

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

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

**DAY:** MONDAY  
**DATE:** APRIL 4, 2022  
**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. [21-24106](#)-A-7     **IN RE: JOSE DIAZ RAMIREZ**  
[UST-1](#)

MOTION TO DISMISS CASE  
3-3-2022    [\[20\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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

**Opposition:** Unopposed

**Disposition:** Granted

**Order:** Prepared by moving party

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 United States Trustee seeks dismissal of the debtor's chapter 7 bankruptcy case pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumption of abuse) and/or 707(b)(3)(B) (i.e., totality of the circumstances abuse).

A motion to dismiss a chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular chapter 7 case is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b)(2) and (3) are applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8) (defining consumer debt). And the means test of § 707(b)(2) is triggered only as to above-median income debtors. See *id.* § 707(b)(7)(A).

The presumption of § 707(b)(2) is triggered when the debtor's current monthly income (CMI) less specified expenses ("disposable income"), § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$8,175.00, whichever is greater, or (2) \$13,650.00. *Id.* § 707(b)(2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. *Id.* § 707(b)(2)(B)(I).

This case involves a debtor who has above-median income and whose debts are primarily consumer debts.

After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income for purposes of Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted, and the case dismissed.

2. [12-20725](#)-A-7     **IN RE: BILLY/JUDY SMITH**  
[DNL-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVIACH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES  
ATTORNEY(S)  
3-7-2022    [\[116\]](#)

RONALD HOLLAND/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTORS DISCHARGED: 04/24/2012

**Final Ruling**

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

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

**Opposition:** Unopposed

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:** \$11,972.50

**Reimbursed Expenses:** \$170.22

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, J. Michael Hopper, Chapter 7 trustee, has applied for an allowance of first and final compensation and reimbursement of expenses for his attorneys Desmond, Nolan, Livaich & Cunningham (DNLN). The applicant requests that the court allow compensation in the amount of \$11,972.50 and reimbursement of expenses in the amount of \$170.22.

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 first and 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.

J. Michael Hopper's application for allowance of final compensation and reimbursement of expenses for attorneys Desmond, Nolan, Livaich & Cunningham (DNLC) 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 first and final basis. The court allows final compensation in the amount of \$11,972.50 and reimbursement of expenses in the amount of \$170.22.

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. [21-24241](#)-A-7     **IN RE: AMY BURNHAM**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-4-2022    [\[14\]](#)

MARY ANDERSON/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
U.S. BANK, N.A. VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Opposition:** Unopposed

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2018 Salem 372RD Trailer

**Cause:** delinquent installment payments 19 months/\$5,931.24

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

### **DEFAULT OF RESPONDENT**

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

Movant, U.S. Bank National Association, seeks an order for relief from the automatic stay under 11 U.S.C. § 362(d)(1) for cause to pursue its state law remedies regarding a 2018 Salem 372RD Trailer. The debtor's Statement of Intention indicates that it is her intention to surrender the subject property. *See Statement of Intention*, ECF No. 1.

### **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.

#### **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.

U.S. Bank National Association'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 Salem 372RD Trailer, 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.

4. [22-20245](#)-A-7     **IN RE: HEATHER GRIFFIN AND BOBBY BREWER**  
[FF-1](#)

MOTION TO DISMISS CASE  
3-16-2022    [\[16\]](#)

GARY FRALEY/ATTY. FOR DBT.

**No Ruling**

5. [19-23553](#)-A-7     **IN RE: SHAWN/HEATHER WHITNEY**  
[GMR-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
3-2-2022    [\[403\]](#)

JOHN DOWNING/ATTY. FOR DBT.  
BARRY SPITZER/ATTY. FOR MV.  
DEBTORS DISCHARGED: 08/17/2021

**Final Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]

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

**Opposition:** Unopposed

**Disposition:** Granted

**Order:** Civil minute order

**Amount Allowed:** \$400.00

**Paid to:** Franchise Tax Board

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, Geoffrey Richards seeks an order allowing the payment of \$400.00 to the Franchise Tax Board as an administrative

expense pursuant to 11 U.S.C. 503(b) (1) (B). This amount represents the estate's liability for 2021 income taxes.

#### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b) (1) (D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b) (1) (B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

#### **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 chapter 7 trustee's motion for allowance of administrative expense 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 allows California state taxes of \$400.00 as an administrative expense under 11 U.S.C. § 503(b) (1) (B).



6. [22-20353](#)-A-7     **IN RE: JACOB COLLINS**  
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-2-2022    [\[15\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
JOHN KIM/ATTY. FOR MV.  
AMERICREDIT FINANCIAL SERVICES, INC. VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Opposition:** Unopposed

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2015 Audi A3

**Cause:** delinquent installment payments 30 months/\$16,037.92

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.

### **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).

Movant, Americredit Financial Services, Inc., dba GM Financial, seeks an order for relief from the automatic stay under 11 U.S.C. § 362(d)(1) for cause to pursue its state law remedies regarding a 2015 Audi A3. The debtor's Statement of Intention indicates that it is his intention to surrender the subject property. See *Statement of Intention*, ECF No. 1.

### **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.

#### **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., dba GM Financial'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 2015 Audi A3, 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. [22-20170](#)-A-7     **IN RE: ROBERT RICO**  
[RWF-1](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION  
3-7-2022    [\[24\]](#)

ROBERT FONG/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h)(1)-(3).

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Judicial Lien of USE Credit Union 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. [22-20170](#)-A-7     **IN RE: ROBERT RICO**  
[RWF-2](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION  
3-4-2022    [\[33\]](#)

ROBERT FONG/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Judicial Lien of USE Credit Union 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.

9. [22-20170](#)-A-7     **IN RE: ROBERT RICO**  
[RWF-3](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION  
3-4-2022    [\[42\]](#)

ROBERT FONG/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Judicial Lien of USE Credit Union 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.

10. [19-27477](#)-A-7     **IN RE: CARMAZZI, INC., A CALIFORNIA**  
CORPORATION  
[DNL-10](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
3-3-2022    [\[343\]](#)

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

### **Final Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]

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

**Opposition:** Unopposed

**Disposition:** Granted

**Order:** Civil minute order

**Amount Allowed:** \$800.00

**Paid to:** Franchise Tax Board

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 allowing the payment of \$800.00 to the Franchise Tax Board as an administrative expense pursuant to 11 U.S.C. 503(b)(1)(B). This amount represents the estate's liability for corporate 2022 estimated income taxes.

### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

## **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 chapter 7 trustee's motion for allowance of administrative expense 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 allows California state taxes of \$800.00 as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

11. [21-20001](#)-A-7     **IN RE: ROBERT BROWNFIELD**  
[MJD-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB  
3-21-2022    [\[38\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 04/13/2021

### **Final Ruling**

This case is transferred to Department E. The matter will be heard on April 7, 2022, at 10:30.

12. [21-20001](#)-A-7     **IN RE: ROBERT BROWNFIELD**  
[MJD-3](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK  
3-21-2022    [\[43\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 04/13/2021

### **Final Ruling**

This case is transferred to Department E. The matter will be heard on April 7, 2022, at 10:30.

13. [21-23051](#)-A-7     **IN RE: NICHOLAS/JENNIFER WILLIAMS**  
[BLF-3](#)

MOTION BY LORIS L. BAKKEN TO WITHDRAW AS ATTORNEY  
3-21-2022    [[97](#)]

DAVID FOYIL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/11/2022

**No Ruling**