



**noUNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: MONDAY
DATE: MAY 1, 2023
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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Please join at least 10 minutes prior to the start of the calendar. You are required to give the court 24 hours advance notice on the [Court Calendar](#).

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PRE-HEARING DISPOSITION INSTRUCTIONS

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.

1. [22-23305](#)-A-7 **IN RE: LISA/BRIAN WESCOTT**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-30-2023 [\[24\]](#)

D. ENSMINGER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling

Motion: Motion for Relief from the Automatic Stay

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

Disposition: Continued to May 30, 2023, at 10:30 a.m.

Order: Civil minute order

SERVICE AND NOTICE

Special Notice Creditors

The motion will be continued to allow moving party to serve the motion on creditors which have filed a request for special notice.

The following parties filed a request for special notice: AIS Portfolio Services, LLC, Americredit Financial Services, Inc. See ECF Nos. 10, 11.

There is no attachment which indicates the special notice creditors, specifically AIS Portfolio Services, LLC, was served. See Certificate of Service, ECF No. 30.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefore, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

CIVIL MINUTE ORDER

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

Americredit Financial Services, Inc.'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 hearing on the motion is continued to May 30, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than May 8, 2023, the moving party shall file and serve the notice of continued hearing and motion on all parties which have filed a request for special notice.

2. [23-20714](#)-A-7 **IN RE: HAN/CAROLYN SEO**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-24-2023 [\[16\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.
THERON COVEY/ATTY. FOR MV.
U.S. BANK TRUST NATIONAL ASSOCIATION VS.

Final Ruling

Motion: Motion for Relief from the Automatic Stay
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued to May 30, 2023, at 10:30 a.m.
Order: Civil minute order

SERVICE AND NOTICE

Special Notice Creditors

The motion will be continued to allow moving party to serve the motion on creditors which have filed a request for special notice.

The following parties filed a request for special notice: AIS Portfolio Services, LLC, U.S. Bank Trust National Association. See ECF Nos. 13, 14.

There is no attachment which indicates the special notice creditors, specifically AIS Portfolio Services, LLC, was served. See Certificate of Service, ECF No. 21.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefore, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

CIVIL MINUTE ORDER

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

U.S. Bank Trust 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 hearing on the motion is continued to May 30, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than May 8, 2023, the moving party shall file and serve the notice of continued hearing and motion on all parties which have filed a request for special notice.

3. [23-20517](#)-A-7 **IN RE: JAMES WHEELER**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
3-20-2023 [\[20\]](#)

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for April 27, 2023, at 8:00 a.m. But if the

debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

4. [23-20019](#)-A-7 **IN RE: ROSITA LEE**
[DNL-2](#)

MOTION TO EMPLOY CATHRYN FUND AS SPECIAL COUNSEL
3-20-2023 [\[26\]](#)

GEORGE BURKE/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Employ Special Counsel

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

Disposition: Approved

Order: Prepared by moving party

Special Counsel: Cathryn Fund, JML LAW, A Professional Law Corporation

Subject of Representation: adverse employment action

Employment: 11 U.S.C. §§ 327, 328

Terms of Employment: tiered contingent, 45% of recovery if made 60 days before trial; and 50% of recovery if made within 60 days of trial

Unopposed applications 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).

J. Michael Hopper, chapter 7 trustee, has moved to Cathryn Fund, JML LAW, A Professional Law Corporation to represent the estate on a contingent fee basis with respect to the matters described herein. Cathryn Fund, JML LAW, A Professional Law Corporation have previously represented the debtor(s) with respect to the same matter.

Prior to the date of the petition, the debtor(s) alleges sexual harassment, failure to prevent harassment, violation of California

Civil Code section 51.9, and failure to provide employment records for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

The attorneys have significant firsthand experience with this case. The trustee deems it appropriate that Proposed Special Purpose Counsel be retained to assist in administering the proceeds from the offer of settlement for the Liability Claim. See Declaration of J. Michael Hopper, ECF No. 30.

Proposed Special Counsel proposes to divide the contingency fee on the same terms previously agreed to with the Debtor: 45% of recovery if made up to 60 days before trial, or 50% of recovery if made within 60 days of trial, plus all costs. See Motion, Exhibit A, ECF No. 26.

EMPLOYMENT

Chapter 7 trustees may employ counsel to represent the estate. 11 U.S.C. § 327. Employment may be for all purposes or for a limited purpose. The burden of proving eligibility is on the applicant. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 154 (8th Cir. BAP 2005). Where the trustee seeks to employ special counsel that has previously represented the debtor employment is governed by § 327(e). That section provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

In most instances, "in the best interest of the estate" means reasonably likely to recover non-exempt assets that may be administered for creditors, 11 U.S.C. § 704(a)(1). Proposed special counsel must not hold or represent "any adverse interest" to the debtor or to the estate "with respect to the matter on which the attorney is to be employed." Adverse interest means "the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holding, Inc.*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008). See *In re Grant*, 507 B.R. 306, 308-10 (Bankr. E.D. Cal. 2014) (holding that there is adverse interest where the attorney to be employed asserts a charging lien—at least if avoidable, or where the debtor argues that the proceeds of the action are exempt under applicable law).

Where the applicant wishes to define the terms of employment it may also seek approval under § 328. The section provides:

The trustee...with the court's approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, 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.

11 U.S.C. § 328(a).

The court will approve the motion. The court authorizes employment of law firms of Cathryn Fund, JML LAW, A Professional Law Corporation as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment of a contingency fee of 45% of recovery if made up to 60 days before trial, or 50% of recovery if made within 60 days of trial, plus costs incurred under 11 U.S.C. § 328(a). Compensation and reimbursement of expenses shall only be paid upon the court's approval of a motion seeking approval of the settlement and payment of propose special purpose counsel. Fed. R. Bankr. P. 9019.

The trustee shall submit an order granting the motion which is consistent with this ruling.

5. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY
LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)
3-29-2023 [\[96\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/16/21

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$29,420.00

Reimbursement of Expenses Allowed: \$360.68

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, Wilke Fleury, counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$29,420.00 and reimbursement of expenses in the amount of \$360.68.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Wilke Fleury'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 \$29,420.00 and reimbursement of expenses in the amount of \$360.68.

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.

6. [23-20737](#)-A-7 **IN RE: FRANKIE GAMBOA**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-30-2023 [\[21\]](#)

CHRISTOPHER LANGLEY/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.
U.S. BANK TRUST NATIONAL ASSOCIATION VS.

Final Ruling

Motion: Motion for Relief from the Automatic Stay

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

Disposition: Continued to May 30, 2023, at 10:30 a.m.

Order: Civil minute order

SERVICE AND NOTICE

Special Notice Creditors

The motion will be continued to allow moving party to serve the motion on creditors which have filed a request for special notice.

The following parties filed a request for special notice: Atlas Acquisitions, LLC, U.S. Bank Trust National Association. See ECF Nos. 9, 15.

There is no attachment which indicates the special notice creditors, specifically Atlas Acquisitions, LLC, was served. See Certificate of Service, ECF No. 26.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir.

2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefore, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to

serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

CIVIL MINUTE ORDER

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

U.S. Bank Trust 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 hearing on the motion is continued to May 30, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than May 8, 2023, the moving party shall file and serve the notice of continued hearing and motion on all parties which have filed a request for special notice.

7. [23-20938](#)-A-7 **IN RE: EDWARD/TATYANA DEREBSKIY**
[MS-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
3-26-2023 [\[6\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$7,502.21 (Wells Fargo Bank, N.A.)

All Other Liens:

- Consensual Lien \$184,626.33 (PennyMac Loan Services, LLC)
- Consensual Lien \$45,305.59 (CalHFA Mortgage Assistance Corp.)
- Consensual Lien \$40,610.73 (Secretary of Housing and Urban Dev.)
- Statutory Lien \$223,178.73 (Internal Revenue Service)
- Judgment Lien \$573.87 (State of California EDD)
- Judgment Lien \$175,453.61 (Nextgear Capital, Inc.)
- Judgment Lien \$66,362.47 (Nextgear Capital, Inc.)

Exemption: \$500,000.00

Value of Property: \$633,100.00

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

The debtor seeks an order avoiding the judicial lien of creditor Wells Fargo Bank, N.A. under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

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

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

8. [23-20938](#)-A-7 **IN RE: EDWARD/TATYANA DEREbenskiY**
[MS-2](#)

MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT
3-26-2023 [\[11\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$573.87 (State of California EDD)

All Other Liens:

- Consensual Lien \$184,626.33 (PennyMac Loan Services, LLC)
- Consensual Lien \$45,305.59 (CalHFA Mortgage Assistance Corp.)
- Consensual Lien \$40,610.73 (Secretary of Housing and Urban Dev.)
- Statutory Lien \$223,178.73 (Internal Revenue Service)
- Judgment Lien \$7,502.21 (Wells Fargo Bank, N.A.)
- Judgment Lien \$175,453.61 (Nextgear Capital, Inc.)
- Judgment Lien \$66,362.47 (Nextgear Capital, Inc.)

Exemption: \$500,000.00

Value of Property: \$633,100.00

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

The debtor seeks an order avoiding the judicial lien of creditor State of California Economic Development Department under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that

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

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

9. [23-20938](#)-A-7 **IN RE: EDWARD/TATYANA DEREbenskiY**
[MS-3](#)

MOTION TO AVOID LIEN OF NEXTGEAR CAPITAL, INC.
3-26-2023 [16](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$175,453.61 (Nextgear Capital, Inc.)

All Other Liens:

- Consensual Lien \$184,626.33 (PennyMac Loan Services, LLC)
- Consensual Lien \$45,305.59 (CalHFA Mortgage Assistance Corp.)
- Consensual Lien \$40,610.73 (Secretary of Housing and Urban Dev.)
- Statutory Lien \$223,178.73 (Internal Revenue Service)
- Judgment Lien \$573.87 (State of California EDD)
- Judgment Lien \$7,502.21 (Wells Fargo Bank, N.A.)
- Judgment Lien \$66,362.47 (Nextgear Capital, Inc.)

Exemption: \$500,000.00

Value of Property: \$633,100.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order avoiding the judicial lien of creditor Nextgear Capital Inc. under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

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

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

10. [23-20938](#)-A-7 **IN RE: EDWARD/TATYANA DEREbenskiy**
[MS-4](#)

MOTION TO AVOID LIEN OF NEXTGEAR CAPITAL, INC.
3-26-2023 [\[21\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$66,362.47 (Nextgear Capital, Inc.)

All Other Liens:

- Consensual Lien \$184,626.33 (PennyMac Loan Services, LLC)
- Consensual Lien \$43,305.59 (CalHFA Mortgage Assistance Corp.)
- Consensual Lien \$40,610.73 (Secretary of Housing and Urban Dev.)
- Statutory Lien \$223,178.73 (Internal Revenue Service)
- Judgment Lien \$573.87 (State of California EDD)
- Judgment Lien \$175,453.61 (Nextgear Capital, Inc.)
- Judgment Lien \$7,502.21 (Wells Fargo Bank, N.A.)

Exemption: \$500,000.00

Value of Property: \$633,100.00

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

The debtor seeks an order avoiding the judicial lien of creditor Nextgear Capital, Inc. under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption

that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

11. [22-22949](#)-A-7 **IN RE: ZOE BURTON-ROSAL**
[DNL-2](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-13-2023 [\[28\]](#)

GARY FRALEY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISCHARGED: 2/22/23
RESPONSIVE PLEADING

Final Ruling

Motion: Objection to debtor's claim of exemptions

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

Disposition: Continued to June 12, 10:30 a.m.

Order: Civil minute order

At the prior hearing on April 6, 2023, the court ordered that the hearing would be continued to May 1, 2023, and the parties could submit briefs and evidence regarding the suggested increase in the homestead exemption. See ECF No. 52. The trustee filed his brief on April 17, 2023. ECF No. 54. The debtors filed their brief on April 17, 2023. ECF No. 59.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the record is now closed and no new evidence or briefing is allowed. The objection is continued to June 12, 2023, at 10:30 a.m.

12. [23-20650](#)-A-7 **IN RE: HENRY TOWNSEND**

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-12-2023 [\[19\]](#)

AMJAD DAWOUD VS.

Final Ruling

Motion: Motion for Relief from the Automatic Stay

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

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE AND NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rule 9013

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party **shall** serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules.

Fed. R. Bankr. P. 9013 (emphasis added).

The certificates of service show that the trustee in this case, Gary Farrar, was not served. See ECF Nos. 19 & 20. Because the movant has failed to serve the trustee as required by FRBP 9013(a), the motion will be denied without prejudice.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3).

CIVIL MINUTE ORDER

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

Amjad Dawould's motion 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.

13. [22-22662](#)-A-7 **IN RE: STACIE BUCKINGHAM**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2023 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Chevrolet Equinox, VIN 3GNAXLEU3JS645563

Cause: delinquent installment payments 3+ months/\$3,047.27

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").

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).

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. 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). Further, 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.

CIVIL MINUTE ORDER

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

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

Americredit Financial Services, Inc. dba GM Financial's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Chevrolet Equinox, VIN 3GNAXLEU3JS645563, 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.

14. [22-22563](#)-A-7 **IN RE: ZELDA TROUTMAN**
[BLF-4](#)

MOTION FOR ORDER AUTHORIZING USE OF PERSONAL PROPERTY OF THE
ESTATE
3-27-2023 [[106](#)]

MARK SHMORGON/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTOR DISCHARGED: 3/15/23

No Ruling

15. [23-20473](#)-A-7 **IN RE: MICHAEL/DOREEN LATIMER**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-28-2023 [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
FIFTH THIRD BANK VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Motion for Relief from the Automatic Stay

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

Disposition: Continued to May 30, 2023, at 10:30 a.m.

Order: Civil minute order

SERVICE AND NOTICE

Special Notice Creditors

The motion will be continued to allow moving party to serve the motion on creditors which have filed a request for special notice.

The following parties filed a request for special notice: AIS Portfolio Services, LLC, SAFE Credit Union. See ECF Nos. 14, 15.

There is no attachment which indicates the special notice creditors were served. See Certificate of Service, ECF No. 26.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefore, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

CIVIL MINUTE ORDER

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

Fifth Third Bank N.A.'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 hearing on the motion is continued to May 30, 2023, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than May 8, 2023, the moving party shall file and serve the notice of continued hearing and motion on all parties which have filed a request for special notice.

16. [23-21078](#)-A-7 **IN RE: DUSTIN CULVER**
[EAT-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
4-13-2023 [[16](#)]

DARLENE VIGIL/ATTY. FOR MV.

No Ruling

17. [22-23086](#)-A-7 **IN RE: JEBRIEL MARASIGAN**
[BLF-2](#)

MOTION TO EMPLOY TMC AUCTION, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-28-2023 [\[25\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 3/16/23

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: 2018 Subaru Forester

Sale Type: Public auction

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.

18. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DNL-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOHNSTONE MOYER, INC.
4-10-2023 [[129](#)]

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

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Parties to Compromise: GEOFFREY M. RICHARDS ("Trustee") in his capacity as trustee for the bankruptcy estate of AMD METAL WORKS, INC. ("Debtor") and JOHNSTONE MOYER, INC. ("Claimant")

Dispute Compromised: Adversary Proceeding No. 23-02017

Summary of Material Terms: Claimant shall pay Trustee \$15,000.00 within 14 calendar days of an order approving the motion; the parties shall cause the adversary proceeding to be dismissed with prejudice within 14 days of receipt of the settlement payment; parties will bear their own attorney costs and fees; Trustee shall provide a release of Claim of Mechanics Lien within 5 days of the Approval Order or Settlement Payment, whichever is later; and, parties will provide mutual releases.

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).

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 that settles the dispute described above. 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.

The Chapter 7 Trustee, Geoffrey Richard's motion to approve a compromise 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 hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at ECF no. 131.

19. [22-20591](#)-A-7 **IN RE: MICHAEL/KINDRA DICKERMAN**
[NLG-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2023 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
LAKEVIEW LOAN SERVICING, LLC VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 30 White Fir Lane, Oroville, California 95966

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

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). 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.

Lakeview Loan Servicing LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 30 White Fir Lane, Oroville, California 95966, 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.