

**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 23, 2023
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

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. 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. [22-22231](#)-A-7 **IN RE: DEAN SWENOR**
[SW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-4-2023 [\[29\]](#)

MARY ANDERSON/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.
DEBTORS DISCHARGED: 12/12/202
ELITE ACCEPTANCE CORPORATION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2011 Nissan Frontier Crew Cab

Cause: Delinquent installment payments \$344.39

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.

Elite Acceptance Corporation seeks relief from the automatic stay of 11 U.S.C. § 362(a). Movant is currently in possession of the subject vehicle a 2011 Nissan Frontier Crew Cab. Movant also contends that there is little to no equity in the subject vehicle and that the vehicle is not necessary for the debtor's reorganization.

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. Consequently, 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.

NOTICE AND SERVICE

While service of the motion was correct in this matter the Certificate of Service was improperly completed. See Certificate of Service, ECF No. 34. Service of the motion on the debtor and debtor's counsel is governed by Fed. R. Bankr. 4001(a), which indicates that Rule 9014 is applicable in motions for relief from stay. Rule 9014(b) requires service in accordance with Rule 7004. While service on the debtor and counsel is accomplished by first class mail in under both rules the Certificate of Service should indicate that service is made on the debtor and counsel pursuant to Rule 7004. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for the special notice creditors, and the United States Trustee.

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.

Elite Acceptance Corporation'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 2011 Nissan Frontier Crew 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.

2. [22-21150](#)-A-7 **IN RE: CLAY TUCKER**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-2022 [\[70\]](#)

KIRSTEN MARTINEZ/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/08/2022
TOYOTA MOTOR CREDIT CORPORATION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

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, LP; Dakota Financial, LLC; California Regional Water Quality Control Board. See ECF Nos. 15, 16, 17.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See Certificate of Service, p. 2, no. 5, ECF No. 75. Moreover, there is no attachment which includes the special notice parties in the matrix. 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).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Toyota Motor Credit Corporation'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.

3. [22-22453](#)-A-7 **IN RE: KELLY MONGIARDO**
[SJJ-1](#)

MOTION TO DISMISS CASE
12-20-2022 [\[18\]](#)

STEPHEN JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order dismissing the Chapter 7 case. For the reasons indicated below the motion will be denied without prejudice.

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. See Certificate of Service, ECF No. 21. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Dismiss Case 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.

4. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[CLH-1](#)

CONTINUED MOTION TO SET TRIAL DATE
9-19-2022 [[14](#)]

PATRICIA WILSON/ATTY. FOR DBT.

No Ruling

5. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[FEC-4](#)

CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION
8-18-2022 [[1](#)]

PATRICIA WILSON/ATTY. FOR DBT.

No Ruling

6. [19-27477](#)-A-7 **IN RE: CARMAZZI, INC., A CALIFORNIA**
CORPORATION
[DNL-11](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH STRATEGIC FUNDING SOURCE, INC.
12-19-2022 [\[354\]](#)

WALTER DAHL/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties: J. Michael Hopper, Trustee; Strategic Funding Source, Inc.,
d.b.a. Kapitus

Settlement: Payment of proceeds to Kapitus; retention of funds by
trustee

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).

Chapter 7 trustee, J. Michael Hopper seeks an order approving a
settlement agreement with Strategic Funding Source, Inc., d.b.a.
Kapitus.

FACTS

The debtor's interest in its accounts and certain accounts
receivable have been recovered by the trustee in the amount of
\$64,169.85 (proceeds). Also among the assets of the estate was the
debtor's interest in a substantial preference claim against Fortis
Law Partners, LLC. The trustee has recovered \$47,026.74 pursuant to
his settlement agreement with Fortis Law Partners, LLC, which was
approved on September 28, 2020.

By Proof of Claim 255, Kapitus asserts a claim in the amount of
\$238,132.12 as of the petition date pursuant to the terms of a
Future Receivables Factoring Agreement (Kapitus Agreement) and
secured by a security interest in the debtor's accounts, accounts
receivable, and general intangibles. See Motion, 2:13-16, ECF No.
354.

A dispute has arisen regarding (1) whether the trustee has a right to surcharge the proceeds; and (2) whether Kapitus' purported ownership of purchased receivables and lien under the Kapitus Agreement extends to the Preference Settlement.

Proposed Settlement

The trustee has entered into a settlement agreement with Kapitus resolving all claims concerning the proceeds and the Preference Settlement. The essential terms of the Agreement include the following: 1) Trustee shall pay Kapitus \$55,169.85 from the proceeds within 14 calendar days of entry of the Bankruptcy Court's order approving the Agreement; 2) Trustee shall retain the balance of \$9,000.00 for the benefit of unsecured creditors; 3) Kapitus waives any interest in the Preference Settlement; 4) Trustee represents and warrants that he has provided to Kapitus a detailed accounting of its collateral under the Kapitus Agreement and will cooperate and provide information as requested by Kapitus to assist it in its collection efforts on any remaining collateral.

The trustee has filed a copy of the proposed settlement agreement concurrently with this motion, as Exhibit A, ECF No. 357.

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 attached to the motion as an exhibit. 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.

SERVICE AND NOTICE

While service was properly accomplished in this matter, there are two minor deficiencies in the memorialization of service. See Certificate of Service, ECF No. 358.

First, limited notice is appropriate in this matter under Rule 2002. However, the box regarding limited noticing under Rule 2002(h) is not checked on page 2, Item 3.

Second, Attachment 6A1 is improperly labeled. It should be labeled 6B2 and Box "a" should be checked in Section 6B, page 3.

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.

J. Michael Hopper, Trustee'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. 357.

7. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[JML-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2022 [\[202\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
JUDY LAM/ATTY. FOR MV.
GLOBAL RENTAL CO., INC. VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Vehicles listed in Exhibits 2, ECF No. 206

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).

Global Rental Co., Inc., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). Movant rented numerous vehicles to the debtor, pursuant to a Master Agreement, which are listed in concurrently filed Exhibits 2 and 3, ECF Nos. 206, 207. See also, Master Agreement, Exhibit 1, ECF No. 205. The debtor has failed to make pre-petition and post-petition payments on the vehicles pursuant to the Master Agreement. On December 21, 2022, the Chapter 7 trustee filed a non-opposition to the motion.

Since the initiation of this Case, Debtor has not made any payments to Global Rental under the Master Agreement and the Acknowledgements. As of the date of the filing of the Proofs of Claim, Debtor owed an amount of \$448,502.19 under the Master Agreement and the Acknowledgements.

Declaration of Bart Watkins, 3:8-12, ECF No. 204.

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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2018). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may provide adequate protection of its security interest while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). The Ninth Circuit has held that a 20% equity cushion adequately protects a creditor's security interest." *Id.* at 1401.

"[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 all post-petition payments due on the debt secured by the moving party's lien. 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.

Global Rental Co., 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 vehicles listed in Exhibit 2, filed concurrently with this motion, ECF No. 206, 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.

8. [22-23296](#)-A-7 **IN RE: PAVEL BARDOSH**
[MS-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-29-2022 [\[19\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 debtor seeks an order converting his case to Chapter 13. The basis for the request is that the petition was accidentally filed under the incorrect Chapter and was at all times intended to be a filing under Chapter 13. See Declaration of Debtor, ECF No. 22. The court notes that a Chapter 13 Plan was filed at the inception of the case, ECF No. 3.

CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

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 debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

9. [22-22898](#)-A-7 **IN RE: LANEISHA JONES**
[CJC-100](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-3-2023 [[21](#)]

MARK SHMORGON/ATTY. FOR DBT.
CALVIN CLEMENTS/ATTY. FOR MV.
CR WESTWOOD COMMUNITIES, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

CR Westwood Communities, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

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. See Certificate of Service, ECF No. 26. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

CR Westwood Communities, 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.