



**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: OCTOBER 2, 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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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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. [23-22917](#)-A-7 **IN RE: MIHAIL/SORINA VANGHELI**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-2023 [\[20\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.
CASHMERE VALLEY BANK VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2023 Vanguard VXP Dry Van Trailer

Cause: delinquent installment payments 4 months/\$4,831.16

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.

Cashmere Valley 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). 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 subject property is owned by a corporation Apollo Brothers Corp., which is in turn wholly owned by the debtors. Prior to the filing of the petition the debtors surrendered the subject property to the movant. The debtors are not on title to the vehicle.

The debtors' corporation is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the vehicle described above. The corporation has defaulted on such loan with the moving party, and post-petition 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 ongoing post-petition 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.

Cashmere Valley 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 2023 Vanguard VXP Dry Van Trailer, 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.

2. [18-21730](#)-A-7 **IN RE: SCOTT/REA MCFADDEN**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-28-2023 [\[55\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

CHRISTINA KHIL/ATTY. FOR MV.

U.S. BANK NATIONAL ASSOCIATION VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

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

SPECIAL NOTICE CREDITORS

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

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

Although service is indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 60. There is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir.

2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

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

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

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

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

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

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

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

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

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to

serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

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

CIVIL MINUTE ORDER

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

U.S. Bank National Association'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. [22-21649](#)-A-7 **IN RE: MARY KATTENHORN**
[BLL-3](#)

MOTION TO COMPEL ABANDONMENT
8-23-2023 [\[80\]](#)

RICHARD HALL/ATTY. FOR DBT.
DEBTOR DISCHARGED: 10/11/2022; TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); non-opposition filed by the trustee
Disposition: Granted
Order: Prepared by moving party pursuant to the instructions below

Subject: 3905 Cedar Mist Lane, Auburn, California
Value: \$659,800.00
1st Trust Deed: \$87,469.00
Exemption: \$600,000.00
Non-Exempt Equity: \$0

The debtor seeks an order compelling the Chapter 7 trustee's abandonment of the subject property under 11 U.S.C. § 554. The Chapter 7 trustee has filed a non-opposition to the motion, ECF No. 100. However, the trustee conditions her non-opposition requesting that the order provide that the abandonment does not extend to funds held in trust by attorney Laura B. Strasser, Esq., of Strasser Law Corp., in the amount of \$91,933.84. *Id.*, 1:21-23. No other parties have filed opposition to the debtor's motion.

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).

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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

The court will grant the motion. The moving party shall prepare the order. The order will compel abandonment of only the real property located at 3905 Cedar Mist Lane, Auburn, California. The order shall also specifically state that it does not extend to funds held in the trust account of attorney Laura B. Strasser, Esq., of Strasser Law Corp., in the amount of \$91,933.84. The order shall be approved and signed by the Chapter 7 trustee prior to submission to the court.

4.[22-21649](#)-A-7 **IN RE: MARY KATTENHORN**
[BLL-4](#)

MOTION TO AVOID LIEN OF BMO HARRIS BANK N.A.
8-23-2023 [\[86\]](#)

RICHARD HALL/ATTY. FOR DBT.
DEBTOR DISCHARGED: 10/11/2022; TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition filed by creditor, non-opposition filed by the trustee

Disposition: Denied without prejudice

Order: Civil minute order

Judicial Lien: \$333,402.82 (BMO Harris Bank)

Subject property: 3905 Cedar Mist Lane, Auburn, California

The debtor seeks an order avoiding the judicial lien of BMO Harris Bank N.A., successor by merger to Bank of the West ("Bank") under 11 U.S.C. § 522(f). The Chapter 7 trustee has filed a non-opposition to the motion, ECF No. 102. However, the trustee conditions her non-opposition requesting that any order issued indicate that it does not extend to funds held in trust by attorney Laura B. Strasser, Esq., of Strasser Law Corp., in the amount of \$91,933.84. *Id.*, 1:21-23. The respondent bank opposes the motion. On September 27, 2023, the debtor filed a late reply to the opposition, ECF No. 104. LBR 9014-1(f)(1)(C).

FACTS

Property Ownership

The debtor and Phillip L. Kattenhorn were not married when they acquired the subject property (property). They acquired the property on or about January 14, 2008, as "PHILLIP KATTENHORN, AN UNMARRIED MAN AND MARY JEAN HOUAR, AN UNMARRIED WOMAN, AS JOINT TENANTS". Grant Deed, Exhibit 5, page 145, ECF No. 97.

Subsequently the debtor and Phillip Kattenhorn were married. On or about August 8, 2011, the debtor and Phillip Kattenhorn executed a grant deed which indicates that the property was conveyed to "Phillip Kattenhorn and Mary Kattenhorn, husband and wife as Joint Tenants". Grant Deed, Exhibit 6, page 149, ECF No. 97.

State Court Litigation and Judgment

The respondent bank asserts a judicial lien against the subject property located at 3905 Cedar Mist Lane, Auburn, California. The judicial lien was obtained as follows. On November 1, 2021, the bank filed a complaint in state court against Longhorn Meat Company, Inc., a California corporation, and Phillip L. Kattenhorn. Exhibit 1, page 17, ECF No. 97. The court notes that the debtor was not a defendant in the litigation.

At the outset of the State Court litigation, the bank obtained a Writ of Attachment After Hearing on January 19, 2022, to secure damages in the amount of \$325,265.70. See Exhibit 1, pages 97-98, ECF No. 97. The bank recorded the Writ of Attachment as Document No. 2022-0022077-005 against the subject property on March 14, 2022, at 10:25 a.m. in the Placer County Recorder's Office. *Id.*, pages 101-105.

On or about January 28, 2022, the bank obtained a judgment against Mr. Kattenhorn. Opposition, 3:12-17, ECF No. 95. Thereafter, Bank of the West prepared and submitted its Judgment by Default, which the Superior Court entered on January 5, 2023. *Id.*

On April 21, 2023, the debtor filed a Motion for Partial Relief from Stay Pursuant to § 362(d)(1), ECF No. 30. The debtor sought relief from stay to allow the Superior Court in her marital dissolution proceeding against Mr. Kattenhorn (pending in the California Superior Court, County of Placer designated as Case No. S-DR-0060655) to determine the division of the marital assets between the debtor and Mr. Kattenhorn. This court denied the debtor's motion for stay relief. Order, ECF No. 57.

On May 2, 2023, the bank filed a Motion for Relief from the Automatic Stay under 11 U.S.C. § 362(d), ECF No. 37. The bank requested relief so that it could perfect its pre-petition (pre-preference period) attachment lien into a judgment lien in connection with the default judgment. On June 14, 2023, this court entered an order granting the bank's motion for relief from stay. Order, ECF No. 58.

Accordingly, on July 5, 2023, the bank requested the Placer County Recorder to record the judgment against Mr. Kattenhorn's interest in the property to transform its attachment lien into a judgment lien. The amount of the judgment as entered is \$333,402.82. See Motion to Avoid Lien, Exhibit D, ECF No. 90. On July 19, 2023, the Placer County Recorder issued its abstract of judgment in favor of the bank. *Id.*

LIEN AVOIDANCE

The Bank's Opposition

The Bank of the West opposes the motion on two alternative grounds:

- 1) the property was acquired prior to the debtor's marriage to Mr. Kattenhorn, and thus, under California law the debtor's interest in the property remained her separate property throughout the marriage. Since Bank of the West's judgment is against Mr. Kattenhorn only, the judgment lien has not affixed to the debtor's separate property interest in the subject property. As such the lien does not impair the debtor's exemption in the property; or
- 2) if the property was transmuted into community property by the debtor and Mr. Kattenhorn, the debtor cannot use section 522(f) of the Bankruptcy Code to avoid the judicial lien that affixed to the non-debtor spouse's community interest in the property. The debtor can only avoid the lien as to her one-half interest.

The opposition requests that the court determine the characterization of the property as separate or community and in turn the extent of the respondent's judicial lien. As such it appears that an adversary proceeding is required under Fed. R. Bankr. P. 7002.

Adversary Proceeding is Not Time Barred

(c) Time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case; notice of time fixed

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c).

The debtor contends that an adversary proceeding is time barred under Fed. R. Bankr. P. 4007(c). This is incorrect as Rule 4007 is applicable to adversary proceedings which determine the dischargeability of a debt. The respondent creditor is not barred from filing an adversary proceeding to litigate the issues raised in it's opposition to this motion.

Until the issues raised in the respondent creditor's opposition are resolved the motion to avoid judicial lien is premature. Accordingly, 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:

The debtor's motion to avoid judicial lien has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

5. [23-22781](#)-A-7 **IN RE: LUIS HERNANDEZ MOLINA AND JENNIFER GOMEZ FELIX**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2023 [\[12\]](#)

DANIEL KING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2022 Chevrolet Silverado 2500

Cause: Delinquent installment payments 5 months/\$6,624.60

Statement of Intention: Surrender

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.

Americredit Financial Services, Inc., 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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

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

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2022 Chevrolet Silverado 2500, 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.

6. [23-22394](#)-A-7 **IN RE: ELIZABETH/GARY PONCIANO**
[MOH-1](#)

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

MICHAEL HAYS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION; RESPONSIVE PLEADING

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: Continued from August 7, 2023

Disposition: Granted

Order: Prepared by moving party

Business Description: G&B Welding, a sole proprietorship; tools and equipment

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 requiring the Chapter 7 trustee's abandonment of business assets.

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 continued the hearing on this motion stating:

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 Minutes, ECF No. 29.

The debtors own and operate a sole proprietorship, G&B Welding. The debtors estimate that the value of the equipment and tools is \$9,000.00. Amended Schedules A/B, C, ECF Nos. 42, 43, 45. After examining the debtors at the meeting of creditors, the Chapter 7 trustee filed a non-opposition to the motion.

CREDITOR OPPOSITION AND WITHDRAWAL

Creditor, Timothy Gallagher (Gallagher) initially opposed the motion. The opposition contends that the debtors have attempted to sell business assets over the radio in Lake Almanor. Declaration of Andrew J. Morrissey, ECF No. 26. Mr. Morrissey is counsel for Mr. Gallagher and the declaration states that he learned this information from Mr. Gallagher. Mr. Morrissey does not have any independent knowledge regarding the assertion that the debtors are or were attempting to sell estate assets and therefore his declaration is hearsay. Fed. R. Evid. 802. The opposition to the motion is unsupported by admissible evidence. As such the court gives the opposition no weight.

On September 26, 2023, Gallagher filed a withdrawal of his opposition, ECF No. 47. As such, the court will grant the motion.

The court finds that the business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

7. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[DNL-26](#)

CONTINUED MOTION TO ABANDON
4-25-2023 [[495](#)]

STEPHAN BROWN/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

This case has been reassigned to the Hon. Christopher M. Klein,
Department C. The hearing date for this motion shall be vacated and
will be reset by Judge Klein.

8. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[DNL-27](#)

CONTINUED OBJECTION TO CLAIM OF PAK KUENG WU, CLAIM NUMBER
45
7-3-2023 [[524](#)]

STEPHAN BROWN/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

This case has been reassigned to the Hon. Christopher M. Klein,
Department C. The hearing date for this motion shall be vacated and
will be reset by Judge Klein.

9. [21-22898](#)-A-7 **IN RE: HEATH V. FULKERSON LLC**
[GEL-4](#)

CONTINUED MOTION BY GABRIEL E. LIBERMAN TO WITHDRAW AS
ATTORNEY
7-27-2023 [\[171\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Withdraw as attorney of record

Notice: Continued from August 28, 2023

Disposition: Denied

Order: Civil minute order

Attorney Gabriel Liberman seeks an order allowing him to withdraw as attorney of record for the debtor Heath V. Fulkerson, LLC.

Counsel contends that irreconcilable differences between he and the debtor have arisen and that it is clear and unambiguous that the attorney-client relationship has broken down.

From my communications with Debtor's representative, it is clear that I can no longer effectively represent the Debtor.

The aforesaid breakdown in the attorney-client relationship and attempting to pursue a course of action against the Firm's advice, render it unreasonably difficult for the Firm to carry out its representation within the meaning of Rule 3-700(C)(1)(d) of the California Rules of Professional Conduct.

Declaration of Gabriel Lieberman, 2:1-6, ECF No. 173.

The hearing on this motion was continued to allow the Chapter 7 trustee to apprise the court whether the trustee anticipates the liquidation of assets for the benefit of the bankruptcy estate, and of her progress in this regard.

On September 20, 2023, the trustee filed a response as ordered, ECF No. 184. The trustee reports:

Among the scheduled assets of the estate is an interest in Midvale Policy No. BPP1088711 and theft and fire claims for prepetition business losses made against said policy ("Insurance Claim(s)"). Because the Insurance Claim(s) appeared to assert overlapping damages for claimed fire and theft losses out of step with the apparent income of the Debtor, the value of the Insurance Claim(s) was unknown at the time of conversion. The bulk of the discovery conducted by the Trustee has been in gathering documents to establish a

value of the Insurance Claim(s) and monitor the claim investigation conducted by Midvale.

The Trustee recently learned that—despite being advised of the bankruptcy estate's interest in the Insurance Claim(s) and having regular contact through its contract counsel—Midvale made payment on the Insurance Claim(s) directly to the principal of the Debtor on or about January 24, 2023. At this time, the Trustee is taking steps to recover those funds, which were due and payable to the bankruptcy estate without exemption. At this time, there do not appear to be additional assets available for liquidation.

Id., 2:14-26.

CORPORATE DEBTORS MUST BE REPRESENTED BY COUNSEL

"It is a longstanding rule that corporations and other unincorporated associations must appear in court through an attorney", *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004).

Rule 183 of the Local Rules of Practice of the United States District Court for the Eastern District of California incorporated and made applicable in bankruptcy cases by Local Bankruptcy Rule 1001-1(c), provides that a corporation or other entity may appear only by an attorney.

The debtor is a limited liability company and "an LLC, by virtue of its structure and limited liability features, fits comfortably within the Bankruptcy Code's definition of 'corporation....' ", *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 717 (9th Cir. BAP 2004).

The debtor must be represented by an attorney, or the case will be dismissed.

Because the trustee has indicated that she is taking steps to recover funds on behalf of the bankruptcy estate the court will deny the motion to withdraw. To allow withdrawal, as opposed to substitution of alternate counsel, would prejudice creditors awaiting distribution by the trustee.

CIVIL MINUTE ORDER

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

Gabriel Liberman's motion to withdraw as attorney of record has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.