



**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 24, 2023**  
**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 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

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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. [23-20902](#)-A-7     **IN RE: ROGER ROBERTSON**  
[MOH-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
6-20-2023    [\[15\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 6/29/23

### **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:** 2650 Ludlum Avenue, Palermo, California

**Judicial Lien Avoided:** \$19,470.84; Discover Bank

**All Other Liens:**

- Deed of Trust - \$34,617.11; Rushmore Loan Management

**Exemption:** \$350,000

**Value of Property:** \$200,000

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 Discover Bank 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) Persolve, LLC, in the amount of \$10,732.75, (ii) Discover Bank in the amount of \$19,470.84. 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 \$350,000 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 \$404,087.95. The value of the property is \$200,000. 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. [23-20902](#)-A-7     **IN RE: ROGER ROBERTSON**  
[MOH-2](#)

MOTION TO AVOID LIEN OF PERSOLVE, LLC  
6-20-2023    [\[19\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 6/29/23

### 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:** 2650 Ludlum Avenue, Palermo, California

**Judicial Lien Avoided:** \$10,732.75 - Persolve, LLC

**All Other Liens:**

- Deed of Trust - \$34,617.11; Rushmore Loan Management

- Judicial Lien - \$19,470.84; Discover Bank

**Exemption:** \$350,000

**Value of Property:** \$200,000

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 Persolve, LLC, 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) Persolve, LLC, in the amount of \$10,732.75, (ii) Discover Bank in the amount of \$19,470.84. 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 \$350,000 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 \$414,820.70. The value of the property is \$200,000. 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. [23-21604](#)-A-7     **IN RE: JOSHUA/LACIE BENTON**  
[TLA-1](#)

MOTION TO AVOID LIEN OF ABSOLUTE RESOLUTION INVESTMENTS, LLC  
6-26-2023    [\[14\]](#)

THOMAS AMBERG/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:** 205 Almeria Place, Winters, California

**Judicial Lien Avoided:** Absolute Resolution Investments, LLC;  
\$13,613.06

**All Other Liens:**

- Consensual Lien - Deed of Trust \$371,099.00 Flagstar Bank
- Statutory Lien - \$45,038.00; Solar Mosaic, Inc.

**Exemption:** \$325,000

**Value of Property:** \$575,000

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 Absolute Resolution Investments, LLC, 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.

4. [23-21622](#)-A-7     **IN RE: ARMANDO RUBIO**  
[JM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-22-2023    [\[17\]](#)

ARASTO FARSAD/ATTY. FOR DBT.  
JAMES MACLEOD/ATTY. FOR MV.  
JOHN DEERE CONSTRUCTION & FORESTRY COMPANY VS.; TRUSTEE NON-  
OPPOSITION

**Final Ruling**

**Matter:** Stay Relief

**Disposition:** Denied without prejudice

**Order:** Civil minute order

John Deere Construction & Forestry Company 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. Certificate of Service, ECF No. 22. 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:

John Deere Construction & Forestry 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.

5. [22-21649](#)-A-7     **IN RE: MARY KATTENHORN**  
[BLL-2](#)

MOTION TO COMPEL ABANDONMENT  
6-21-2023    [\[59\]](#)

RICHARD HALL/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 10/11/22; RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(1); written opposition filed by the trustee  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The debtor seeks an order compelling the Chapter 7 trustee's abandonment of real property located at 3905 Cedar Mist Lane, Auburn, California. For the following reasons the motion will be denied without prejudice.



**NOTICE**Rule 6007(a)

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

Fed. R. Bankr. P. 6007(a).

The certificate of service filed in this case does not state that all creditors were served with the motion as required by Rule 6007. See *Certificate of Service*, ECF No. 64, p. 2, item 5. Neither is a matrix attached to the certificate which shows that all parties were served as required under Rule 6007(a).

The court will deny the motion without prejudice as notice was not provided to all creditors as required by Rule 6007(a).

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Compel Abandonment of Property of the Estate 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.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-23-2023    [\[28\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
KEVIN MORSE/ATTY. FOR MV.  
VOLVO FINANCIAL SERVICES VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

### **SPECIAL NOTICE CREDITORS**

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Ally Bank. See ECF No. 9.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 34. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

### **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)).

### Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written

motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(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(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

#### **FAILURE TO PROPERLY LIST CREDITORS SERVED**

Two attachments accompany the certificate of service, ECF No. 34. The first is a "Certificate of Service" and is signed by Belinda D. Lambert. Ms. Lambert states that she caused the documents listed "to be served on the parties listed on the attached service list via the Court's CM/ECF system and/or U.S. Mail, postage prepaid, on June 23, 2023." *Id.* The signature lacks the required language indicating the statement is made under penalty of perjury. Moreover, it is unclear who served the documents in this matter. The certificate is also signed under penalty of perjury by attorney Kevin H. Morse. *Id.*, Section 7. Mr. Morse states that he served the documents in this matter.

The second attachment purports to be a list of individuals served by mail and by email. This attachment is insufficient to support service as follows.

Serving registered users of the electronic filing system requires the use of the Clerk's Electronic Service Matrix applicable to this case, and attaching it to the certificate of service as Attachment 6B1. *Id.*, Section 6B1. The Clerk's Electronic Service Matrix is not attached as required. Counsel is reminded that the clerk's matrix of registered users is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

Alternatively, movant has listed parties and email addresses for service in the attachment, but this is also insufficient as no copy of written consent to service by email has been attached as required.

For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.

LBR 7005-1(b).

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

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.

## **CIVIL MINUTE ORDER**

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

Volvo Financial Services' 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.

7. [23-20951](#)-A-7      **IN RE: COLLEEN BRITTAIN**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-30-2023    [\[15\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RYAN EGAN/ATTY. FOR MV.  
FAIRWAY ESTATES MHC, LP VS.

## **Final Ruling**

**Motion:** Motion for Relief from the Automatic Stay

**Notice:** LBR 9014-1(f) (2); written opposition not required

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Fairway Estates MHC, LP, 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**

"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](http://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) (emphasis added).

The notice of motion in this case fails to comply with LBR 9014-1(B) (i), (ii), and (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. 16.

#### Service

The certificate of service filed in this case is insufficient as it fails to include an attachment indicating the parties (and their addresses) upon which 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.

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

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.

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:

Fairway Estates MHC, LP'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.

8. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-20](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.  
6-13-2023    [\[101\]](#)

GURJIT SRAI/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 7/29/13

### **Final Ruling**

**Matter:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of Capital One Bank, USA, N.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. Certificate of Service, ECF No. 105. 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:

The debtor's motion to avoid the lien of Capital One Bank, USA, N.A. 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.



9. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-21](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE LLC  
6-13-2023    [\[96\]](#)

GURJIT SRAI/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 7/29/13

### **Final Ruling**

**Matter:** Avoid Lien  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of Asset Acceptance, LLC. 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. Certificate of Service, ECF No. 100. 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:

The debtor's motion to avoid the lien of Asset Acceptance, LLC, 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.

10. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-22](#)

MOTION TO AVOID LIEN OF GLOBAL CREDIT ACCEPTANCE CREDIT  
COMPANY, L.P.  
6-13-2023    [[106](#)]

GURJIT SRAI/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 7/29/13

#### **Final Ruling**

**Matter:** Avoid Lien

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of Global Credit Acceptance Company, L.P. 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. Certificate of Service, ECF No. 110. 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:

The debtor's motion to avoid the lien of Global Credit Acceptance Company, L.P., 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.

11. [19-27883](#)-A-7     **IN RE: MIRANDA CASTRO**  
[MS-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
6-20-2023    [\[38\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
STEPHEN REYNOLDS/ATTY. FOR MV.  
DEBTOR DISCHARGED: 4/6/20

### **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 her 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. [23-21986](#)-A-7     **IN RE: MOISEY KELBATYROV**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-30-2023    [[15](#)]

PETER CIANCHETTA/ATTY. FOR DBT.

### **Final Ruling**

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

13. [23-21598](#)-A-7     **IN RE: CHRISTINA PARKS**  
[CJC-103](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2023    [[20](#)]

CALVIN CLEMENTS/ATTY. FOR MV.  
2018-3 IH BORROWER, LP VS.

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 55 Kelso Circle, Sacramento, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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).

2018-3 IH Borrower, LP, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion and supporting declaration indicate that the debtor has failed to make payments pursuant to a lease. While the movant has filed an unlawful detainer proceeding it has not yet obtained a judgment for unlawful detainer.

#### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

2018-3 IH Borrower, LP'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 55 Kelso Circle, Sacramento, California, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.