

**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 17, 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. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[DNL-8](#)

MOTION TO ABANDON
9-29-2022 [\[141\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

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

Disposition: Granted only as to the assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Asset Description: Five parcels of real property

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The chapter 7 trustee moves for an order authorizing his abandonment of the bankruptcy estate's interest in the five parcels of real property identified as follows:

Property	Value	Secured Claim	Difference
Legorio's & Carroll's	\$5,000,000	\$2,474,141.33	\$2,525,858.67
House	\$600,000.00	\$613,987.97	\$(13,987.97)
Rental	\$225,000.00	\$187,931.00	\$37,069.00
Hill Ground	\$80,000.00	0	\$80,000.00
Shop	\$400,000.00	\$352,019.69	\$47,980.31

SURPLUS ESTATE

The chapter 7 trustee currently holds approximately \$822,222.37 and the indicates that the estate is a "surplus" estate. See Declaration of Geoffrey Richards, ECF No. 143, 3:12-15; Exhibit A, ECF No. 143. The claims bar date has passed. The trustee anticipates a surplus exceeding \$200,000.00 after all anticipated distributions. *Id.* Thus, it appears that the trustee need not liquidate further assets to pay all administrative claims and expenses, and to distribute full payment to all filed claims. Such claims include the late filed claim of David J. Lacroix, and the secured portion of the claim of the Internal Revenue Service. *Id.*

ABANDONMENT

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).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Legorio's & Carroll's

The estate has an interest in SEQ Lenehan and Two Mile Road, Maxwell, California, and 4894 Fairview Road, Maxwell, California. These parcels are referred to as "Legorio's and Carroll's".

While there appears to be equity in the properties the trustee has consulted with his accountant, Michael Gabrielson. The trustee has determined that the adverse tax consequences from a sale of Legorio's & Carroll's would be: (a) \$653,680.00 for federal taxes and; (b) \$339.14 for state taxes. See Motion, ECF No. 141, 3:7-9. Moreover, as previously indicated the trustee already has sufficient funds on hand to administer the estate.

House

The debtors' residence is located at 5145 Fairview Road, Maxwell, California. A sale of this property would net no proceeds for the estate; hence it is of inconsequential value.

Rental and Shop

The rental property is located at 188 California Street, Maxwell, California. The shop is located at 5084 Maxwell-Sites Road, Maxwell, California.

The trustee states that it is uncertain if the foreclosure sale proceeds resulting from these properties would be sufficient to cover the resulting tax consequences. See Motion, ECF No. 141, 3:3-6. Thus, these properties are burdensome to the estate and of inconsequential value.

Hill Ground

Estate assets also include undeveloped land with a description of APN 014-260-007-0. While there is equity in this property the funds

the trustee is currently holding indicate that a liquidation of the land is unnecessary to fully administer the estate.

The court will grant the motion and concludes that the assets described above are either burdensome to the estate or of inconsequential value or benefit to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.

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) motions), 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, Desmond, Nolan, Livaich & Cunningham filed a Certificate of Service, ECF No. 145. That form was signed by "Ellen Angello," who 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. Section 4 properly lists the documents served. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. Section 6(B)(2) is supported by the clerk's matrix of remaining creditors. The firm and Ms. Angello are to be commended on their precise and skillful application of the new local rules.

2. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[DNL-9](#)

MOTION TO ABANDON
9-29-2022 [\[146\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

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

Disposition: Granted only as to the assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Asset Description: Equipment as detailed in the Debtors' Amended Schedule A/B filed at ECF No. 98 at Paragraph 49; and Six Vehicles

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court

may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The chapter 7 trustee moves for an order authorizing his abandonment of the bankruptcy estate's interest in equipment and vehicles as indicated below.

SURPLUS ESTATE

The chapter 7 trustee currently holds approximately \$822,222.37 and anticipates that the estate is a "surplus" estate. See Declaration of Geoffrey Richards, ECF No. 149; Exhibit A, ECF No. 150. The claims bar date has passed. The trustee anticipates a surplus exceeding \$200,000.00 after all anticipated distributions. *Id.* Thus, it appears that the trustee need not liquidate further assets to pay all administrative claims and expenses, and to distribute full payment to all filed claims. Those claims include the late filed claim of David J. Lacroix, and the secured portion of the claim of the Internal Revenue Service. *Id.*

ABANDONMENT

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).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Business Equipment

The debtors' scheduled equipment with an aggregate value of approximately \$1,077,916.00. See, ECF No. 98.

The trustee has investigated the value of the equipment and indicates that the value of the equipment is significantly overstated in the schedules. Moreover, the trustee indicates that the equipment is subject to the security interest of the United States Small Business Administration in the amount of \$502,157.54; and the debtors' exemption in the amount of \$13,106.00. In the

trustee's informed estimation of the SBA's loan, coupled with the debtors' exemption in the equipment exceeds value of the equipment. See Declaration of Geoffrey Richards, ECF No. 149.

Moreover, the trustee's counsel conferred with debtor's counsel regarding the debtors' valuation of the equipment in the schedules and states as follows:

I have reviewed the Debtors' Amended Schedule A/B filed as Docket# 98. At paragraph #49 there is a single entry of \$500,000.00 for "Misc. Farming Equipment" followed by more specific entries. I have been advised by Nikki Farris, the Debtors' counsel, that she had mistakenly added the total of \$500,000.00 for "Misc. Farming Equipment" to the specific entries, and that this was due to a drafting error.

Declaration of J. Russell Cunningham, ECF No. 148, 2:3-7.

The trustee therefore contends that the equipment is of inconsequential value and of no benefit to the estate.

Vehicles

The debtors have scheduled six vehicles. Three of the vehicles are subject to liens as follows:

Property	Scheduled Value	Amount of Lien	Equity
2010 Chevrolet Silverado	\$4,709.00	\$7,797.00	(\$3,088.00)
2015 Chevrolet Traverse	\$11,783.00	\$13,176.45	(\$1,393.45)
2020 Chevrolet Silverado	\$31,581.00	\$14,552.36	\$17,028.64

The debtors have claimed an exemption in the following two additional vehicles: 1) 1999 Dodge Ram 2500 valued at \$5,944.00; 2) 1992 Dodge Ram 2500 valued at \$1,396.00. There is no value to the estate after deducting the debtors' exemption in the vehicles.

The remaining sixth vehicle, a 2020 Honda Pioneer is valued at \$11,499.00 and is owned outright.

The trustee contends that as the estate is a surplus estate, that any funds which would be generated by liquidating the 2020 Chevrolet Silverado and the 2020 Honda Pioneer are unnecessary for the payment in full of all administrative claims and all claims filed in this case. See Exhibit A, ECF No. 150. Therefore, these vehicles are of no benefit to the estate.

The court will grant the motion and concludes that the assets described above are either burdensome to the estate or of inconsequential value or benefit to the estate. An order authorizing the trustee's abandonment of such assets is warranted.

The order will authorize abandonment of only the assets that are described in the motion.

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) motions), 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, Desmond, Nolan, Livaich & Cunningham filed a Certificate of Service, ECF No. 151. That form was signed by "Ellen Angello," who 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. Section 4 properly lists the documents served. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. Section 6(B)(2) is supported by the clerk's matrix of remaining creditors. The firm and Ms. Angello are to be commended on their precise and skillful application of the new local rules.

3. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[RDW-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
9-29-2022 [\[152\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

Tentative Ruling

Motion: Confirm Absence of Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Instant Case Filed: May 3, 2022

Prior Filed Chapter 12 Cases:

- A) 2022-20737 Filed March 29, 2022; Dismissed April 22, 2022
- B) 2022-20512 Filed March 7, 2022; Dismissed March 25, 2022
- C) 2021-23989 Filed November 29, 2021; Dismissed March 2, 2022

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).

Movant, Peritus Portfolio Service II, LLC as service for Westlake Financial Services seeks an order confirming that the automatic stay of 11 U.S.C. §362(a) is not in effect.

CONFIRMATION OF THE STAY'S TERMINATION

11 U.S.C. § 362(c) (4)

If a debtor who files a petition has had two prior bankruptcy cases pending within the preceding one-year period that were dismissed, then the automatic stay does not go into effect upon the filing of the later case. 11 U.S.C. § 362(c) (4) (A) (i). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(c) (4) (A) (ii). In this case, the debtors have had 2 cases pending within the preceding 1-year period that were dismissed. The automatic stay never went into effect upon the filing of the current case.

The motion will be granted, and to the extent it is applicable 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.

Peritus Portfolio Service II, LLC as service for Westlake Financial Services' motion to confirm the termination of the stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The automatic stay is not in effect and never went into effect in this case. No party has filed a request for extension of the stay. To the extent it is applicable the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

4. [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
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from September 12, 2022; trustee statement filed

Disposition: Granted

Order: Prepared by moving party

Subject: 521 Hawkcrest Circle, Sacramento

Judicial Lien Avoided: \$10,801.65, recorded July 23, 2021, by
American Express National Bank

All Other Liens:

- Deed of Trust - \$722,264.00 Fay Servicing LLC
- Statutory Lien - \$56,437.29 and \$21,529.21, Franchise Tax Board
- Judicial Lien - \$21,307.96 recorded April 23, 2018, by Wells Fargo Bank, N.A.
- Judicial Lien - \$3,977.88 recorded December 21, 2018, by Catherine Tien

Exemption: \$626,400.00

Value of Property: \$920,000.00

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 to avoid the judicial lien of American Express National Bank under 11 U.S.C. § 522(f). The hearing on this motion was continued to allow the chapter 7 trustee to conclude the meeting of creditors and to state her position regarding the exemption claimed by the debtor in the subject property.

The chapter 7 trustee concluded the meeting of creditors on September 9, 2022. The trustee has filed a statement indicating that she does not intend to object to the debtor's claimed exemption in the subject property. *See Trustee's Statement*, ECF No. 127.

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) \$10,801.65, recorded July 23, 2021, by American Express National Bank, (ii) \$3,977.88, recorded December 21, 2018, by Catherine Tien, (iii) \$21,307.96, recorded April 23, 2018, by Wells Fargo Bank, N.A. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$626,400.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$1,462,717.99. The value of the property is \$920,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

5. [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
RESPONSIVE PLEADING

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from September 12, 2022; trustee statement filed;
opposition filed by creditor

Disposition: Granted

Order: Prepared by moving party

Subject: 521 Hawkcrest Circle, Sacramento

Judicial Lien Avoided: \$3,977.88, recorded December 21, 2018,
Catherine Tien, a.k.a. Catie Tien

All Other Liens:

- Deed of Trust - \$722,264.00 Fay Servicing LLC
- Statutory Lien - \$56,437.29 and \$21,529.21, Franchise Tax Board
- Judicial Lien - \$21,307.96, recorded April 23, 2018, Wells Fargo Bank, N.A.
- Judicial Lien - \$10,801.65, recorded July 23, 2021, American Express National Bank

Exemption: \$626,400.00

Value of Property: \$920,000.00

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, the chapter 7 trustee, 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 to avoid 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 to allow the chapter 7 trustee to conclude the meeting of creditors and to state her position regarding the exemption claimed by the debtor in the subject property.

The chapter 7 trustee concluded the meeting of creditors on September 9, 2022. The trustee has filed a statement indicating that she does not intend to object to the debtor's claimed exemption in the subject property. *See Trustee's Statement*, ECF No. 129.

Respondent, Catherine Tien, opposes the motion. See *Opposition*, ECF No. 64. While the opposition presents facts which might arguably be evidence in a complaint to determine dischargeability of the debt owed to respondent it fails to allege any facts or proffer any legal argument regarding why the motion to avoid the lien should not be granted under 11 U.S.C. § 522(f).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The motion to avoid the judicial lien held by Ms. Tien meets all of the requirements set forth above.

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) \$10,801.65, recorded July 23, 2021, American Express National Bank, (ii) \$3,977.88, recorded December 21, 2018, Catherine Tien, (iii) \$21,307.96, recorded April 23, 2018, Wells Fargo Bank, N.A. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$626,400.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$1,451,916.34. The value of the property is \$920,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together

exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

6. [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
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from September 12, 2022; trustee statement filed

Disposition: Granted

Order: Prepared by moving party

Subject: 521 Hawkcrest Circle, Sacramento

Judicial Lien Avoided: \$21,307.96 Recorded April 23, 2018, by Wells Fargo Bank, N.A.

All Other Liens:

- Deed of Trust - \$722,264.00 Fay Servicing LLC
- Statutory Lien - \$56,437.29 and \$21,529.21, Franchise Tax Board
- Judicial Lien - \$10,801.65, recorded July 23, 2021, by American Express National Bank
- Judicial Lien - \$3,977.88, recorded December 21, 2018, by Catherine Tien

Exemption: \$626,400.00

Value of Property: \$920,000.00

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 to avoid the judicial lien of Wells Fargo Bank, N.A. under 11 U.S.C. § 522(f). The hearing on this motion was continued to allow the chapter 7 trustee to conclude the meeting of creditors and to state her position regarding the exemption claimed by the debtor in the subject property.

The chapter 7 trustee concluded the meeting of creditors on September 9, 2022. The trustee has filed a statement indicating that she does not intend to object to the debtor's claimed exemption in the subject property. See *Trustee's Statement*, ECF No. 130.

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) \$10,801.65, recorded July 23, 2021, by American Express National Bank, (ii) \$3,977.88, recorded December 21, 2018, by Catherine Tien, (iii) \$21,307.96, recorded April 23, 2018, by Wells Fargo Bank, N.A. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$626,400.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$1,447,938.46. The value of the property is \$920,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

7. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-4](#)

MOTION TO SELL
9-8-2022 [\[47\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/16/2021

Final Ruling

Motion: Sell Property of Estate

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

Disposition: Denied without prejudice

Order: Civil minute order

Trustee Nikki Farris seeks an order authorizing the sale of assets of the estate to the debtor.

The motion will be denied without prejudice as the movant has failed to properly provide notice to all parties as required. The following party filed a request for special notice: Superior Estates, LLC - Jennifer L. Pruski, Esquire. See Request for Special Notice, ECF No. 9. This creditor was not served with the motion. See *Certificate of Service*, ECF No. 51.

The court notes that after the filing of this motion Bank of America N.A. also filed a request for special notice. The court recommends use of the clerk's feature on the court's website which generates an updated matrix of special notice creditors in any given case.

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 the 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) designates creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

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) motions), 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, Wilke Fleury LLP filed a Certificate of Service, ECF No. 51. That form was signed by "Stephanie Douglas," who is apparently a paraprofessional employed by that firm. Except for omitting the matrix of creditors who have filed a request for special notice, as discussed previously in this ruling, the Certificate of Service generally represents the proper use of the new local rules and form Certificate of Service. Section 3 properly identifies the case is subject to limited noticing. Attachment 4 properly lists the documents served. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of

the Court's electronic-filing system. Section 6(B)(2) is not checked but the certificate is supported by the clerk's matrix of remaining creditors. Save and except the missed Request for Special Notice creditor, the firm and Ms. Douglas 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 trustee's motion to sell property of the estate has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

8. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-5](#)

MOTION TO ABANDON
9-8-2022 [\[52\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/16/2021

Final Ruling

Motion: Abandon Property of Estate

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

Disposition: Denied without prejudice

Order: Civil minute order

Trustee Nikki Farris seeks an order authorizing the abandonment of estate property.

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

The following party filed a request for special notice: Superior Estates, LLC - Jennifer L. Pruski, Esquire. See Request for Special Notice, ECF No. 9. This creditor was not served with the motion. See Certificate of Service, ECF No. 56.

The court notes that after the filing of this motion Bank of America N.A. also filed a request for special notice. The court recommends the use of the clerk's feature on the court's website which

generates an updated matrix of special notice creditors in any given case.

Moreover, the Certificate of Service filed in this case indicates that this motion is subject to limited notice. This is incorrect under Fed. R. Bankr. P. 6007(a) as further discussed below.

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 the 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) designates creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

MOTION TO ABANDON NOTICE

Rule 6007(a)

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

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

The certificate of service filed in this case does not include an attachment which shows that all creditors were served with the motion as required by Rule 6007. The certificate shows that the movant attempted to limit notice under LBR 2002-3. *See Certificate of Service*, ECF No. 56, p. 2, item 3.

The trustee may not limit notice in a motion to abandon estate assets unless directed to do so by the court. It appears that the movant believes the recently enacted LBR 2002-3 provides such a direction.

LBR 2002-3

Without further order of the court, the provisions of Fed. R. Bankr. P. 2002(h) are applicable to chapter 7, chapter 12 and chapter 13 cases *that otherwise satisfy the provisions of that subdivision.* The Clerk of the Court or any party in interest giving notice required by Fed. R. Bankr. P. 2002(a) may limit such notice to those persons specified in Fed. R. Bankr. P. 2002(h).

LBR 2002-3 (emphasis added).

In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for

relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, *the court may direct that all notices required by subdivision (a) of this rule* be mailed only to:

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

Fed. R. Bankr. P. 2002(h) (emphasis added).

Rule 2002(h) only allows limited notice in applicable motions specifically listed in Rule 2002(a). Thus, LBR 2002-3 does not authorize, nor contemplate, limited service in any motion which is not included in Fed. R. Bankr. P. 2002(a). Moreover, Fed. R. Bankr. P. 6007(a) specifically requires notice to all parties in motions to abandon estate property.

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

CIVIL MINUTE ORDER

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

The trustee's Motion to Abandon Estate Assets has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

9. [13-25159](#)-A-7 **IN RE: ARVINDER KAUR**
[GSS-14](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA (N.A.)
9-13-2022 [\[74\]](#)

GURJIT SRAI/ATTY. FOR DBT.
DEBTORS DISCHARGED: 07/29/2013

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil Minute Order

The debtor seeks to avoid the judicial lien of Capital One Bank (USA), N.A. under 11 U.S.C. § 522(f).

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)).

This motion is brought pursuant to Fed. R. Bankr. P. 7004 which requires that the moving party serve the motion and supporting papers on the affected party in a specified manner.

In addition to the service required under Rule 7004 the court has directed that a creditor requesting special notice also be served with the moving papers as follows.

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.

In this case creditor Atlas Acquisitions, LLC, has filed a request for special notice. See Request for Notice, ECF No. 10. Thus, the debtor is bound to serve the motion to avoid lien on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this objection does not list Atlas Acquisitions, LLC, as a party served with the notice as required. See Certificate of Service, ECF No. 85.

LBR 9004-2(e)

- 1) Separate Document. The proof of service for any documents filed shall itself be filed as a separate document.
- 2) Pleadings Not Attached. Copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. The proof of service shall identify by title each of the pleadings and documents served.
- 3) Single Docket Control Number. Multiple documents and pleadings related to papers with the same Docket Control Number may be included in one proof

of service. Documents and pleadings related to papers with different Docket Control Numbers SHALL NOT be included in the same proof of service.

LBR 9004-2(e) (emphasis added).

The debtor has filed three motions to avoid lien under 11 U.S.C. § 522(f) to be heard on the court's October 17, 2022, calendar. Each motion, as required, has been assigned a different docket control number as follows: 1) GSS-14; 2) GSS-17; and 3) GSS-19.

Only one certificate of service has been filed in support of each individual motion. See, Certificate of Service, ECF No. 85. The document lists all three of the motions to avoid lien which contravenes LBR 9004-2(e) (3).

LBR 9014-1(c) (1)

The lack of a docket control number on the certificate of service filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The certificate of service contains no docket control number. See Certificate of Service, ECF No. 85.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien of Capital One Bank (USA), N.A., has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

10. [13-25159](#)-A-7 **IN RE: ARVINDER KAUR**
[GSS-17](#)

MOTION TO AVOID LIEN OF GLOBAL CREDIT ACCEPTANCE CREDIT
COMPANY, L.P.
9-13-2022 [\[82\]](#)

GURJIT SRAI/ATTY. FOR DBT.
DEBTORS DISCHARGED: 07/29/2013

Final Ruling

Matter: Motion to Avoid Judicial Lien
Notice: LBR 9014-1(f)(1)
Disposition: Denied without prejudice
Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Global Credit Acceptance Company, L.P, under 11 U.S.C. § 522(f).

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)).

This motion is brought pursuant to Fed. R. Bankr. P. 7004 which requires that the moving party serve the motion and supporting papers on the affected party in a specified manner.

In addition to the service required under Rule 7004 the court has directed that a creditor requesting special notice also be served with the moving papers as follows.

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.

In this case creditor Atlas Acquisitions, LLC, has filed a request for special notice. See Request for Notice, ECF No. 10. Thus, the debtor is bound to serve the motion to avoid lien on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this objection does not list Atlas Acquisitions, LLC as a party served with the notice as required. See Certificate of Service, ECF No. 85.

LBR 9004-2(e)

1) Separate Document. The proof of service for any documents filed shall itself be filed as a separate document.

2) Pleadings Not Attached. Copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. The proof of service shall identify by title each of the pleadings and documents served.

3) Docket Control Number. Multiple documents and pleadings related to papers with the same Docket Control Number may be included in one proof of

service. Documents and pleadings related to papers with different Docket Control Numbers SHALL NOT be included in the same proof of service.

LBR 9004-2(e) (emphasis added).

The debtor has filed three motions to avoid lien under 11 U.S.C. § 522(f) to be heard on the court's October 17, 2022, calendar. Each motion, as required, has been assigned a different docket control number as follows: 1) GSS-14; 2) GSS-17; and 3) GSS-19.

Only one certificate of service has been filed in support of each individual motion. See, Certificate of Service, ECF No. 85. The document lists all three of the motions to avoid lien which contravenes LBR 9004-2(e) (3).

LBR 9014-1(c) (1)

The lack of a docket control number on the certificate of service filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The certificate of service contains no docket control number. See Certificate of Service, ECF No. 85.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien of Global Credit Acceptance Company, L.P., has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

11. [13-25159](#)-A-7 **IN RE: ARVINDER KAUR**
[GSS-19](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE LLC
9-13-2022 [\[78\]](#)

GURJIT SRAI/ATTY. FOR DBT.
DEBTORS DISCHARGED: 07/29/2013

Final Ruling

Matter: Motion to Avoid Judicial Lien

Notice: LBR 9014-1(f)(1)

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Asset Acceptance LLC, under 11 U.S.C. § 522(f).

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)).

This motion is brought pursuant to Fed. R. Bankr. P. 7004 which requires that the moving party serve the motion and supporting papers on the affected party in a specified manner.

In addition to the service required under Rule 7004 the court has directed that a creditor requesting special notice also be served with the moving papers as follows.

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.

In this case creditor Atlas Acquisitions, LLC, has filed a request for special notice. See Request for Notice, ECF No. 10. Thus, the debtor is bound to serve the motion to avoid lien on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this objection does not list Atlas Acquisitions, LLC as a party served with the notice as required. See Certificate of Service, ECF No. 85.

LBR 9004-2(e)

1) Separate Document. The proof of service for any documents filed shall itself be filed as a separate document.

2) Pleadings Not Attached. Copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. The proof of service shall identify by title each of the pleadings and documents served.

3) Single Docket Control Number. Multiple documents and pleadings related to papers with the same Docket Control Number may be included in one proof of

service. Documents and pleadings related to papers with different Docket Control Numbers SHALL NOT be included in the same proof of service.

LBR 9004-2(e) (emphasis added).

The debtors have filed three motions to avoid lien under 11 U.S.C. § 522(f) to be heard on the court's October 17, 2022, calendar. Each motion, as required, has been assigned a different docket control number as follows: 1) GSS-14; 2) GSS-17; and 3) GSS-19.

Only one certificate of service has been filed in support of each individual motion. See, Certificate of Service, ECF No. 85. The document lists all three of the motions to avoid lien which contravenes LBR 9004-2(e) (3).

LBR 9014-1(c) (1)

The lack of a docket control number on the certificate of service filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

The certificate of service contains no docket control number. See Certificate of Service, ECF No. 85.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien of Asset Acceptance LLC, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

12. [22-20175](#)-A-7 **IN RE: DARRIN/KRISTINA DEMELLO**
[DRE-2](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER
13
7-31-2022 [\[41\]](#)

D. ENSMINGER/ATTY. FOR DBT.

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

Notice: Continued from August 29, 2022

Disposition: Granted

Order: Civil minute order

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

The hearing on this motion was continued to allow the debtors to augment the evidentiary record. Specifically, the debtors were to file Amended Schedules I and J to show their ability to fund a Chapter 13 plan.

On September 12, 2022, the debtors filed Amended Schedules I and J, ECF No. 50. The schedules were served on all interested parties including the United States Trustee on September 13, 2022. See Certificate of Service, ECF No. 53.

Despite the filing of its Motion to Dismiss under 11 U.S.C. § 707(b) the United States Trustee has not appeared in this matter or otherwise opposed the debtors' motion to convert.

CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No

party in interest has questioned the debtor's eligibility for relief under Chapter 13, or otherwise opposed this motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to convert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

13. [22-20175](#)-A-7 **IN RE: DARRIN/KRISTINA DEMELLO**
[UST-1](#)

CONTINUED MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C.
SECTION 707(B)
7-29-2022 [[34](#)]

D. ENSMINGER/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Matter: Motion to Dismiss - 11 U.S.C. § 707(b)

Notice: Continued from August 29, 2022

Disposition: Denied as moot

Order: Civil minute order

The hearing on the United States Trustee's Motion to Dismiss under 11 U.S.C. § 707(b) was continued from August 29, 2022, to coincide with the debtors' Motion to Convert Case to Chapter 13.

The motion to convert was unopposed by any party in interest including the United States Trustee. The instant motion contains no allegations which precluded the court from converting the case to Chapter 13 as requested by the debtors. The Motion to Convert to Chapter 13 (DRE-2) has been granted.

The court will deny this motion as moot.

CIVIL MINUTE ORDER

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

The United States Trustee's Motion to Dismiss Chapter 7 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 as moot.

14. [21-22987](#)-A-7 **IN RE: ROBERT MCKEAGUE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-2022 [\[39\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/12/2021
TOYOTA MOTOR CREDIT CORPORATION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Relief from automatic stay
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. §§ 362(a).

The motion will be denied without prejudice as the movant has failed to properly provide notice to all parties as required. The following party filed a request for special notice: Synchrony Bank c/o PRA Receivables Management. This creditor was not served with the motion. See *Certificate of Service*, ECF No. 43.

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 the 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) designates 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) to Rule 2002 motions. Thus, the movant is required to serve the motion on creditors who have filed requests for special notice.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

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

of service shall identify the title of the pleadings and documents served."

In this case the movant did not file the certificate of service as a separate document but rather filed it an exhibit in support of the motion. See ECF No. 43, Exhibit No. 4. In the future, failure to follow local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

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) motions), 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, Bonial and Associates, P.C. filed a Certificate of Service, ECF No. 43. That form was signed by "Corey Banks," who is a paraprofessional employed by that firm. Except for omitting the matrix of creditors who have filed a request for special notice, as discussed previously in this ruling, and filing the certificate as an exhibit, the Certificate of Service generally represents the proper use of the new local rules and form Certificate of Service. Section 4 properly lists the documents served. Attachment 6(a) lists the parties which were served with the motion. Except for the missed Request for Special Notice creditor and the aggregation problem, LBR9014-1(e)(3), the firm and Corey Banks 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.

Toyota Motor Credit Union's motion for relief from the automatic stay has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

15. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DNL-2](#)

MOTION TO ABANDON
10-3-2022 [\[31\]](#)

MARK WOLFF/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

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

Disposition: Continued to November 7, 2022, at 9:00 a.m.

Order: Civil Minute Order

The chapter 7 trustee moves for an order authorizing his abandonment of the bankruptcy estate's interest in the following assets more fully described in the motion: vehicles; inventory; work in progress; machinery; office furniture. See Motion, ECF No. 31. The assets are currently located in the debtor's prior business premises which are leased.

The trustee opines that:

[b]efore expenses (which will be substantial due to the heavy weight of some of the equipment), it is estimated that a sale of the Subject Property would gross about \$171,000 to \$227,000. Secured claims against the Subject Property will likely exceed \$645,000.

Motion, ECF No. 31, 3:12-15.

ABANDONMENT

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).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of

inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a).

The motion is supported by the declaration of the trustee Geoffrey Richards. There are no exhibits filed in support of the motion. The court takes judicial notice of the Bankruptcy Schedules filed in this case under Fed. R. Evid. 201.

Neither Schedule D, the motion, nor the trustee’s declaration state the amount of the lien against the assets. Therefore, the court is unable to determine that the assets are of inconsequential value to the estate. *See Schedule D*, ECF No. 1. Schedule D lists two equipment loans but fails to indicate the name of any creditor, the amounts owed, or a list of items securing the loans.

AMENDED SCHEDULE D

On October 6, 2022, the debtor filed an Amended Schedule D, listing numerous additional secured creditors. The court will continue the hearing on this motion to allow the trustee to analyze the Schedules, review the evidence and augment the evidentiary record in the context of the new information provided in the schedule. Were this motion not continued it would be denied without prejudice.

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) motions), 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, Desmond, Nolan, Livaich & Cunningham filed a Certificate of Service, ECF No. 34. That form was signed by “Ellen Angello,” who 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. Section 4 properly lists the documents served. Section 5 is supported by the Clerk’s official list of those parties that have filed a Request for Special Notice. Section 6(B)(1) properly attaches the Clerk’s Official Matrix of Registered Users of the Court’s electronic-filing system. Section 6(B)(2) is supported by the clerk’s matrix of remaining creditors. The firm and Ms. Angello 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:

IT IS ORDERED that the motion is continued to November 7, 2022, at 9:00 a.m. No later than October 24, 2022, the trustee shall file and serve all additional evidence and argument in support of his motion.