



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

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

**DAY: MONDAY**  
**DATE: JULY 15, 2024**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be 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

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [24-21011](#)-A-7     **IN RE: SCOTT HORN**  
[NBL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-17-2024    [\[30\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
NICHOLAS LAZZARINI/ATTY. FOR MV.  
DEERE & COMPANY VS.

### **Final Ruling**

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

Deere & Company 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 Fails to Include List of Parties Served

The Certificate of Service purports to have served the debtor, the debtor's attorney, the case trustee, and the United States Trustee. Certificate of Service, Section 5, ECF No. 35. 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:

Deere & Company'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.

2. [24-21918](#)-A-7     **IN RE: AMALIA EVANGELISTA**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-13-2024    [\[16\]](#)

FRED IHEJIRIKA/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
NISSAN MOTOR ACCEPTANCE COMPANY LLC VS.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 2023 Infiniti QX55

**Lessor:** Nissan Motor Acceptance Company, LLC

#### **Statement of Intention**

**(11 U.S.C. § 365(d)(1), (p)(1)-(2)-Performance):**

-Lease listed in the Statement of Intention: yes

-Stated Intention: reject

Deadline for Performance (60 days after order for relief): June 17, 2024

#### **Chapter 7 trustee's motion**

**(11 U.S.C. § 362(h)(2)-Retain Stay):**

-Chapter 7 trustee filed motion (consequential value or benefit): no

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

## DEFAULT OF RESPONDENT

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

## STAY RELIEF

Filing a Chapter 7 petition imposes the stay, protecting the debtor, the debtor's property and property of the estate. 11 U.S.C. § 362(a). The stay terminates: (1) when the case has run its course, i.e., as to the debtor, when debtor is granted or denied a discharge and as to the estate, when the property leaves the estate, 11 U.S.C. § 362(c); (2) by order of the court after noticed motion, 11 U.S.C. § 362(d); or (3) by operation of law, see e.g., § 362(c)(3), (4). Among the operative provisions of law that lift the stay as § 362(h). That subdivision provides:

**(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)–**

**(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and**

**(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.**

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's

interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 362(h) (emphasis added).

In the pertinent part, § 365 provides:

**In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.**

...

**(p) (1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.**

(2) (A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a) (2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

11 U.S.C. § 365(d) (1), (9) (1)-(2) (emphasis added).

As described in subdivision (p) (2) assumption by the debtor is a three-step process: (1) notifying the lessor in writing that the debtor wishes to assume the lease; (2) the lessor's notification of the debtor of its willingness to assume the lease, including conditioning assumption on any cure; and (3) within 30 days of creditors demand for cure, the debtor's written notification of its acceptance. 11 U.S.C. §

365(p)(2); *In re Bailly*, 522 B.R. 711, 713-14 (Bankr. M.D. Fla. 2014). If the debtor completes the process, the lease is deemed assumed by the debtor, and not by the estate. 11 U.S.C. § 365(d)(2)(B).

Failure to file the Statement of Intent in a timely manner or to specify the treatment of that secured debt or to perform the Statement of Intention terminates the stay as to the property. *In re Jones*, 591 F.3d 308, 311 (4th Cir. 2010); *In re Dumont*, 581 F.3d 1104, 1110 (9th Cir. 2009).

Here, the debtor timely filed a Statement of Intention with respect to leased personal property. The statement indicated the debtor's desire to reject the lease.

More than 60 days have passed since the filing of the petition. The Chapter 7 trustee has not assumed the lease and there is no indication in the record that the debtor has assumed the lease. As a consequence, the stay has already lifted, and the property is no longer property of the estate. 11 U.S.C. § 362(h)(1). The motion will be denied as moot.

#### **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.

Nissan Motor Acceptance 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 denied as moot with respect to the property of the debtor described in the motion, commonly known as a 2023 Infiniti QX55.

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.



3. [24-21620](#)-A-7     **IN RE: CAMERON SMITH**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-7-2024     [\[19\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
MERCEDES-BENZ VEHICLE TRUST VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 2023 Mercedes Benz GLC 300W4

**Lessor:** Mercedes Benz Vehicle Trust

#### **Statement of Intention**

**(11 U.S.C. § 365(d)(1), (p)(1)-(2)-Performance):**

-Lease listed in the Statement of Intention: yes

-Stated Intention: reject

Deadline for Performance (60 days after order for relief): June 17, 2024

#### **Chapter 7 trustee's motion**

**(11 U.S.C. § 362(h)(2)-Retain Stay):**

-Chapter 7 trustee filed motion (consequential value or benefit): no

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

### **DEFAULT OF RESPONDENT**

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

### **STAY RELIEF**

Filing a Chapter 7 petition imposes the stay, protecting the debtor, the debtor's property and property of the estate. 11 U.S.C. § 362(a). The stay terminates: (1) when the case has run its course, i.e., as to the debtor, when debtor is granted or denied a discharge and as to the estate, when the property leaves the estate, 11 U.S.C. § 362(c); (2) by order of the court after noticed motion, 11 U.S.C. § 362(d); or (3) by operation of law, see e.g., § 362(c)(3), (4).

Among the operative provisions of law that lift the stay as § 362(h). That subdivision provides:

**(h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a) (2)–**

**(A) to file timely any statement of intention required under section 521(a) (2)** with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

**(B) to take timely the action specified in such statement,** as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a) (2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 362(h) (emphasis added).

In the pertinent part, § 365 provides:

**In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.**

...

**(p) (1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.**

(2) (A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

11 U.S.C. § 365(d)(1), (9)(1)-(2) (emphasis added).

As described in subdivision (p)(2) assumption by the debtor is a three-step process: (1) notifying the lessor in writing that the debtor wishes to assume the lease; (2) the lessor's notification of the debtor of its willingness to assume the lease, including conditioning assumption on any cure; and (3) within 30 days of creditors demand for cure, the debtor's written notification of its acceptance. 11 U.S.C. § 365(p)(2); *In re Bailly*, 522 B.R. 711, 713-14 (Bankr. M.D. Fla. 2014). If the debtor completes the process, the lease is deemed assumed by the debtor, and not by the estate. 11 U.S.C. § 365(d)(2)(B).

Failure to file the Statement of Intent in a timely manner or to specify the treatment of that secured debt or to perform the Statement of Intention terminates the stay as to the property. *In re Jones*, 591 F.3d 308, 311 (4th Cir. 2010); *In re Dumont*, 581 F.3d 1104, 1110 (9th Cir. 2009).

Here, the debtor timely filed a Statement of Intention with respect to leased personal property. The statement indicated the debtor's desire to reject the lease and the debtor has voluntarily surrendered the subject property to the lessor.

More than 60 days have passed since the filing of the petition. The Chapter 7 trustee has not assumed the lease and there is no indication in the record that the debtor has assumed the lease. As a consequence, the stay has already lifted, and the property is no

longer property of the estate. 11 U.S.C. § 362(h)(1). The motion will be denied as moot.

#### **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.

Mercedes Benz Vehicle Trust'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 denied as moot with respect to the property of the debtor described in the motion, commonly known as a 2023 Mercedes Benz GLC 300W4.

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.

4. [24-22526](#)-A-7      **IN RE: CYNTHIA JIMINEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-24-2024    [\[20\]](#)

6/24/2024 FILING FEE PAID \$338

#### **Final Ruling**

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

5. [22-20862](#)-A-7     **IN RE: NOEL PETALVER AND MARITES FLORES**  
[DNL-2](#)

MOTION FOR TURNOVER OF PROPERTY  
6-17-2024    [\[93\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTORS DISCHARGED: 02/27/23

### **Final Ruling**

**Motion:** Compel Debtor's Turnover of Property of the Estate

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

**Disposition:** Granted

**Order:** Prepared by movant

**Subject Property:** Aggregate value of \$12,598 in (1) a scheduled 2007 Nissan X-Terra automobile; (2) an unscheduled 2010 Honda Civic automobile; and (3) unscheduled tax refunds for tax year 2021

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).

J. Michael Hopper, Chapter 7 trustee, seeks an order requiring the turnover of the aggregate value of \$12,598 in non-exempt estate property under 11 U.S.C. § 542(a) and Fed. R. Bankr. P. 7001(1).

### **FACTS**

The petition was filed under Chapter 7 on April 6, 2022. On October 4, 2022, the trustee filed a motion to sell assets. Prior to the hearing on the motion the debtors converted the case to Chapter 13 on October 28, 2022. The case was reconverted to Chapter 7 on January 23, 2023.

The debtors initially disclosed the following four vehicles in their schedules: (1) a 2015 Ford GT Mustang automobile, valued at \$13,570.00; (2) a 2015 Lexus RC 350, valued at \$20,718.00; (3) a 2007 Nissan, valued at \$5,337.00; and (4) a 2010 Toyota Prius, valued at \$2,290.00.

The debtors failed to schedule a fifth vehicle, a 2010 Honda, valued at \$5,000-\$6,000. The Chapter 7 trustee discovered the Honda during his investigation of the debtors' assets. The vehicle's value was estimated by West Auction at the trustee's request. Additionally, the debtors failed to disclose the existence of the 2021 Tax Refunds and have not amended their schedules to disclose the amount(s) received in connection with same.

The trustee initially estimated the value of the non-exempt estate assets to be approximately between \$26,775.00 to \$31,875.00. However, during the pendency of the Chapter 13 the value of the assets has diminished and some assets are no longer in the debtors' possession.

Since his reappointment, the Trustee has learned that, while the Debtors' case was pending under Chapter 13, they: (a) sold the Nissan, allegedly for \$500, and consumed the proceeds; (b) received and consumed the Refunds in the amount of \$2,161.00; and (c) the Honda, which remains unscheduled, has been diminished in value and is now estimated to be slightly less than the \$5,000 to \$6,000 originally estimated by West.

Motion, 3:11-15, ECF No. 93.

Accordingly, the trustee has determined that the aggregate value of the Subject Property on the petition date was \$11,748 to \$12,598 and the debtors' consumption of same diminished the available property of the bankruptcy estate by approximately \$12,000 since the trustee first sought to liquidate the vehicles and obtain the tax refunds.

The trustee seeks to recover the value in cash of the Subject Property, as opposed to possession, because the liquidation value of the vehicles has been entirely consumed and otherwise heavily diminished by the debtors' use thereof post-petition. The trustee contends that absent an order directing the debtors to turnover the value of the assets in cash the debtors will have been allowed the benefits of bankruptcy and its protections while bouncing between chapters and using property that should otherwise have been liquidated for the benefit of their creditors.

#### **TURNOVER**

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

#### Section 542(a)

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease

under section 363 of this title, or that the debtor may exempt under section 522 of this title, *shall deliver to the trustee, and account for, such property or the value of such property*, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a) (emphasis added).

Moreover, “§ 542(a) does not require the debtor to have current possession of the property which is subject to turnover.” *In re Newman*, 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

In this case, the trustee has made the requisite showing of the value of the estate’s interest in the property sought by turnover. The court will grant the trustee’s motion and order the debtors to pay the sum of \$12,598 to the trustee. The order shall state that \$12,598 shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

6. [24-22286](#)-A-7     **IN RE: EFREN AMADOR CHACON**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-5-2024    [\[18\]](#)

DANE EXNOWSKI/ATTY. FOR MV.  
WELLS FARGO BANK, N.A. VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 120 B Street, Roseville, California

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).

Wells Fargo Bank, N.A., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The movant contends:

Debtor filed a prior bankruptcy [23-24603] that was dismissed [on trustee’s motion due to failure to attend 341(a) meeting]; Movant obtained relief from stay as to this Property in Debtor’s prior case [23-14603]. Further, on September 16, 2023, Movant’s

records show that Debtor transferred Property via Quit Claim Deed; therefore it appears that Debtor only has possessory interest in the Property [Debtor's schedule A lists both No and Yes as to real property ownership, with reference to a property that in a county that is not legible to Movant]. Thus, Movant submits that cause exists to terminate the stay pursuant to 11 U.S.C. § 362(d)(1).

Motion, 2:1-7, ECF No. 18.

The court notes that the debtor also failed to attend the meeting of creditors in the instant case and that the Chapter 7 trustee has filed a Notice of Trustee's Motion to Dismiss, ECF No. 26.

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 1 post-petition payment(s) due on the debt secured by the moving party's lien. This constitutes cause for stay relief. Additionally, the court notes that pre-petition payments are delinquent in the amount of \$19,208.48 as payments have not been tendered since July 31, 2023.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

Well Fargo Bank, N.A.'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 120 B Street, Roseville, California, 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.

7. [24-22195](#)-A-7     **IN RE: CHRISTA BLACKWELL**  
[DAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2024    [\[20\]](#)

ANH TRINH/ATTY. FOR MV.  
JEFF PLOCHER VS.

### **Final Ruling**

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

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

### **SERVICE AND NOTICE**

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

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

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

LBR 7005-1 (emphasis added).

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

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1 (g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 25. The motion will be denied without prejudice.

**CIVIL MINUTE ORDER**

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

Jeff Plocher'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.

8. [24-22835](#)-A-7     **IN RE: VLADIMIR/NATALIE IMMEL**  
[MS-1](#)

MOTION TO COMPEL ABANDONMENT  
7-1-2024    [\[10\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Continued to September 9, 2024, at 10:30 a.m.  
**Order:** Civil minute order

**Petition Date:** June 28, 2024  
**Meeting of Creditors:** August 5, 2024

**Subject:** 2700 El Prado Way Sacramento, California

The debtor seeks an order compelling the trustee's abandonment of the estate's interest in the subject property.

The motion is premature. The case was filed on June 28, 2024, and the meeting of creditors will not take place until August 5, 2024. As such the Chapter 7 trustee has not had an opportunity to examine the debtors, evaluate assets, or object to the debtors' claim of exemptions.

Accordingly, the court will continue the hearing on this matter to allow the examination of the debtors at the meeting of creditor and for the trustee and creditors to file opposition, if any, to the motion or to object to the debtor's claim of exemptions.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to September 9, 2024, at 10:30 a.m.

IT IS FURTHER ORDERED that no later than August 26, 2024, the Chapter 7 trustee and any interested party may file and serve opposition, if any, to the motion. The court may rule on this matter without further hearing.