

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

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

DAY: TUESDAY
DATE: APRIL 20, 2021
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. [17-25421](#)-A-7 **IN RE: MICHAEL HAIGH**
[MPD-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH STEWART ALTEMUS
3-19-2021 [\[87\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/30/2017

Final Ruling

Motion: Approve Compromise of Controversy with Stewart Altemus, individually and dba Altemus & Wagner

Notice: LBR 9014-1(f)(1); 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). 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).

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. 1982). 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, Michael P. Dacquisto, requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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.

Michael P. Dacquisto'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 attached to the motion as exhibit and filed at docket no. 91.

2. [17-25421](#)-A-7 **IN RE: MICHAEL HAIGH**
[MPD-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DREYER BABICH
BUCCOLA WOOD CAMPORA, LLP FOR CHRISTOPHER W. WOOD, SPECIAL
COUNSEL(S)
3-19-2021 [\[93\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/30/2017

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

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, Dreyer Babich Buccolo Wood Campora, LLP, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved

pursuant to § 328(a) of the Bankruptcy Code. The applicant requests reimbursement of expenses in the amount of \$2,584.51.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

The counsel has waived fees and only requests for reimbursement of expenses. The court finds that the 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.

Dreyer Babich Buccolo Wood Campora, LLP'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 \$0.00 and reimbursement of expenses in the amount of \$2,584.51.

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. [20-25322](#)-A-7 **IN RE: JOGINDER SINGH**
[BLF-3](#)

MOTION TO SELL
3-22-2021 [\[25\]](#)

DAVID ARIETTA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1/3 interest in 3856 Stafford Springs Way, Fairfield, CA 94533

Buyer: Debtor

Sale Price: \$11,000.00

Sale Type: Private sale subject to overbid of at least \$113,000.00 (\$2,000.00 more than purchase price + Debtor's exemption of \$100,000.00)

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).

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.

4. [21-20826](#)-A-7 **IN RE: REBIE MOTT-MITCHELL**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-23-2021 [\[26\]](#)

G. WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
LENDINGHOME FUNDING CORP. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2069 South Tuxedo #W, Stockton, CA 95204

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

11 U.S.C. § 362(d)(1)

"[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).

The debtor was obligated to make debt payments to the moving party pursuant to a deed of trust. The debtor is in default 17 pre-petition payments totaling \$25,867.21.

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.

11 U.S.C. § 362(d) (4)

Section 362(d) (4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d) (4).

The Bankruptcy Appellate Panel has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d) (4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d) (4).

Here the secured creditor holds a deed of trust securing the subject real property. The debtor defaulted on the deed of trust, and the creditor scheduled a foreclosure sale. However, on the day before the foreclosure sale, the debtor filed this bankruptcy case and also obtained a lien of \$25,000.00 on the subject property without the movant's consent or the court's approval. In addition, the debtor has filed a prior bankruptcy case affecting the same subject property, Case Number 2:19-bk-22939. For the foregoing reasons, the court finds the elements of § 362(d) (4) have been satisfied. The court will grant this motion under § 362(d) (4).

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.

LendingHome Funding Corp.'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 2069 South Tuxedo #W, Stockton, CA 95204, 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, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

5. [21-20826](#)-A-7 **IN RE: REBIE MOTT-MITCHELL**
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-23-2021 [\[19\]](#)

G. WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
LHOME MORTGAGE TRUST 2019-RTL3 VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1640 Greenfield Dr, El Cajon, CA 92021

Value of Collateral: \$475,000.00

Aggregate of Liens: \$510,559.23

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).

STAY RELIEF

11 U.S.C. § 362(d) (2)

"[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).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

11 U.S.C. § 362(d) (4)

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The Bankruptcy Appellate Panel has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d)(4).

Here the secured creditor holds a deed of trust securing the subject real property. The debtor defaulted on the deed of trust, and the creditor scheduled a foreclosure sale. However, six days before the foreclosure sale, the debtor filed this bankruptcy case and also obtained a lien of \$25,000.00 on the subject property without the movant's consent or the court's approval. In addition, the debtor has filed a prior bankruptcy case affecting the same subject property, Case Number 2:19-bk-22939. For the foregoing reasons, the court finds the elements of § 362(d)(4) have been satisfied. The court will grant this motion under § 362(d)(4).

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.

LHome Mortgage Trust 2019-RTL'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 1640 Greenfield Dr, El Cajon, CA 92021, 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, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

6. [20-23029](#)-A-7 **IN RE: SEAN RILEY**
[DB-1](#)

CONTINUED OBJECTION TO CLAIM OF W. PATRICK GARCIA, CLAIM
NUMBER 4
1-8-2021 [\[77\]](#)

RONALD HOLLAND/ATTY. FOR DBT.
JAMIE DREHER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

7. [20-24433](#)-A-7 **IN RE: FRANK/CAROL RODGERS**
[RLC-1](#)

MOTION BY STEPHEN M. REYNOLDS TO WITHDRAW AS ATTORNEY
3-19-2021 [\[34\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.
DEBTORS DISCHARGED: 12/28/2020

No Ruling

8. [21-20435](#)-A-7 **IN RE: IVORY/MICHELLE JONES**
[TLA-1](#)

MOTION TO AVOID LIEN OF FINANCIAL PACIFIC LEASING, INC.
AND/OR MOTION TO AVOID LIEN OF AMUR EQUIPMENT FINANCE, INC.
3-19-2021 [\[13\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 3717 Coniston Court, Antelope, CA 95843

Judicial Lien #1: \$55,078.48

Judicial Lien #2: \$100,677.60

Consensual Lien: \$150,403.00

Exemption Claimed: \$300,000.00

Value of property: \$348,680.00

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).

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Financial Pacific Leasing's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Financial Pacific Leasing's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$606,159.08. The value of the property is \$348,680.00. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, both Financial Pacific Leasing's and Amur Equipment Finance's judicial liens will be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

9. [20-23543](#)-A-7 **IN RE: 1420 HOWE BUSINESS CENTER**
REHABILITATION LP
[JLS-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY , MOTION FOR
ADEQUATE PROTECTION
2-12-2021 [\[95\]](#)

JAMES BRUNELLO/ATTY. FOR DBT.
JOSHUA SCHEER/ATTY. FOR MV.
MAXVI 1 LLC VS.; RESPONSIVE PLEADING

No Ruling

10. [20-23246](#)-A-7 **IN RE: SACRAMENTO I STEAKHOUSE, L.P.**
[DNL-9](#)

MOTION FOR ADMINISTRATIVE EXPENSES
3-18-2021 [\[87\]](#)

MATTHEW OLSON/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

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). 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).

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 \$800.00 and an additional \$800.00 per year in California state taxes for future years this case is opened as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

11. [20-25649](#)-A-7 **IN RE: ADELA GAUNIA**
[CLH-1](#)

MOTION TO COMPEL ABANDONMENT
3-20-2021 [\[16\]](#)

CINDY HILL/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Denied without prejudice

Order: Civil minute order

Federal Rule of Bankruptcy Procedure 6007(b) provides, "A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. Unless otherwise directed by the court, the party filing the motion *shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.* A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court." (emphasis added).

In this case, none of the creditors and parties in interest described in Rule 6007(b) and Rule 9014(a) have not received notice of the motion. A proof of service has not been filed. The court will deny the motion without prejudice for lack of sufficient notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice.

12. [19-24759](#)-A-7 **IN RE: AK BUILDERS AND COATINGS, INC**
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-17-2021 [\[186\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.
IRA SERVICES TRUST COMPANY CFBO KRISTAN E. EVANS IRA412995 VS.;

TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); trustee's non-opposition filed
Disposition: Granted
Order: Civil minute order

Subject: Vacant Land (described in the motion)

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).

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).

The debtor was obligated to make debt payments to the moving party pursuant to a deed of trust. The debtor is in default 11 pre-

petition payments totaling \$109,626.00. Also, the trustee purported to abandon the subject property as inconsequential to the estate.

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.

IRA Services Trust Company, et al.'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 Vacant Land, 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.

13. [19-24759](#)-A-7 **IN RE: AK BUILDERS AND COATINGS, INC**
[HSM-3](#)

MOTION TO ABANDON
4-6-2021 [\[194\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.
AARON AVERY/ATTY. FOR MV.

No Ruling

14. [15-27366](#)-A-7 **IN RE: LINDA MILLER**
[SLE-2](#)

MOTION TO AVOID LIEN OF PERSOLVE, LLC
4-5-2021 [\[56\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
DEBTOR DISCHARGED: 12/23/2015

Tentative Ruling

Motion: Avoid Multiple Liens that Impair Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 2019 Renpoint Way, Roseville, CA 95661

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).

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

Under the reverse-priority analysis, Pride Acquisitions, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether

Persolve, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$639,459.34. The value of the property without liens is \$520,220.00. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Pride Acquisitions, LLC's judicial lien and junior lienholder Persolve, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

15. [15-27366](#)-A-7 **IN RE: LINDA MILLER**
[SLE-3](#)

MOTION TO AVOID LIEN OF PRIDE ACQUISITIONS, LLC
4-5-2021 [\[61\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
DEBTOR DISCHARGED: 12/23/2015

Tentative Ruling

Motion: Avoid Multiple Liens that Impair Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 2019 Renpoint Way, Roseville, CA 95661

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).

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

Under the reverse-priority analysis, Pride Acquisitions, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Persolve, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$639,459.34. The value of the property without liens is \$520,220.00. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Pride Acquisitions, LLC's judicial lien and junior lienholder Persolve, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

16. [21-20666](#)-A-7 **IN RE: ASHLEY ARANGO**
[PSB-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
3-18-2021 [\[11\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party

Subject Property: 7001 Chesline Drive, Fair Oaks, CA 95628

Judgment lien: \$10,835.91

Consensual liens: \$302,641.03

Exemption claimed: \$420,000.00

Value: \$387,586.44

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).

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.

17. [18-24170](#)-A-7 **IN RE: DAVE GARROD**
[NRL-3](#)

MOTION TO AVOID LIEN OF CACH, LLC AND CAVALRY PORTFOLIO
SERVICES
3-3-2021 [\[58\]](#)

TRAVIS STROUD/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/15/2018

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: 741 Todd Road, Portola, CA 96122

Judgment liens: \$23,244.00

First consensual lien: \$30,937.00

Second consensual lien: \$122,403.68

Exemption claimed: \$3,972.06 (\$26,800.00 + \$1,425.00 = \$28,225.00
allowed under C.C.P. § 703.140(b)(1), (5) - \$24,252.04 already
claimed under § 703.140(b)(1), ECF No. 13).

Value: \$147,000.00

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).

LAW

Judicial estoppel

"[J]udicial estoppel is an equitable doctrine invoked by a court at its discretion. *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S. Ct. 1808, 1815 (2001). The purpose of the doctrine is "to protect the integrity of the judicial process." *Id.*

The Supreme Court has established factors that "inform the decision whether to apply the doctrine in a particular case." *Id.* These factors are as follows: "[1] First, a party's later position must be clearly inconsistent with its earlier position. [2] Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court

determinations, and thus poses little threat to judicial integrity. [3] A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 750-51 (citations omitted) (internal quotation marks omitted).

These three factors are not exclusive and inflexible. In *New Hampshire*, the Supreme Court clarified that "[i]n enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. *Additional considerations* may inform the doctrine's application in specific factual contexts." *Id.* (emphasis added).S

11 U.S.C. 522(f)

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).

Exemptions-Operative Dates

The debtor's right to claim exemptions is determined on the petition date.

[21:1470] Operative dates: The debtor's right to avoid a judicial lien is determined as of the date the bankruptcy petition is filed. [*In re Chiu* (9th Cir. BAP 2001) 266 BR 743, 751, aff'd (9th Cir. 2002) 304 F3d 905; *In re Salanoa* (BC SD CA 2001) 263 BR 120, 123—petition date is "operative date to dmake all § 522(f) determinations"]

[21:1471] Debtor's right to exemption: For lien avoidance purposes, the debtor's exemption rights are determined as of the date the petition is filed, *not when the lien is fixed*. [*Owen v. Owen* (1991) 500 US 305, 314, 111 S.Ct. 1833, 1838, fn. 6; *In re Reaves* (9th Cir. 2002) 285 F3d 1152, 1156; *In re Chiu*, supra, 266 BR at 751]

March, Ahart & Shapiro, *California Practice Guide: Bankruptcy* § 21:1470 et seq. (Rutter Group 2020).

DISCUSSION

The debtors filed their chapter 7 petition on July 2, 2018. At that time the debtors claimed an exemption on the subject property under § 704.730 in the amount of \$26,659.32, ECF No. 1. However, the debtors later substantially amended Schedule C so that they may claim exemptions under C.C.P. § 703.140, ECF No. 13. Under the applicable exemption scheme outlined by § 703.140(b) at the time the debtor filed the amended schedule, the debtor was allowed to claim up to \$28,225.00 for the homestead exemption (\$26,800.00 under (b)(1) + \$1,425.00 under (b)(5)). The debtor claimed exemptions under § 703.140(b)(1) up to \$24,252.04, ECF No. 13. Relying on these claimed exemptions, the trustee closed the debtor's case as a no-asset case, ECF No. 53.

Now the debtors reopened their case to avoid the judicial lien that underlies this motion. As a part of that effort they again amended their claims of exemption and claimed a \$100,000.00 exemption on the subject property under § 704.730, ECF No. 57. To the extent that the debtor's Amended Schedule C claims a higher amount than allowed under §§ 703.140(b)(1), (5), the court finds that the debtor are judicially estopped from doing so, *Allen v. C & H Distributors, LLC*, 813 F.3d 566, 572 (5th Cir. 2015). That is true because when the debtor filed the previous Schedule C (ECF No. 13) where the debtor claimed exemptions under § 703.140, the chapter 7 trustee detrimentally relied on the debtors' claimed exemption and determined this to be a no asset case.

To the extent that the debtor retained unused applicable exemption under the applicable § 703.140 exemption scheme for the year 2018, they may do so. The applicable exemption scheme allows claims of homestead exemptions up to \$28,225.00 (\$26,800.00 under (b)(1) + \$1,425.00 under (b)(5)). On the date of the petition, the debtors used their homestead exemption under § 703.140(b)(1) up to \$24,252.04, ECF No. 13. That left them \$3,972.06 of unused homestead exemption available for this motion.

Section 522(f) (2) is a formula to avoid liens. The calculation applied here is as follows: \$23,244.00 (judicial lien) + \$30,937.00 (1st consensual lien) + \$122,403.68 (2nd consensual lien) + \$3,972.06 (remaining homestead lien) = \$180,556.74. This amount exceeds the value of the property (\$147,000.00) by an amount greater than the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

18. [17-20689](#)-A-7 **IN RE: MONUMENT SECURITY, INC.**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2021 [\[863\]](#)

MATTHEW EASON/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Civil minute order

Subject: 2017 Toyota Corolla

Cause: delinquent installment payments 9 months/\$2,259.60

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.

DEFAULT OF RESPONDENT

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

STAY RELIEF

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor

bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Toyota Motor Credit 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 2017 Toyota Corolla, 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.

19. [21-20395](#)-A-7 **IN RE: MATHIAS FRANZ**
[JMH-1](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-13-2021 [\[15\]](#)

BARRY SPITZER/ATTY. FOR DBT.
J. HOPPER/ATTY. FOR MV.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2005 Harley Davidson FXSTD Softail Deuce motorcycle

Sale Type: Public auction

Auctioneer: West Auctions

Compensation Requested: 15% gross sales + expenses not to exceed
\$950.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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).

SECTION 363(b) SALE

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.

SECTION 328(a) EMPLOYMENT AND COMPENSATION

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a)

authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.