



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

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

DAY: MONDAY
DATE: AUGUST 7, 2023
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-23305](#)-A-7 **IN RE: LISA/BRIAN WESCOTT**

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-10-2023 [\[42\]](#)

D. ENSMINGER/ATTY. FOR DBT.
PATRICK KANE/ATTY. FOR MV.
M&T BANK VS.
DEBTORS DISCHARGED: 05/22/2023

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2021 Jayco Mesa Ridge 314RLS Fifth Wheel Trailer

Value of Collateral: \$54,840

Aggregate of Liens: \$75,790.89

Discharge: May 22, 2023

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.

M&T Bank seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

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). 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).

As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied as moot as to the debtor.

As to the Estate

"[A]fter notice and a hearing," the court may terminate, annual, 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).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

VIOLATION OF LBR 9014-1(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.

In the future failure to properly assign a docket control number may result in denial of relief or the imposition of sanctions under LBR 1001-1(g).

CIVIL MINUTE ORDER

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

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

M&T Bank'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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2021 Jayco Mesa Ridge 314RLS Fifth Wheel Trailer. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

2. [23-20305](#)-A-7 **IN RE: LAKHWINDER VIRK AND RAJINDER KAUR**
[DCF-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-11-2023 [\[82\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DANIEL FLEMING/ATTY. FOR MV.
DEBTORS DISCHARGED: 07/10/2023
BMO HARRIS BANK N.A. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

BMO Harris Bank, N.A., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

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).

The Notice of Motion states that the motion is brought pursuant to LBR 9014-1(f). See Notice of Motion, 2:10-24, ECF No. 83. The Certificate of Service indicates that the motion was served on July 11, 2023. Certificate of Service, p. 4, ECF No. 87. This provided only 27 days' notice of the hearing. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

BMO Harris Bank, N.A.'s Motion for 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.

3. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[CAE-1](#)

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

RICK MORIN/ATTY. FOR DBT.

No Ruling

4. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-1](#)

CONTINUED MOTION TO SET TRIAL DATE
10-18-2022 [[23](#)]

RICK MORIN/ATTY. FOR DBT.

No Ruling

5. [23-22023](#)-A-7 **IN RE: JOE FURTADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-14-2023 [\[18\]](#)

Final Ruling

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

6. [11-28028](#)-A-7 **IN RE: JAMES/TERRI COOK**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE
OF RUEB STOLLER DANIEL, LLP FOR JENNIFER RETHEMEIER, SPECIAL
COUNSEL(S)
7-7-2023 [\[42\]](#)

JESSICA DORN/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.
DEBTORS DISCHARGED: 07/18/2011

Final Ruling

Matter: (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

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

Disposition: Continued to September 11, 2023, at 10:30 a.m.

Order: Civil minute order

The movant requests approval of a compromise that settles a cause of action for product liability and to approve compensation for special counsel representing the estate in the proceeding. The hearing on the motion will be continued to allow the movant to file and serve documents which evidence the compromise and settlement.

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 11, 2023, at 10:30 a.m. No later than August 22, 2023, the movant shall file and serve documents which evidence the compromise and settlement.

7. [23-21843](#)-A-7 **IN RE: DAVID/JOYCE SANTIAGO**
[DS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-11-2023 [\[12\]](#)

GARY ZILAFF/ATTY. FOR DBT.
DANIEL SINGER/ATTY. FOR MV.
MATRIX FINANCIAL SERVICES CORPORATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Matrix Financial Services Corporation 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, applicant, debtor has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 12 The motion will be denied without prejudice.

Insufficient 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).

The Notice of Motion states that the motion is brought pursuant to LBR 9014-1(f). See Notice of Motion, 2:9-14, ECF No. 13. The Certificate of Service indicates that the motion was served on July 11, 2023. Certificate of Service, ECF No. 12. This provided only 27 days' notice of the hearing. The court will deny the motion without prejudice.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

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

In this case, the movant has attached the proof of service to the motion. In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

Matrix Financial Services Corporation'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.

8. [23-21160](#)-A-7 **IN RE: KIMBERLY DEMUTH**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2023 [\[22\]](#)

SETH HANSON/ATTY. FOR DBT.
DIANA TORRES-BRITO/ATTY. FOR MV.
PRESTIGE FINANCIAL SERVICES VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Kia Optima

Cause: delinquent installment payments 3 months/\$1,266.54

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.

Prestige Financial Services seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) contending that cause exists under § 362(d)(1) for delinquent installment payments. The debtor has filed a Statement of Intention which indicates her intention to surrender the subject vehicle. See Statement of Intention, ECF No. 1.

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 payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing 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.

Prestige Financial Services's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2018 Kia Optima, 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.

9. [23-22182](#)-A-7 **IN RE: BLAKE RICHMOND**
[KR-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-18-2023 [\[17\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.
THE GOLDEN 1 CREDIT UNION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Toyota Prius

Cause: delinquent installment payments 3 months/\$1,470.66

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.

The Golden One Credit Union seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) contending that cause exists under § 362(d)(1) for delinquent installment payments. Non-Opposition to the motion was filed by Chapter 7 trustee, Nikki Farris on July 26, 2023.

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 payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing 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.

The Golden One Credit Union'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 2017 Toyota Prius, 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.

10. [23-21287](#)-A-7 **IN RE: LANIER HINES**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
6-8-2023 [\[14\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. However, the debtor attended the continued meeting of creditors on July 20, 2023, and the trustee concluded the meeting. Accordingly, the court will deny the motion to dismiss.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to September 18, 2023, which is 60 days following the last meeting

of creditors: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

The debtor's objection to the motion states: "Debtor does not object to the Trustee's alternative request that the deadline to object to Debtor's discharge under Bankruptcy Code §523, §707(b), and §727 be extended." Objection, 2:10-11, ECF No. 16. Accordingly, the court will grant the request to extend deadlines.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied as the debtor has attended the meeting of creditors and the trustee has concluded the meeting.

IT IS ALSO ORDERED that the following deadlines shall be extended to September 18, 2023: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

11. [19-20389](#)-A-7 **IN RE: CAROLYN ANGUIANO**
[GMR-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-29-2023 [\[82\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
BARRY SPITZER/ATTY. FOR MV.
DEBTORS DISCHARGED: 04/29/2019

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

2023 Federal Estimated Taxes: \$5,000

The Chapter 7 trustee seeks an order authorizing payment of federal estimated taxes for 2023 in the amount of \$5,000.00. The taxes are due not later than August 15, 2023.

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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 chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows federal taxes of \$5,000.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

12. [23-21991](#)-A-7 **IN RE: BRIAN RIELLA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-2023 [\[11\]](#)

JAMES MOOTZ/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
MECHANICS BANK VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2008 Subaru Outback

Cause: delinquent installment payments 2 months/\$358.77

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.

Mechanics Bank seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee has filed a non-opposition to the motion. The debtor has filed a Statement of Intention which indicates his intention to surrender the subject vehicle. See Statement of Intention, ECF No. 1.

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 payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing 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.

Mechanics Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2008 Subaru Outback, 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.

13. [23-22394](#)-A-7 **IN RE: ELIZABETH/GARY PONCIANO**
[MOH-1](#)

MOTION TO COMPEL ABANDONMENT
7-20-2023 [\[9\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); written opposition filed by creditor
Disposition: Continued to October 2, 2023, at 10:30 a.m.
Order: Civil minute order

The debtors seek an order compelling the Chapter 7 trustee's abandonment of the debtors' sole proprietorship G&B Welding, including its equipment and tools. Creditor, Timothy Gallagher opposes the motion.

The 341 Meeting of Creditors is scheduled to be held on August 23, 2023, at 1:00 p.m. On July 24, 2023, trustee Nikki Farris was removed as the trustee in this case and Geoffrey Richards was appointed. The following documents have not yet been filed by the debtor: Statement of Financial Affairs; Schedules I and J; Summary of Assets and Liabilities. See Notice of Incomplete Filing, ECF No. 7.

ABANDONMENT

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

The court does not have sufficient information to grant the motion. Moreover, the motion is premature. Neither the trustee nor any creditors have had an opportunity to examine the debtor at the meeting of creditors, and the time to object to the debtors' claimed exemptions in assets will not expire until at least September 22, 2023. The court will continue the hearing on this motion to allow the trustee and opposing creditor to examine the debtor and for the time to object to the debtors' exemptions to expire.

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 October 2, 2023, at 10:30 a.m. No later than September 11, 2023, the Chapter 7 trustee shall file and serve a response to the motion indicating his position.

IT IS FURTHER ORDERED that no later than September 11, 2023, opposing creditor Timothy Gallagher, may file and serve additional evidence and argument in this matter.

IT IS FURTHER ORDERED that no later than September 18, 2023, the debtors may file and serve any additional evidence and argument in support of the motion.

14. [23-21699](#)-A-7 **IN RE: DANIEL/JILL GODTLAND**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2023 [\[12\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA LEASE 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: 2021 Toyota Camry

Lessor: Toyota Lease Trust

Petition Filed: May 25, 2023

Statement of Intention

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

-Lease listed in the Statement of Intention: Yes

-Stated Intention: Assume

Deadline for Performance: July 24, 2023

Chapter 7 trustee's motion

(11 U.S.C. § 362(h)(2)-Retain Stay):

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

-Was trustee's motion timely under 11 U.S.C. § 362(h)(2): not applicable

-Result of trustee's motion: not applicable

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.

Toyota Lease Trust seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The movant contends that the debtor has defaulted under the Lease Agreement and Movant's records reflect that Debtor's account is currently past due for the March 1, 2023 through and including June 1, 2023, monthly payments at the rate of \$497.48 per month and Debtor will become due for the sum of \$497.48 again on July 1, 2023. The remaining sums owing under the Contract, including accrued and unpaid charges total \$23,194.97.

The Chapter 7 trustee has filed a non-opposition to the motion.

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. Statement of Intention, ECF No. 1. More than 60 days have passed since the filing of the petition. The Chapter 7 trustee has not assumed the lease and has filed a non-opposition to this motion. Moreover, there is no indication in the record that the debtor has assumed the lease. Consequently, 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.

Toyota Lease 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 2021 Toyota Camry.

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.