

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

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

DAY: MONDAY
DATE: SEPTEMBER 12, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-21407](#)-A-7 **IN RE: PAULINE RAY**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
8-23-2022 [\[24\]](#)

DAVID COLLINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

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

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The chapter 7 trustee requests the case be dismissed as the debtor failed to attend the meeting of creditors on August 9, 2022. The debtor has filed an opposition indicating that her failure to attend the meeting was due to a calendaring error by counsel. See *Opposition*, ECF No. 24.

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 has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

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 60 days after the next continued date of the creditors' meeting: (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.

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 on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for September 20, 2022, at 1:30 p.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (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).

2. [22-21519](#)-A-7 **IN RE: DELONE JOHNSON**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-4-2022 [\[19\]](#)

SHERYL ITH/ATTY. FOR MV.
EXETER FINANCE, LLC VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2011 Kia Optima

Secured Creditor: Exeter Finance

Statement of Intention

(11 U.S.C. § 521(a)(2)(A)-Filing/Declaring):

-Deadline (earlier of 30 days after petition or before meeting of creditors): July 17, 2022

-Filed: Not filed

Chapter 7 trustee's position:

-Chapter 7 trustee filed statement of non-opposition to the motion on August 14, 2022

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

DEFAULT OF RESPONDENT

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

STAY RELIEF

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

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

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

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

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

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

11 U.S.C. § 362(h) (emphasis added).

In the pertinent part, § 521 provides:

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)...

11 U.S.C. § 521(a)(2) (emphasis added).

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 did not timely declare an intention to redeem or reaffirm this secured debt in the Statement of Intention. The Chapter 7 trustee has not retained the stay in the manner specified in § 362(h)(2). As a consequence, the stay has already lifted, and the property is no longer property of the estate. 11 U.S.C. § 362(h)(1). The motion will be denied as moot.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied as moot with respect to the property of the debtor described in the motion, commonly known as a 2011 Kia Optima.

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

3. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-4](#)

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

WILLARD FIELDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 06/08/2022

Final Ruling

Motion: Avoid Judicial Lien

Notice: Continued from June 21, 2022

Disposition: Continued to October 17, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of American Express National Bank under 11 U.S.C. § 522(f). The hearing on this motion was continued from June 21, 2022, to allow the chapter 7 trustee to examine the debtor at the meeting of creditors and for the time to object to the debtor's claimed exemptions to expire.

The chapter 7 trustee has not yet concluded the meeting of creditors. The next meeting of creditors is scheduled on September 9, 2022. The trustee filed a motion to employ a real estate professional for the purposes of marketing and selling the property located at 521 Hawkcrest Circle, Sacramento, California. The Hawkcrest property is the subject of this motion. The court granted the motion authorizing the employment of Paul Boudier of Knowledge Real Estate Group on July 13, 2022. See *Order Authorizing Employment*, ECF No. 106.

The court will continue the hearing on this motion to allow the chapter 7 trustee to complete her examination of the debtor and, if appropriate, to file an objection to the debtor's claim of exemptions.

For the same reasons other motions to avoid judicial liens on the same subject real property are being continued for a further hearing. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the other lien-avoidance motions.

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 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the hearing on this motion the chapter 7 trustee shall file a statement of her position regarding this motion.

4. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-5](#)

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

WILLARD FIELDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 06/08/2022

Final Ruling

Motion: Avoid Judicial Lien

Notice: Continued from June 21, 2022

Disposition: Continued to October 17, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Catherine Tien, a.k.a. Catie Tien under 11 U.S.C. § 522(f). The hearing on this motion was continued from June 21, 2022, to allow the chapter 7 trustee to examine the debtor at the meeting of creditors and for the time to object to the debtor's claimed exemptions to expire.

The chapter 7 trustee has not yet concluded the meeting of creditors. The next meeting of creditors is scheduled on September 9, 2022. The trustee filed a motion to employ a real estate professional for the purposes of marketing and selling the property located at 521 Hawkcrest Circle, Sacramento, California. The Hawkcrest property is the subject of this motion. The court granted the motion authorizing the employment of Paul Boudier of Knowledge

Real Estate Group on July 13, 2022. See *Order Authorizing Employment*, ECF No. 106.

The court will continue the hearing on this motion to allow the chapter 7 trustee to complete her examination of the debtor and, if appropriate, to file an objection to the debtor's claim of exemptions.

For the same reasons other motions to avoid judicial liens on the same subject real property are being continued for a further hearing. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the other lien-avoidance motions.

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 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the hearing on this motion the chapter 7 trustee shall file a statement of her position regarding this motion.

5. [22-20526](#)-A-7 **IN RE: KENNETH THOMAS**
[WRF-6](#)

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

WILLARD FIELDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 06/08/2022

Final Ruling

Motion: Avoid Judicial Lien

Notice: Continued from June 21, 2022

Disposition: Continued to October 17, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Wells Fargo Bank, N.A. under 11 U.S.C. § 522(f). The hearing on this motion was continued from June 21, 2022, to allow the chapter 7 trustee to examine the debtor at the meeting of creditors and for the time to object to the debtor's claimed exemptions to expire.

The chapter 7 trustee has not yet concluded the meeting of creditors. The next meeting of creditors is scheduled on September 9, 2022. The trustee filed a motion to employ a real estate professional for the purposes of marketing and selling the property located at 521 Hawkcrest Circle, Sacramento, California. The

Hawkcrest property is the subject of this motion. The court granted the motion authorizing the employment of Paul Boudier of Knowledge Real Estate Group on July 13, 2022. See *Order Authorizing Employment*, ECF No. 106.

The court will continue the hearing on this motion to allow the chapter 7 trustee to complete her examination of the debtor and, if appropriate, to file an objection to the debtor's claim of exemptions.

For the same reasons other motions to avoid judicial liens on the same subject real property are being continued for a further hearing. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the other lien-avoidance motions.

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 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the hearing on this motion the chapter 7 trustee shall file a statement of her position regarding this motion.

6. [19-24044](#)-A-7 **IN RE: TIEN LAM**
[MHK-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU
AND KASSENROCK FOR ANTHONY ASEBEDO, TRUSTEES ATTORNEY(S)
8-15-2022 [\[63\]](#)

GARY ZILAFF/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/07/2019

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation allowed: \$19,020.00

Reimbursement of Expenses: \$487.32

Application: First and Final

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days

before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, The Law Office of Meegan, Hanschu, and Kassenbrock, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$19,020.00 and reimbursement of expenses in the amount of \$487.32.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of this application, Meegan, Hanschu & Kassenbrock filed a Certificate of Service, ECF No. 67. That form was signed "Jeanne Hutton," who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. The applicant has properly limited notice of the application. Fed. R. Bankr. P. 2002(a)(6), 2002(h); LBR 2002-3. Section 4 properly attaches the list of documents served. ECF No. 67, p. 4. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. *Id.* at p. 5. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. *Id.* at p. 6. Section 6(B)(2) is supported by a properly filtered list of creditors, e.g., those that have filed a Proof of Claim. *Id.* at p. 7. The firm and Ms. Hutton are to be commended on their precise and skillful application of the new local rules.

CIVIL MINUTE ORDER

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

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

The Law Office of Meegan, Hanschu, and Kassenbrock's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$19,020.00 and reimbursement of expenses in the amount of \$487.32.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

7. [22-21453](#)-A-7 **IN RE: CHERYL SPRAGUE**
[SMJ-1](#)

CONTINUED MOTION TO AVOID LIEN OF CADLEROCK JOINT VENTURE,
LP
6-24-2022 [[12](#)]

SCOTT JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from August 1, 2022

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$7,355.05 - Cadlerock Joint Venture, LP

All Other Liens:

- Deed of Trust - \$41,004.00 California Housing Finance Agency

- Deed of Trust - \$466,387.00 Loancare

Exemption: \$626,000.00

Value of Property: \$782,000.00

Subject Property: 8771 Blinman Way, Fair Oaks, California

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 Cadlerock Joint Venture, LP. The hearing on this motion was continued from August 1, 2022, to allow the chapter 7 trustee to examine the debtor at the meeting of creditors. The meeting of creditors was held on August 3, 2022, and the chapter 7 trustee has filed a non-opposition to the motion.

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.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

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.

In support of this motion, attorney Scott Johnson filed a Certificate of Service, ECF No. 16. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. The movant has properly indicated service pursuant to Fed. R. Bankr. P. 7004 and attached the list of parties served as Attachment 6A. Counsel is to be commended on his precise and skillful application of the new local rules.

8. [21-24059](#)-A-7 **IN RE: KATHLEEN BROWN**
[MKM-2](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE
INJUNCTION AND/OR MOTION FOR CONTEMPT
7-27-2022 [[25](#)]

MICHAEL MOORE/ATTY. FOR DBT.
DEBTORS DISCHARGED: 03/14/2022
WITHDRAWN BY M.P.

Final Ruling

The motion was withdrawn by the moving party on August 19, 2022, ECF No. 29. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

9. [22-20982](#)-A-7 **IN RE: COURTNEY STUHR**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-10-2022 [[17](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DEBTOR DISCHARGED: 08/01/2022
WELLS FARGO BANK, N.A. VS.
TRUSTEE NON-OPPOSITION

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: 2007 GMC Sierra 1500

Cause: delinquent installment payments \$3,831.21

Discharge: August 1, 2022

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.

Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) to pursue its remedies under state law regarding a 2007 GMC Sierra 1500. The loan matured on June 19, 2021, and the entire balance of \$3,831.21 is due. The movant currently has possession of the vehicle as it has been voluntarily surrendered to it by the debtor. The debtor's Statement of Intentions indicates that the debtor intends to surrender the vehicle. *See Statement of Intentions*, ECF No. 10. On

August 24, 2022, the chapter 7 trustee filed a non-opposition to this 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). 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).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a

consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

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.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of this motion, Bonial & Associates, P.C. filed a Certificate of Service, ECF No. 22. That form was signed "Corey Banks," who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. The movant has properly indicated service pursuant to Fed. R. Bankr. P. 7004 and attached the list of parties served as Attachment 6A. The firm is to be commended on its precise and skillful application of the new local rules.

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.

Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto'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 2007 GMC Sierra 1500. 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.

10. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON ALCOHOL AND DRUG ABUSE, INC.**
[DK-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-15-2022 [[115](#)]

GALEN GENTRY/ATTY. FOR DBT.
CHRISTIAN KIM/ATTY. FOR MV.
DENISE ALFARO, ET AL. VS.
RESPONSIVE PLEADING

No Ruling

11. [21-22898](#)-A-7 **IN RE: HEATH V. FULKERSON LLC**
[MRB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-27-2022 [[148](#)]

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

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition filed by the chapter 7 trustee

Disposition: Granted

Order: Civil minute order

Subject: 2017 Jeep Wrangler Unlimited

Cause: delinquent installment payments - 7 months totaling \$4,130.70

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.

Sierra Pacific Federal Credit Union 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.

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 moving party contends that the debtor has no interest in the subject property as the debt is in the name of Heath Fulkerson, individually. While the debtor is not obligated to make the debt payments to the moving party, the debtor's principal, Heath Fulkerson is obligated pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The payments are in default on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

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

CIVIL MINUTE ORDER

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

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

Sierra Pacific Federal 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 a 2017 Jeep Wrangler Unlimited, 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.

12. [22-21498](#)-A-7 **IN RE: REBECCA HOYT**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [\[11\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
SANTANDER CONSUMER USA, INC. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Chevrolet Volt

Cause: delinquent installment payments 1.67 months/\$631.03

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.

Santander Consumer USA, Inc., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The vehicle has been voluntarily surrendered to the movant and the debtor's Statement of

Intention indicates that she will surrender the 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 postpetition payments are past due. Vehicles depreciate over time and with usage. As a

consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Chevrolet Volt, 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.