



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: MONDAY
DATE: APRIL 22, 2024
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-1](#)

MOTION TO AVOID LIEN OF THE BOARD OF TRUSTEES
3-5-2024 [\[27\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to June 3, 2024, at 10:30 a.m.

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). The court will continue the hearing on this motion as follows.

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

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

Other motions to avoid judicial liens on the same subject real property are being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the hearing in the Motion to Avoid Lien of H. Jeffrey Froelich (BLG-2).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 3, 2024, at 10:30 a.m.

2. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-2](#)

MOTION TO AVOID LIEN OF H. JEFFREY FROELICH
3-5-2024 [\[32\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to June 3, 2024, at 10:30 a.m.

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). The court will continue the hearing on this motion as follows.

SERVICE

The court will continue the motion to allow for sufficient 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).

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Fed. R. Bankr. P. 7004(b)(1).

The responding party is H. Jeffrey Froelich, who appears to be an individual. Accordingly, service must be made in compliance with Rule 7004(b)(1).

Service on Prior Counsel is Insufficient

"An implied agency to receive service is not established by representing a client in an earlier action." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted).

"We cannot presume from Paris' handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Id.*, at 93.

In this case service of the respondent H. Jeffrey Froelich was achieved *only* by serving him at the address of the law firm which represented respondent in the state court action which resulted in judgment against the debtors. Certificate of Service, Attachment 6A1, ECF No. 71. Exhibit A, ECF No. 35.

No evidence has been presented in the certificate of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case. Accordingly, service upon the respondent must comply with Fed. R. Bankr. P. 7004(b)(1).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 3, 2024, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than May 6, 2024, the moving party shall file and serve a notice of continued hearing and the motion to avoid lien on the respondent in a manner which complies with the court's ruling in this manner.

3. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-3](#)

MOTION TO AVOID LIEN OF KELSTIN GROUP, INC.
3-5-2024 [\[37\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to June 3, 2024, at 10:30 a.m.

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). The court will continue the hearing on this motion as follows.

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

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

Other motions to avoid judicial liens on the same subject real property are being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the hearing in the Motion to Avoid Lien of H. Jeffrey Froelich (BLG-2).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 3, 2024, at 10:30 a.m.

4. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-4](#)

MOTION TO AVOID LIEN OF GRANITE STATE INSURANCE COMPANY
3-5-2024 [\[42\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to June 3, 2024, at 10:30 a.m.

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). The court will continue the hearing on this motion as follows.

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already

avoided are excluded from the exemption-impairment calculation with respect to other liens.” *Id.*; 11 U.S.C § 522(f) (2) (B).

Other motions to avoid judicial liens on the same subject real property are being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property’s value or the amounts of liens or exemptions, the court will continue this motion to coincide with the hearing in the Motion to Avoid Lien of H. Jeffrey Froelich (BLG-2).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 3, 2024, at 10:30 a.m.

5. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-5](#)

MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT BUREUA, INC.
3-7-2024 [[51](#)]

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to June 3, 2024, at 10:30 a.m.

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). The court will continue the hearing on this motion as follows.

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

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

Other motions to avoid judicial liens on the same subject real property are being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the hearing in the Motion to Avoid Lien of H. Jeffrey Froelich (BLG-2).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 3, 2024, at 10:30 a.m.

6. [23-24304](#)-A-7 **IN RE: LORENZO JACKSON AND EMO**
TAULAGA-JACKSON
[GC-1](#)

MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR
2-21-2024 [[21](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Motion: Substitution of Representative and Waiver of Post-Petition Education Requirement

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

Disposition: Granted

Order: Civil minute order

Emo Taulaga-Jackson prays for appointment of a personal representative, substitution of the representative, and waiver of the post-petition education requirement for her now deceased spouse Lorenzo Jackson.

DEFAULT

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

DISCUSSION

Suggestion of Death

When a chapter 7 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a *Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025]* shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, the applicant has filed a notice of death and the accompanying death certificate of debtor Lorenzo Jackson. Exhibit A, ECF No. 24.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Lorenzo Jackson's death occurred on January 9, 2024. The required motion and supporting exhibits were filed and served February 21, 2024, by the decedent's spouse and co-debtor in this case, in compliance with LBR 2016-1.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

CIVIL MINUTE ORDER

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

Emo Taulaga-Jackson's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Emo Taulaga-Jackson is the representative of Lorenzo Jackson and is substituted in his place and stead; and (2) as to Lorenzo Jackson the post-petition education requirement is waived, 11 U.S.C. § 109(h).

7. [23-23407](#)-A-7 **IN RE: RAYMOND/MARLEN GALLO**
[TBG-10](#)

MOTION TO AVOID LIEN OF SYSCO SACRAMENTO, INC.
3-22-2024 [\[91\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/08/24

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

8. [23-23407](#)-A-7 **IN RE: RAYMOND/MARLEN GALLO**
[TBG-11](#)

MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT BUREAU, INC.
3-22-2024 [\[96\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/08/24

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

9. [23-23407](#)-A-7 **IN RE: RAYMOND/MARLEN GALLO**
[TBG-12](#)

MOTION TO AVOID LIEN OF PERRIN BERNARD SUPOWITZ, LLC
3-22-2024 [[101](#)]

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/08/24

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

10. [23-23407](#)-A-7 **IN RE: RAYMOND/MARLEN GALLO**
[TBG-9](#)

MOTION TO AVOID LIEN OF AKF, INC., DBA FUNDKITE
3-22-2024 [[86](#)]

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/08/24

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

11. [24-20707](#)-A-7 **IN RE: JOHNNY GARCIA**

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-20-2024 [\[35\]](#)

C. GREER/ATTY. FOR MV.
CLI ATLAS ASHTON LLC VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: 9014-1(f)(2); non-opposition filed by trustee

Disposition: Denied without prejudice

Order: Civil minute order

CLI Atlas Ashton, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee has filed a non-opposition to the motion.

The motion will be denied without prejudice for the following reason.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of

any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

In this case the certificate of service is attached to the declaration and exhibits in support of the motion, ECF No. 38

VIOLATION OF LBR 9014-1

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.

FAILURE TO FILE REQUIRED FORM

With all motions for relief from stay, the movant shall file and serve as a separate document completed Form EDC 3-468, *Relief from Stay Summary Sheet*.

LBR 4001-1(a)(3).

The motion seeks relief from the automatic stay. However, the motion contravenes LBR 4001-1(a)(3) as the movant failed to file Form EDC 3-468 in support of the motion.

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

CLI Atlas Ashton, LLC's Motion for relief from the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

12. [23-24309](#)-A-7 **IN RE: BHUPINDER KOONER**
[BLF-3](#)

MOTION TO SELL
3-26-2024 [[36](#)]

SETH HANSON/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTOR DISCHARGED: 03/15/24

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1200 S. Main Street, Yreka, California; 2022 Cobalt A29 Boat

Buyer: Jaskarn Johal

Sale Price: \$45,000

Sale Type: Private sale subject to overbid opportunity

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

Chapter 7 trustee Nikki Farris seeks an order approving the sale of 1200 S. Main Street, Yreka, California, and a 2022 Cobalt A29 Boat to Jaskarn Johal for \$45,000.

REAL PROPERTY

The debtor's interest in the subject real property is one third. The buyer also holds a one third interest in the property. The property is operated as a homeless shelter. The trustee estimates the value of the estate's interest in the subject property is \$75,000 after costs of sale but excluding the necessary legal fees and costs which would be required to sell the entire property. Declaration of Nikki B. Farris, ECF No. 38.

BOAT

The trustee estimates that the value of the boat is approximately \$10,000 - \$30,000, but this figure does not consider the necessary repairs estimated at \$33,452.33 or costs of sale. *Id.*

Accordingly, the trustee believes the sum of \$45,000 is the highest price she could realize for the sale of the assets.

SALES

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. [24-20815](#)-A-7 **IN RE: RONALD SMITH AND BEATRICE COOK**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2024 [[13](#)]

RYAN KEENAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
EXETER FINANCE LLC VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Granted

Order: Civil minute order

Subject: 2013 Ford Fusion

Cause: Delinquent Payments \$2,476.57

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).

Exeter Finance, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The movant recovered (pre-petition) possession of the vehicle on February 2, 2024.

STAY RELIEF

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

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

The debtor has missed payments due on the debt secured by the moving party's lien from November 2023 through February 2024. 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.

Exeter 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 2013 Ford Fusion, 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. [11-28028](#)-A-7 **IN RE: JAMES/TERRI COOK**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
3-22-2024 [\[63\]](#)

JESSICA DORN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 07/18/11
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$2,100.00

Reimbursement of Expenses: \$237.33

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, James Salven, 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 \$2,100.00 and reimbursement of expenses in the amount of \$237.33.

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.

James Salven'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 \$2,100.00 and reimbursement of expenses in the amount of \$237.33.

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.

15. [23-23129](#)-A-7 **IN RE: JOHN/ANGELA BOWMAN**
[TBG-4](#)

MOTION TO AVOID LIEN OF TRI COUNTIES BANK
3-12-2024 [[61](#)]

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/26/23

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

16. [23-23129](#)-A-7 **IN RE: JOHN/ANGELA BOWMAN**
[TBG-5](#)

MOTION TO AVOID LIEN OF AMUR EQUIPMENT FINANCE, INC.
3-12-2024 [\[65\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/26/23

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

At the request of the movant the hearing on this matter is continued to May 6, 2024, at 10:30 a.m.

17. [24-20530](#)-A-7 **IN RE: BENNANICO ROSALES**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
3-19-2024 [\[15\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines
Notice: LBR 9014-1(f)(1); written opposition filed by the debtor
Disposition: Conditionally denied in part, granted in part
Order: Civil minute order

The Chapter 7 trustee, Nikki Farris, moves to dismiss the case as the debtor failed to attend the meeting of creditors on March 19, 2024. The debtor opposed the motion and requested a hearing. The trustee continued the meeting of creditors to April 18, 2024, at 8:00 a.m.

DISMISSAL

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

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the

continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for April 18, 2024, at 8:00 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 and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

18. [24-20136](#)-A-7 **IN RE: EVELYN DOMONDON**

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-2024 [\[46\]](#)

JEANNE SERRANO/ATTY. FOR DBT.
ROBERT MILLER/ATTY. FOR MV.
JEFFREY VIEYRA VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Jeffrey Vieyra seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice as follows.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of

default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: AIS Portfolio Services, LLC. See ECF No. 9.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, ECF No. 51. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified

herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d) (3) (B) (iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d) (3) (B) (iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d) (3) (B) (iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

VIOLATION OF LBR 9014-1

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.

CIVIL MINUTE ORDER

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

Jeffrey Vieyra's Motion for Relief From the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

19. [24-20562](#)-A-7 **IN RE: CHARLES CULPEPPER AND DELORES RHODES**
CULPEPPER
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-2024 [[13](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CAPITAL ONE AUTO FINANCE VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition by trustee

Disposition: Granted

Order: Civil minute order

Subject: 2020 Ford F-150 Supercrew Cab

Cause: delinquent installment payments 4 months/\$3,031

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Capital One Auto Finance seeks an order for relief from the automatic stay of 11 U.S.C. 362(a).

DEFAULT OF RESPONDENT

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

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief 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.

Capital One Auto Finance'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 2020 Ford F-150 Supercrew Cab, 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.

20. [24-20666](#)-A-7 **IN RE: JENNIE/JEREMY WOLFE**
[MOH-1](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
2-23-2024 [[14](#)]

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

21. [22-21669](#)-A-7 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-5](#)

CONTINUED OBJECTION TO CLAIM OF NICOLAS LOPER, CLAIM NUMBER
10
1-4-2023 [[143](#)]

BYRON FARLEY/ATTY. FOR DBT.

Final Ruling

At the request of the parties, the court will continue the hearing on the trustee's objection to the claim of Nicholas Loper until July 1, 2024, at 10:30 a.m. Mr. Macaluso, Mr. Herrera, and Mr. Cunningham shall file a joint status report no later than 14 days prior to the continued hearing. The report will include: (1) status

of the malpractice claim, and (2) suggestions for a mechanism moving forward. Mr. Cunningham will take the lead in coordinating the meeting and the filing of the report.

22. [24-20670](#)-A-7 **IN RE: LABRAYA MITCHELL**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-2024 [\[11\]](#)

ANH NGUYEN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
MERCEDES-BENZ VEHICLE TRUST VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Denied as moot

Order: Civil minute order

Subject: 2022 Mercedes Benz CLA

Lessor/Creditor: Mercedes Benz Vehicle Trust

Statement of Intention

(11 U.S.C. § 521(a)(2)(A)-Filing/Declaring) :

-Deadline: March 24, 2024

-Filed: February 22, 2024, ECF No. 1

-Timely: yes

-Lease listed in the Statement of Intention: no

Chapter 7 Trustee: non-opposition to motion filed April 4, 2024

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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

Filing a Chapter 7 petition imposes the stay, protecting the debtor, the debtor's property and property of the estate. 11 U.S.C. §

362(a). The stay terminates: (1) when the case has run its course, i.e., as to the debtor, when debtor is granted or denied a discharge and as to the estate, when the property leaves the estate, 11 U.S.C. § 362(c); (2) by order of the court after noticed motion, 11 U.S.C. § 362(d); or (3) by operation of law, see e.g., § 362(c)(3), (4). Among the operative provisions of law that lift the stay as § 362(h). That subdivision provides:

(h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)–

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 362(h) (emphasis added).

In the pertinent part, § 521 provides:

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate–

(A) **within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier,** or within such additional time as the court, for cause, within such period fixes, **file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and**

(B) **within 30 days after the first date set for the meeting of creditors under section 341(a),** or within such additional time as the court, for cause, within such 30-day period fixes, **perform his intention with respect to such property,** as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)...

11 U.S.C. § 521(a) (2) (emphasis added).

Failure to file the Statement of Intent in a timely manner or to specify the treatment of that lease or to perform the Statement of Intention terminates the stay as to the property. *In re Jones*, 591 F.3d 308, 311 (4th Cir. 2010); *In re Dumont*, 581 F.3d 1104, 1110 (9th Cir. 2009).

Here, the debtor did not timely declare an intention to assume this lease in the Statement of Intention. The Chapter 7 trustee has filed a non-opposition to this motion for stay relief and has not otherwise retained the stay in the manner specified in § 362(h) (2). Consequently, the stay has already lifted, and the property is no longer property of the estate. 11 U.S.C. § 362(h) (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:

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

Mercedes Benz Vehicle Trust'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 denied as moot with respect to the property of the debtor described in the motion, commonly known as a 2022 Mercedes Benz CLA.

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. [23-23295](#)-A-7 **IN RE: ROBERT SNYDER**
[PGM-1](#)

MOTION TO ABANDON
3-22-2024 [[23](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/26/23
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Subject: 5191 Coyote Pass Road, Shingle Springs, California; and all remaining assets as indicated in the motion excepting the debtor's 2022 and 2023 income tax refunds, and malpractice claim against Western Heritage Insurance

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).

On October 16, 2023, the Chapter 7 Trustee filed a Notice of Assets and Notice to Creditors to file Proof of Claims, ECF No. 13. The nonexempt assets which the trustee intends to administer consist of the debtor's 2022 and 2023 income tax refunds (if any), and a malpractice claim against Western Heritage Insurance.

By this motion the debtor seeks an order compelling the Chapter 7 trustee's abandonment of all remaining real and personal property scheduled by the debtor and listed in the motion.

On April 5, 2024, the Chapter 7 trustee, Nikki B. Farris, filed a non-opposition to the motion.

ABANDONMENT

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

The real and personal property described in the motion is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order will compel abandonment of only the real property and personal assets that are described in the motion.