

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

**DAY: TUESDAY**  
**DATE: JUNE 21, 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-3](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.  
5-17-2022    [\[30\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 925 Douglas Road., Stockton, California

**Judicial Lien Avoided:** \$6,087.91 - Citibank, N.A.

**All Other Liens:**

- Deed of Trust, UMW \$237,687.00

- Judgment Lien C.A.T. Exteriors, Inc. \$25,225.60

**Exemption:** \$300,000.00

**Value of Property:** \$332,600.00

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

The debtor seeks an order avoiding the judicial lien of Citibank, N.A. 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).

## 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 liens against the subject real property, listed in the reverse order of their priority are: (i) Citibank, N.A., and (ii) C.A.T. Exteriors, Inc. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$300,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent’s lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$563,912.60. The value of the property is \$332,600.00. The respondent’s judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property’s value by an amount greater than or equal to the judicial lien. As a result, the respondent’s judicial lien will be avoided entirely.

2. [22-20406](#)-A-7     **IN RE: FAYE ROQUE**  
[JCK-4](#)

MOTION TO AVOID LIEN OF C.A.T. EXTERIORS, INC.  
5-17-2022    [\[35\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.

### Final Ruling

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 925 Douglas Road., Stockton, California

**Judicial Lien Avoided:** \$25,225.60 - C.A.T. Exteriors, Inc.

**All Other Liens:**

- Deed of Trust, UMW \$237,687.00

**Exemption:** \$300,000.00

**Value of Property:** \$332,600.00

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

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order avoiding the judicial lien of C.A.T. Exteriors, Inc. 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).

#### **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 liens against the subject real property, listed in the reverse order of their priority are: (i) Citibank, N.A., and (ii) C.A.T. Exteriors, Inc. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$300,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$537,687.00. The value of the property is \$332,600.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

3. [22-21115](#)-A-7     **IN RE: JANICE/DAVID LACROIX**

AMENDED NOTICE OF INTENT TO DISMISS CASE IF DOCUMENTS ARE  
NOT TIMELY FILED  
5-5-2022    [8]

**No Ruling**

4. [22-21115](#)-A-7     **IN RE: JANICE/DAVID LACROIX**  
[DNL-3](#)

MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY  
6-7-2022    [58]

J. CUNNINGHAM/ATTY. FOR MV.

**Tentative Ruling**

**Application:** Approval of Employment

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

**Disposition:** Approved

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

Unopposed applications 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).

Chapter 7 trustee Geoffrey Richards seeks an order approving his employment of Desmond, Nolan, Livaich, and Cunningham as general counsel pursuant to an hourly fee agreement.

The court may approve employment of professional persons who “do not hold or represent an interest adverse to the estate, and that are disinterested persons.” 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining “disinterested person”). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: “Nothing contained herein shall be construed to approve any provision of any agreement between [professional’s name] and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision.” The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

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

MOTION TO AVOID LIEN OF CATHERINE TIEN AKA CATIE TIEN  
5-23-2022    [[51](#)]

WILLARD FIELDS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

6. [22-20526](#)-A-7     **IN RE: KENNETH THOMAS**  
[WRF-4](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK  
5-23-2022    [[45](#)]

WILLARD FIELDS/ATTY. FOR DBT.

**No Ruling**

7. [22-20526](#)-A-7     **IN RE: KENNETH THOMAS**  
[WRF-6](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.  
5-23-2022    [[57](#)]

WILLARD FIELDS/ATTY. FOR DBT.

**No Ruling**

8. [19-26031](#)-A-7     **IN RE: LUTHER ESPINOSA IPIALES AND ERIKA**  
    ESPINOSA  
    [MSN-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.  
5-13-2022    [\[28\]](#)

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

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 10601 Sandberg Lane, Stockton, California

**Judicial Lien Avoided:** \$3,393.97 Citibank, N.A.

**All Other Liens:**

- Deed of Trust \$324,383.00 Pennymac Loan Services

- Consensual Lien \$4,774.00 - Castle Credit Co. Holding, LLC

**Exemption:** \$100,000.00

**Value of Property:** \$419,908.00

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

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

**LIEN AVOIDANCE**

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

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

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

9. [19-26964](#)-A-7     **IN RE: LYNN HARRINGTON**  
[DNL-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S  
ATTORNEY(S)  
5-17-2022    [\[85\]](#)

KAREN PINE/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTORS DISCHARGED: 03/02/2020

### **Tentative 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:** \$9,923.93

**Expenses:** \$76.07

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, The Law Office of Desmond, Nolan, Livaich & Cunningham, 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 \$9,923.93 (which represents a reduction in fees earned) and reimbursement of expenses in the amount of \$76.07. To preserve funds for distribution to creditors counsel has agreed to a "capped" amount of \$10,000.00 for the combined compensation and expenses.

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.

The Law Office of Desmond, Nolan, Livaich & Cunningham'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 \$9,923.93 and reimbursement of expenses in the amount of \$76.07.

10. [22-20175](#)-A-7 **IN RE: DARRIN/KRISTINA DEMELLO**  
[DRE-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER  
13  
4-18-2022 [[19](#)]

D. ENSMINGER/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Notice:** Continued from May 23, 2022

**Disposition:** Denied without prejudice

**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).

The hearing on the debtors' motion to convert case was continued from May 23, 2022, to allow the debtors to augment the record.

## **CONVERSION UNDER § 706(a)**

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtors' schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

The prior ruling in this case ordered the debtors to augment the record to include proof, if any, that a chapter 13 plan would be feasible. The debtors' previous Schedules I and J showed that the debtors had negative net income each month in the amount of (\$996.43). On June 2, 2022, the debtors filed Amended Schedules I and J. However, the debtors' Amended Schedules I and J show the debtors' net monthly income to be (\$1,411.66). See ECF No. 28. Without any evidence of changed circumstances, the court is unable to find that the debtors can propose a plan which is feasible under 11 U.S.C. § 1325(a)(6).

Nothing in this ruling precludes the United States Trustee from pursuing a motion to dismiss under 11 U.S.C. § 707(b)(1), (3). Pursuant to a stipulation signed by the debtors and the United States Trustee the court ordered the deadline for the United States Trustee to pursue such a motion until July 1, 2022. See Order, ECF No. 25.

The court will deny the motion to convert to chapter 13 without prejudice.

## **CIVIL MINUTE ORDER**

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

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

The debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

11. [21-22096](#)-A-7    **IN RE: KANI JAHNKE**  
[DEF-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
4-5-2022    [\[40\]](#)

DAVID FOYIL/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**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).

The debtor seeks an order converting this case to chapter 13.

**CONVERSION UNDER § 706(a)**

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

**CIVIL MINUTE ORDER**

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

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

The debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion,

oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

12. [21-22898](#)-A-7 **IN RE: HEATH V. FULKERSON LLC**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-12-2022 [[118](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.  
MICHAEL BROOKS/ATTY. FOR MV.  
SIERRA PACIFIC FEDERAL CREDIT UNION VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **SERVICE**

#### Rule 7004

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).

#### Rule 9036

(b) Notices from and service by the court

(1) Registered users

The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system.

(2) All recipients

For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code.

(c) Notices from and service by an entity  
An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b) (2) (A) and (B).

(d) Completing notice or service  
Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk.

(e) *Inapplicability*

*This rule does not apply to any paper required to be served in accordance with Rule 7004.*

Fed. R. Bankr. P. 9036 (emphasis added).

Here, service of the motion was insufficient as it does not indicate the names of any of the parties which were served, nor were the parties served as required under Rule 7004. The proof of service does not comply with LBR 9014-1. The proof of service is attached to the notice of hearing, ECF No. 119, and provides parties were served as follows.

I hereby certify that I am an employee of Hutchison & Steffen, PLLC and that I caused a copy of the NOTICE OF HEARING ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY to be served by electronic service pursuant to *Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada*. The above referenced document was electronically filed on the date hereof and served through Notice of Electronic Filing automatically generated by that Court's facilities.

Id., 3:2-8 (emphasis added).

It appears that the movant believes service of the motion was accomplished under Rule 9036. However, Rule 9036 service is not applicable in this matter as service is required in accordance with Rule 7004. See Fed. R. Bankr. P. 9036(e).

On May 12, 2022, the movant filed two amended notices of the hearing, ECF Nos. 126 and 127. Each of the certificates of

service attached to the amended notices suffers from the same deficiencies as previously discussed by the court.

The court will deny the motion without prejudice.

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

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service. In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

**PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT**

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

In this case, the movant has attached the proof of service to the various pleadings in this motion. The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3). In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

**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.

IT IS ORDERED that the motion is denied without prejudice.