



**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: JANUARY 6, 2025
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 **Court Appearances** page of our website at:

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

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. [24-22702](#)-A-7 **IN RE: DANIEL/GLORIA JOHANSEN**
[KLG-1](#)

CONTINUED MOTION TO DISMISS CASE
10-14-2024 [\[19\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Chapter 7 Case
Notice: Continued from December 2, 2024
Disposition: Granted
Order: Prepared by the movant

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).

The debtors seek dismissal of the Chapter 7 bankruptcy case under 11 U.S.C. § 305.

DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The debtors seek dismissal of their case because of debtor Gloria Johansen's severe illness. The Chapter 7 trustee has filed a non-opposition to the motion.

The court finds that the interests of the debtor and the creditors are better served by dismissal. The motion will be granted. The debtors shall submit an order consistent with this ruling.

2. [24-25311](#)-A-7 **IN RE: LLOYD PEREIRA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-6-2024 [\[10\]](#)

STEPHEN JOHNSON/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2020 GMC Sierra 3500HD

Cause: delinquent installment payments \$84,299.55

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.

Americredit Financial Services, Inc. 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.

Americredit Financial Services, 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 2020 GMC Sierra 3500HD, 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.

3. [24-20722](#)-A-7 **IN RE: WILLIAM QUIRANTE**
[KMT-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WILLIAM LARIOSA QUIRANTE
12-6-2024 [\[79\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.
DEBTOR DISCHARGED: 08/29/24

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

Subject property: 2289 Brannan Way, El Dorado Hills, California

Discharge entered: August 29, 2024

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).

FACTS

The Chapter 7 trustee, Geoffrey Richards, seeks an order approving the agreement reached with the debtor.

Judicial Notice

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

The bankruptcy estate includes the debtor's interest in his residence located at 2289 Brannan Way, El Dorado Hills, California. On April 3, 2024, the debtor filed an Amended Schedule C. In the amended schedules the debtor claimed a homestead exemption in the subject property in the amount of \$366,707.00 pursuant to C.C. P. § 704.730. Amended Schedule C, ECF No. 14. The court notes that the Amended Schedule C was not submitted as an exhibit by the moving

party. Rather, the original Schedule C which was filed at the inception of the case was filed as an exhibit in support of the motion. The original Schedule C did not contain any claim of exemption in the subject property. However, the court takes judicial notice of the Amended Schedule C filed at docket number 14.

The subject property has a value of \$1,012,000. Schedule A/B, ECF No. 1. The movant also values the property at \$1,012,000 and in addition to the exemption claimed, the property is subject to the secured claim of Movement Mortgage, LLC, in the approximate amount of \$640,887.00. Declaration of Geoffrey Richards, 2:17-21, ECF No. 81.

Discharge and Compromise

On September 13, 2024, the court denied Movement Mortgage, LLC's motion for stay relief without prejudice. On August 29, 2024, the debtor was granted a discharge.

Movement Mortgage, LLC, has not filed a subsequent motion for stay relief against the Chapter 7 trustee, and the case has not been closed.

The compromise provides:

1. Allowance of Homestead Exemption. Subject to the terms of the Agreement, the Homestead Exemption is deemed allowed.
2. Carve Out and Distribution of Any Proceeds of the Subject Property. In the event the Subject Property is sold or the proceeds collected by the Trustee, the Debtor agrees that the Homestead Exemption shall be subordinated in the amount of \$60,000 to the bankruptcy estate. For the avoidance of doubt, the proceeds of any sale of the Subject Property shall be distributed as follows: First, costs of sale, including broker fees and property taxes; Second, claims secured by the Subject Property; Third, \$60,000 to the bankruptcy estate; Fourth, the amount of the Homestead Exemption to the Debtor; Fifth, the balance if any to the bankruptcy estate.
3. Sale. The Trustee is not required to collect, recover, and/or sell the Subject Property.
4. Cooperation. The Debtor shall cooperate with the Trustee, and any professionals employed by the estate, in the marketing and selling of the Subject Property and shall not file any opposition or response to the Trustee's attempts to sell the Subject Property.

Motion, 3:2-15, ECF No. 79.

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. 1986). 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 movant requests approval of a compromise. The compromise is reflected in the settlement agreement filed concurrently with the motion as Exhibit A, ECF No. 82. 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.

Geoffrey Richard'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 hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as Exhibit A and filed at docket no. 82.

4. [24-21931](#)-A-7 **IN RE: JOSE CRUZ QUINTANA**
[PGM-1](#)

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
12-5-2024 [\[97\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

5. [24-23540](#)-A-7 **IN RE: DONALD/RUBY TRAMEL**
[JM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-3-2024 [\[31\]](#)

MARY ANDERSON/ATTY. FOR DBT.
JAMES MACLEOD/ATTY. FOR MV.
DEERE & COMPANY VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Discharge granted: December 20, 2024

Subject: John Deere 2038R Tractor, John Deere 270B BACKHOE, Frontier
PHD200 Post Hole Digger, Frontier BB2060 STD Duty Box Blade

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.

Deere & Company 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).

As to the Debtor

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

As to the Estate

"[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.

Deere & Company'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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as John Deere 2038R Tractor, John Deere 270B BACKHOE, Frontier PHD200 Post Hole Digger, Frontier BB2060 STD Duty Box Blade. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that 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.

6. [24-24062](#)-A-7 **IN RE: ALICIA HERNANDEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2024 [\[21\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
CAPITAL ONE AUTO FINANCE VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Chevrolet Malibu LT Sedan 4D

Cause: delinquent installment payments 12 months/\$5,454.92

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 2018 Chevrolet Malibu LT Sedan 4D, 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.

7. [24-22469](#)-A-7 **IN RE: JENNIFER RODRIGUE**

OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
12-9-2024 [\[144\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
SAMUEL RAY/ATTY. FOR MV.

Final Ruling

To avoid inconsistent rulings in this case, this objection is continued to coincide with additional motions that have been filed by the debtor and creditor, Michael Turon. The hearing is continued to January 21, 2024, at 10:30 a.m.

8. [24-25386](#)-A-7 **IN RE: EKTAA BABBAR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-3-2024 [\[19\]](#)

Final Ruling

An Order granting the Debtor's Motion to Pay in Installments was filed December 11, 2024, ECF No. 30. Therefore, the order to show cause is discharged. The case will remain pending.

9. [24-21395](#)-A-7 **IN RE: JULIE WARDEN**
[BHS-2](#)

MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
11-22-2024 [\[27\]](#)

SETH HANSON/ATTY. FOR DBT.
DEBTOR DISCHARGED: 07/22/24

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 approved: \$5,367.50

Reimbursement of expenses: \$34.38

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, Barry H. Spitzer, attorney for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,367.50 and reimbursement of expenses in the amount of \$34.38.

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.

Barry Spitzer'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 \$5,367.50 and reimbursement of expenses in the amount of \$34.38.

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.

10. [24-21931](#)-A-7 **IN RE: JOSE CRUZ QUINTANA**
[RLL-4](#)

MOTION FOR TURNOVER OF PROPERTY UNDER SEC. 542(A) O.S.T.
12-26-2024 [\[102\]](#)

PETER MACALUSO/ATTY. FOR DBT.
ANTHONY ASEBEDO/ATTY. FOR MV.

Tentative Ruling

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

Notice: LBR 9014-1(f)(3); order shortening time, no written opposition required

Disposition: Granted

Order: Prepared by the movant

Subject property: 2288-2292 Marconi Avenue, Sacramento, Sacramento County, California

Property Value: \$800,000

Exemption: \$0

Liens: deed of trust, Elmer F. Karpe, Inc., \$525,025

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).

JUDICIAL NOTICE

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

The court takes judicial notice of the documents filed on the docket in this case.

FACTS

Geoffrey M. Richards, Chapter 7 trustee, seeks an order compelling the debtor to turn over to the trustee possession and control of the real property commonly known as 2288-2292 Marconi Avenue, Sacramento, Sacramento County, California. The trustee requests that the debtor:

immediately turn over possession of the Marconi Property to the Trustee, including by way of the following and any other actions reasonably necessary: (i) to permit the Trustee, his broker, and his agents to have a lock-box installed at the Residence, (ii) to turn over a full set of keys to the Residence for use in connection with the lock-box, (iii) to permit the Trustee's broker and/or agents to install a for-sale sign at the front of the Residence, and (iv) to cooperate with reasonable marketing of the Residence, communicate with the Trustee, his broker, and agents in regard to marketing of the Residence and to refrain from any acts that would interfere with the Trustee, his broker, and agents in the showing of the Residence, both exterior and interior and including any out-buildings, to prospective buyers who may be accompanied by either their own broker or by the Trustee's broker. . . .

Motion, 3:19-27, 4:1-2, ECF No. 102.

Value

The property has a value of \$800,000.

While the Debtor valued the Marconi Property at over \$900,000, my own broker more conservatively valued it at around \$800,000. But either value leaves significant equity over and above the known liens of record revealed by the title report. Given the significant equity, I believe that sale of the Marconi Property is in the best interest of the estate and its creditors.

Declaration of Geoffrey M. Richards, 2:21-25, ECF No. 105.

The property is encumbered by an obligation owed to Elmer F. Karpe, Inc., in the amount of \$525,025. Amended Schedule D, ECF No. 62. The debtor has failed to claim any exemption in the subject property, Amended Schedule C, ECF No. 60.

The trustee intends to sell the property for the benefit of the bankruptcy estate.

Case History

The debtor filed the petition without an attorney. On July 28, 2024, attorney Peter Macaluso substituted into the case as the debtor's attorney. Substitution of Attorney, ECF No. 47. The debtor filed the amended bankruptcy schedules and statements referenced above in this ruling.

The Meeting of Creditors was concluded on September 12, 2024.

After the conclusion of the Meeting of Creditors trustee's counsel communicated to the debtor's counsel that the trustee planned to market and sell the subject property and would need the debtor's cooperation in so doing. Concurrently, the trustee started the process of marketing the Marconi Property by obtaining approval for his employment of a broker for such sale. Declaration of Anthony Asebedo, ECF No. 104.

On December 4, 2024, I received directly from the Debtor's email address a lengthy email stating that he had terminated the employment of his bankruptcy counsel, had rescinded counsel's authority to communicate with the Trustee and me, and would instead communicate with the Trustee and me through his "[f]inancial, [a]ccounting, and [t]ax [a]dvisor." With permission of the Debtor's counsel, who had not yet obtained an order authorizing his withdrawal as counsel,

I communicated thereafter directly with the named "advisor." I informed the "advisor" that the Trustee's broker could not access the Marconi Property because it is surrounded by a steel fence and locked gate. I requested that the broker be given access. The "advisor" stated that the Debtor planned to move from his home on Barton Road in Granite Bay into the Marconi Property, and therefore that the Debtor did not wish to give up possession of the Marconi Property. While the "advisor" stating a willingness by the Debtor to seek a consensual resolution, thereafter he did not respond to my communications, in which I requested the Debtor's prompt cooperation by giving the Trustee access and control of the Marconi Property through the Trustee's broker.

It has been weeks since the Debtor or his "advisor" has responded to my subsequent communications.

Id., 2:8-23.

TURNOVER

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).

"To prevail in a turnover action under § 542, the party seeking turnover must establish that: [1] the property in which the estate has an interest is or was in the possession, custody or control of an entity during the pendency of the case; [2] the property may be used by the trustee in accordance with § 363 or exempted by the

debtor under § 522; and [3] the property has more than inconsequential value or benefit to the estate." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 21:1704, at 21-191 (rev. 2015).

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.