

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**  
**DATE: DECEMBER 8, 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. [15-13404](#)-A-7 RICARDO/ROSARIO VIZCARRA MOTION TO AVOID LIEN OF MIDLAND  
NEA-1 FUNDING LLC  
RICARDO VIZCARRA/MV 10-5-15 [[12](#)]  
NICHOLAS ANIOTZBEHERE/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.

2. [15-13404](#)-A-7 RICARDO/ROSARIO VIZCARRA MOTION TO AVOID LIEN OF MOTOR  
NEA-2 CREDIT COMPANY, LLC  
RICARDO VIZCARRA/MV 10-5-15 [[16](#)]  
NICHOLAS ANIOTZBEHERE/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.

3. [15-14104](#)-A-7      MICHAEL/CHRISTINA DENHAM      MOTION FOR RELIEF FROM  
APN-1      AUTOMATIC STAY  
SANTANDER CONSUMER USA INC./MV      10-30-15 [[13](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2012 Ford Focus

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

**STAY RELIEF**

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

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Ford Focus, 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.

4. [15-12805](#)-A-7 SIEGFRED CRUZ CRUZ  
TMT-2  
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION  
AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
11-10-15 [[38](#)]

TRUDI MANFREDO/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:** Various items of personal property described in the notice of hearing

**Sale Type:** Public auction

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).

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.

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.

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.

5. [15-13606](#)-A-7 JULIE LYTTON  
JES-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
11-3-15 [[18](#)]

### **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 next 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 next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will 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 next continued § 341(a) meeting of creditors scheduled for December 18, 2015, at 9:00 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 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).

6. [15-13307](#)-A-7 JAMES/LEZLEY FIFE MOTION TO SELL  
PFT-1 11-6-15 [[15](#)]  
PETER FEAR/MV  
JEFFREY ROWE/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Personal property listed below

**Buyer:** Debtor

**Sale Price:**

-Dodge Ram: \$3770 (\$870 cash plus \$2900 exemption credit)

-Chevy 1500: \$2275 cash

-Trailer: \$250 cash

-5 Firearms: \$750 cash

**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.

7. [15-13307](#)-A-7 JAMES/LEZLEY FIFE  
PFT-2  
PETER FEAR/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DON S. BATHURST  
11-6-15 [[19](#)]

JEFFREY ROWE/Atty. for dbt.  
PETER FEAR/Atty. for mv.

### **Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise that settles a preference a cause of action against Don S. Bathurst for \$5,000.00. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include resolution of the trustee's claims associated with the transfer of a Kabota tractor against Don S. Bathurst for payment to the estate of \$5,000.00. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

### **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.

Trustee Fear's motion to approve a compromise 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 approves the parties' compromise, which settles a dispute pertaining to the transfer of a Kabota tractor from the debtor to Don S. Bathurst. The terms and conditions of the compromise include payment of \$5,000.00 to the estate by Donald S. Bathurst.

8. [15-13713](#)-A-7      MIGUEL AGUILAR      MOTION TO COMPEL ABANDONMENT  
JRL-1      10-31-15 [[11](#)]  
MIGUEL AGUILAR/MV  
JERRY LOWE/Atty. for dbt.

### **Final Ruling**

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

**Notice:** LBR 9014-1(f)(1); 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:** Barbershop

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).

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).

9.    [15-13420](#)-A-7    JANE CARRILLO    OBJECTION TO DEBTOR'S CLAIM OF  
JES-1    EXEMPTIONS  
JAMES SALVEN/MV    10-13-15 [[14](#)]  
SCOTT LYONS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**Final Ruling**

**Objection:** Objection to Claim of Exemptions for Failure to File Spousal Waiver

**Disposition:** Overruled as moot

**Order:** Civil minute order

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

But the debtor has filed the spousal waiver since the trustee brought this objection. The objection will be overruled as moot.

10.    [15-14127](#)-A-7    ERICKA WILSON    MOTION FOR WAIVER OF THE  
ERICKA WILSON/MV    CHAPTER 7 FILING FEE OR OTHER  
FEE  
ERICKA WILSON/Atty. for mv.    10-22-15 [[5](#)]  
RESPONSIVE PLEADING

**No tentative ruling.**

11. [15-14128](#)-A-7 JASMINE SOHAL  
APN-1  
CAB WEST LLC/MV  
ROSALINA NUNEZ/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-4-15 [[12](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2013 Ford Focus

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**

"[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 lease of the subject personal property matured on October 28, 2015, but debtor remains in possession of the property. (The debtor has not paid the purchase option amount or other amounts contractually due and owing in order to retain possession of the property.) This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

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

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

Cab West 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 2013 Ford Focus, 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. [15-11435](#)-A-7 SAUL/CAMILA MARTINEZ MOTION TO SELL  
JES-1 10-26-15 [[22](#)]  
JAMES SALVEN/MV  
SCOTT LYONS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

### **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:**

-2004 Dodge Ram 1500 Quad Cab: \$4500 (\$1600 cash plus \$2900 exemption credit)

-2001 Nissan Sentra: \$1500 cash

**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.

13. [15-13338](#)-A-7 FRANK ORTIZ  
EAT-1  
OCWEN LOAN SERVICING, LLC/MV  
BENNY BARCO/Atty. for dbt.  
MARISOL NAGATA/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-30-15 [[16](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 4544 East Gettysburg Avenue, Fresno, CA

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

### **STAY RELIEF**

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.

Ocwen Loan Servicing, 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 4544 East Gettysburg Avenue, Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

14. [14-13849](#)-A-7 SUSAN BUTTERMAN MOTION TO COMPEL  
JES-1 10-15-15 [[17](#)]  
JAMES SALVEN/MV  
CHRISTIAN YOUNGER/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

15. [15-11749](#)-A-7 LUCIANO JAIMES SEGRERO MOTION FOR TURNOVER OF PROPERTY  
JES-1 10-15-15 [[16](#)]  
JAMES SALVEN/MV  
ERIC ESCAMILLA/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

16. [15-13550](#)-A-7 CHRISTOPHER KAUTZMAN AND MOTION TO AVOID LIEN OF CAVALRY  
JRL-1 KIMBERLY TORRES SPV I, LLC  
CHRISTOPHER KAUTZMAN/MV 10-23-15 [[16](#)]  
JERRY LOWE/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.

17.	<a href="#">15-13357</a> -A-7      SANDRA RAMOS KAZ-1 WELLS FARGO BANK, N.A./MV MARIO LANGONE/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 10-14-15 [ <a href="#">15</a> ]
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### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 900 Longspur, Suisun, CA

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

### **STAY RELIEF**

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

### **CIVIL MINUTE ORDER**

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 900 Longspur, Suisun, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

18. [15-13658](#)-A-7      ARMANDO/IRINA QUINTERO      MOTION TO COMPEL ABANDONMENT  
PLG-1      11-24-15 [[28](#)]  
ARMANDO QUINTERO/MV  
L. HURST/Atty. for dbt.

### **Tentative Ruling**

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

**Disposition:** Continued to January 13, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f)(2)

**Order:** Civil minute order

### **SALE OF PROPERTY**

If property is abandoned, then the property is no longer property of the estate. See 11 U.S.C. § 554. The Bankruptcy Code authorizes sales only if the property to be sold is property of the estate. See 11 U.S.C. § 363(b), (f); see also *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 172 (B.A.P. 9th Cir. 2001) (stating that the threshold question in sales of potentially exempt property is whether property is property of the estate, and that if property is exempt from property of the estate, it may not be sold).

The motion therefore seeks two forms of relief that are mutually exclusive and not capable of being granted simultaneously. Because this motion has not been noticed to all creditors and parties in interest (see discussion below), the court cannot grant either form of relief requested.

However, the court infers that the debtors may want to pursue only the abandonment. If such relief is obtained, then the sale authorization will be unnecessary. At the continued hearing, the court will deny the § 363(b) relief and consider only the abandonment of the property.



## **NOTICE INSUFFICIENT**

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court cannot grant the motion at this time due to insufficient notice of the motion.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

## **FILING FEE**

As of December 4, 2015, at 5:38 p.m., the filing fee for this motion had not been paid as reflected on the court's docket. If the filing fee for this motion, in the amount of \$176 has not been paid as of the continued hearing date, 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 January 13, 2015, at 9:00 a.m. No later than 14 days before the continued hearing date, the movant will file a supplemental proof of service showing notice of the motion and hearing on all creditors and parties in interest along with a notice of continued hearing using the notice procedure of LBR 9014-1(f)(2).

19. [12-13067](#)-A-7      MICHAEL JOHANNES      MOTION FOR COMPENSATION FOR  
JTW-2      JANZEN, TAMBERI & WONG,  
JANZEN, TAMBERI AND WONG/MV      ACCOUNTANT(S)  
JERRY LOWE/Atty. for dbt.      11-9-15 [[102](#)]

### **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, Janzen, Tamberi & Wong, accountant 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 \$1197.00 and reimbursement of expenses in the amount of \$10.78.

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.

Janzen, 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 \$1197.00 and reimbursement of expenses in the amount of \$10.789.

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.

20. [15-13673](#)-A-7 GUSTAVO/GUADALUPE ZERMENO MOTION TO COMPEL ABANDONMENT  
ALG-1 10-21-15 [[15](#)]  
GUSTAVO ZERMENO/MV  
JANINE ESQUIVEL/Atty. for dbt.

### **Tentative Ruling**

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

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

**Disposition:** Continued to December 15, 2015, at 9:00 a.m.; re-filing of declaration in support (currently at docket 17) no later than December 10, 2015

**Order:** Not applicable at this time

### **Business Description:** Lupita's Cleaning Services

The declaration is undated and unsigned. Thus, the motion does not comply with the court's local rules requiring evidence that establishes its factual allegations. LBR 9014-1(d)(7).

However, if the declaration is resubmitted with a signature of the declarant, and a date, the court will grant the motion at the continued hearing. (The court considers all opposition to have been waived as of the date of this initial hearing.)

21. [14-13881](#)-A-7 RAQUEL FLORES MOTION TO COMPEL  
JES-1 10-15-15 [[21](#)]  
JAMES SALVEN/MV  
GREG BLEVINS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

**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 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

22. [15-13782](#)-A-7 EVELYN SMITH  
DJP-1  
EDUCATIONAL EMPLOYEES CREDIT  
UNION/MV  
STEPHEN LABIAK/Atty. for dbt.  
DON POOL/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-17-15 [[15](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Alumacraft Boat Co Escape 145 CS and 2013 Single 16 Foot Trailer Bear SJ 54-16

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

### **STAY RELIEF**

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Alumacraft Boat Co Escape 145 CS and a 2013 Single 16 Foot Trailer Bear SJ 54-16, 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.

23. [14-15483](#)-A-7 BRENTON/STEPHANIE SANDERS MOTION TO COMPEL ABANDONMENT  
JDR-1 11-19-15 [[38](#)]  
BRENTON SANDERS/MV  
JEFFREY ROWE/Atty. for dbt.

**Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Real Property Description:** 31333 Yosemite Springs, Coarsegold CA

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

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

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

24. [15-14085](#)-A-7 MICHELLE JONES MOTION FOR RELIEF FROM  
SRH-1 AUTOMATIC STAY  
MARTIN GARCIA/MV 11-17-15 [[21](#)]  
STEVEN HRDLICKA/Atty. for mv.  
DEBTOR DISMISSED: 11/17/2015

**Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

The moving party seeks relief from the automatic stay. The dismissal of this case has terminated the automatic stay, § 362(c)(2)(B), so the court is unable to grant effective relief. The motion will be denied as moot.

25. [14-13989](#)-A-7 MIRIAM GOMEZ  
JES-1  
JAMES SALVEN/MV  
THOMAS GILLIS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO COMPEL  
10-14-15 [[20](#)]

**No tentative ruling.**

26. [15-12889](#)-A-7 ERIC MIRELES AND MAXINE  
UST-1 HERNANDEZ  
TRACY DAVIS/MV

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)  
10-28-15 [[21](#)]

MARK ZIMMERMAN/Atty. for dbt.  
TERRI DIDION/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).

### **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 60 days after the conclusion of the § 341 creditors' meeting.

### **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. The deadline will be extended through July 3, 2014.

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 60 days after the conclusion of the § 341 creditors' meeting.

27.	<a href="#"><u>15-13290</u></a> -A-7     JOSE/SUSAN MORENO SAH-1 JOSE MORENO/MV SUSAN HEMB/Atty. for dbt.	MOTION TO AVOID LIEN OF UNIFUND CCR, LLC 10-14-15 [ <a href="#"><u>17</u></a> ]
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### **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.



28. [15-13290](#)-A-7 JOSE/SUSAN MORENO  
TMT-1  
TRUDI MANFREDO/MV

AMENDED MOTION TO EMPLOY GOULD  
AUCTION & APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
11-9-15 [[31](#)]

SUSAN HEMB/Atty. for dbt.  
TRUDI MANFREDO/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:** 2005 GMC Sierra 1500 Pickup

**Sale Type:** Public auction

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).

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.

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.

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.

29. [15-14392](#)-A-7 JEANNIE COLLINS  
JDR-1  
JEANNIE COLLINS/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
11-12-15 [5]

### **Final Ruling**

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

**Notice:** LBR 9014-1(f)(1); 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:** Clean Sweep, 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). 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).

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).

30. [15-13793](#)-A-7 KELLI CRANE  
PPR-1  
HSBC BANK USA, NATIONAL  
ASSOCIATION/MV  
HAGOP BEDOYAN/Atty. for dbt.  
SAMYEL GESHGIAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-4-15 [[13](#)]

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 4390 Crimson Court, Helena, Montana

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.

HSBC Bank USA, National Association'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 4390 Crimson Court, Helena, Montana, 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.

31. [15-11394](#)-A-7 CARLOS GONZALEZ AND KARLA CONTINUED MOTION TO REDEEM  
MAR-3 GOMEZ-DIAZ AND/OR MOTION TO BORROW ,  
CARLOS GONZALEZ/MV MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF RIVERA LAW  
CORPORATION DEBTORS ATTORNEY(S)  
9-30-15 [[26](#)]

MICHAEL RIVERA/Atty. for dbt.

**No tentative ruling.**

32. [14-14995](#)-A-7 PAUL/CARRIE ESTES MOTION FOR COMPENSATION FOR  
JES-5 ROBERT CASEY, REALTOR(S)  
JAMES SALVEN/MV 10-21-15 [[47](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

### **Final Ruling**

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

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

**Disposition:** Approved in part as to Berkshire Hathaway Home Services California Realty

**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).

### **ORDER OF EMPLOYMENT**

#### Entity Employed

The order of employment lists Berkshire Hathaway Home Services California Realty ("Berkshire") as the broker who was employed. The application seeks to compensate Robert Casey, the real estate agent who acted on behalf of his principal in providing real estate marketing services to the estate. The court will only authorize compensation to Berkshire, the entity employed specifically by the order. **If the chapter 7 trustee wishes to compensate specific, individual real estate agents in the future, the trustee shall include the name of the agent in the order of employment.**

### Unauthorized Services

Additionally, the application for employment was filed on January 21, 2015. Thus, the court does not find that the services performed before December 22, 2014, are authorized. However, excluding the hours of services performed in November 2014, the court concludes that sufficient hours of services were performed after the employment order to justify the compensation sought. In the future, the trustee shall ensure that the person to be employed does not perform significant services prematurely.

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, the trustee, on behalf of Berkshire Hathaway Home Services California Realty, broker and agent for the trustee, has applied for an allowance of final compensation and reimbursement of expenses for such broker and agent. The applicant requests that the court allow compensation in the amount of \$400 and reimbursement of expenses in the amount of \$0.

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.

The chapter 7 trustee's application for allowance of final compensation and reimbursement of expenses, made on behalf of Berkshire Hathaway Home Services California Realty, 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 \$400 and reimbursement of expenses in the amount of \$0.

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.