

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY  
DATE: NOVEMBER 7, 2018  
CALENDAR: 9:45 A.M. CHAPTER 7 CASES

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

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

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

1. [18-13302](#)-A-7     **IN RE: TIGRAN MANSOURIAN**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-19-2018    [[11](#)]

ACAR LEASING LTD/MV  
NEIL SCHWARTZ  
JENNIFER WANG/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 2016 Chevrolet Malibu

### **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. Furthermore, no respondent has opposed with evidence of a timely assumption of the lease of personal property described above. Because this lease has not been timely assumed, the lease has been rejected. As a result, the stay has automatically terminated as to such property, and it is no longer property of the estate.

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. On the date that was 61 days after the voluntary petition was filed, the stay automatically terminated as to the leased personal property described in the motion.

2. [17-10608](#)-A-7     **IN RE: JOHN ANTONGIOVANNI**  
[PK-1](#)

MOTION TO AUTHORIZE THE TRUSTEE TO MAKE PRELIMINARY  
DISTRIBUTION TO PRIORITY DEBT - TAXES  
10-10-2018    [[110](#)]

JOHN ANTONGIOVANNI/MV  
PATRICK KAVANAGH

#### **Tentative Ruling**

**Motion:** Authorize Chapter 7 Trustee to Make Interim Distribution

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

**Disposition:** Denied

**Order:** Civil minute order

Debtor John Antongiovanni ("Antongiovanni") moves for authorization for the Chapter 7 trustee to make an interim distribution to priority claim holders, Franchise Tax Board and the Internal Revenue Service. He does so arguing that the distribution from the estate will pay off, or at least down, his non-dischargeable taxes and that the Franchise Tax Board is presently levying his wages.

#### **FACTS**

Antongiovanni filed Chapter 7 bankruptcy 20 months ago. Jeffrey Vetter was appointed the Chapter 7 trustee.

Vetter sold one asset: 1,000 shares of A-10 Investments, Inc. stock for \$640,000, gross. The net amount due the estate, after transactional costs and taxes, if any, is not clear.

Claims filed exceed \$500,000. Among those claims are the Internal Revenue Service \$346,115 (\$94,372 secured, \$233,938 priority); Franchise Tax Board \$69,947 (\$69,947 secured, \$63,578 priority); and Kern County Tax Collector \$372 (all secured).

Administrative claims are not yet known. The known or knowable portion of administrative claims are professional administrative claims: trustee's counsel \$37,840; trustee's accountant \$2,874; and trustee's compensation \$ 35,250 (estimated at cap under § 326(a) for the \$640,000 sale). Whether the estate must pay taxes on the stock sale and the amount of those taxes, if any, is unknown.

## **DISCUSSION**

Distributions from a Chapter 7 estate are to be made "as promptly as practicable." Fed. R. Bankr. P. 3009; *In re Calkins*, 143 B.R. 790, 791 (Bankr. W.D. Okla. 1992). Bankruptcy courts does have authority to authorize interim distributions. But generally courts will not authorize such an interim distribution unless convinced there are sufficient remaining funds to pay administrative claims, *In re Energy Co-op., Inc.*, 173 B.R. 363, 372 (N.D. Ill. 1994) and claims with a higher distribution priority. 11 U.S.C. § 726.

Here, the debtor has moved to authorize the trustee to make an interim distribution. That the trustee has not joined the motion concerns the court. Based on the court's review of the docket it appears that the case is administratively solvent and that the trustee is holding sufficient funds to make payment on the priority claims without harming higher priority creditors. But without a complete picture of the estates assets/funds, the administrative expenses and claims with a higher priority under 11 U.S.C. § 726, this court is unwilling to exercise its discretion to authorize an interim distribution.

Moreover, the debtor had the means to retain the protections of the stay during the life of the case, precluding the Franchise Tax Board from levying post-petition but prior to payout of all estate funds. But the debtor elected not to avail himself of those right. The debtor could have filed a petition under Chapters 11 or 13 and deferred discharge under §§ 1141(b), 1327(b) until completion of the plan. In the alternative, the debtor could have filed Chapter 7 (as he did) but asked the court to exercise its discretion to defer discharge. Fed. R. Bankr. P. 4004(c)(2); *In re Rich*, 544 B.R. 436 (Bankr. E.D. Cal. 2016).

For these reasons, the motion will be denied.

## **CIVIL MINUTE ORDER**

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

John Antongiovanni's motion 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 motion is denied.

3. [17-10608](#)-A-7     **IN RE: JOHN ANTONGIOVANNI**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,  
ACCOUNTANT(S)  
10-5-2018    [[103](#)]

RATZLAFF, TAMBERI & WONG/MV  
PATRICK KAVANAGH

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Ratzlaff, Tamberi & Wong, accountants for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,829.00 and reimbursement of expenses in the amount of \$45.12.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

### **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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,829.00 and reimbursement of expenses in the amount of \$45.12.

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

4. [17-11918](#)-A-7     **IN RE: GARZA CONTRACTING, INC.**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
10-5-2018    [[148](#)]

RATZLAFF TAMBERI & WONG/MV  
T. BELDEN

**Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

**COMPENSATION AND EXPENSES**

In this Chapter 7 case, Ratzlaff, Tamberi & Wong, accountants for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,710.50 and reimbursement of expenses in the amount of \$12.69.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

#### **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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,710.50 and reimbursement of expenses in the amount of \$12.69.

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

5. [18-13723](#)-A-7      **IN RE: JASWINDER SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-27-2018    [[13](#)]

\$335.00 FILING FEE PAID 10/1/18

#### **Final Ruling**

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

6. [18-13134](#)-A-7      **IN RE: KAMLESH/CHHAYA SHIHORA**

MOTION TO AVOID LIEN OF CITIZENS BUSINESS BANK  
10-1-2018    [\[16\]](#)

KAMLESH SHIHORA/MV  
AHREN TILLER

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **VIOLATIONS OF LOCAL BANKRUPTCY RULES**

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

Bankruptcy cases are assigned to either the Fresno Division, Modesto Division or the Sacramento Division. See LBR 1002-1. Hearings are held at the Bakersfield Federal Courthouse once a month. However, there is no Bankruptcy Clerk's Office in Bakersfield. The notice of hearing incorrectly directs respondents to file opposition with the "Clerk of the Bakersfield Federal Courthouse". Notice of Hearing, ECF No. 17.

The notice of hearing fails to advise respondents to check the court's website to view [any] pre-hearing dispositions after 4:00 p.m., the day preceding the hearing. LBR 9014-1(d)(3)(B)(iii). Notice of Hearing, ECF No. 17.

Documents must be filed as separate documents. LBR 9004-2(c)(1). Here, the motion, declaration, exhibit and proof of service were filed as one document. Motion, ECF No. 16.

### **INSUFFICIENT SERVICE**

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

Service of the motion was insufficient. Service of the motion was not made by certified mail and was not addressed to an officer of the responding party. No showing has been made that the exceptions



in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

If a renewed motion to avoid lien of Citizens Business Bank is filed, the movant will set it for a hearing, on the same date and time, as the probable evidentiary hearing on the motion to avoid lien of UCB Best Inn, LLC.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion to avoid lien of Citizens Business Bank has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

7. [18-13134](#)-A-7      **IN RE: KAMLESH/CHHAYA SHIHORA**

MOTION TO AVOID LIEN OF UCB BEST INN, LLC  
10-1-2018    [\[18\]](#)

KAMLESH SHIHORA/MV  
AHREN TILLER  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption in Real Property

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

#### **VIOLATIONS OF LOCAL BANKRUPTCY RULES**

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

Bankruptcy cases are assigned to either the Fresno Division, Modesto Division or the Sacramento Division. See LBR 1002-1. Hearings are held at the Bakersfield Federal Courthouse once a month. However, there is no Bankruptcy Clerk's Office in Bakersfield. The notice of hearing incorrectly directs respondents to file opposition with the "Clerk of the Bakersfield Federal Courthouse". Notice of Hearing, ECF No. 19.

The notice of hearing fails to advise respondents to check the court's website to view [any] pre-hearing dispositions after 4:00 p.m., the day preceding the hearing. LBR 9014-1(d)(3)(B)(iii). Notice of Hearing, ECF No. 19.

Documents must be filed as separate documents. LBR 9004-2(c)(1). Here, the motion, declaration, exhibit and proof of service were filed as one document. Motion, ECF No. 18.

#### **FACTUAL DISPUTES**

The motion seeks to avoid the responding party's lien on the moving party's real property. At the hearing on this matter, the court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The disputed material factual issues to be resolved are: (1) the amount owing to Chase Mortgage, the holder of the first deed of trust; and (2) the real property's value.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

8. [15-11835](#)-A-7     **IN RE: JAMES/JAMIE CANNON**  
[MRG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-21-2018    [\[716\]](#)

U.S. BANK TRUST NATIONAL  
ASSOCIATION/MV  
RONALD MAKAREM  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Stay Relief  
**Disposition:** Denied as moot  
**Order:** Civil minute order

### **MOOTNESS STANDARDS**

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

#### Moot as to the Estate

Closure of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Property is automatically abandoned upon closure of a case when it has been "scheduled under § 521(a)(1)." 11 U.S.C. § 554(c). This abandonment of scheduled property is known as technical abandonment. See *In re Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 913 (B.A.P. 9th Cir. 1999).

Furthermore, for property to be technically abandoned under § 554(c), it must be "properly scheduled" under § 521(a)(1). *Pace v. Battley (In re Pace)*, 146 B.R. 562, 566 (B.A.P. 9th Cir. 1992) (emphasis added). As to what constitutes scheduling, merely listing property on the Statement of Financial Affairs is not sufficient. "Mentioning an asset in the statement of affairs is not the same as scheduling it." See *Orton v. Hoffman (In re Kayne)*, 453 B.R. 372, 384 (B.A.P. 9th Cir. 2011) (noting that any argument that property was abandoned because it was listed on the SOFA was meritless). "The cases have held that the word 'scheduled' in § 554(c) refers to properly listed in the debtor's Schedules of Assets and Liabilities." *Swindle v. Fossey*, 119 B.R. 268, 272 (D. Utah 1990).

In this case, the debtors listed the property, commonly known as 5820 Fernside Ct., Bakersfield, California on their bankruptcy schedules. Amended Schedule A, filed November 16, 2015, ECF No. 289. The case closed on May 17, 2017. Final Decree, ECF No. 655. Thus, the stay evaporated when the case closed, and the subject property reverted back to the debtor. The court is unable to grant effective relief and will deny the motion as moot, as to the estate.

#### Moot as to the Debtor

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

In this case, because a judgment denying the discharge was entered, the automatic stay no longer exists. See Judgment, March 14, 2016, ECF No. 403. The court cannot grant relief from a non-existent stay under § 362(d)(1). The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied as moot.

9. [18-12445](#)-A-7      **IN RE: LUCIA JIMENEZ AND JORGE MARTINEZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-13-2018    [\[16\]](#)

TD AUTO FINANCE LLC/MV  
RALPH AVILA  
JENNIFER WANG/ATTY. FOR MV.  
DISMISSED 10/9/18

#### **Final Ruling**

The case dismissed, the motion is dropped as moot.

10. [18-13664](#)-A-7     **IN RE: MONICA DOMINGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-20-2018    [[13](#)]

WILLIAM EDWARDS  
\$335.00 FILING FEE PAID 10/2/18

**Final Ruling**

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

11. [18-13177](#)-A-7     **IN RE: TERYSA PATTERSON**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-10-2018    [[34](#)]

TD AUTO FINANCE LLC/MV  
JOSEPH PEARL  
JENNIFER WANG/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2016 Nissan Versa

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

**STAY RELIEF**

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

## CIVIL MINUTE ORDER

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

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

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

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

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

12. [17-14380](#)-A-7     **IN RE: FRANCISCO/LINA BADILLO**  
[PK-2](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC  
8-27-2018    [\[25\]](#)

FRANCISCO BADILLO/MV  
PATRICK KAVANAGH

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$15,407.90

**All Other Liens:** \$153,000.00

**Exemption:** \$22,000.00

**Value of Property:** \$175,000.00

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