



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

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

**DAY: MONDAY**  
**DATE: MAY 15, 2023**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be 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.
2. Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
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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

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [23-20305](#)-A-7      **IN RE: LAKHWINDER VIRK AND RAJINDER KAUR**  
[FRB-1](#)

CONTINUED MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE  
AUTOMATIC STAY  
4-3-2023    [\[16\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
GERRICK WARRINGTON/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Approval of Stipulation for Relief from the Automatic Stay

**Notice:** Continued from April 17, 2023

**Disposition:** Granted

**Order:** Prepared by the movant pursuant to the instructions below

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 hearing on this motion to approve a stipulation for relief from the automatic stay was continued to allow the moving party to serve the notice of hearing on creditors which filed a request for special notice. On April 14, 2023, the movant filed and served a notice of continued hearing in this matter and properly served the special notice creditors as ordered. See ECF Nos. 33, 34.

### **STIPLUATION**

The stipulation between the Chapter 7 trustee, the debtors, and the movant, Wells Fargo Equipment Finance, Inc., authorizes the movant to pursue its remedies under state law regarding equipment, which is in the possession of a third party, Virk Systems, Inc.

The movant has filed a motion to approve a stipulation for relief from the automatic stay of 11 U.S.C. § 362(a). Federal Rule of Bankruptcy Procedure 4001(d)(3) authorizes the court to approve or disapprove a stipulation for relief from the automatic stay. Under this rule, the court hereby approves the stipulation for relief from stay filed. The movant shall attach the stipulation to the proposed order as an exhibit.

2. [23-20218](#)-A-7     **IN RE: ROGER MCENTYRE**  
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-4-2023    [\[15\]](#)

STANLEY BERMAN/ATTY. FOR DBT.  
ANDREW STILL/ATTY. FOR MV.  
DEBTOR DISCHARGED: 4/26/23  
CALIFORNIA PHYSICIANS SERVICE VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion will be denied without prejudice for the following reasons.

### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### 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).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 20. The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

California Physicians Service'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.

3. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[DB-4](#)

MOTION TO EXTEND DISCOVERY DEADLINE  
4-28-2023    [[104](#)]

RICK MORIN/ATTY. FOR DBT.  
JAMIE DREHER/ATTY. FOR MV.

#### **No Ruling**

4. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[DB-5](#)

MOTION TO COMPEL  
4-28-2023    [[108](#)]

RICK MORIN/ATTY. FOR DBT.  
JAMIE DREHER/ATTY. FOR MV.

#### **No Ruling**

5. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[DB-6](#)

MOTION TO COMPEL AND/OR MOTION FOR CONTEMPT  
5-1-2023    [\[114\]](#)

RICK MORIN/ATTY. FOR DBT.  
JAMIE DREHER/ATTY. FOR MV.

**No Ruling**

6. [22-22931](#)-A-7     **IN RE: DEBRA LOCKHART**

MOTION TO AVOID LIEN OF FREEWAY FUNDING  
4-7-2023    [\[48\]](#)

DEBRA LOCKHART/ATTY. FOR MV.  
DEBTOR DISCHARGED: 2/22/23  
RESPONSIVE PLEADING

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption, Stay Violation  
**Notice:** LBR 9014-1(f)(2), written opposition filed by respondent  
**Disposition:** Denied  
**Order:** Civil minute order

**Subject Property:** 2013 Nissan Quest Van  
**Lien:** Purchase Money Security Interest  
**Date Discharge Entered:** February 22, 2023

The debtor seeks an order avoiding the lien of respondent Freeway Funding. The debtor also contends that the respondent violated the automatic stay following the entry of discharge, by attempting to repossess the subject vehicle, a 2013 Nissan Quest Van. The respondent opposes the motion contending that: 1) the motion is improper as respondent holds a purchase money security interest in the subject vehicle and thus the lien may not be avoided under 11 U.S.C. § 522(f); and 2) that the subject vehicle may be properly repossessed as the discharge has been entered in this case.

**FACTS**

The debtor filed this Chapter 7 bankruptcy on November 14, 2022. The debtor valued the subject vehicle in Schedule A/B at \$14,000.00 and claimed \$4,000.00 exempt in the subject vehicle. See Schedule A/B, ECF No. 18, Amended Schedule C, ECF No. 27. A discharge was entered on February 22, 2023.

Respondent Freeway Funding holds a note secured by a purchase money security interest in the subject vehicle. The payments under the note were 150 days delinquent upon the discharge of the debtor's Chapter 7 bankruptcy. Declaration of April Rios, 2:27-28, 3:1-8, 11-12; Exhibits A, B, ECF No. 55. The debtor failed to make payments as required to the respondent and on March 15, 2023, respondent Freeway Funding hired Phantom Recovery to repossess the subject vehicle. The debtor moved to reopen her bankruptcy case and the court entered an order reopening the case on April 3, 2023. Opposition, 3:15-19 ECF No. 54. The debtor remains in possession of the subject vehicle and because the case was reopened the respondent has ceased all attempts to obtain payment on the obligation or possession of the vehicle, pending the court's ruling on this motion. *Id.*, 5:2-7.

### **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).

In this case the respondent's lien is a purchase money security interest. Therefore, the debtor may not avoid the respondent's lien because the lien held against the subject property is neither a judicial lien nor a nonpossessory, nonpurchase-money security interest as required by 11 U.S.C. § 522(f)(1)(B).

The motion to avoid lien, will be denied.

### **LIEN STRIPPING**

The debtor's ability to reduce an undersecured creditor's claim to the present value of its collateral is limited to cases filed under Chapter 11, 12, and 13. This relief is not available to a debtor in a Chapter 7 proceeding. *Dewsnup v. Timm* 502 US 410, 412, 417, 112 S.Ct. 773, 776, 778 (1992).

It appears that the debtor is requesting the court value the subject vehicle and allow the repayment of a lesser amount to the secured creditor. See Motion, page 2, paragraph 3, ECF No. 48.

Because this case is filed under Chapter 7 the court is prohibited from awarding this relief to the debtor. The request to reduce the creditor's claim is denied.

**AUTOMATIC STAY**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

. . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

. . .

11 U.S.C. § 362(a)(3), (5), (6).

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) *if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;*

11 U.S.C. § 362(c) (emphasis added).

During the pendency of the bankruptcy case, absent relief from the stay, the respondent was prevented from demanding payment on the obligation owed to it by the debtor or from repossessing the subject vehicle. However, because this case was filed under Chapter 7 and the debtor is an individual the stay expired upon the granting of the discharge on February 22, 2023. As such, the respondent and its agent Phantom Recovery were entitled to resume lawful collection of the debt owed to respondent and/or actions to enforce respondent's lien under California state law.

The debtor has provided no evidence that the respondent has taken any action against her in violation of the automatic stay.

The court will deny the motion.

#### **DEBTOR REQUEST FOR CONTINUANCE**

On May 10, 2023, the debtor requested a continued hearing, ECF No. 59. As the respondent has appeared in this matter, but has not agreed to the continuance, the court will hear the debtor's request in court with all parties present.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to avoid lien under 11 U.S.C. 522(f) and motion for violation of the automatic stay has been presented to the court. Having considered the motion, the opposition, and having heard oral argument, if any,

IT IS ORDERED that the motion is denied.

7. [22-21692](#)-A-7      **IN RE: EVERGREEN ARBORISTS, INC.**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-20-2023    [\[254\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
CHAD CARLOCK/ATTY. FOR MV.  
MILES DANFORTH VS.

#### **Final Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **NO CERTIFICATE OF SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process. A motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Under Rule 7004, service on an individual must be made by first class mail addressed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). A debtor in bankruptcy may be served

before the case is dismissed or closed "at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

Here, service of the motion was insufficient because a certificate of service evidencing service of the notice and the motion was never filed.

#### **VIOLATION OF LBR 9014-1(c)**

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c) (1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service. No docket control number was used by the moving party in this case.

#### **CIVIL MINUTE ORDER**

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

Mile Danforth's motion for relief from the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

8. [23-20622](#)-A-7     **IN RE: PREM KUMAR**  
[SKS-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
4-14-2023    [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

**Notice:** LBR 9014-1(f) (1); written opposition filed by the debtor

**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.

The trustee reports that the debtor attended a continued meeting of creditors on April 28, 2023. See Docket Entry April 29, 2023. The court notes that the trustee has continued the meeting of creditors until May 19, 2023, at 3:30 p.m.

Because the debtor's failure to attend this meeting has occurred once, and because the debtor has attended one continued meeting of creditors, 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 on May 19, 2023, 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.

The court notes that the debtor does not oppose the extension of the requested deadlines, stating "[i]n this instance, extensions are not opposed." Opposition, 2:12, ECF No. 18. Accordingly, this portion of the motion will be granted.

#### **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 May 19, 2023, at 3:30 p.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).