

The court has issued a final order on the Motion to Avoid Creditor's judicial lien on Debtor's Property. Dckt. 12. At the December 21, 2011 hearing, the court granted the motion, finding that Creditor's judicial lien impaired Debtor's exemption. Dckt. 21. The court entered its order on the record on December 22, 2011, which states explicitly that:

[T]he judgment lien of Springleaf Financial Services, Inc., successor-in-interest to American General Financial Services, Inc., Stanislaus County Superior Court Case No. 642483, recorded on December 4, 2009, with the Stanislaus County Recorder, against the real property commonly known as 3719 Iowa Avenue, Riverbank, California, **is avoided** pursuant to 11 U.S.C. § 522(f)(1)

Dckt. 22 (emphasis added). No party opposed the motion in 2011. *See* Dckt. 21.

Now, Debtor pleads that they are trying to sell real property commonly known as 3719 Iowa Avenue, Riverbank, California ("Property"), but "the absence of a Final Order as opposed to the Civil Minute Order is preventing the title insurer from removing the affected lien as an exception to the title policy." Dckt. 32 at 2:8–10. Additionally, Debtor claims that the escrow officer involved in the sale stated that a particular form of an order "is all that the title insurer will accept." *Id.* at 2:11.

DISCUSSION

Though framing the Motion as requesting a "final order" because the "minute order" is not a sufficient final order, that construction appears to misstate the issue. The court's December 22, 2011 order is a final order. It was entered on the docket, and no appeal has been taken therefrom. FED. R. CIV. P. 54, FED. R. BANKR. P. 7054, 8002, 9014; *See In re Souza*, 795 F.2d 855, 857 (9th Cir. 1986).

The Motion is phrased as requesting the court "finalize" its prior order. It has been requested that the court "ORDER that the subject Lien be formally and finally AVOIDED as to remove the affected lien as a matter of record affecting the Subject Property . . ." Dckt. 32 at 2:19–21. No legal basis has been provided for issuing an order stating that the prior final order is actually a final order, or that the court engage in what may be a never ending series of issuing orders that the prior order is final—really.

What is hinted at in the Motion is that a title officer does not like the form of the order. Such does not surprise the court, which has made a practice of putting in "pretty order form" any orders that may be recorded with county recorders. Filed as Exhibit A is a proposed order form that Debtor represents in the Motion to be the only order that the title company will determine to be sufficient, stating:

According to the escrow officer handling the sale, the attached Order is all that the title insurer will accept.

Motion, p. 2:10–11; Dckt. 32. It is not uncommon for attorneys and the legal departments for title companies to jointly prepare complex orders to be *proposed* to the court.

Exhibit A, Dckt. 36, provided to the court is a proposed order that is almost exactly the same order language in the prior order of the court. The proposed order states in pertinent part, with the court showing deletions from the prior order language in strikeout and additions in underlined text:

IT IS ORDERED that the judgment of a judicial lien of Springleaf Financial Services, successor in interest to American General Financial Services, Inc. placed on the real property located at 3719 Iowa Avenue, Riverbank, CA 95367. Stanislaus County Superior Court Case No. 642483; recorded on ~~December 4, 2009~~; August 29, 2017, with the Stanislaus County Recorder, Document No. 2017-0063228-00, against ~~the~~ real property commonly known as 3719 Iowa Avenue, Riverbank, ~~California~~ CA 95367, is avoided pursuant to 11 U.S.C. Section 522 (f) (1), subject to the provisions of 11 U.S.C. Section 349 if this bankruptcy case is dismissed.

This proposed language contains some curious language, such as “judgment of a judicial lien.” There is nothing in the record to support that there was a “judgment” granting a “judicial lien.” Rather, the creditor had a monetary judgment. The creditor obtained an abstract of judgment. The creditor recorded the abstract of judgment, by which creditor perfected a judicial lien on the property.

The proposed order form makes the order generic, effectively an in rem order against the world. For a federal court to issue an order or judgment, it must have the real parties in interest before it. Here, Debtor filed a motion to avoid the judicial lien of Springleaf Financial Services, Inc., as the successor to American General Financial Services, Inc. Debtor diligently served Springleaf Financial Services, Inc., at multiple addresses, as well as serving American General Services (at a post office box).

The court concludes that the title company is not requesting that the court issue a final order stating that the prior order was final, but issue a “pretty order” that looks like a real order, not some “minute order.” (Actually, the court’s use of the term “minute order” on its form is a misnomer, as it is an actual order, not merely an entry on the docket stating that there was an order made by the court in the minutes.)

However, the court recognizes that certain formalities and traditions are commonplace, which led to this court abandoning the minute order form.

The court will issue a Supplemental Order (in recordable form) that will have the trappings of a standard-looking order, on legal pleading paper, with the conventional looking title and caption page. The form of the order text will be that of the prior order, and the order date shall relate back to the December 22, 2011 recording of the original order.

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

SUPPLEMENTAL ORDER AVOIDING LIEN (Format for Recording)

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

The court previously on December 22, 2011, issued its order avoiding the judicial lien recorded against the real property commonly known as 3719 Iowa Avenue, Riverbank, California. Order, Dckt. 22. By subsequent Motion, Debtors Santiago Lopez and Erika Lopez have requested that the court issue a supplemental order restating the prior relief granted so that it may be recorded with the county recorder and used by title companies in ongoing real estate transactions being undertaken by Debtors. Therefore, upon review of the prior order of this court, the request of Debtors, the files in this case, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Springleaf Financial Services, Inc., successor-in-interest to American General Financial Services, Inc., California Superior Court for Stanislaus County Case No. 642483, recorded on December 4, 2009, and renewed on August 29, 2017, Document No. 2017-0063228-00, with the Stanislaus County Recorder, against the real property commonly known as 3719 Iowa Avenue, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

This is a Supplemental Order that restates the final order of this court entered on December 22, 2011, avoiding the above judgment lien. This Supplemental Order does not alter, amend, or change in any way the relief previously granted, but is issued to address a perceived “form of order” issue by a title company.

2. [17-21063](#)-E-13 **DIANA DELGADO MONGE**
NLG-1 **Mikalah Liviakis**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-3-17 [17]**

**FIRST TECH FEDERAL CREDIT
UNION VS.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 3, 2017. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is denied without prejudice, the automatic stay already having been terminated by the confirmed Chapter 13 Plan.

First Tech Federal Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Chevrolet Trax, VIN ending in 8634 (“Vehicle”). The moving party has provided the Declaration of Heather Anderson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Diana Monge (“Debtor”).

The Heather Anderson Declaration provides testimony that Debtor has not made two post-petition payments, with a total of \$971.86 in post-petition payments past due. The Heather Anderson Declaration was filed on October 10, 2017, and mentions that additional payments would be due on September 15, 2017, and October 15, 2017.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 24, 2017. Dckt.26. The Chapter 13 Trustee asserts that relief may not be needed because Section 2.11 of the confirmed plan provides for relief. Debtor's Plan establishes Creditor's secured interest in the Vehicle as a Class 4 secured claim to be paid directly by Debtor and not by the bankruptcy estate. Class 4 secured claims mature after the completion of Debtor's Plan and are not in default.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$30,811.73, as stated in the Heather Anderson Declaration, while the value of the Vehicle is determined to be \$18,535.00, as stated in Schedules B and D filed by Debtor.

A review of Debtor's Plan reveals that Creditor holds a Class 4 secured claim. Dckt. 5. Therefore, Creditor may exercise its rights against its collateral in the event of a default under applicable law or contract. Creditor's secured claim is not within the bankruptcy estate, though. Therefore, a request for relief of an automatic stay is inapplicable.

Denial without prejudice of this Motion is not necessarily a loss for Movant. As the Chapter 13 Trustee has noted, Section 2.11 of the confirmed plan indicates that "all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Dckt. 5. The confirmed plan lists Movant as a holder of a Class 4 secured claim. If Movant believes that Debtor has defaulted on her obligation, then Movant can enforce its nonbankruptcy rights as provided for in the Plan.

The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Relief from the Automatic Stay filed by First Tech Federal Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is denied without prejudice, the automatic stay having been modified already by the confirmed Chapter 13 Plan, ¶ 2.11, to allow Movant to exercise its right in the collateral, including foreclosure and obtaining possession thereof. Chapter 13 Plan, Dckt. 5, Order Confirming Plan, Dckt. 13.