

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

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

**DAY: TUESDAY**  
**DATE: FEBRUARY 21, 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. [22-22509](#)-A-7     **IN RE: AMIR JOSAN**  
[ADR-1](#)

MOTION TO AVOID LIEN OF STATES RECOVERY SYSTEMS, INC.  
1-22-2023    [\[18\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 1/9/23

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 1905 Bradley Estates Dr., Yuba City, California

**Judicial Lien Avoided:** \$11,411.16; States Recovery Systems, Inc.

### **All Other Liens:**

-First Deed of Trust, United Wholesale MTG; \$348,691.00

**Exemption:** \$300,000.00

**Value of Property:** \$635,000.00

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 debtor seeks an order avoiding the judicial lien of States Recovery Systems, Inc. under 11 U.S.C. § 522(f).

### **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).

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.

In this case service of the motion was proper, however the memorialization of the service is incorrect.

### Rule 7004 Service

Service of the motion on the lienholder is required in accordance with Rule 7004. While service on the lienholder is properly accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter

should indicate that service is made on the lienholder pursuant to Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as special notice creditors, and the United States Trustee. See Certificate of Service, ECF No. 22.

#### **LIEN AVOIDANCE**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [22-21115](#)-A-7     **IN RE: JANICE/DAVID LACROIX**  
[DNL-10](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH, CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES  
ATTORNEY(S)  
1-18-2023    [\[191\]](#)

NIKKI FARRIS/ATTY. FOR DBT.

### **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

**Capped Compensation Total:**    \$50,000.00

**Compensation Approved:**    \$49,549.80

**Reimbursement of Expenses Approved:**    \$450.20

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, [Desmond, Nolan, Livaich & Cunningham](#), attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow capped compensation in the total amount of \$50,000.00. The court notes that the value of services performed on behalf of the estate total more than \$70,000.00, thus the capped amount requested represents a compromise by counsel. The court will apportion the request and approve it as follows: \$49,549.80 in compensation; and reimbursement of expenses in the amount of \$450.20.

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.

Desmond, Nolan, Livaich & Cunningham'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 \$49,549.80 and reimbursement of expenses in the amount of \$450.20.

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.

3. [22-20632](#)-A-7     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES, INC.**  
[RLC-19](#)

MOTION FOR COMPENSATION FOR JORDAN MANAGEMENT COMPANY, OTHER PROFESSIONAL(S)  
1-20-2023    [\[265\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

### Final Ruling

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

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

**Disposition:** Continued to March 20, 2023, at 10:30 a.m.

**Order:** Civil minute order

**Conversion Date:** December 21, 2022

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**

This case was originally filed under Chapter 11 and was converted to Chapter 7 on December 21, 2022. See Notice of Conversion, ECF No. 250.

Jordan Management Company seeks an order for an allowance of final compensation and reimbursement of expenses as property manager for the debtor in possession during the period the debtor was in Chapter 11. This is a final application for allowance of compensation and expenses. An interim order was entered September 28, 2022, ECF No. 204.

The hearing on the application will be continued to allow the applicant to supplement the evidentiary record as follows.

It is unclear to the court how much, if any, compensation has been paid to the applicant under the interim order, ECF No. 204. The Declaration of Kelly Linares does not address this issue. No invoices or other evidence of billing or payment have been submitted as exhibits with the motion. As the court intends to determine the amount of the administrative claim under 11 U.S.C. § 726(b) this evidence is essential to the court's approval of the application.

## **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.

IT IS ORDERED that the hearing on the application will be continued to March 20, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than March 6, 2023, the applicant shall file and serve on all parties additional admissible evidence in support of its motion. Should the applicant fail to timely file and serve additional evidence, the court will rule on the application without further notice or hearing.

4. [22-20632](#)-A-7     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[RLC-20](#)

MOTION FOR COMPENSATION FOR MICHAEL THOMAS, SPECIAL  
COUNSEL(S)  
1-20-2023    [\[272\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.  
MICHAEL THOMAS/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Continued to March 20, 2023, at 10:30 a.m.

**Order:** Civil minute order

**Conversion Date:** December 21, 2022

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**

This case was originally filed under Chapter 11 and was converted to Chapter 7 on December 21, 2022. See Notice of Conversion, ECF No. 250.

Thomas & Associates seeks an order for an allowance of final compensation and reimbursement of expenses as Special Counsel for the debtor in possession during the period the debtor was in Chapter 11. This is a final application for allowance of compensation and expenses. An interim order was entered September 28, 2022, ECF No. 203.

The court is unable to determine the amounts requested because the application and supporting exhibit are inconsistent regarding the amount of compensation earned and expenses incurred. For example, the motion is internally inconsistent as it states that the compensation earned from the period of August 1, 2022, through December 27, 2022, is \$6,335.00 and expenses incurred were \$1,521.20. See Motion, 1:27-28, 2:1-2, ECF No. 272. Also, in the motion the applicant contends that the expenses incurred during this same period total \$1,080.20. *Id.*, 3:22-28, 4:1-4. Finally, the prayer requests that the court allow compensation in the amount of \$5,973.00 and expenses of \$1,080.20. See *Id.*, 4:9.

The motion is also not consistent with the additional evidence submitted. Exhibit 1 is an invoice showing expenses incurred during the measuring period of \$1,080.20. See Exhibit 1, ECF No. 275. The exhibit also shows an aggregate amount due of \$7,494.20. After subtracting the \$1,080.20 for expenses, the total compensation on the exhibit equals \$6,414.00, which does not align with any of the requests made in the motion. The Declaration of Michael Thomas in support of the application does not address this issue. As such the court is unable to sufficiently reconcile the request for approval of compensation and expenses with the evidence submitted and issue a ruling.

The court will continue the hearing on this application to allow the applicant to file and serve additional analysis and admissible evidence in support of its application. All such analysis shall specifically refer to appropriate entries in any supporting exhibits submitted. All filed exhibits shall be numbered by page and comply with the requirements of LBR 9004-2(d)(2), (3). Exhibits which do not comply with the rule will not be considered, LBR 1001-1(g).

#### **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.

IT IS ORDERED that the hearing on the application is continued to March 20, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than March 6, 2023, the applicant shall file and serve additional admissible evidence consistent with this court's ruling, in support of its application. Should the applicant fail to file and serve all parties with the additional evidence, the court will rule on the application without further notice or hearing.

IT IS FURTHER ORDERED that all exhibits shall comply with LBR 9004-2(d)(2), (3).



5. [22-20632](#)-A-7     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[RLC-21](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF REYNOLDS LAW  
CORPORATION FOR STEPHEN M. REYNOLDS, DEBTORS ATTORNEY(S)  
1-20-2023    [\[268\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Approved in part, disallowed in part

**Order:** Civil minute order

**Conversion Date:** December 21, 2022

**Compensation Requested:** \$62,175.50

**Compensation Approved:** \$58,875.50

**Reimbursement of Expenses Approved:** \$787.26

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**

This case was originally filed under Chapter 11 and was converted to Chapter 7 on December 21, 2022. See Notice of Conversion, ECF No. 250.

Reynolds Law Corporation, counsel for the debtor in possession, during the period the case was in Chapter 11, has applied for an allowance of final compensation and reimbursement of expenses.

The applicant requests that the court allow compensation in the amount of \$62,175.50 and reimbursement of expenses in the amount of \$787.26. This is the applicant's first and final application for approval of compensation and reimbursement of expenses. As of the date of the application, the applicant held a retainer in its trust account in the amount of \$10,522.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case 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).

### PostConversion Compensation is Disallowed

Debtor's counsel may not receive compensation from the Chapter 7 estate for postconversion services. *Lamie v. United States Trustee*, 540 US 526, 538-539, (2004).

In support of the application the applicant submitted an invoice which detailed services performed and the time required to perform those services. See Exhibit, ECF No. 271. Services performed from the date of conversion to Chapter 7 (December 21, 2022) through January 13, 2023, total \$3,300.00. No expenses are listed during this period.

The court will subtract \$3,300.00 from the amount of compensation requested as compensation may not be awarded for postconversion services. The court will approve compensation in the amount of \$58,875.50 and reimbursement of expenses in the amount of \$787.26.

### Claim under 11 U.S.C. § 726(b)

When a Chapter 11 or 13 case is converted to Chapter 7, unpaid administrative claims (including unpaid attorney fees) incurred preconversion are subordinated to administrative claims incurred in the Chapter 7 case. 11 USC § 726(b).

The court finds that compensation and reimbursement of expenses in the aggregate amount of \$59,622.76 are reasonable, and the court will approve the application on a final basis.

The applicant is authorized to draw on the retainer held in the amount of \$10,522.00. The balance of the compensation and expenses approved shall be allowed as an administrative claim in the Chapter 7 case in the aggregate amount of \$49,140.76.

### **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.

Reynolds Law Corporation'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 compensation requested during the period of December 21, 2022, through January 13, 2023, in the amount of \$3,300.00 is disallowed.

IT IS FURTHER ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$58,875.50 and reimbursement of expenses in the amount of \$787.26.

The applicant is authorized to draw on the retainer held in the amount of \$10,522.

IT IS FURTHER ORDERED that \$49,140.76 shall be allowed as an administrative claim under 11 U.S.C. § 726(b).

6. [23-20244](#)-A-7     **IN RE: DARYL FLETCHER**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-1-2023     [\[12\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.  
TRANSPORT FUNDING, L.L.C. VS.

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2); non-opposition filed by debtor

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2016 International Prostar Tractor Truck

**Cause:** delinquent installment payments 4 months; \$6,363.96

**Statement of Intention:** Surrender

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.

Transport Funding, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. §362(a). On February 9, 2023, the debtor filed his remaining bankruptcy schedules including the Statement of Intention. The Statement indicates the debtor's intention to surrender the subject vehicle. See ECF No. 22.

As a courtesy to the court, the debtor filed a non-opposition to the motion on February 9, 2023, ECF No. 23.

### **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 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.

## **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.

Transport Funding, 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 2016 International Prostar Tractor Truck, 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. [22-22453](#)-A-7     **IN RE: KELLY MONGIARDO**  
[SJJ-2](#)

MOTION TO DISMISS CASE  
1-23-2023    [\[26\]](#)

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 her Chapter 7 case. 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).

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.

## Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is dated December 20, 2022. See Certificate of Service, ECF No. 29. Service of the motion occurred on January 23, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and does not comply with LBR 7005-1. 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:

The debtor's Motion to Dismiss 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.

8. [22-23375](#)-A-7     **IN RE: RHONDA FRANKLIN**  
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-2-2023    [\[11\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
ADAM BARASCH/ATTY. FOR MV.  
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 Chevrolet Malibu

**Cause:** delinquent installment payments; \$341.25

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 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 post-petition 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 post-petition 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.

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 Chevrolet Malibu, 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.

9. [22-23098](#)-A-7     **IN RE: TIFFANY/JASON MILLER**  
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-19-2023    [\[19\]](#)

SETH HANSON/ATTY. FOR DBT.  
MARJORIE JOHNSON/ATTY. FOR MV.  
CAPITAL ONE AUTO FINANCE VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Capital One Auto Finance 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).

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.

### Attachment

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it *the Clerk of the Court's Official Matrix, as appropriate:* (1) for the case or the adversary proceeding; (2) *list of ECF Registered Users;* (3) *list of persons who have filed Requests for Special Notice;* and/or (4) the list of Equity Security Holders.

LBR 7005-1(a) (emphasis added).

In this case the list of parties served fails to use the Clerk of the Court's Official Matrix for: 1) list of ECF Registered Users; and 2) list of persons who have filed Requests for Special Notice as required by LBR 7005-1(a). See Certificate of Service, ECF No. 24.

Additionally, more than six parties were served with this motion and therefore a single typed attachment also contravenes LBR 7005-1.

#### Trustee and Debtors' Counsel Not Properly Served

Because the proper matrix was not used to serve the Chapter 7 trustee or the debtors' attorney neither of these parties received adequate notice of the motion. The court notes that according to the attachment to the certificate of service that neither of these parties were served by mail. Service of the motion on each of these parties is required under Fed. R. Bankr. P. 7004(g), and 9013(a). The court must deny the motion as the Chapter 7 trustee and debtors' counsel were not properly served with the motion.

#### Rule 7004 Service

Service of the motion on the debtor and debtor's counsel is governed by Fed. R. Bankr. 4001(a), which provides 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 properly accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter should indicate that service is made on the debtor and counsel pursuant to Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee.

#### Amended Notice of Hearing and Certificate of Service

On February 10, 2023, the movant filed an amended notice of hearing and certificate of service. See ECF Nos. 25, 26.

The Certificate of Service filed with the Amended Notice of Hearing indicates that debtors' counsel and the Chapter 7 trustee were each served by mail with the Amended Notice. See Certificate of Service, ECF No. 26.

This motion is brought under LBR 9014-1(f)(1) which requires written opposition must be filed at least 14 days prior to the hearing on the motion. LBR 9014-1(f)(1) is cited as the operative rule for noticing in the Amended Notice, which also states that written opposition is required 14 days prior to the date of the hearing. ECF No. 25. Because the notice was served only 11 days prior to the hearing on the motion it is impossible for any responding party to comply with the rule regarding timely written opposition.

As the Amended Notice of Hearing does not provide sufficient time for written opposition to the newly noticed parties the motion must be denied without prejudice.

**CIVIL MINUTE ORDER**

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

Capital One Auto Finance'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.