

**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: MONDAY
DATE: MAY 16, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-20406](#)-A-7 **IN RE: FAYE ROQUE**
[JCK-1](#)

MOTION TO AVOID LIEN OF CITIBANK N.A.
4-14-2022 [\[13\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.

Final Ruling

Matter: Motion to Avoid Lien

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Citibank, N.A., under 11 U.S.C. § 522(f). The debtor has also filed a motion to avoid the lien of C.A.T. Exteriors, Inc. (JCK-2). The motion to avoid the lien of C.A.T. Exteriors, Inc. has been denied.

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).

Both motions pertain to judicial liens currently attached to the same real property. As such the analysis and/or defense of the Motion to Avoid Judicial Lien of C.A.T. Exteriors, Inc. by a responding party might impact the analysis and result in this motion.

Other motions to avoid judicial liens on the same subject real property are being denied. To avoid entering inconsistent orders regarding the subject real property’s value or the amounts of liens or exemptions, the court will deny this motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor’s motion to avoid lien of Citibank, N.A. 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.

2. [22-20406](#)-A-7 **IN RE: FAYE ROQUE**
[JCK-2](#)

MOTION TO AVOID LIEN OF C.A.T. EXTERIORS, INC
4-14-2022 [\[18\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.

Final Ruling

Matter: Motion to Avoid Lien

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of C.A.T. Exteriors, Inc., under 11 U.S.C. § 522(f).

SERVICE

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

The debtor served the motion on the responding party at addresses which are not in the court's docket. While the court does not discourage the debtor from serving the respondent at additional addresses, service upon the responding party at the address in the court's docket is required.

CIVIL MINUTE ORDER

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

The debtor's motion to avoid lien of C.A.T. Exteriors, Inc. 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. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
3-30-2022 [\[10\]](#)

WILLARD FIELDS/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

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

The court also notes that the respondent Wells Fargo Bank, N.A. was served at an address which is not the address in the court's docket. While the court does not discourage the debtor from serving the respondent at additional addresses, service upon the responding party at the address in the court's docket is required.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien of Wells Fargo Bank, N.A. 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.

4. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-2](#)

MOTION TO AVOID LIEN OF CATHERINE TIEN AKA CATIE TIEN
3-30-2022 [16](#)

WILLARD FIELDS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Matter: Motion to Avoid Lien

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Catherine Tien, aka Catie Tien, under 11 U.S.C. § 522(f). The debtor has also filed a motion to avoid the liens of Wells Fargo Bank, N.A. (WRF-1) and American Express National Bank (WRF-3). The motions to avoid the judicial lien of Wells Fargo Bank, N.A. and American Express National Bank have been denied without prejudice

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).

All three motions pertain to judicial liens currently attached to the same real property. As such the analysis and/or defense of the motions filed by Wells Fargo Bank, N.A. and/or American Express National Bank by a responding party might impact the analysis and result in this motion.

Other motions to avoid judicial liens on the same subject real property are being denied. To avoid entering inconsistent orders regarding the subject real property’s value or the amounts of liens or exemptions, the court will deny this motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor’s motion to avoid lien of Catherine Tien aka Catie Tien, 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.

5. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-3](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK
3-30-2022 [\[22\]](#)

WILLARD FIELDS/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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

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

The court also notes that the respondent American Express National Bank was served at an address which is not the address in the court's docket. While the court does not discourage the debtor from serving the respondent at additional addresses, service upon the responding party at the address in the court's docket is required.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien of American Express National Bank 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.

6. [19-26031](#)-A-7 **IN RE: LUTHER ESPINOSA IPIALES AND ERIKA ESPINOSA**
[MSN-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
3-22-2022 [\[22\]](#)

MARK NELSON/ATTY. FOR DBT.
DEBTORS DISCHARGED: 01/03/2020

Final Ruling

Matter: Motion to Avoid Lien

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

Disposition: Denied without prejudice

Order: Civil minute order

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

SERVICE

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

The debtor served the motion on the responding party at addresses which are not in the court's docket. While the court does not discourage the debtor from serving the respondent at additional addresses service at the address in the court's docket is required.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to avoid lien of Citibank, N.A. 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.

7. [22-20735](#)-A-7 **IN RE: SIMRANJIT SINGH**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-2022 [\[11\]](#)

ROBERT FONG/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
DAIMLER TRUCK FINANCIAL SERVICES USA, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Freightliner

Cause: delinquent installment payments: Fully matured contract -
\$72,549.30 due

Last Payment: June 12, 2019

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

Movant seeks an order granting relief from the automatic stay under 11 U.S.C. § 362(d)(1). The vehicle, a 2016 Freightliner, is not listed in the debtor's Schedule A/B nor the Statement of Intentions, see ECF No. 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).

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 payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing 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.

Daimler Truck Financial Services, USA, 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 a 2016 Freightliner, 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.

8. [21-23042](#)-A-7 **IN RE: RICHARD LUCERO**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-5-2022 [\[33\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Ford F150 Truck

Cause: delinquent installment payments 3.6 months/\$3,755.78

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

DEFAULT OF RESPONDENT

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

Movant seeks an order for relief from the stay under 11 U.S.C. § 362(d)(1).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R.

Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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

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

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

CIVIL MINUTE ORDER

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

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

Ford Motor Credit Company, 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 a 2018 Ford F150 Truck, 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.

9. [22-20642](#)-A-7 **IN RE: LESTER ANTHONY BANGSAL**
[MET-1](#)

MOTION TO COMPEL ABANDONMENT
4-24-2022 [\[17\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied without prejudice
Order: Civil Minute Order

Subject: 1667 Matthew Drive, Fairfield, California

The debtor seeks an order compelling the chapter 7 trustee's abandonment of the estate's interest in the property located at 1667 Matthew Drive, Fairfield, California. The chapter 7 trustee, J. Michael Hopper, has filed non-opposition to the motion.

ABANDONMENT

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled

IMPROPERLY AMENDED SCHEDULES

On April 19, 2022, the debtor filed the following amended schedules: Amended Schedule A/B, ECF No. 12; amended Schedule C, ECF No. 11. Schedule A/B purports the unique circumstances of the debtor's ownership interest in the subject property and indicates the debtor's opinion of the property value. Schedule C claims the debtor's interest in the property exempt.

Neither of the amended schedules is signed as there is no amendment cover sheet *affixed* to either document as required.

Amendment Cover Sheet

On April 19, 2022, the debtor signed and filed a separate Amendment Cover Sheet, ECF No. 13. No schedules were attached to the amendment cover sheet as required. The court notes that counsel appears to be using an outdated Amendment Cover Sheet form and refers counsel to EDC 2-015, Rev. 12/1/20 which is located on the court's website.

The Amendment Cover Sheet contains clear instructions regarding its use. The Instructions provide that a party is to "[a]ttach each amended document to this form." See Form EDC 2-015, Rev. 12/1/20.

The separate filing of the Amendment Cover Sheet from the amended documents is not sufficient. All the amended schedules and the cover sheet should be filed as one document on the court's docket. First, filing amended documents separately from the cover sheet which authenticates and verifies them does not serve the effective use of the court's electronic docket. Reference to the documents as a whole is difficult and easily leads to errors in reviewing documents by the court and other parties to the current or subsequent litigation. Second, parties in interest who are served, as required, with the documents piecemeal will not be able to easily determine to which Schedules a separately served separate cover sheet refers.

Rule 1008

Because the schedules were filed without the required amendment cover sheet, EDC 2-015 they are unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008 (emphasis added).

In the Eastern District Form EDC 2-015, available on the court's website, is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word "Amended" or "Supplemental" at the top of the form.

EDC 002-015(emphasis added).

LBR 9004-1(c)

(c) *Signatures Generally.* All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c) (emphasis added).

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are of no evidentiary value and are not properly before the court.

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

Additionally, the time to object to the debtor's claimed exemptions is called into question because of the deficient filing of the amended schedules. The court will not presume what a creditor might surmise regarding the necessity and/or timing of objecting to a debtor's claim of exemptions, when unsigned schedules are served as required.

The court finds that the evidentiary record is insufficient to grant the motion.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Compel Abandonment has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

10. [22-21067](#)-A-7 **IN RE: CHRISTOPHER CARTER**
[MOH-1](#)

MOTION TO COMPEL ABANDONMENT
4-29-2022 [\[9\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

11. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-4](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[63\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Judicial Lien

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

Disposition: Continued to July 5, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

The court is unable to determine whether the lien held by Select Portfolio Servicing, Inc. in the amount of \$134,999.32 is a

consensual lien as alleged in the motion. The evidentiary record shows that the obligation to Select Portfolio is a judicial lien. See Schedule D, ECF No. 1. The debtor's declaration in support of the motion does not clarify the type of lien which secures the Select Portfolio obligation.

The court will continue the hearing on this motion to allow the debtor to augment and/or correct the evidentiary record as appropriate.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties any additional evidence in support of his motion, in accordance with this court's ruling;

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties a notice of continued hearing. The notice shall advise the parties that written opposition to the motion must be served and filed with the court not later than June 21, 2022.

12. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-5](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[72\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Judicial Lien

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

Disposition: Continued to July 5, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

The court is unable to determine whether the lien held by Select Portfolio Servicing, Inc. in the amount of \$134,999.32 is a consensual lien as alleged in the motion. The evidentiary record shows that the obligation to Select Portfolio is a judicial lien. See Schedule D, ECF No. 1. The debtor's declaration in support of the motion does not clarify the type of lien which secures the Select Portfolio obligation.

The court will continue the hearing on this motion to allow the debtor to augment and/or correct the evidentiary record as appropriate.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties any additional evidence in support of his motion, in accordance with this court's ruling;

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties a notice of continued hearing. The notice shall advise the parties that written opposition to the motion must be served and filed with the court not later than June 21, 2022.

13. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-6](#)

MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[81\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Judicial Lien

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

Disposition: Continued to July 5, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

The court is unable to determine whether the lien held by Select Portfolio Servicing, Inc. in the amount of \$134,999.32 is a consensual lien as alleged in the motion. The evidentiary record shows that the obligation to Select Portfolio is a judicial lien. See Schedule D, ECF No. 1. The debtor's declaration in support of the motion does not clarify the type of lien which secures the Select Portfolio obligation.

The court will continue the hearing on this motion to allow the debtor to augment and/or correct the evidentiary record as appropriate.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties any additional evidence in support of his motion, in accordance with this court's ruling;

IT IS FURTHER ORDERED that no later than May 30, 2022, the debtor shall file and serve on all interested parties a notice of continued hearing. The notice shall advise the parties that written opposition to the motion must be served and filed with the court not later than June 21, 2022.

14. [22-20875](#)-A-7 **IN RE: THOMAS DEAL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-26-2022 [\[47\]](#)

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

15. [22-20488](#)-A-7 **IN RE: GRACE MOSBY**
 [APN-1](#)

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

NICHOLAS WAJDA/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
HARLEY-DAVIDSON CREDIT CORP VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Harley-Davidson FLFB Fat Boy

Cause: delinquent installment payments: \$16,312.48

Last Payment: October 24, 2019

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

Movant seeks an order granting relief from the automatic stay under 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).

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 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 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.

Harley-Davidson Credit 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 a 2018 Harley-Davidson FLFB Fat Boy, 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.

16. [20-25590](#)-A-7 **IN RE: ZENAIDA DAOS**
[GMR-1](#)

MOTION FOR AN ORDER TO SHOW CAUSE REGARDING DEBTORS FAILURE
TO COMPLY WITH THIS COURT'S ORDER COMPELLING DEBTOR TO
TURNOVER
4-12-2022 [[32](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
GEOFFREY RICHARDS/ATTY. FOR MV.
DEBTORS DISCHARGED: 03/29/2021

No Ruling

17. [22-20096](#)-A-7 **IN RE: GLEN ANDERSEN**
[KJS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-15-2022 [\[17\]](#)

SETH HANSON/ATTY. FOR DBT.
KELLY MCCOY/ATTY. FOR MV.
DEBTOR DISCHARGED: 4/27/2022;
SIERRA CENTRAL CREDIT UNION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition filed by chapter 7 trustee

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 1476 Upland Drive, Yuba City, California

Discharge Entered: April 27, 2022

Chapter 7 Trustee Non-Opposition: docket entry April 19, 2022

Delinquent Mortgage Payments: March and April 2022 - totaling
\$2,687.38

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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Movant, Sierra Central Credit Union, seeks an order for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The debtor has failed to pay post-petition mortgage payments to the movant for the months of March and April 2022. The delinquent payments total \$2,687.38.

The chapter 7 trustee filed a notice of non-opposition, which appears on the court's docket, on April 19, 2022.

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the

burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

As to the Debtor

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

As to the Estate

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

The debtor has defaulted in post-petition mortgage payments to the movant and the chapter 7 trustee has signaled her non-opposition to the motion. The court will grant the motion.

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.

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

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 1476 Upland Drive, Yuba City, California. Relief from the

automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

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

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

18. [21-22759](#)-A-7 **IN RE: NADIA ZHIRY**
[KSR-2](#)

MOTION TO COMPEL ABANDONMENT
5-2-2022 [\[87\]](#)

MARK SHMORGON/ATTY. FOR DBT.
KIRK RIMMER/ATTY. FOR MV.
DEBTOR DISCHARGED: 04/20/2022;

No Ruling