

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: OCTOBER 21, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13701](#)-A-7 KEVIN GERHARDT
FLG-4
KEVIN GERHARDT/MV
GABRIEL WADDELL/Atty. for dbt.
TONYA NYGREN/Atty. for mv.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
10-7-15 [[32](#)]

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Prepared by moving party

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

LEGAL STANDARD

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

ANALYSIS

In the future, the court would prefer that attorneys provide grounds in their motions to convert (from chapter 7 to another chapter) that meet the standards set forth above. In particular, motions to convert should (1) represent whether the case has been previously converted under §§ 1112, 1208, or 1307, (2) represent the noncontingent, liquidated, secured debt amount as shown on Schedule D, and (3) represent the noncontingent, liquidated, unsecured debt amount as shown in the applicable schedules, and including any unsecured portion of any partially secured or wholly unsecured lien debt.

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

2. [15-13103](#)-A-7 PAUL/ESPERANSA GARCIA
RWR-1
TULARE COUNTY TAX COLLECTOR/MV
SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-15 [[27](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2317 W. Monte Vista, Visalia, 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).

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

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

The movant has asserted that the property has been tax defaulted since June 30, 2003, and no payments are being made by the debtors in an attempt to pay the old tax debt or the current year's taxes as they come due.

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

3. [14-14706](#)-A-7 STEVE GEISENHEIMER MOTION TO SELL
PBB-2 9-14-15 [[59](#)]
STEVE GEISENHEIMER/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 20137 Arlon Street, Hilmar, CA

Buyer: Debtors

Sale Price: \$115,000 (\$15,000 cash to be financed by lender and \$100,000 exemption credit)

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 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.

4. [15-13214](#)-A-7 ANGELINA CABALLERO OPPOSITION RE: TRUSTEE'S MOTION
PFT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
9-15-15 [[13](#)]

SCOTT MITCHELL/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for October 23, 2015, at 10:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

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

5. [15-13221](#)-A-7 JENNA WARNER
APN-1
FORD MOTOR CREDIT COMPANY/MV
JEFFREY ROWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-15 [[24](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to November 18, 2015, at 9:00 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014.

The trustee has not been served at the correct address. The trustee was served at her former address, which does not count. Although a notice of no distribution has been entered on the docket, the asset for which stay relief is sought does not appear on the schedules. The court will require service on the trustee.

6. [14-15823](#)-A-7 JULIO/YOLANDA HERNANDEZ
DJD-1
SETERUS, INC./MV
THOMAS GILLIS/Atty. for dbt.
DARREN DEVLIN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-25-15 [[25](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Prepared by moving party

Subject: 2341 W. Acacia Ave., Fresno, CA

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

AS TO DEBTOR

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

AS TO ESTATE

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

7.	15-12729 -A-7 RANDY/YOLANDA PALMER CJO-1 THE BANK OF NEW YORK MELLON/MV CHARLES MARSHALL/Atty. for dbt. CHRISTINA O/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-18-15 [24]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 8315 North Thyme Way, Fresno, California

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

Section 362(d)(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.

8. [15-10635](#)-A-7 JOHN JANDA
TGM-3
PARMINDER JANDA/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
9-10-15 [[142](#)]

JERRY LOWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Extend Deadline for Filing Nondischargeability Complaint under section 523(c)

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

Disposition: Granted

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 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).

EXTENSION OF DEADLINE TO FILE A § 523(c) COMPLAINT

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4007(c). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend Parminder Singh's deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through and including December 15, 2015.

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.

Parminder Singh's motion for an extension of time to file a nondischargeability complaint under § 523(c) has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court extends Parminder Singh's deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through and including December 15, 2015.

9. [15-11235](#)-A-7 MARTIN/TAMBRA VALADOA MOTION TO AVOID LIEN OF
SAH-8 EMPLOYMENT DEVELOPMENT
MARTIN VALADOA/MV DEPARTMENT
8-19-15 [[72](#)]
SUSAN HEMB/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

10. [15-11535](#)-A-7 JOHN HALOPOFF OBJECTION TO DEBTOR'S CLAIM OF
TMT-6 EXEMPTIONS
TRUDI MANFREDO/MV 9-4-15 [[183](#)]
JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [15-11535](#)-A-7 JOHN HALOPOFF MOTION TO EXTEND DEADLINE TO
TMT-8 FILE A COMPLAINT OBJECTING TO
TRUDI MANFREDO/MV DISCHARGE OF THE DEBTOR
9-23-15 [[199](#)]
JUSTIN HARRIS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.

Final Ruling

Motion: Extend Trustee's Deadline for Objecting to Discharge under § 727(a)

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

Disposition: Granted

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 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).

EXTENSION OF DEADLINE TO FILE § 727(a) ACTION

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 trustee or U.S. Trustee's deadline for objecting to discharge under § 727(a). Their deadline to object to discharge will be extended through and including December 31, 2015.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's motion for an extension of time to file a § 727 complaint objecting to the debtor's discharge has been presented

to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court extends the trustee or U.S. Trustee's deadline to object to the debtor's discharge under § 727(a) of the Bankruptcy Code. This deadline is extended to and including December 31, 2015.

12.	<u>15-13436</u> -A-7 ROBERT HANCER SL-1 ROBERT HANCER/MV STEPHEN LABIAK/Atty. for dbt.	CONTINUED MOTION TO COMPEL ABANDONMENT 9-3-15 [<u>8</u>]
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Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: 5th Avenue Jewelers, a sole proprietorship business

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

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

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

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

13. [15-12540](#)-A-7 JUAN/TERESA GOMEZ MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
DITECH FINANCIAL LLC/MV 9-30-15 [[16](#)]
THOMAS GILLIS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 108 East Stanislaus Street, Avenal, California

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

Section 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.

14. [15-12757](#)-A-7 FLORANTE/CECILIA PARRENAS MOTION FOR RELIEF FROM
RFM-1 AUTOMATIC STAY
MMCA LEASE LTD/MV 9-18-15 [[13](#)]
F. GIST/Atty. for dbt.
RAYMOND MOATS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: Unexpired lease of personal property described as a 2014 Mitsubishi Outlander SE

DEEMED REJECTION OF AN UNEXPIRED LEASE OF PERSONAL PROPERTY

In chapter 7 cases, an unexpired lease of personal property of the debtor must be assumed or rejected by the trustee within 60 days after the order for relief, i.e., 60 days after the petition date in a voluntary case, see § 301(a) and (b). 11 U.S.C. § 365(d)(1). The

court may extend the time to assume or reject for cause, but such extension may only occur within such 60-day period. *Id.*

If the lease is not assumed or rejected by the end of such 60-day period or a court-ordered extension of such period, then the lease is deemed rejected. *See id.* Further, a chapter 7 debtor may assume a lease of personal property as provided in § 365(p).

AUTOMATIC TERMINATION OF THE STAY

"If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated." *Id.* § 365(p)(1).

In this case, more than 60 days has passed since the petition date. Because this lease has not been timely assumed, the lease has been rejected.

Furthermore, no evidence has been presented of a timely assumption of the lease of personal property described above. As a result, the stay has automatically terminated as to such property, and such property is no longer property of the estate.

DOCTRINE OF MOOTNESS

The court adheres to the principle that federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Because the stay has automatically terminated, no effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists. 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:

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

IT IS ORDERED that the motion is denied as moot as the stay automatically terminated as to the personal property on the date that was 61 days after the voluntary petition.

15. [15-12757](#)-A-7 FLORANTE/CECILIA PARRENAS MOTION FOR RELIEF FROM
RFM-1 AUTOMATIC STAY
MMCA LEASE LTD/MV 9-18-15 [[20](#)]
F. GIST/Atty. for dbt.
RAYMOND MOATS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: Unexpired lease of personal property described as a 2015 Mitsubishi Outlander Sport

DEEMED REJECTION OF AN UNEXPIRED LEASE OF PERSONAL PROPERTY

In chapter 7 cases, an unexpired lease of personal property of the debtor must be assumed or rejected by the trustee within 60 days after the order for relief, i.e., 60 days after the petition date in a voluntary case, see § 301(a) and (b). 11 U.S.C. § 365(d)(1). The court may extend the time to assume or reject for cause, but such extension may only occur within such 60-day period. *Id.*

If the lease is not assumed or rejected by the end of such 60-day period or a court-ordered extension of such period, then the lease is deemed rejected. See *id.* Further, a chapter 7 debtor may assume a lease of personal property as provided in § 365(p).

AUTOMATIC TERMINATION OF THE STAY

"If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated." *Id.* § 365(p)(1).

In this case, more than 60 days has passed since the petition date. Because this lease has not been timely assumed, the lease has been rejected.

Furthermore, no evidence has been presented of a timely assumption of the lease of personal property described above. As a result, the stay has automatically terminated as to such property, and such property is no longer property of the estate.

DOCTRINE OF MOOTNESS

The court adheres to the principle that federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Because the stay has automatically terminated, no effective relief can

be awarded. The movant's personal interest in obtaining relief from the stay no longer exists. 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:

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

IT IS ORDERED that the motion is denied as moot as the stay automatically terminated as to the personal property on the date that was 61 days after the voluntary petition.

16.	15-13061 -A-7 JAMES/PAULA MONTES CJO-1 DITECH FINANCIAL LLC/MV JOEL WINTER/Atty. for dbt. CHRISTINA O/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-18-15 [12]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 4622 East Illinois Avenue, Fresno, California

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

Section 362(d)(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.

17. [14-14370](#)-A-7 DAVID/DONNA SILER
JES-4
JAMES SALVEN/MV
F. GIST/Atty. for dbt.

MOTION TO SELL
9-16-15 [[53](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Personal property described below

Buyer: Debtors

Sale Price:

—M-1 Garand rifle: \$500

—Semi-automatic Glock 22 .40 caliber handgun: \$599

—Rossi .38 5-shot revolver: \$100

—Epiphone Blackstone Guitar, Fender Telecaster Standard Guitar,
Ukulele and Amplifiers: \$1900

Sale Type: Private sale subject to overbid opportunity

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

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.

18. [08-18473](#)-A-7 CYRUS CERRO
ASW-2
CYRUS CERRO/MV

CONTINUED PRE-TRIAL CONFERENCE
RE: MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
4-28-15 [[30](#)]

ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling

19. [15-12876](#)-A-7 MARY TAYLOR

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-25-15 [[15](#)]

TIMOTHY SPRINGER/Atty. for dbt.
\$12.50 FILING FEE PAID
9/28/15

Final Ruling

The fee paid, the order to show cause is discharged.

20. [14-10678](#)-A-7 CARLOS/ALICIA CASTRO
BHT-1
OCWEN LOAN SERVICING, LLC/MV
ERIC ESCAMILLA/Atty. for dbt.
JOSEPH DELMOTTE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-16-15 [[29](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 4112 W. Olive Avenue, Fresno, California

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

Section 362(d)(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.

21. [15-12581](#)-A-7 MARISSA ACOSTA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-17-15 [[20](#)]

Tentative Ruling

If the fee has not been paid by the time of the hearing or an application for waiver of the filing fee filed, the case may be dismissed without further notice or hearing.

22. [15-11283](#)-A-7 GLORIA ESTILLORE
[15-1076](#)
ESTILLORE V. U.S. BANK
NATIONAL ASSOCIATION ET AL
GLORIA ESTILLORE/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
6-8-15 [[1](#)]

No tentative ruling.

23. [15-12089](#)-A-7 FREDERICK/SARAH RICH
JES-2
JAMES SALVEN/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO SELL
9-9-15 [[29](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Vehicles described below

Buyer: Debtors

Sale Price:

-2007 Lexus RX350: \$3200

-2007 Toyota Camry: \$15,300 (\$5600 cash plus \$2900 exemption credit plus \$6800 of secured debt encumbering this vehicle to which the sale is subject as to the proposed buyer)

Sale Type: Private sale subject to overbid opportunity

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

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.

24. [15-12892](#)-A-7 DAVID DECK CONTINUED MOTION TO SELL
RHT-1 9-8-15 [[16](#)]
ROBERT HAWKINS/MV
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

No Tentative Ruling

[The prehearing disposition from the original hearing on September 30, 2015, is reprinted below for the convenience of the court and the parties.]

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2009 Toyota Prius

Buyer: Debtor

Sale Price: \$7250 (\$4350 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

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

25. [15-12894](#)-A-7 JESSE/KELLY BACA
RCO-1
WELLS FARGO BANK, N.A./MV
MARK ZIMMERMAN/Atty. for dbt.
NANCY LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-15-15 [[22](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 4533 West Evergreen Court, Visalia, California

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

Section 362(d)(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.

26. [14-13796](#)-A-7 EDGAR SALAZAR
JES-5
JAMES SALVEN/MV
ROSALINA NUNEZ/Atty. for dbt.
CONDITIONAL NON-OPPOSITION

MOTION TO SELL
9-16-15 [[66](#)]

Tentative Ruling

Motion: Sell Real Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 3180 Birch Dr., Firebaugh, CA

Buyer: Debtor

Sale Price: \$155,000 (\$7000 cash, plus \$9445 exemption credit, plus \$138,555 debt secured by a deed of trust on the real property to which the sale is made subject)

Sale Type: Private sale subject to overbid opportunity

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.

- ## Final Ruling

Order: Prepared by the trustee

CLAIM OBJECTION

Further, the debtor in this case is a corporation, not an individual.

As a corporation, the debtor does not owe a domestic support obligation (absent some legal theory showing that it should be liable for the debts of an individual that owes child support). For the reasons stated in the objection, the court will sustain the objection and disallow Claim No. 8 in its entirety in this bankruptcy case.

28. [14-16009](#)-A-7 CINDY MILLER
JRL-4
CINDY MILLER/MV
JERRY LOWE/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF PMGI, LLC
9-2-15 [[47](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 18, 2015

Order: Civil minute order

APPLICABLE LAW

Lien-exemption standards generally

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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) (emphasis added).

Specific standards for avoiding liens on co-owned property

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." All

Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

Specific standards for lien-avoidance in the context of multiple judicial liens

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). “[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens.” *Id.*; 11 U.S.C § 522(f) (2) (B).

ANALYSIS

Application of Section 522(f) and In re Meyer

The motion has not applied the proper legal standard under *Meyer* for co-owned property. Even if those standards were applied to the facts asserted in the motion, however, the present motion does not present sufficient grounds for relief under § 522(f) and the standards for lien-avoidance as to liens on jointly owned property.

The court will apply *Meyer* to the facts presented in the motion to illustrate why relief is not warranted here. In this case, the responding party, PMGI, LLC, holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property. Miller Decl. ¶ 7.

The jointly owned value of the entire fee interest in the property equals \$130,763.00. The court first deducts consensual lien debt of \$0.00 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$130,763.00. Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is \$65,381.50.

Adding together the judicial lien to be avoided (\$7,147.45), plus all other liens (\$2,172.13 lien of Unifund, Assignee of Palisades Collection, LLC) excluding the consensual liens already deducted from the property's value, plus the exemption amount (\$58,504.04) equals a sum of \$67,823.62. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$2442.12. *This calculation assumes that the respondent's lien is the senior judicial lien.* Under this assumption, the responding party's judicial lien, all other liens except consensual liens, and the exemption amount together do not exceed the value of the moving party's fractional interest in the property *by an amount equal to the entire debt secured by the responding party's lien.*

In defining impairment, the statute looks at *the extent that* the lien, all other liens (excluding consensual liens in the case of co-owned property), and the exemption exceed the value of the property. Therefore, a respondent's judicial lien may be avoidable in part to the extent that the total lien debt, together with the exemption, exceeds the value of the property by an amount *less than* the total debt secured by the respondent's judicial lien.

Here, however, the court cannot determine the extent to which it may

avoid the respondent's lien in part because the motion fails to indicate the priority of the respondent's lien vis-à-vis the other \$2172.13 judicial lien on the property held by Unifund.

If the \$2172.13 judicial lien of Unifund were senior to the respondent's lien, then the respondent's lien would only be avoidable by the amount of \$2442.12. In such a case, the \$2172.13 judicial lien of Unifund would be included in the exemption impairment calculation (the portion requiring inclusion of "all other liens").

If the \$2172.13 judicial lien of Unifund were junior to the respondent's lien, then it would in fact be excluded from the exemption-impairment calculation. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). This is consistent with the reverse-priority approach of *Meyer* and the statutory requirement that "liens already avoided [be] excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B). In this scenario, the respondent's judicial lien would only be avoidable in the amount of \$269.99.

CONTINUANCE

The hearing on this matter will be continued to November 18, 2015. No later than 14 days prior to the continued hearing date, the movant may file supplemental declarations that would address the priority of the \$2172.13 judicial lien of Unifund. No later than 14 days prior to the continued hearing date, the movant may file an amended Schedule C to modify the amount of the exemption claimed to the extent the modification is consistent with applicable law.

If no supplemental declarations addressing the court's issues are filed, the court will deny the motion.

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 continued to November 18, 2015, at 9:00 a.m.

IT IS FURTHER ORDERED THAT no later than 14 days prior to the continued hearing date, the movant may, at the movant's option, file supplemental declarations that would address the priority of the \$2172.13 judicial lien of Unifund. No later than 14 days prior to the continued hearing date, the movant may file an amended Schedule C to modify the amount of the exemption claimed to the extent the modification is consistent with applicable law.

29. [14-12654](#)-A-7 ROGELIO RIOS
KDG-3
VINCENT GORSKI/MV
PHILLIP GILLET/Atty. for dbt.
LISA HOLDER/Atty. for mv.

CONTINUED MOTION TO SELL AND/OR
MOTION TO PAY
9-16-15 [[94](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 22 acres at 16428 Leonard Ave., Wasco, CA (APNs: 070-140-20, 071-140-09)

Buyer: Reyes Trucking, Inc.

Sale Price: \$575,000 cash

Sale Type: Private sale subject to overbid opportunity

Commission: 6% which the broker will then split with the buyer's broker pursuant to industry custom

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

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

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.

30. [14-12654](#)-A-7 ROGELIO RIOS
KDG-4

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ELIAS VALADEZ
AND CAROLINA VALADEZ
9-25-15 [[103](#)]

PHILLIP GILLET/Atty. for dbt.

No tentative ruling.

31. [11-19687](#)-A-7 ROBERT SCARPITTO
THA-5
JAMES SALVEN/MV
STEVEN SIEVERS/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

RESCHEDULED HEARING RE: MOTION
TO SELL AND/OR MOTION TO PAY
9-10-15 [[61](#)]

Final Ruling

The hearing is continued to November 10, 2015, at 9:00 a.m.