



**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 12, 2023
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

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

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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. [23-21100](#)-A-7 **IN RE: JOSE PANAMENO MALDONADO AND KELLY SANDIFER**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-2023 [\[14\]](#)

LUONG LECHAU/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
CAPITAL ONE AUTO FINANCE VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Ford Explorer Limited Sport Utility 4D

Cause: Delinquent payment - \$1,653.36; 4 months

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).

Capital One Auto Finance seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The debtors have filed a non-opposition to the motion, ECF No. 20.

STAY RELIEF

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

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Capital One Auto Finance'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 2015 Ford Explorer Limited Sport Utility 4D, 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.

2. [15-29103](#)-A-7 **IN RE: ROCK RIDGE PROPERTIES, INC.**
[GB-2](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS
5-2-2023 [[176](#)]

DENNIS HILL/ATTY. FOR DBT.
VALERY LOUMBER/ATTY. FOR MV.

Final Ruling

The hearing on this matter is continued to July 10, 2023, at 10:30 a.m. If this motion is not withdrawn, the parties are to file a joint status report no later than July 3, 2023.

3. [23-20305](#)-A-7 **IN RE: LAKHWINDER VIRK AND RAJINDER KAUR**
[DCF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-2023 [\[41\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DANIEL FLEMING/ATTY. FOR MV.
BMO HARRIS BANK, N.A. VS.

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

BMO Harris Bank, N.A., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

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.

Certificate of Service Not Dated

The Certificate of Service is not dated. See Certificate of Service, Section 7, ECF No. 47. The court cannot determine when service was made.

Certificate Fails to List Parties Served

The Certificate of Service purports to have served the debtors, the debtors' attorney, the case trustee, and the United States Trustee. See *id.*, Section 5. However, there is no Attachment 6A1 as indicated in the Certificate at Item 6, showing where the parties were served. *Id.*, Section 6.

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 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:

BMO Harris Bank, N.A.'s motion for stay relief 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. [23-21209](#)-A-7 **IN RE: JARED WOODS**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-9-2023 [[13](#)]

AUGUST BULLOCK/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2020 Ford F250

Cause: Delinquent payment - \$4,723.95; 3 months

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).

Ford Motor Credit Company, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The debtors have filed a non-opposition to the motion, ECF No. 23.

STAY RELIEF

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

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

SERVICE

Rule 5 Service

Service of the motion on the debtor and his attorney is required in accordance with Rule 7004, as indicated in the certificate of service filed in this matter, ECF No. 20. However, service on the remaining parties is properly accomplished by first class mail under Fed. R. Civ. P. 5.

The Certificate of Service in this matter should indicate that service is made on the debtor pursuant to Fed. R. Bankr. P. 7004 but also indicate service on the other parties under Rule 5. Thus, Parts 6 and 7 are incorrectly completed as service under Rule 5 is not indicated. Here the certificate only indicates service under Fed. R. Bankr. P. 7004. See Certificate of Service, Section 6, 7, ECF No. 20.

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 2020 Ford F250, 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.

5. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[CAE-1](#)

STATUS CONFERENCE RE: INVOLUNTARY PETITION
8-15-2022 [\[1\]](#)

RICK MORIN/ATTY. FOR DBT.

Final Ruling

This is a status conference. The status conference presently has two hearings scheduled: (1) a monitoring date, June 12, 2023; and (2) the status conference, June 26, 2023. Now before the court is the monitoring date. By way of status report, the parties have signaled that they believe this matter will be ready on June 26, 2023, for scheduling a trial. Joint Status Report 1:23-27, ECF No. 175 ("Debtor specifically requests that the Court set a trial date, in consultation with the parties, at the June 26, 2023, hearing"). This court does not agree that the matter is ready to be set for trial. Significant fact discovery remains unresolved, e.g., see motions to compel and for contempt, DB-5, DB-6. Until the court has confirmed that all discovery is complete the court will not set a trial date. Oral argument for June 26, 2023, at 10:30 a.m. is confirmed. The court will issue a civil minute order.

6. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-1](#)

STATUS CONFERENCE RE: MOTION TO SET TRIAL DATE
10-18-2022 [\[23\]](#)

RICK MORIN/ATTY. FOR DBT.

Final Ruling

This is a motion to set a trial date. That motion presently has two hearings scheduled: (1) a status conference, June 12, 2023; and (2) oral argument, June 26, 2023. Now before the court is the status conference, which was scheduled to confirm that this matter is ready for hearing and resolution on June 26, 2023. By way of status report, the parties have confirmed that this matter is ready for resolution on June 26, 2023, Joint Status Report 1:23-27, ECF No. 175. The record is closed. Order ¶ 2, ECF No. 131. Oral argument for June 26, 2023, at 10:30 a.m. is confirmed. The court will issue a civil minute order.

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

STATUS CONFERENCE RE: MOTION TO APPOINT TRUSTEE
4-3-2023 [\[78\]](#)

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

Final Ruling

This is a motion to appoint a trustee. 11 U.S.C. § 303(g). That motion presently has two hearings scheduled: (1) a status conference, June 12, 2023; and (2) oral argument, June 26, 2023. Now before the court is the status conference, which was scheduled to confirm that this matter is ready for hearing and resolution on June 26, 2023. By way of status report, the parties have confirmed that this matter is ready for resolution on June 26, 2023, Joint Status Report 1:23-27, ECF No. 175. The record is closed. Order ¶ 2, ECF No. 131. Oral argument for June 26, 2023, at 10:30 a.m. is confirmed. The court will issue a civil minute order.

8. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-4](#)

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

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

No Ruling

9. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-5](#)

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

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

Final Ruling

The Richard N. Sauer, Family Limited Partnership has filed a non-opposition to the motion, ECF No. 158. No later than June 26, 2023, the partnership shall turnover all documents responsive to the subpoena, Exh. 1, ECF No. 111. Movant shall prepare and lodge an order consistent with this order; the form of the order shall be approved by Gabriel Liberman.

10. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-6](#)

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

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

No Ruling

11. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[RJM-3](#)

STATUS CONFERENCE RE: MOTION TO AMEND
4-3-2023 [\[73\]](#)

RICK MORIN/ATTY. FOR DBT.

Final Ruling

This is a motion to amend an answer to an involuntary petition. That motion presently has two hearings scheduled: (1) a status conference, June 12, 2023; and (2) oral argument, June 26, 2023. Now before the court is the status conference, which was scheduled to confirm that this matter is ready for hearing and resolution on June 26, 2023. By way of status report, the parties have confirmed that this matter is ready for resolution on June 26, 2023, Joint Status Report 1:23-27, ECF No. 175. The record is closed. Order ¶ 2, ECF No. 131. Oral argument for June 26, 2023, at 10:30 a.m. is confirmed. The court will issue a civil minute order.

12. [22-22949](#)-A-7 **IN RE: ZOE BURTON-ROSAL**
[DNL-2](#)

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

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

Tentative Ruling

Objection: Objection to Claim of Exemptions

Notice: Continued from May 1, 2023

Disposition: Sustained

Order: Civil minute order

Petition Filed: November 14, 2022

Chapter 7 trustee, J. Michael Hopper, objects to the debtor's claim of exemption in real property located at 432 Parker Drive, Folsom, California.

At the prior hearing on this matter the parties indicated that the minimum amount which could be exempted under the statute would have increased annually. On April 3, 2023, the court ordered the parties to file additional briefing regarding: the suggested increase in the homestead exemption based on the Consumer Price Index (CPI) and inflation. Order, ECF No. 52. The inflated exemption amount under C.C.P. § 704.730 is the sole issue before the court.

FACTS

On November 14, 2022, the debtor filed a Chapter 7 bankruptcy. In the bankruptcy schedules the debtor listed her interests in two parcels of real property each of which were purchased prior to the filing of the case.

Addison Property

The debtor purchased the real property located at 577 Addison Court, Folsom, California, on May 12, 2015, over 7 years prior to the filing of the bankruptcy petition. The Addison property was the debtor's personal residence until September 9, 2022. Declaration of Zoe Burton-Rosal, 2:1-2, ECF No. 36.

Parker Property

On September 9, 2022, the debtor borrowed money secured by a second deed of trust in the Addison property. The amount borrowed was \$140,000, and resulted in net funds of \$135,149.43 to the debtor. See Final Closing Statement, Exhibit 1, ECF No. 37.

Also on September 9, 2022, the debtor used the \$135,149.43 in funds from the Addison property second mortgage to purchase the Parker property. See Final Closing Statement, Exhibit 2, *id.*

On September 9, 2022, the debtor purchased and then moved into the property located at 432 Parker Drive, Folsom, California. This was approximately 66 days prior to the filing of the petition. The Parker property was the debtor's residence on the date the petition was filed. *Id.*, 2:2-3. The debtor has claimed an exemption in the Parker property in the amount of \$508,500.00 under C.C.P. § 704.730. See Schedule C, ECF No. 1.

The Chapter 7 trustee objects to the debtor's claim of exemption in the Parker property contending that the debtor is limited to an exemption of \$189,050.00 under 11 U.S.C. § 522(p)(1)(D).

The debtor contends that she qualifies for the exception to the exemption limitations of § 522(p)(1)(D) pursuant to 11 U.S.C. § 522(p)(2)(B). The debtor contends that the transfer of the \$135,149.43 interest from Addison entitles her to claim the equity in the Parker property as exempt under the California exemption statute.

ISSUE

What amount of exemption in the Parker property, if any, has the debtor proven she is entitled to claim?

BURDEN OF PROOF

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

DISCUSSION

Section 522(p)(1)(A)

Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$189,050 [originally "\$125,000", adjusted effective April 1, 2022] in value in--

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

11 U.S.C. § 522(p) (1) (A) (emphasis added) .

It is undisputed that the debtor has not resided in the Parker property longer than 1215 days. The trustee does not appear to dispute the debtor's residence in the Parker property on the date the petition was filed. Thus, under this section the debtor may only claim \$189,050 exempt in the Parker property.

Section 522(p) (2) (B)

For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

11 U.S.C. § 522(p) (2) (B) .

It is undisputed that both properties are located in the same state, they are located in the same city. It is also undisputed that the debtor acquired her interest in the Addison property more than 1215 days prior to the filing of the bankruptcy petition.

The court applies the analysis in *In re Summers*, 344 B.R. 108 (Bankr. Ariz. 2006) in determining the appropriate amount of exemption under 11 U.S.C. § 522(p) (1), (2) as follows.

Under 11 U.S.C. § 522(p) (2) (B) the debtor may claim the \$135,149.43 transferred from the Addison property in addition to the \$189,050 allowed under § 522(p) (1) (A) . The aggregate amount is \$324,199.43.

In his reply the trustee contends that the debtor may not claim the \$135,149.43, transferred from the Addison property to the Parker property because the transferred funds did not result from a sale of the Addison property, but rather the further encumbrance of the Addison property by the debtor. The court is unaware of any 9 Circuit authority requiring that the transfer of funds from one property to another be accomplished by the sale of the first property.

C.C.P. § 704.730

- (a) The amount of the homestead exemption is the greater of the following: (1) *The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption*, not to exceed six hundred thousand dollars (\$600,000). (2) Three hundred thousand dollars (\$300,000) .
- (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual *California Consumer Price Index for All*

*Urban Consumers for the prior fiscal year,
published by the Department of Industrial
Relations.*

Cal. Civ. Proc. Code § 704.730 (emphasis added).

Under this section the debtor is limited to an exemption of \$300,000.00 unless she proves the median sales price of a single-family home in Sacramento County was greater than \$300,000 during 2021.

The debtor argues that the amount allowed under C.C.P. § 704.730 must be adjusted for inflation. Thus, \$300,000.00 is not the proper amount. As the case was filed November 14, 2022, the statute provides the exemption amount is adjusted beginning January 1, 2022.

ADJUSTMENT FOR INFLATION

To properly calculate the required adjustment for inflation the court must use the data from the Consumer Price Index for All Urban Consumers for the prior fiscal year, as published by the Department of Industrial Relations. C.C.P. § 704.730(b).

Definition of Fiscal Year

The California Code of Civil Procedure does not define the term "fiscal year" for purposes of section 704.730(b). As a result, the Legislature has not explicitly addressed this statutory interpretation issue.

The trustee contends and the court agrees that the phrase "fiscal year" is ambiguous because, a "fiscal year" is reasonably susceptible to multiple interpretations. Supplemental Brief, ECF No. 54.

Fiscal Year Means July 1 through June 30

The trustee contends "Fiscal year" means the period that begins on July 1 and ends on the following June 30, because:

1) California Government Code Section 970, adopted in 1980, defines the term "[f]iscal year" as a "year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity." Cal. Gov. Code § 970; 2) California Harbor and Navigation Code Section 6843, adopted in 1937, provides that "[t]he fiscal year of a district shall begin on the first day of July of each year and shall end on the thirtieth day of June of the following year." Harb. & Nav. Code, § 6843; 3) California Finance Code, adopted in 1980, provides that "[t]he corporation shall adopt as its fiscal year the period from July 1st to and including the following June 30th." Cal. Fin. Code § 32401.

Supplemental Brief, 5:19-27, ECF No. 54.

The debtor also contends that the California fiscal year begins on July 1 of each year. Debtor's Supplemental Opposition, 2:14-15, ECF No. 59.

The court agrees with the parties and finds that pursuant to Cal. Gov. Code § 970 the fiscal year runs from July 1 through June 30 of each year.

California Consumer Price Index for All Urban Consumers

The parties have each used, and provided as evidence, the same index of data in calculating the inflation adjustment to \$ 704.730. As required by the statute the source is the California Department of Industrial Relations: <http://www.dir.ca.gov/OPRL> CALIFORNIA CONSUMER PRICE INDEX (1955-2023). See Trustee's Exhibit B, ECF No. 55, and Debtor's Exhibit B, ECF No. 61.

However, the parties' calculations differ. The trustee contends the proper amount, adjusted for inflation, equals \$311,584.63. Conversely, the debtor contends that the proper amount, adjusted for inflation, equals \$313,200.00, a difference of \$1,615.37.

Using the index provided the trustee measures the difference between the month of August 2020 and June 2021 in calculating the increased percentage. The reason the trustee uses August 2020, instead of July, is that the index only provides data for even numbered months. Thus, there is no data provided for the month of July 2020.

Conversely, the debtor used data from the months of June 2020 and June 2021, which accounts for the higher adjustment.

The statute requires that the calculation be made based upon the prior fiscal year, which implies a period of twelve months. And the parties have agreed the proper fiscal year period in this case is from July 1, 2020, through June 30, 2021. The debtor's thirteen-month calculation exceeds the statutory requirement of one year. Moreover, the debtor has proffered no argument which supports using data spanning an increased period of thirteen months. As the court has previously discussed it is the debtor's burden to prove the amount of the exemption to which she is entitled.

The court finds that the debtor's claim of exemption in the Parker property exceeds the amount allowed under C.C.P. § 704.730. The debtor's exemption is allowed in the amount of \$311,584.63.

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 trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemption claimed under Cal. Civ. Proc. Code § 704.730 will be disallowed to the extent it exceeds \$311,584.63.

13. [23-20650](#)-A-7 **IN RE: HENRY TOWNSEND**

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-18-2023 [\[28\]](#)

AMJAD DAWOUD VS.

Final Ruling

Motion: Motion for Relief from the Automatic Stay

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

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE AND NOTICE

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

B) 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), (iii). The notice fails to state whether written opposition to the motion is required, or 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. Notice of Motion, ECF No. 28.

Service

The movant filed three certificates regarding the service of this motion. The first is attached to the notice of the motion, ECF No. 28. This contravenes LBR 9004-2(c)(1) which requires the certificate to be filed as a separate document.

The movant also filed two additional certificates of service utilizing EDC Form 7-005. See Certificate of Service, ECF Nos. 31, 32. While the certificates indicate that the debtor and the Chapter 7 trustee were served with the motion, neither of the certificates includes an attachment indicating the address where the moving papers were served. Thus, the court cannot determine if the parties were properly served as required under Fed. R. Bankr. P. 7004(b), 9013, 9014.

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:

Amjad Dawould's motion has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

14. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DNL-5](#)

MOTION TO APPROVE INTRA-ESTATE AGREEMENT
5-15-2023 [\[139\]](#)

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

Final Ruling

Motion: Approve Intra Estate Settlement

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

Disposition: Granted

Order: Civil minute order

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

Geoffrey Richards, the duly appointed Chapter 7 trustee in the instant case (AMD) seeks the court's approval of an intra estate agreement between he and Kimberly Husted the duly appointed trustee in *In re Rocco Pietro Digiovanni, III*, Case No. 22-23020-A-7, E.D. Cal. (2022), (RPD).

PROPOSED INTRA ESTATE AGREEMENT

The intra estate agreement is filed concurrently with the motion as Exhibit A, ECF No. 141.

Facts

RPD was the controlling shareholder who executed the petition that commenced the instant AMD Case. In his schedules, RPD identified claims aggregating about \$105,000 for funds "put into" AMD pre-petition.

Trustee Richards and Trustee Husted have: (a) identified pre-petition transfers of funds to Fordham University for the benefit of an adult child of RPD that may be avoidable under applicable bankruptcy and non-bankruptcy law (collectively "Fordham Transfers"); and (b) determined that AMD may have been the ultimate source of some of the funds used by RPD to make avoidable transfers (collectively "Transfer Avoidance Claims"), including the Fordham Transfers. Motion, 3:7-12, ECF No. 139.

Absent a potential net recovery on the Transfer Avoidance Claims, Trustee Husted does not anticipate administration of non-exempt property will produce a net return to unsecured creditors of the RPD estate. *Id.*, 3:21-23.

Summary of Intra Estate Agreement

Releases. The RPD and AMD estates will exchange broad releases, to include all proof of claim that have been filed or could be filed against one another. The releases will only inure to the benefit of the estates; and not to respective downstream transferees and insiders.

Administration of Transfer Avoidance Claims. All rights of the RPD bankruptcy estate in and to the Transfer Avoidance Claims, including those based on the Fordham Transfers, shall be deemed irrevocably assigned to the AMD estate. Trustee Richards shall have exclusive control over the Transfer Avoidance Claims, including prosecution, settlement, and abandonment (if advisable to do so), subject to approval of the Bankruptcy Court in the AMD Case.

Distribution of Proceeds. The recovery, if any, on account of the Transfer Avoidance Claims shall be distributed: (a) first to the attorney fees and costs allowed Trustee Richards' counsel for prosecution of the Transfer Avoidance claims; and (b) second, the balance, 50% to Trustee Husted for the benefit of the RPD Case estate and 50% to Trustee Richards for the benefit of the AMD Case estate. The AMD Case estate and RPD Case estate shall pay all other administrative expenses from their respective shares of the recovery, including the compensation allowed the trustees and their other professionals.

Id., 4:1-15.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the intra estate settlement agreement filed

concurrently with the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The intra estate compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Geoffrey Richard's motion to approve an intra estate settlement agreement has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the intra estate settlement that is reflected in the intra estate agreement filed concurrently with the motion as Exhibit A and filed at docket no. 141.