

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

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

**DAY: MONDAY**  
**DATE: SEPTEMBER 13, 2021**  
**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. [21-22457](#)-A-7     **IN RE: EVELYN SIMMS**  
[BLG-1](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB  
8-4-2021    [\[13\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$4,538.00 (American Express Bank, FSB)

**All Other Liens:** Select Portfolio Service \$249,380

**Exemption:** \$491,000

**Value of Property:** \$503,868

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).

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.

2. [21-22759](#)-A-7     **IN RE: NADIA ZHIRY**  
[AAS-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-17-2021    [[36](#)]

MARK SHMORGON/ATTY. FOR DBT.  
ANGEL SOLIS/ATTY. FOR MV.  
CITY OF SACRAMENTO VS.  
DEBTOR NON-OPPOSITION

**No Ruling**

3. [21-22759](#)-A-7     **IN RE: NADIA ZHIRY**  
[KSR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-15-2021    [[28](#)]

MARK SHMORGON/ATTY. FOR DBT.  
KIRK RIMMER/ATTY. FOR MV.  
GERARD F. KEENA II VS.  
DEBTOR NON-OPPOSITION

**No Ruling**

4. [21-22759](#)-A-7     **IN RE: NADIA ZHIRY**  
[MS-1](#)

MOTION TO AVOID LIEN OF LVNV FUNDING, LLC  
8-3-2021    [[17](#)]

MARK SHMORGON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien of LVNV Funding, LLC

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

**Disposition:** Continued to November 1, 2021, at 9:00 a.m.

**Order:** Civil Minute Order

The debtor seeks to avoid the judicial lien of LVNV funding, LLC pursuant to 11 U.S.C. §522(f). The debtor is the owner of real property located at 1049 Claire Avenue, Sacramento, California 95838, which is the subject of this motion and the property which the lien encumbers. The court will continue the hearing on this motion for the reasons indicated below.

## **MOTION IS PREMATURE**

Federal Rule of Bankruptcy Procedure 4003(b)(1) allows a party in interest to file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors is concluded or within 30 days after any amendment to the list of supplemental schedules is filed, whichever is later. Fed. R. Bankr. P. 4003(b)(1).

The meeting of creditors was scheduled and held on August 24, 2021, but has been continued by the trustee until September 14, 2021. As the meeting has not been concluded the 30-day period for objecting to exemptions has not run. Thus, this motion is premature.

The motion shall be continued until November 1, 2021, at 9:00 am to allow the time to run for any objection to the debtor's claim of exemptions.

## **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).

### Consensual Lien

Even if this motion had not been set for hearing prematurely the court lacks sufficient information to grant the relief requested.

The debtor has listed consensual liens in his motion (ECF 17) which encumber the subject property. However, the court cannot determine if the listing of consensual liens is complete and accurate.

On August 15, 2021, Gerard F. Keena II filed a Motion for Relief From Automatic Stay (KSR-1). Filed concurrently with the motion was the required Relief From Stay Information Sheet (ECF #33). The Relief From Stay Information Sheet lists a "third deed of trust holder" in the amount of \$115,000.00 at Item 5. The debtor's Schedule D (ECF 14) does not appear to include this obligation, as there is no listing of a consensual lien in this amount in the schedules. Nor is a third deed of trust indicated in this motion.

An accurate listing of all liens is required for the court to determine whether LVNV Funding, LLC's lien impairs debtor's exemption in the subject property. Not later than October 18, 2021, the debtor shall file admissible evidence indicating whether an additional deed of trust or other consensual lien exists, and if so,

identify the date of encumbrance, the holder of the obligation, and amount owed. Without this information the court cannot determine if the lien of LVNV Funding, LLC may be avoided.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the hearing on the debtor's Motion to Avoid Lien of LVNV Funding, LLC (MS-1) is continued to November 1, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than September 27, 2021, the debtor shall file admissible evidence indicating whether any additional consensual lien exists, and if so, identify the date of encumbrance, the holder of the obligation, and amount owed.

IT IS FURTHER ORDERED that not later than September 27, 2021, the debtor shall file and serve a Notice of Continued Hearing on all interested parties. Also, not later than September 27, 2021, the debtor shall file a Proof of Service indicating compliance with the prior sentence. The notice shall indicate that written opposition to the motion must be filed with the court and served not less than 14 days prior to the hearing on the motion.

5. [21-21664](#)-A-7      **IN RE: JUAN MUNGUIA**  
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE  
A MOTION TO DISMISS CASE UNDER SEC. 707(B)  
8-9-2021    [\[19\]](#)

JOHN MAXEY/ATTY. FOR DBT.  
JUSTIN VALENCIA/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Motion to Extend Deadlines

**Disposition:** Continued to October 18, 2021, at 9:00 a.m.

**Order:** Civil minute order

As a contested matter, a motion to extend deadlines is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The United States Trustee moves to extend the deadlines to file a complaint objecting to discharge of the debtor pursuant to 11 U.S.C. § 727 and to extend the time to file a motion to dismiss the case under 11 U.S.C. § 707(b).

#### Debtor Not Properly Served

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor, the debtor's attorney and the trustee must be properly served with this motion. The debtor was not properly served.

The debtor was served at an incorrect address. The Certificate of Service (ECF #22) filed with this motion indicates that the debtor was served at 24123 Edna Street, Sacramento, CA 95822. Debtor's address as indicated on the Petition is 2413 Edna Street, Sacramento, CA 95822. The debtor has not been served at the correct address.

The court will continue the hearing to October 18, 2021, at 9:00 am to allow for proper service of the motion on the debtor.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the hearing on this motion shall be continued until October 18, 2021, at 9:00 a.m. to allow for proper service of this motion on the debtor.

IT IS FURTHER ORDERED that not later than September 20, 2021, the United States Trustee shall file and serve a Notice of Continued Hearing on all interested parties. Also, not later than September 20, 2021, the United State Trustee shall file a Proof of Service indicating compliance with the prior sentence. The notice shall indicate that written opposition to the motion must be filed with the court and served not less than 14 days prior to the hearing on the motion.

6. [21-21373](#)-A-7     **IN RE: ROSA PALMA AND JAIME MARTINEZ**  
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-4-2021    [\[15\]](#)

CHARLES HASTINGS/ATTY. FOR DBT.  
ERICA LOFTIS/ATTY. FOR MV.  
CONSUMER PORTFOLIO SERVICES, INC. VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); Trustee's Non-Opposition filed

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 2016 Dodge Journey

**Value of Collateral:** \$15,475

**Aggregate of Liens:** \$20,371.57

**Discharge:** August 17, 2021

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). 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 exceed 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.

#### **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.

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

IT IS ORDERED that the motion is granted 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 2016 Dodge Journey. 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.

7. [21-22073](#)-A-7     **IN RE: TROY TATE**  
[GR-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
8-10-2021     [\[48\]](#)

JASON BLUMBERG/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

8. [13-35275](#)-A-7     **IN RE: JAMES/JOCELYN GRIFFIN**  
[EJS-1](#)

MOTION TO AVOID LIEN OF ADVANTA BANK CORP.  
8-6-2021     [\[25\]](#)

ERIC SCHWAB/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 03/17/2014

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of Advanta Bank Corp, ECF No. 29. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h) (1)-(3).

9. [18-20177](#)-A-7     **IN RE: DAVID BENJAMIN**  
[DNL-13](#)

MOTION FOR COMPENSATION FOR BACHECKI, CROM, & CO., LLP,  
ACCOUNTANT(S)  
8-16-2021    [\[168\]](#)

DAVID MEEGAN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 04/16/2018

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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, Bacheki, Crom & Co., LLP, accountant 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 \$26,647.00 and reimbursement of expenses in the amount of \$23.80.

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.

### **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.

Bacheki, Crom & Co., LLP'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 \$26,647.00 and reimbursement of expenses in the amount of \$23.80.

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.

10. [18-20177](#)-A-7     **IN RE: DAVID BENJAMIN**  
[DNL-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH, AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)  
8-16-2021    [\[174\]](#)

DAVID MEEGAN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 04/16/2018

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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, Desmond, Nolan, Livaich & Cunningham, 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 \$16,330.00 and reimbursement of expenses in the amount of \$260.31.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

#### **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.

Desmond, Nolan, Livaich & Cunningham'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 \$16,330.00 and reimbursement of expenses in the amount of \$260.31. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

11. [18-20177](#)-A-7     **IN RE: DAVID BENJAMIN**  
[DNL-15](#)

MOTION FOR COMPENSATION FOR J. MICHAEL HOPPER, CHAPTER 7  
TRUSTEE(S)  
8-16-2021    [[180](#)]

DAVID MEEGAN/ATTY. FOR DBT.  
J. HENDRIX/ATTY. FOR MV.  
DEBTORS DISCHARGED: 04/16/2018

### **Final Ruling**

**Application:** Allowance of Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

#### **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 application for allowance of 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 to the trustee compensation in the amount of \$57,560.19 and reimbursement of expenses in the amount of \$0.00.

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.

12. [19-26680](#)-A-7     **IN RE: KENNETH LOKE**  
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-6-2021     [\[49\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.  
LAKEVIEW LOAN SERVICING, LLC VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); trustee's non-opposition filed

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 712-225 Sears Road, Janesville, CA 96114

**Value of Collateral:** \$146,955.00

**Aggregate of Liens:** \$154,856.00

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**

"[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).

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 exceed 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.

#### **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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 712-225 Sears Road, Janesville, CA 96114, 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. [20-24691](#)-A-7     **IN RE: FREEDOM 123 LLC**  
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-26-2021    [\[295\]](#)

REILLY WILKINSON/ATTY. FOR MV.  
IRON OAK HOME LOANS, INC. VS.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2463 East Oak St., Stockton, CA 95205

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**

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

The debtor has missed 6 post-petition payments totaling \$8,181.90 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

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

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

Iron Oak Home Loans, 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 2463 East Oak St., Stockton, CA 95205, 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.

14. [21-21597](#)-A-7     **IN RE: NICHOLAS/RACHEAL RENNERT**  
[UST-2](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE  
WITHOUT ENTRY OF DISCHARGE , MOTION TO EXTEND TIME TO FILE A  
MOTION TO DISMISS CASE UNDER SEC. 707(B) AND/OR MOTION  
EXTEND DEADLINE TO FILE A MOTION TO CONVERT CASE  
8-23-2021    [\[24\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadline to File a Motion to Dismiss or Convert Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

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).

#### **EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS OR CONVERT**

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires. A motion to convert a chapter 7 case under § 706(a) must be filed in accordance with Fed. R. Bankr. P. 9013. Fed. R. Bankr. P. 1017(f)(2).

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S.

Trustee to file a motion to dismiss under § 707(b) and (c) or convert under § 706(a). This deadline to file a motion to dismiss or convert will be extended through September 30, 2021.