

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

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

DAY: MONDAY
DATE: JULY 18, 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. [19-27507](#)-A-7 **IN RE: KENNETH/LIELANIE STEERS**
[HSM-19](#)

CONTINUED OBJECTION TO CLAIM OF AMERISOURCE FUNDING, INC.,
CLAIM NUMBER 13
4-18-2022 [\[260\]](#)

WALTER DAHL/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.
DEBTORS DISCHARGED: 04/06/2021
WITHDRAWN BY M.P.

Final Ruling

Motion: Objection to Claim
Notice: Continued from June 8, 2022
Disposition: Withdrawn
Order: Civil minute order

Chapter 7 trustee Geoffrey Richards has filed an objection to the claim of Amerisource Funding, Inc., Claim No. 13. Although the parties executed a stipulation to continue the hearing on this matter, there has been no opposition filed by the responding party. On July 1, 2022, the trustee filed a notice of withdrawal, without prejudice, of his objection. See ECF No. 267.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A).

Here the responding party has not opposed the objection.

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 objection is withdrawn without prejudice.

2. [22-20832](#)-A-7 **IN RE: DANIEL STEWART**
[CLH-1](#)

MOTION FOR ORDER CONFIRMING CHAPTER 7 TRUSTEE STATUS, AND
STATUS OF CONSOLIDATED CASES
6-28-2022 [\[32\]](#)

CHARLES HASTINGS/ATTY. FOR MV.

No Ruling

3. [22-21150](#)-A-7 **IN RE: CLAY TUCKER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-27-2022 [\[30\]](#)

6/28/2022 FILING FEE PAID \$32

Final Ruling

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

4. [22-21150](#)-A-7 **IN RE: CLAY TUCKER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2022 [\[28\]](#)

6/21/2022 FILING FEE PAID \$32

Final Ruling

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

5. [08-38758](#)-A-7 **IN RE: GEORGE/SYLIVIA LANDEROS**
[PGM-5](#)

MOTION TO AVOID LIEN OF GURINDER S. GREWEL, M.D.
6-13-2022 [\[93\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/03/2009

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: 2779 Annette Court, Tracy, California

Judicial Lien Avoided: \$37,160.65 - Gurinder S. Grewal, M.D.
All Other Liens:
- Deed of Trust - \$620,000.00 Countrywide Home Loans
Exemption: \$1.00
Value of Property: \$400,000.00

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 Gurinder S. Grewal, M.D. 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) \$81,000.00 John Husary and Judy Husary; and (ii) \$37,160.65 - Gurinder S. Grewal, M.D. 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 \$1.00 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 \$657,161.65. The value of the property is \$400,000.00. 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.

6. [08-38758](#)-A-7 **IN RE: GEORGE/SYLIVIA LANDEROS**
[PGM-6](#)

MOTION TO AVOID LIEN OF JOHN & JUDY HUSARY
6-13-2022 [\[99\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/03/2009

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: 2779 Annette Court, Tracy, California

Judicial Lien Avoided: \$81,000.00 - John Husary and Judy Husary

All Other Liens:

- Deed of Trust - \$620,000.00 Countrywide Home Loans
- Judicial Lien - \$37,160.65 - Gurinder S. Grewal, M.D.

Exemption: \$1.00

Value of Property: \$400,000.00

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 John Husary and Judy Husary 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) \$81,000.00 John Husary and Judy Husary; and (ii) \$37,160.65 - Gurinder S. Grewal, M.D. 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 \$1.00 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 \$738,161.65. The value of the property is \$400,000.00. 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.

7. [22-21277](#)-A-7 **IN RE: YOUSEF HADDAD**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-8-2022 [\[14\]](#)

MARK WOLFF/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.

DEBTOR NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2019 Chevrolet Corvette

Cause: delinquent installment payments 19 months/\$17,226.35

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.

Movant, Americredit Financial Services, Inc. seeks relief from the automatic stay of 11 U.S.C. § 362(a). The court notes that the debtor has indicated his intention to surrender the vehicle. See Statement Of Intention, ECF No. 6. Moreover, as a courtesy to the court, debtor's counsel filed a non-opposition to the motion. See ECF No. 23.

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

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

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

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

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

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

CIVIL MINUTE ORDER

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

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

Americredit Financial Services, Inc.'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 2019 Chevrolet Corvette, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

8. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON
DRUG AND ALCOHOL ABUSE, INC.
[DNL-5](#)**

MOTION TO EMPLOY TRANZON ASSET STRATEGIES AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-27-2022 [\[54\]](#)

GALEN GENTRY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2015 Lincoln Navigator; 2014 Ford Van; 2013 Ford Van; 2004 GMC Box Truck

Sale Type: Public auction

Auctioneer: Tranzon Asset Strategies

Compensation: 10% of gross sale proceeds; 10% buyer's premium assessed directly to the buyer(s)

Reimbursed Expenses: actual expenses incurred not to exceed \$5,000.00

The chapter 7 trustee, Susan Smith, seeks an order approving the sale of the following vehicles at public auction: 2015 Lincoln Navigator; 2014 Ford Van; 2013 Ford Van; 2004 GMC Box Truck. The trustee further seeks an order approving the employment of Tranzon Asset Strategies as auctioneer and its compensation and expenses as follows: compensation at 10% of the gross sale proceeds/a 10% buyer's premium assessed directly to the buyer(s); and expenses estimated at \$5,000.00.

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).

SECTION 363(b) SALE

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

SECTION 328(a) EMPLOYMENT AND COMPENSATION

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application. The court awards compensation of 10% of the gross sale proceeds; and the 10% buyer's premium to be assessed directly to the buyer(s). The court further approves reimbursement of actual expenses incurred not to exceed \$5,000.00.

9. [21-22898](#)-A-7 **IN RE: HEATH V. FULKERSON LLC**
[MRB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-2022 [\[132\]](#)

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)
Disposition: Denied without prejudice
Order: Civil minute order

Movant, Sierra Pacific Federal Credit Union, seeks relief from the automatic stay of 11 U.S.C § 362(a).

The chapter 7 trustee, Nikki Farris, has filed a non-opposition to the motion. The debtor has not responded to the motion.

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)).

LBR 9014-1(f) (1)

Amount of Notice.

Motions Set on 28 Days' Notice. Unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f) (2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date.

LBR 9014-1(f) (1) (emphasis added).

When fewer than twenty-eight (28) days' notice of a hearing is given, *no party in interest shall be required to file written opposition to the motion.* Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

LBR 9014-1(f) (2) (C) (emphasis added).

In the Eastern District of California notice of a motion for relief from the automatic stay must comply with the notice requirements of either LBR 9014-1(f)(1), or (2). The rule allows a choice of two different notice periods. LBR 9014-1(f)(1) requires 28 days' notice of the motion and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f)(2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f)(1), (2).

The notice which was filed and served in this motion provided as follows.

NOTICE IF (sic) FURTHER GIVEN that if you do not want the court to grant the relief sought in the Motion, or if you want the court to consider your views on the Motion, then *you must file an opposition with the court, and serve a copy on the person making the Motion no later than 14 days preceding the hearing date for the motion.*

Notice, ECF 133, 1:17-20 (emphasis added).

The Notice specifically requires written opposition to be filed and served at least 14 days prior to the hearing on the motion. Thus, the movant elected to proceed under LBR 9014-1(f)(1). However, sufficient notice was not provided under LBR 9014-1(f)(1).

The Notice and Motion were served on June 23, 2022. See Certificate of Service, ECF No. 140. Thus, the movant only provided 25 days' notice of the hearing to responding parties. Therefore, sufficient notice of the motion was not given under LBR 9014-1(f)(1).

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:

Sierra Pacific Federal Credit Union's Motion for Relief from the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.