



**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: MONDAY**  
**DATE: APRIL 8, 2024**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [23-24309](#)-A-7     **IN RE: BHUPINDER KOONER**  
[BLF-2](#)

MOTION TO SELL  
3-11-2024    [[29](#)]

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

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2020 Hyundai Palisade and 2021 Polaris Razor Pro R

**Buyer:** Debtor

**Sale Price:** \$7,000

**Sale Type:** Private sale subject to overbid opportunity

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

Chapter 7 trustee, Nikki Farris, seeks an order authorizing the sale of a 2020 Hyundai Palisade and a 2021 Polaris Razor Pro R to the debtor for the sum of \$7,000.00.

**SALES**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

2. [23-24511](#)-A-7     **IN RE: JASPREET KAUR**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-7-2024    [\[15\]](#)

SETH HANSON/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
U.S. BANK NATIONAL ASSOCIATION 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

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

The court is unable to determine if service of the motion and supporting documents complies with Fed. R. Bankr. P. 4001, 9014, LBR 9014-1, 7005-1. The certificate of service is unsigned. Certificate of Service, p. 4, ECF No. 21.

**CIVIL MINUTE ORDER**

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

U.S. Bank National Association'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. [24-20012](#)-A-7     **IN RE: JAMES/TRACY FAULKNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-11-2024    [\[21\]](#)

MARK BRIDEN/ATTY. FOR DBT.

**Final Ruling**

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

4. [23-23523](#)-A-7     **IN RE: THE RETREAT AT ROYAL GREEN, LLC.**  
[DNL-3](#)

MOTION TO CONSOLIDATE LEAD CASE 23-23523 WITH 23-23834  
3-7-2024    [\[43\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

**Final Ruling**

This case has been transferred to Department E. The hearing on the trustee's motion to consolidate will be heard on April 18, 2024, at 10:30 a.m., before the Honorable Ronald H. Sargis.

5. [23-23129](#)-A-7     **IN RE: JOHN/ANGELA BOWMAN**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-7-2024    [\[51\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DEBTORS DISCHARGED: 12/26/23; SYSTEMS & SERVICES TECHNOLOGIES,  
INC. VS.; TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 2016 Keystone Montana 36 RV

**Cause:** delinquent installment payments 5 months/\$3,772.50

**Discharge Entered:** December 26, 2023

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.

Systems and Services Technologies, Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee has filed a non-opposition to the motion.

**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). The default of the responding party is entered. The court considers the record,

accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **STAY RELIEF**

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

#### As to the Debtor

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

#### As to the Estate

"[A]fter notice and a hearing," the court may terminate, annual, 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.

Systems and Services Technologies, 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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 2016 Keystone Montana 36 RV. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.



6. [24-20338](#)-A-7     **IN RE: BRENDA PRIEST**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-4-2024    [\[23\]](#)

SETH HANSON/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
TD BANK, N.A. VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2017 Jeep Grand Cherokee

**Cause:** delinquent installment payments 16 months/\$12,265.60

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.

T.D. Bank, N.A. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). On March 26, 2024, the Chapter 7 trustee, Nikki Farris, filed a non-opposition to the motion.

### **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 both pre-petition 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.

T.D. Bank, N.A.'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 2017 Jeep Grand Cherokee, 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. [23-24253](#)-A-7     **IN RE: MICHAEL/CONNIE SCHMALJOHANN**  
[BLF-3](#)

MOTION TO ABANDON  
3-4-2024   [\[31\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Authorized Trustee's Abandonment of Property of the Estate

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

**Disposition:** Granted only as to the assets described in the motion

**Order:** Prepared by moving party pursuant to the instructions below

**Assets Abandoned:** 2005 Chrysler Town and Country; 1976 Honda GL 1000 Goldwing Motorcycle; 1985 Honda GL 1200A Goldwing Motorcycle; 1980 Utility Trailer

**Value:** \$2,800 - \$4,100

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).

Kimberly Husted, the chapter 7 trustee moves for an order authorizing her abandonment of the bankruptcy estate's interest in the following assets described in the motion: (1) 2005 Chrysler Town and Country - value \$1,000-\$1,500; (2) 1976 Honda GL 1000 Goldwing Motorcycle - value \$400-\$500; (3) 1985 Honda GL 1200A Goldwing Motorcycle - value \$800-\$1,200; and (4) 1980 Utility Trailer - value \$600-\$900.

### **ABANDONMENT**

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and

benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

**11 U.S.C. § 554(a)**

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The trustee sought advice from auctioneer TMC Auction, Inc. which indicated a combined value for all vehicles of \$2,800-\$4,100. Declaration of Lonny Papp, ECF No. 33. Upon further investigation Mr. Papp also discovered that licensing fees were owed to the DMV as follows: (1) 2005 Chrysler Town and Country - \$1,477; (2) 1976 Honda GL 1000 Goldwing Motorcycle - \$1,305; (3) 1985 Honda GL 1200A Goldwing Motorcycle - \$1,222; and (4) 1980 Utility Trailer - homemade trailer with no registration. *Id.*

The trustee contends that after subtracting the licensing fees owed from the value of the vehicles that the vehicles are of inconsequential value and are burdensome to the estate.

The court finds the assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.

8. [23-24174](#)-A-7 **IN RE: MICHAEL/SUSAN MARASCO**  
[THS-4](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
3-1-2024 [[40](#)]

TIMOTHY STEARNS/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 debtors seek an order converting this case to a Chapter 13. The motion states that the debtors' attorney failed to check the Chapter 13 box in the petition and thus the case was filed under Chapter 7 in error. A Chapter 13 Plan was filed with the petition and schedules in this case. Chapter 13 Plan, ECF No. 11.

#### **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. [23-23376](#)-A-7     **IN RE: JOSEPH/RACHEL DIAZ**  
[KMT-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH EMPOWER RETIREMENT, LLC  
3-11-2024    [[65](#)]

SIMRAN HUNDAL/ATTY. FOR DBT.  
GABRIEL HERRERA/ATTY. FOR MV.  
DEBTORS DISCHARGED: 01/23/24

**Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

**Parties:** Chapter 7 trustee; creditor Empower Retirement, LLC

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 Chapter 7 trustee, Nikki Farris seeks an order approving the compromise of controversy and stipulation entered with creditor Empower Retirement, LLC. The stipulation between the parties was filed concurrently with this motion as Exhibit A and appears at ECF No. 68.

The relevant terms of the stipulation are as follows:

(a) The Creditor shall be allowed an unsecured claim against the Debtors' bankruptcy estate in the amount of \$822,181.50.

(b) Any claims asserted, or interests or rights held by the Creditor against certain real property generally located at 1379 Crestwood Avenue, Manteca, CA 95336 ("Subject Property") or any other assets of the bankruptcy estate arising from the allegations made in the Eastern District of California Case No. 2:22-cv-00489 ("District Case") are avoided under 11 U.S.C. § 544 and preserved for the benefit of the bankruptcy estate under 11 U.S.C. §§ 550 and 551.

(c) For the avoidance of doubt, the Creditor assigns, conveys, and otherwise transfers all claims, rights and interests it has against the Subject Property or any other assets of the bankruptcy estate arising from

the allegations made in the District Case to the estate.

Motion, 1:23-28, 2:1-4, ECF No. 65.

#### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement filed concurrently with the motion as 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.

#### **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 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. 68.

10. [22-22290](#)-A-7    **IN RE: AMD METAL WORKS, INC**  
[DNL-8](#)

OBJECTION TO CLAIM OF CESAR M. GALINDO, CLAIM NUMBER 12  
2-22-2024    [\[174\]](#)

MARK WOLFF/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (1); non-opposition filed by debtor

**Disposition:** Sustained in part and the claim will be allowed as a general unsecured claim

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 objects to the allowance of the claim of Cesar M. Galindo, Claim No. 12, as a priority claim. The trustee contends that the claim is properly allowed as a general unsecured claim. While the claim is for wages owed, the wages sought were earned outside the 180-day period provided in 11 U.S.C. § 507(a) (4) (A).

### **CLAIM OBJECTION**

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counterevidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal of factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).



Furthermore, “[a] claim that is not regular on its face does not qualify as having been ‘executed and filed in accordance with these rules.’” *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The claim does not provide sufficient documentation to show that the claim is for compensation earned within the relevant look-back period. The claim must show that the compensation was earned within the earlier of 180 days before the petition or the cessation of the debtor’s business. See 11 U.S.C. § 507(a)(4).

Moreover, the trustee states:

The Claimant has provided documents to the Trustee reflecting that the Debtor’s obligation is based on a \$2,054.69 paycheck that bounced on February 6, 2020 (sic) and related statutory penalties.

Motion, 2:11-13, ECF No. 174.

The trustee has filed the information received from the claimant as Exhibits A, B, C, ECF No. 177. The evidence shows that the wages claimed are from February 2020. The petition in this case was filed September 9, 2022. Thus, the amounts claimed are outside the 180-day lookback period of 11 U.S.C. § 507(a)(4)(A).

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

11. [24-20904](#)-A-7 **IN RE: TIFFANY MCINTYRE**  
[JMC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-21-2024 [[17](#)]

JOSEPH CANNING/ATTY. FOR MV.  
ZHUO LIU VS.

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 3411 Springfield Drive, Fairfield, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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).

Zhou Yau Liu seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) for cause under 11 U.S.C. § 362(d)(1), (2).

#### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Zhou Yau Liu'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 3411 Springfield Drive, Fairfield, California, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

12. [24-21125](#)-A-7 **IN RE: TROY FINLEY**  
[JMC-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY O.S.T.  
3-27-2024 [[17](#)]

JOSEPH CANNING/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Confirm Absence of Automatic Stay

**Notice:** LBR 9014-1(f)(3); Order Shortening Time, no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Petition Filed:** March 22, 2024

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).

Creditor Zhou Yau Liu seeks an order confirming the absence of the automatic stay under 11 U.S.C. § 362(c)(4)(A)(i), (ii).

The debtor has filed the following pertinent Chapter 7 cases in the Eastern District of California: Case No. 23-22869, filed August 23, 2023, and dismissed November 8, 2023; and Case No. 23-24368, filed December 6, 2023, and dismissed February 20, 2024.

The petition in the instant case was filed on March 22, 2024.

### **CONFIRMATION OF THE STAY'S TERMINATION**

If a debtor who files a petition has had two prior bankruptcy cases pending within the preceding one-year period that were dismissed, then the automatic stay does not go into effect upon the filing of the later case. 11 U.S.C. § 362(c)(4)(A)(i). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(c)(4)(A)(ii). In this case, the debtor has had 2 cases pending within the preceding 1-year period that were dismissed. The automatic stay never went into effect upon the filing of the current case.

### **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.

Zhou Yau Liu's motion to confirm the termination of the stay 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 automatic stay is no longer in effect with respect to the debtor in this case.