



**UNITED 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: JUNE 3, 2024
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

PRE-HEARING DISPOSITION INSTRUCTIONS

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. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-1](#)

CONTINUED MOTION TO AVOID LIEN OF THE BOARD OF TRUSTEES
3-5-2024 [\[27\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from April 22, 2024

Disposition: Denied without prejudice

Order: Civil Minute Order

The debtors seek an order avoiding the judicial lien of The Board of Trustees, affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). For the following reasons the court will deny the motion without prejudice.

LIEN-AVOIDANCE STANDARDS

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

REVERSE-PRIORITY ANALYSIS

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

The motion to avoid the judicial lien of H. Jeffrey Froelich (BLG-2), regarding the same subject real property has been denied after the debtor failed to file the notice of continued hearing and serve the respondent in that motion in compliance with Fed. R. Bankr. P. 7004 as ordered. Order, ECF No. 81. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of

liens or exemptions, the court will also deny this motion to avoid lien 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 The Board of Trustees 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. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-2](#)

CONTINUED MOTION TO AVOID LIEN OF H. JEFFREY FROELICH
3-5-2024 [\[32\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from April 22, 2024

Disposition: Denied without prejudice

Order: Civil Minute Order

The debtors seek an order avoiding a judicial lien affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). For the following reasons the court will deny the motion without prejudice.

On April 23, 2024, the court ordered as follows:

IT IS FURTHER ORDERED that no later than May 6, 2024, the moving party shall file and serve a notice of continued hearing and the motion to avoid lien on the respondent in a manner which complies with the court's ruling in this manner.

Order, ECF No. 81.

The debtors have failed to file a notice of continued hearing and serve the moving papers on the respondent in compliance with Fed. R. Bankr. 7004 as ordered.

SERVICE

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).

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint 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).

The responding party is H. Jeffrey Froelich, who appears to be an individual. Accordingly, service must be made in compliance with Rule 7004(b)(1). The debtor served the respondent at the address listed in the Abstract of Judgment, which is the address of the law firm representing the respondent in the underlying state court action which resulted in the judgment lien. Exhibit A, ECF No. 35.

Service on Prior Counsel is Insufficient

"An implied agency to receive service is not established by representing a client in an earlier action." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted).

"We cannot presume from Paris' handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Id.*, at 93.

In this case service of the respondent H. Jeffrey Froelich was achieved *only* by serving him at the address of the law firm which represented the respondent in the state court action which resulted in judgment against the debtors. Certificate of Service, Attachment 6A1, ECF No. 71. Exhibit A, ECF No. 35.

No evidence has been presented in the certificate of service that the state court attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case. Accordingly, service upon the respondent does not comply with Fed. R. Bankr. P. 7004(b)(1).

DEBTOR STATUS REPORT

On May 28, 2024, the debtors filed a status report which is supported by the declaration of debtors' counsel, ECF No. 87, 88.

The status report counsel explains his communications with the attorneys who represented the respondent in state court. Status

Report, ECF No. 87. Counsel also reports that he was informed by an attorney at the law firm that they no longer represent the respondent and have no address for service to provide to the debtors. Declaration of Chad Johnson, ECF No. 88.

The debtors argue that if service complies with California law regarding the address on the Abstract of Judgment that service to this address satisfies the requirements of Rule 7004. Debtors argue that because the prior attorneys listed the firm's name in the Abstract of Judgment that they must accept service on behalf of the respondent, or the attorneys run afoul of the requirements of California Rule of Professional Conduct 1.16 which prevents an attorney from terminating representation without taking steps to avoid reasonably foreseeable prejudice to the client.

The court takes no position regarding the obligations owed to respondents by his prior counsel.

In this case service under Fed. R. Bankr. P. 7004 is required. Counsel has described no investigative efforts to locate the respondent other than to contact the prior state court attorney and review court records in the underlying state court action. Moreover, Rule 7004(e) provides a method for service when service is not possible under Rule 7004(b).

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 H. Jeffrey Froelich has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

3. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-3](#)

CONTINUED MOTION TO AVOID LIEN OF KELSTIN GROUP, INC.
3-5-2024 [\[37\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from April 22, 2024

Disposition: Denied without prejudice

Order: Civil Minute Order

The debtors seek an order avoiding the judicial lien of Kelstin Group, Inc., affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). For the following reasons the court will deny the motion without prejudice.

LIEN-AVOIDANCE STANDARDS

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

REVERSE-PRIORITY ANALYSIS

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

The motion to avoid the judicial lien of H. Jeffrey Froelich (BLG-2) regarding the same subject real property has been denied after the debtor failed to file the notice of continued hearing and serve the respondent in that motion in compliance with Fed. R. Bankr. P. 7004 as ordered. Order, ECF No. 81. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of

liens or exemptions, the court will also deny this motion to avoid lien 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 Kelstin Group, 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.

4. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-4](#)

CONTINUED MOTION TO AVOID LIEN OF GRANITE STATE INSURANCE
COMPANY
3-5-2024 [\[42\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: Continued from April 22, 2024
Disposition: Denied without prejudice
Order: Civil Minute Order

The debtors seek an order avoiding the judicial lien of Granite State Insurance Company, affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). For the following reasons the court will deny the motion without prejudice.

LIEN-AVOIDANCE STANDARDS

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

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

REVERSE-PRIORITY ANALYSIS

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

The motion to avoid the judicial lien of H. Jeffrey Froelich (BLG-2) regarding the same subject real property has been denied after the debtor failed to file the notice of continued hearing and serve the respondent in that motion in compliance with Fed. R. Bankr. P. 7004 as ordered. Order, ECF No. 81. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will also deny this motion to avoid lien 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 Granite State Insurance Company 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. [24-20302](#)-A-7 **IN RE: JAIME/IRMA ANDUJO**
[BLG-5](#)

CONTINUED MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT
BUREUA, INC.
3-7-2024 [\[51\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from April 22, 2024

Disposition: Denied without prejudice

Order: Civil Minute Order

The debtors seek an order avoiding the judicial lien of Creditors Adjustment Bureau, Inc., affecting the real property located at 424 Seville Place, Vacaville, California, under 11 U.S.C. § 522(f). For

the following reasons the court will deny the motion without prejudice.

LIEN-AVOIDANCE STANDARDS

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

REVERSE-PRIORITY ANALYSIS

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

The motion to avoid the judicial lien of H. Jeffrey Froelich (BLG-2) regarding the same subject real property has been denied after the debtor failed to file the notice of continued hearing and serve the respondent in that motion in compliance with Fed. R. Bankr. P. 7004 as ordered. Order, ECF No. 81. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will also deny this motion to avoid lien 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 Creditors Adjustment Bureau, 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.

6. [11-44905](#)-A-7 **IN RE: RONNIE/TERESA TERRY**
[BLF-2](#)

MOTION TO SELL
4-17-2024 [\[41\]](#)

JAMES SHAH/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 02/06/12

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Estate's Non-exempt Interest in Lawsuit in wage and hour lawsuit

Buyer: Debtors

Sale Price: \$20,972.72

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

Irma Edmonds, Chapter 7 trustee, seeks an order approving the sale of the estate's interest in a wage and hour lawsuit.

FACTS

Debtor Ronnie Terry is a party to a wage and hour lawsuit. The debtors have exempted a portion of the anticipated proceeds after payment of attorney fees. The debtors indicated that they wish to remain in control of the litigation and the trustee entered into negotiations with the debtors to purchase the non-exempt portion of the litigation proceeds. Selling the interest to the debtors allows the estate to realize funds for the estate without the added expense of litigating the case, and without the need to appoint counsel. The trustee opines that she would not be able to realize additional monies for the estate absent the sale of the non-exempt interest.

SALES

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

will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The trustee shall prepare an order consistent with this ruling.

7. [23-21409](#)-A-7 **IN RE: MICHAEL/ERIN CHRISTENSEN**
[BLF-13](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES
ATTORNEY(S)
4-18-2024 [\[111\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/18/23

Final Ruling

Motion: Allowance of Compensation
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Loris L. Bakken seeks an order allowing compensation. The motion will be denied without prejudice as follows.

The court is unable to determine if service of the motion and supporting documents complies with Fed. R. Bankr. P. 4001, 9014, LBR 9014-1, 7005-1. The certificate of service is unsigned. Certificate of Service, p. 4, ECF No. 116.

CIVIL MINUTE ORDER

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

Loris L. Bakken's Motion for Allowance of Compensation 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. [23-21409](#)-A-7 **IN RE: MICHAEL/ERIN CHRISTENSEN**
[NBF-2](#)

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY,
ACCOUNTANT(S)
4-24-2024 [\[117\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/18/23

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$2,180.50

Reimbursement of Expenses: \$118.51

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, Gabrielson & Company, accountants for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,180.50 and reimbursement of expenses in the amount of \$118.51.

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.

Gabrielson & Company'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 \$2,180.50 and reimbursement of expenses in the amount of \$118.51.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. [23-24331](#)-A-7 **IN RE: JAYATON THOMAS**

MOTION FOR DISQUALIFICATION OF MCCARTHY & HOLTHUS LLP AS COUNSEL FOR JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AND ALL ASSIGNEES AND/OR SUCCESSORS; QUALITY LOAN ASSOCIATION; MCCARTHY & HOLTHUS LLP; ALL OTHER PROCEEDINGS PRESENT OR OTHERWISE
5-20-2024 [\[102\]](#)

JAYATON THOMAS/ATTY. FOR MV.
DEBTOR DISCHARGED: 03/15/24

Final Ruling

Because the substantive issues are identical the hearing on the instant motion is continued to June 4, 2024, at 10:30 a.m. to coincide with the debtor's motion to disqualify counsel in the following adversary proceeding: *Mary Alice Nelson Rogers Trust Pre-1933 Private American Indian v. JP Morgan Chase Bank, National Association, et. al.*, Case No. 24-2001.

10. [24-20136](#)-A-7 **IN RE: EVELYN DOMONDON**
[RAM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2024 [\[55\]](#)

JEANNE SERRANO/ATTY. FOR DBT.
ROBERT MILLER/ATTY. FOR MV.
DEBTOR DISCHARGED: 05/06/24
JEFFREY VIEYRA VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2768 Georgia St., Vallejo, California

Value of Collateral: \$415,000.00

Aggregate of Liens: \$342,170.90

Allowed Exemption: \$111,425.42

Equity: \$0

Discharge: May 6, 2024

Movant, Jeffrey Vieyra seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee filed a non-opposition to the motion on April 29, 2024.

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).

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).

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

Jeffrey Vieyra'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 2768 Georgia St., Vallejo, 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.

11. [22-21649](#)-A-7 **IN RE: MARY KATTENHORN**
[WF-3](#)

MOTION TO SELL
5-13-2024 [[136](#)]

RICHARD HALL/ATTY. FOR DBT.
JASON ELDRED/ATTY. FOR MV.
DEBTOR DISCHARGED: 10/11/22

Final Ruling

The hearing on this matter will be continued to June 4, 2024, at 10:30 a.m. to coincide with the hearing on the trustee's motion for Summary Judgment in the following adversary proceeding: *Farris v. Kattenhorn, et. al.*, Case No. 23-2063.

12. [23-24253](#)-A-7 **IN RE: MICHAEL/CONNIE SCHMALJOHANN**
[BLF-4](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES
ATTORNEY(S)
5-1-2024 [\[40\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/15/24

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$4,080.00

Reimbursement of Expenses: \$110.95

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, Loris L. Bakken, attorney for the trustee, has applied for an allowance of first and final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,080.00 and reimbursement of expenses in the amount of \$110.95.

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.

Loris L. Bakken'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 \$4,080.00 and reimbursement of expenses in the amount of \$110.95.

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.

13. [22-22772](#)-A-7 **IN RE: YURIY SVITYASHCHUK**
[RLS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-2-2024 [\[65\]](#)

MARK SHMORGON/ATTY. FOR DBT.
JOHN BOLLIER/ATTY. FOR MV.
SERHII IVANOV VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Serhii Ivanov seeks an order for relief from the automatic stay of 11 U.S.C. § 362 (a). For the following reason the motion will be denied without prejudice.

SERVICE

The court is unable to determine if the objection and supporting papers were served properly on the debtors or any other parties in interest. A certificate of service has not been filed with this motion as required. LBR 9014-1(e).

Accordingly, the motion will be denied without prejudice.

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)).

Notice

- (i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.
- (ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
- (iii) The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.
- (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(B).

The notice of motion in this case fails to comply with LBR 9014-1(B) (i), (ii), and (iii). The notice states in its entirety:

PLEASE TAKE NOTICE that on June 3, 2024 (sic) at 10:30 a.m. or as soon thereafter as the matter may be heard in Department A of the above-entitled court, located at Robert T. Matsui U.S. Courthouse 501 I Street, Sacramento, CA 95814. Creditor Serhii Ivanov will move the court for an order under 11 U.S.C. §§ 362(d)(1) to modify the automatic stay.

Notice of Motion, ECF No. 68.

The notice fails to clearly state whether written opposition to the motion is required, advise respondents how the motion may be opposed. The notice also fails to advise respondents how they can determine whether the matter has been resolved. *Id.*

CIVIL MINUTE ORDER

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

Serhii'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.

14. [24-21788](#)-A-7 **IN RE: NICOLE JACKSON**
[MS-2](#)

MOTION TO DISMISS DUPLICATE CASE
5-16-2024 [\[23\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Chapter 7 Case

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

Disposition: Granted

Order: Prepared by moving party

The debtor seeks an order dismissing the case, contending that the case is a duplicate of a previously filed case. The debtor contends that this case was filed in error.

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).

DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. §

305(a)(1); see, e.g., *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether “cause” exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

On April 26, 2024, the debtor filed a Chapter 7 bankruptcy in the Eastern District of California, *In re Nicole Ayesha Jackson*, Case No. 24-21750, E.D. Cal. Bankr. (2024). That case remains pending and was filed prior to the instant case.

The instant case was filed in error by debtor’s counsel creating a duplicate filing. Accordingly, the court will grant the motion and dismiss the instant case. Counsel for the debtor shall prepare an order dismissing the case in accordance with this ruling.