exemption: \$175,000.00

Non-Exempt Equity: \$0

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

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

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. [19-23452](#)-A-7 **IN RE: CIAO RESTAURANTS, LLC**
[DNL-7](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
9-16-2021 [[152](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

No Ruling

3. [21-22352](#)-A-7 **IN RE: DANNIE BROWN AND LINDA RAMIREZ**
[JMH-1](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
9-17-2021 [[16](#)]

CANDACE BROOKS/ATTY. FOR DBT.
J. HOPPER/ATTY. FOR MV.

Final Ruling

Motion: Sell Property and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2007 Ford GT Mustang Deluxe Coupe; 2006 BMW 750Li Sedan;
1979 Harley Davidson Sportster

Sale Type: Public auction

Auctioneer: West Auctions, Inc.

Fees Allowed: 15% of gross sale proceeds

Costs Allowed: actual, not to exceed \$2,300.00

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

The chapter 7 trustee seeks approval under 11 U.S.C. § 363(b) to sell the following assets at auction: 2007 Ford GT Mustang Deluxe Coupe; 2006 BMW 750Li Sedan; 1979 Harley Davidson Sportster.

The trustee also requests that the court approve the employment of West Auctions, Inc. to conduct the auction and for the allowance of compensation to West Auctions Inc. as follows: 15% of the gross sale proceeds; and in addition, reimbursement for expenses in an amount not to exceed \$2,300.

The trustee further requests that the 14 day stay period imposed by Fed. R. Bankr. P. 6004(h) be waived.

SECTION 363(b) SALE

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

SECTION 328(a) EMPLOYMENT AND COMPENSATION

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

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

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

4. [21-22953](#)-A-7 **IN RE: RAYMOND BRAGG**
[RCB1-1](#)

MOTION TO ABANDON
8-30-2021 [\[9\]](#)

RAYMOND BRAGG/ATTY. FOR MV.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1): written opposition required
Disposition: Denied without prejudice
Civil Minute Order

Business Description: IMAGES 2 and Business Equipment

The debtor seeks an order compelling the abandonment of business assets for his business Images 2 and related barbershop equipment.

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.

RULE 6007(b)

(b) Motion by party in interest
A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. *Unless otherwise directed by the court, the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.* A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court.

Fed. R. Bankr. P. 6007(b) (emphasis added).

Bankruptcy Rule 6007(a) requires that the debtor's motion to abandon be served on all creditors and the United States trustee as well as the chapter 7 trustee. Here, the debtor has only served the court

and the chapter 7 trustee, Sheri Carello, with this motion. See Proof of Service, ECF No. 12.

The court also notes that while the chapter 7 trustee has not appeared in this matter, she has continued the 341 meeting of creditors until October 18, 2021, at 12:00 p.m. The trustee has 30 days from the conclusion of the meeting of creditors to object to the exemptions claimed by the debtor. See Fed. R. Bankr. P. 4003(b). The court is unable to determine the trustee's position regarding whether the assets are of inconsequential value.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Compel the Trustee to Abandon Debtor's Business, Images 2 and Business Equipment has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the debtor's motion is denied without prejudice.

5. [21-21664](#)-A-7 **IN RE: JUAN MUNGUIA**
[UST-1](#)

CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND
TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
8-9-2021 [\[19\]](#)

JOHN MAXEY/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

Final Ruling

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

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

Disposition: Granted

Order: Prepared by moving party

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

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through November 8, 2021.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

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

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through November 8, 2021.

6. [21-22267](#)-A-7 **IN RE: MICHAEL VASQUEZ**
[MB-1](#)

MOTION TO AVOID LIEN OF CITIBANK
9-1-2021 [\[19\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted in part; denied in part

Order: Prepared by moving party

Subject Property: 6608 Oak Branch Court, Citrus Heights, CA

Judicial Lien Sought to be Avoided: \$7,225.51, Citibank

-Amount as Originally Entered: \$6,254.23

-Date Judgment Entered: November 27, 2019

-Amount Paid Against Judgment: \$0.00

-Days Elapsed Between Entry of Judgment and Petition Date: 568

-Daily Interest \$1.71

-Aggregate Judgment as of Petition Date: \$7,225.51

All Other Liens:

- First Deed of Trust - Mid America Mortgage \$181,829

Exemption: \$344,000

Value of Property: \$532,000

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).

DISCUSSION

Section 522(f)

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

The operative date for determining lien avoidance under § 522(f) is the date of the petition. *In re Chiu*, 266 B.R. 743, 751 (9th Cir. BAP 2001), *aff'd* 304 F.3d 905 (9th Cir. 2002); *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (the petition date is the "operative date to make all § 522(f) determinations"). It controls: (1) the debtor's right to claim a particular exemption and the amount of that exemption, *Owen v. Owen* 500 U.S. 305, 314 fn. 6 (1991); *In re Reaves*, 285 F.3d 1152, 1156 (9th Cir. 2002); *In re Chiu*, 266 B.R. at 751; (2) the value of the property claimed exempt, 11 U.S.C. § 522(a)(2); *In re Dore*, 124 B.R. 94, 96 (Bankr. S.D. Cal. 1991); *In re Harris*, 120 B.R. 142, 148 (Bankr. S.D. Cal. 1990); and (3) the amount of the lien. *In re Salanoa* 263 B.R. at; March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Avoidance and Turnover Actions § 21:1470 et seq. (Rutter Group December 2020).

California Law on Post-Judgment Interest

"Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied." Cal. Civ. Proc. Code § 685.010; *Hyundai Securities Co. Ltd. v. Lee*, 232 Cal.App.4th 1379, 1390 (2015); *Lucky United Properties Investment, Inc. v. Lee*, 213 Cal.App.4th 635, 642 (2013). Interest accrues the

from date judgment is entered. Cal. Code of Civ. Proc. 685.020. In most cases, interest is not compounded. *Big Bear Properties, Inc. v. Gherman*, 95 Cal.App.3d 908, 914-915 (1979); *Mendez v. Kurten*, 170 Cal.App.3d 481, 487 (1985); *Westbrook v. Fairchild*, 7 Cal.App.4th 889, 894-895 (1992). Generally, interest cases upon tender of full satisfaction. Cal. Code of Civ. Proc. 685.030(b) ("If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full"). *Wertheim, LLC v. Currency Corp.*, 35 Cal.App.5th 1124, 1132 (2019); *Bell v. Farmers Ins. Exchange*, 137 Cal.App.4th 835, 839-840 (2006).

Here, the responding party's judicial lien, all other liens, and the exemption amount together equal \$533,054.51 which exceed the property's value of \$532,000 by \$1,054.51. Therefore, the judicial lien may only be avoided in part. The judicial lien of Citibank will be avoided in the amount of \$1,054.51, see *In re Hanger*, 217 B.R. 592 (B.A.P. 9th Cir.).

7. [12-38073](#)-A-7 **IN RE: MICHAEL LEWIS**
[HLG-1](#)

MOTION TO AVOID LIEN OF RIVERWALK HOLDINGS, LTD
9-10-2021 [\[35\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/29/2013;
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Denied in part; continued in part to January 31, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks to avoid the judicial lien, in the amount of \$10,455.16, of Riverwalk Holdings, LTD under 11 U.S.C. § 522 (f). The debtor contends that the judicial lien impairs an exemption in the debtor's residence at 10062 Elk Glen Court, Elk Grove, Ca, the subject property.

The respondent, Riverwalk Holdings, LTD opposes the motion contending that: 1) the debtor has failed to carry his burden of proof regarding the value of the property and hence that respondent's lien impairs his exemption; 2) the motion should be denied on laches grounds as the delay in pursuing the avoidance of its lien is prejudicial to respondent's ability to defend against the motion; and 3) because the debtor failed to disclose his intent to the United States Trustee and other interested entities to amend his Schedule C exemptions in the Debtor's Motion to Reopen this case.

BIFURCATION OF ISSUES

Rule 9014(c) provides that, unless the court directs otherwise, that FRCP 42 is applicable in contested matters as incorporated by Fed. R. Bankr. P. 7042. FRCP 42(b) allows the court to order a separate trial on an issue.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

Fed. R. Civ. P. 42(b).

The court will bifurcate this into three issues: (1) valuation; (2) appointment of a trustee/exemption; and (3) laches. The court will rule on the later two, but will continue the first issue, i.e., valuation to allow the creditor to obtain an appraisal.

SUBJECT PROPERTY VALUE

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 respondent correctly states that in the context of a motion to avoid lien under 11 U.S.C. § 522(f) that "[a]s the moving party, the debtor carries the burden of proof on all factors." *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). The respondent disputes the movant's value of the subject property.

The subject property's value is a material factual issue, which must be resolved before the court can rule on the relief requested. The creditor's discovery rights have attached. Fed. R. Bankr. P. 9014(c). The court will continue the hearing on the issue of valuation to allow the parties time to obtain appropriate appraisals and gather other evidence relating to the value of the subject property.

AMENDED EXEMPTION

Respondent contends that because the debtor failed to disclose his intention to amend his Schedule C and request the appointment of a

chapter 7 trustee in his motion to reopen the case that the amendment to Schedule C exemption should be disallowed.

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. *In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.*

Fed. R. Bankr. P. 5010 (emphasis added).

Respondent argues that the United State trustee should have been notified of the debtor's intention to amend his Schedule C at the outset of the proceeding. The purpose of the notice to the United States trustee is to request the court appoint a chapter 7 trustee.

In this case the debtor added no assets to his property schedules. The only change was to Schedule C wherein the debtor claimed an additional \$1.00 exemption in the subject property under CCP § 703.140(b)(1). The amount of exemption under the combined subsections (b)(1) and (b)(5) claimed when the petition was filed totaled \$21,531.94. The amount claimed in the combined subsections in the Amended Schedule C was \$21,532.94. This is less than the maximum amount of \$23,250 which the debtor was entitled to claim. There were no other changes in the exemptions claimed by the debtor and no other assets were added to the schedules. There is simply no reason to appoint a trustee in this case.

Because the change was so minor no purpose would be served in appointing a chapter 7 trustee. Thus, the court denies this portion of the respondent's objection to the motion.

LACHES

To succeed in a laches defense the respondent, must prove that there has not only been delay but that it is prejudiced such that avoidance of the lien would be inequitable. "The key factor in allowing the late avoidance of a lien pursuant to § 522(f) is whether the creditor is sufficiently *prejudiced* so that it would be *inequitable* to allow avoidance of the lien." *ITT Financial Serv. v. Ricks (In re Ricks)*, 89 B.R. 73, 75-76 (B.A.P.9th Cir.1988).

Respondent contends that its potential costs in litigating the value of the property and the balance owed on the consensual liens over nine years after the petition was filed in this case amount to sufficient prejudice such that the motion should be denied for laches.

The court disagrees. Had the creditor disputed the motion and the value of the subject property while the bankruptcy case was pending the same evidence would have been required.

This motion relies on the evidence as presented at the inception of the bankruptcy case. In his Schedule A, ECF No. 1, the debtor

valued the subject property at \$221,755.00 and he has not proposed any different value in support of this motion. Schedule A also indicates that the debtor used zillow.com in determining the value of the property. The respondent disagrees with this method of valuation, and thus disputes the debtor's value of the subject property. The identical argument would have ensued had the motion to avoid lien been brought during the pendency of the bankruptcy.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is bifurcated into the following issues: (1) valuation; (2) appointment of a trustee/exemption; and (3) laches;

IT IS FURTHER ORDERED that the issue of valuation of 10062 Elk Glen Court, Elk Grove, California is continued to January 31, 2022, at 9:00 a.m.; the continued hearing as a status conference, no further filings are required before that date; and

IT IS FURTHER ORDERED that the motion is otherwise denied.

8. [12-38073](#)-A-7 **IN RE: MICHAEL LEWIS**
[HLG-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
9-10-2021 [\[40\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/29/2013

No Ruling

9. [12-38073](#)-A-7 **IN RE: MICHAEL LEWIS**
[HLG-3](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
9-10-2021 [\[45\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/29/2013

No Ruling

10. [21-22976](#)-A-7 **IN RE: THE DESIGN BUILD COMPANY, LLC**
[MCF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-8-2021 [\[20\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
MICHAEL FALLON/ATTY. FOR MV.
RAY/EMILY CONWAY VS.

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(1); chapter 7 trustee response filed
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Pending state-court litigation described in the motion

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)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11)

whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue through judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Ray and Emily Conway'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief is awarded.

11. [21-22976](#)-A-7 **IN RE: THE DESIGN BUILD COMPANY, LLC**
[MCF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-9-2021 [\[27\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
MICHAEL FALLON/ATTY. FOR MV.
EDUARDO DE ARKOS VS.

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(1); chapter 7 trustee response filed
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Pending state-court litigation described in the motion

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)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11)

whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue through judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Eduardo de Arkos'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief is awarded.

12. [21-21778](#)-A-7 **IN RE: AMANDA MURPHY**
[BB-1](#)

MOTION TO DISMISS CASE
9-15-2021 [\[12\]](#)

BONNIE BAKER/ATTY. FOR DBT.

No Ruling

13. [20-23487](#)-A-7 **IN RE: MARCIE OKPAKPOR**
[SLC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-16-2021 [\[40\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.
SHERI CARELLO/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Debtor's Claim of Exemptions

Notice: Written opposition filed by Debtor

Disposition: Sustained in part; overruled in part

Order: Civil minute order

The chapter 7 trustee, Sheri Carello, objects to the debtor's claim of exemptions, under CCP § 704.730, on Amended Schedule C, filed August 19, 2021, see ECF No. 39. The debtor has filed opposition to the objection.

As this case was filed on July 15, 2020, the amount of the claimed exemption is controlled by the law in effect as of the date of the filing of the petition.

CALIFORNIA HOMESTEAD EXEMPTION - DOLLAR LIMITATIONS

Section 704.730 of the C.C.P. provides the limits on the amount of the homestead exemption. The homestead exemption is limited to \$75,000, \$100,000, or \$175,000, depending on whether the debtor and the debtor's spouse or family satisfy certain conditions. Section 704.730(a) provides as follows:

The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who

resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. . . .

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

Cal. Civ. Proc. Code § 704.730(a).

The trustee objects to the claimed exemption in the amount of \$175,000.00 contending that while the debtor receives income from social security, she has not proven the income is disability income. Thus, the trustee questions whether the debtor is disabled.

In response the debtor filed a declaration stating that she is disabled and not able to engage in any meaningful employment, ECF No. 46. In support of this statement the debtor has attached a copy of a letter from the Social Security Administration to her declaration, *id.* The letter is dated January 26, 2017, and states that the debtor is entitled to monthly disability benefits.

Absent any evidence refuting this information the court overrules this portion of the trustee's objection and allows the exemption in the amount of \$175,000.00.

DUPLICATE CLAIM OF EXEMPTION

The chapter 7 trustee also objects to the claim of exemption in the amount of \$100,000.00, which appears on the Amended Schedule C as it is duplicative. If added to the \$175,000.00 the claim of exemption exceeds the amount which the debtor may claim.

The debtor's opposition to the objection states that the \$100,000.00 additional claim of exemption was in error, ECF No. 45.

As the parties agree that the \$100,000.00 claim of exemption is both duplicative and erroneous, the court will sustain this portion of the trustee's objection to the debtor's claim of exemptions.

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 Objection to the Debtor's Claim of Exemptions has been presented to the court. Having considered the objection, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained as to the duplicate claim of \$100,000.00 under CCP § 704.730.

IT IS FURTHER ORDERED that the objection to the debtor's claim of \$175,000.00 under CCP § 704.730 is overruled. This exemption is allowed in the amount of \$175,000.00.

14. [21-22887](#)-A-7 **IN RE: WANDA BARNARD**
[BLF-2](#)

MOTION TO EMPLOY TRANZON ASSET STRATEGIES AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
9-16-2021 [\[21\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2017 Toyota Corolla iM; 2016 Scion tC

Sale Type: Public auction

Auctioneer: Tranzon Asset Strategies

Fees Allowed: 10% of the gross sale proceeds and 10% buyer's premium

Costs Allowed: transport and title costs in an amount not to exceed \$1,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee seeks approval under 11 U.S.C. § 363(b) to sell the following assets at auction: 2017 Toyota Corolla iM; 2016 Scion tC.

The trustee also requests that the court approve the employment of Tranzon Asset Strategies to conduct the auction and for the allowance of compensation to Tranzon as follows: 10% of the gross sale proceeds; plus, reimbursement of transport and title costs in an amount not to exceed \$1,000.00; and a 10% buyer's premium.

The trustee further requests that the 14 day stay period imposed by Fed. R. Bankr. P. 6004(h) be waived.

SECTION 363(b) SALE

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

SECTION 328(a) EMPLOYMENT AND COMPENSATION

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

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

15. [21-21397](#)-A-7 **IN RE: CHRISTOPHER FIGUEROA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-28-2021 [\[96\]](#)

GORDON BONES/ATTY. FOR DBT.

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

16. [21-22370](#)-A-7 **IN RE: SHELLY FORBES**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
9-15-2021 [\[21\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition filed by Debtor

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The chapter 7 trustee filed a notice to dismiss as debtor failed to attend the regularly scheduled meeting of creditors. The debtor has filed a reply.

DISMISSAL

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

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the chapter 7 trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge

under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

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

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 November 10, 2021, at 12:00 p.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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