

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**November 18, 2021 at 10:00 a.m.**

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| <b>1.</b> | <b><u>21-23235-E-7</u></b><br><b><u>KC-1</u></b><br><br><b>HARRIS-TAAD</b> | <b>JASON TAAD AND TAWYNA</b><br><b>Kathleen Crist</b> | <b>MOTION TO COMPEL</b><br><b>ABANDONMENT</b><br><b>11-2-21 [17]</b> |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided.

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held for an “order of abandonment”. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 2, 2021. By the court’s calculation, 16 days’ notice was provided. 14 days’ notice is required.

The court notes that Synchrony Bank (“Creditor”) requested special notice on September 17, 2021. Dckt. 9. Debtor’s proof of service does not document that Creditor received notice to the address requested in its request for special notice. Under the facts and circumstances of this Motion, the court waives this notice insufficiency.

The Motion to Compel Abandonment was properly set for hearing on the notice required by

Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

**The Motion to Compel Abandonment is XXXXX.**

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Jason Earl Taad (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property commonly known as the business name, “Taad Transport”, and the business checking account with F&M Bank ending in 4501 (“Property”). The Declaration of Jacob Earl Taad has been filed in support of the Motion and values the Property at \$82.58.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The Motion states that the property is exempted pursuant to California Code of Civil Procedure §§ 704.730 and 704.010, which are the homestead exemption and motor vehicle exemption, respectfully. The Property Debtor is attempting to compel abandonment is neither real property nor a motor vehicle. Accordingly, the Code sections that Debtor uses as grounds for abandonment do not apply to the Property. Movant also makes reference to “the Transport company” but does not assert what assets would be abandoned in regards to “the Transport company.”

Debtor’s Declaration states that “The Transport Business listed herein and operated by myself, including the F&M Checking account, which is fully exempt under various sections of the California Code of Civil Procedure.” Dckt. 20. Debtor then provides a different Code section than provided in the Motion by listing California Code of Civil Procedure §§ 704.010, 704.070.

Debtor’s Schedule C lists “Business Checking: F&M Banking ending in 4501” as property the Debtor claims as exempt in the amount of \$82.58 pursuant to California Code of Civil Procedure § 704.070. Under § 704.070:

“Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in § 703.080 are exempt in the following amounts: (1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support; or (2) Disposable earnings that would otherwise not be subject to levy under § 706.050 that are levied upon or otherwise sought to

be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.”

In accordance with § 703.080, the exemption claimant has the burden of tracing an exempt fund. Furthermore, the deadline for filing objections to exemptions does not expire until thirty (30) days after the conclusion of the Meeting of Creditors. Notice of Bankruptcy, Section 9; Dckt. 5. The Meeting of Creditors was held on November 8, 2021, making the deadline to file an objection to exemptions December 8, 2021. Therefore, the court cannot determine whether the F&M Bank Business Checking account ending in 4501 is properly exempt.

However, Debtor does not need to have an exemption to have the asset abandoned. The Code only requires that it be burdensome or of inconsequential value to the estate. 11 U.S.C. 554(a). Debtor’s Motion and Declaration state that the business has no marketable value outside of Debtor’s own efforts. Debtor does not provide any more evidence to prove to the court that such assets he wants abandoned are burdensome or of inconsequential value to the estate. Instead, Debtor makes the conclusory statement that “the Property is protected and exempted, it is of inconsequential value to the bankruptcy estate, and there is nothing for the Trustee to administer to unsecured creditors.” Such a statement provides no evidence to the court. Finally, the court notes the vague request to abandon the business name, “Taad Transport.” While the goodwill of a business is generally intangible property of the bankruptcy estate, the Debtor fails to provide the court with any evidence of how much the business is worth besides stating it has no marketable value.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule 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.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The court shall issue an order substantially in the following form holding that:

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

The Motion to Compel Abandonment filed by Jason Earl Taad (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is **xxxx**.

**FITZGERALD V. TRELLIS COMPANY**

Plaintiff's Atty: Pro Se  
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18  
Answer: 7/26/18

Nature of Action:  
Dischargeability - student loan  
Dischargeability - other

Notes:

Continued from 9/23/21. A representative of Defendant and Defendant's counsel to appear in court at the continued status conference, and to serve prior to the continued Status Conference, copies of all notes and other loan documents upon which claims against Plaintiff-Debtor are asserted for loans made to him personally.

**NOVEMBER 18, 2021 TRIAL SCHEDULING CONFERENCE**

At the Conference, **XXXXXXX**

**SEPTEMBER 23, 2021 TRIAL SCHEDULING STATUS CONFERENCE**

On September 16, 2021, Defendant Trellis Company filed a Status Report for this Adversary Proceeding. Dckt. 181. At the heart of this dispute is Plaintiff-Debtor's assertion that his purported signature on the refinanced consolidated student loans of his ex-wife and Plaintiff-Debtor (if any) was forged. Plaintiff-Debtor asserts that he never had any student loans in his name.

Defendant states that Plaintiff-Debtor was obligated on Perkins and Stafford student loans during the period 1991 through 1994 for his attendance of California State University Chico. Exhibit A is a printout of the alleged student loans. Dckt. 182. These appear to total \$55,648.00. The court says "appears" because Defendant does not provide a computation of such amounts.

Then, later in the Status Report Defendant states that the total of the consolidated loan (Debtor's ex-wife's loans and Debtor's personal loans) was only \$35,997.91, with \$16,102.48 attributable to Plaintiff-Debtor's loan. Thus, it would appear that Debtor made substantial payments on his loans that Defendant asserts he obtained.

Defendant then states that the balance on the consolidated loan has grown to \$81,949.19 as of March 2, 2015.

Though the parties have attempted a judicial mediation, they were unable to successfully schedule such with the designated judicial mediator.

The Status Report states that Defendant has tendered an offer to accept a reduced loan amount which it computes to be the \$19,845.93 balance on Plaintiff-Debtor's prior to the asserted consolidation, which effectively waives 24 years of accrued interest. A deadline of September 21, 2021 was imposed on the settlement offer.

No further pleadings regarding settlement have been filed as of the court's review of the Docket on September 22, 2021 at 4:56 p.m.

On Plaintiff-Debtor's Schedules from 2016 when his bankruptcy case was filed, he reported having gross monthly income of \$6,934.90 from his employment at UC Merced. 16-90157; Schedule I, Dckt. 1 at 36. After deducting taxes, mandatory retirement contribution, repayment of retirement loans, and other expenses, Plaintiff-Debtor computes his monthly take home income to be \$4,678.28. *Id.*, at 37. On Schedule J Debtor lists a spouse as a dependent (for which no income is listed on Schedule I) and two children who now, in 2021, are adults. *Id.*, at 38. Debtor lists (\$6,486.00) in monthly expenses, stating that he runs (\$1,807) a month in the red.

These expenses include making a \$586 a month payment for student loans; two car payments of \$556 and \$480 a month; \$500 for transportation; and \$400 for cell phone, cable, and internet. With the adult children out of the house by 2021 and a spouse (if it is not Debtor's ex-spouse who is listed) who may well be able to work to contribute for her monthly expenses, it appears that Plaintiff-Debtor's current monthly expenses may be substantially different than they were in 2016.

Though this judge is not a settlement or mediation judge, he does have some observations dating back to that portion of his former legal practice in representing creditor and the debt collection industry (as well as debtor who needed to effectively communicate with the creditor and "educate" the creditor on what a reasonable repayment plan was on an economic basis).

Defendant has constructively come forward and proposed reducing the claim to the balance it was in the mid-1990's – \$19,845.93. It is proposed that this obligation be amortized over 15 years at 8% interest. Status Report, p. 8:3-6; Dckt. 181. Using the Excel Loan Amortization Program, the court computes the monthly payment on this amount to be \$189.65.

The Parties made productive use of the Scheduling Status Conference, reporting to the court that a settlement has been achieved, which settlement shall be reduced to writing and filed with the court. The basic terms of the settlement are:

- A. Plaintiff-Debtor may fully resolve the debt owed to Defendant by the payment of a lump sum of \$9,500.00 to Defendant by a date certain (to be specified in the Settlement Agreement).

If paid in a lump sum, the Adversary Proceeding will be dismissed without prejudice, the obligation having been fully paid under the terms of the Settlement Agreement.

- B. If not by a lump sum payment, the obligation of Debtor will be \$11,100, with 8%

interest, to be paid in \$200 a month installments, which (using the Microsoft Excel Loan Amortization program) would be approximately a sixty-eight month repayment period.

If the monthly payment option is selected by Plaintiff-Debtor, the court shall stay this Adversary Proceeding pending either payment of the obligation as provided under the installment terms, which upon payment of the obligation the court will dismiss the Adversary Proceeding, or if Plaintiff-Debtor defaults in the payments, enter judgment as provided in the Settlement Agreement.

- C. If Plaintiff-Debtor defaults in payment of the obligation by a lump sum or by installments as provided in Settlement Agreement, judgment will be entered for Defendant in the amount of \$19,845.93, plus interest from May 7, 2016, with credit given for the installments or partial lump sum payments made by Plaintiff-Debtor.

The court continues the Scheduling Status Conference to allow the parties time to document their settlement and Plaintiff-Debtor to make the lump sum payment or begin making the installment payments.

3. [19-25168-E-7](#) **MATHEW LAKOTA**  
[19-2140](#)

**LUCAS V. LAKOTA**

**CONTINUED PRE-TRIAL  
CONFERENCE  
RE: COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
11-14-19 [1]**

Plaintiff's Atty: Raymond L. Sandelman  
Defendant's Atty: Pro Se

Adv. Filed: 11/14/19  
Answer: 11/26/19

Nature of Action:  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - wilful and malicious injury

Notes:  
Continued from 10/28/21. On or before Noon on 11/12/21, Defendant Mathew Lakota shall file and serve his Pre-Trial Conference Statement.

### **SUMMARY OF COMPLAINT**

Lisa Lucas ("Plaintiff") has filed a complaint seeking to have alleged obligations to be determined nondischargeable in connection with Defendant-Debtor's bankruptcy case. Plaintiff obtained a judgement against her ex-husband, and assigned the judgment to Defendant-Debtor for collection. Under the terms of the assignment, 33% of the monies collected would be paid to Defendant-Debtor and 67% to Plaintiff.

Plaintiff's ex-husband filed a Chapter 13 bankruptcy case, the confirmed plan in which provided for 100% payment of Plaintiff's judgment. Plaintiff alleges that Defendant-Debtor improperly retained and took \$3,931.71 of Plaintiff's portion of the monies paid on the judgment that was assigned for collection. Plaintiff commenced and was prosecuting a state court action asserting her claims when Defendant-Debtor commenced his Chapter 7 bankruptcy case. Plaintiff asserts that her claims are nondischargeable pursuant to 11 U.S.C. § 523(a)(4), embezzlement, breach of fiduciary duty; (a)(6), willful and malicious injury; and her claim for punitive damages.

## SUMMARY OF ANSWER

Mathew Lakota ("Defendant"), in pro se, filed an Answer (Dckt. 8) that admits and denies specific allegations in the Complaint.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Lisa Lucas alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (d)(I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Mathew Lakota admits the allegations of jurisdiction and core proceedings. Answer ¶ 2, Dckt. 8.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2021**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2021**.
- F. The Trial shall be conducted at ----**x.m. on -----, 2021**.

The Parties in their respective Pretrial Conference Statements, Dckts. 20, 48, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

## Jurisdiction and Venue:

Plaintiff Lisa Lucas alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Mathew Lakota admits the allegations of jurisdiction and core proceedings. Answer ¶ 2, Dckt. 8. Venue in this court is proper.

## Undisputed Facts:

1. Plaintiff obtained a judgment against Jeffrey Kahn.
2. Plaintiff assigned the judgment to Defendant Mathew Lakota.
3. The assignment includes a provision stating that any moneys recovered will be split between Plaintiff and Defendant.
4. Defendant is in the business of collecting judgments.
5. Jeffrey Kahn filed a Chapter 13 Bankruptcy, which provided for payment of 100% of the unsecured claims.
6. Defendant filed two proofs of claims in that case which were based on the assigned judgment.
7. The judgment claim was paid in full, with only \$1,000.00 of the bankruptcy payments disbursed to Plaintiff.
8. Plaintiff asserts being owed \$5,092.33 for her portion of the monies recovered by Defendant on the judgment.
9. Plaintiff sued Defendant in state court, which Defendant answered, and during such period retained all of the Chapter 13 Plan payments made on the assigned judgment.
10. Defendant has been convicted of felonies for crimes under the California Penal Code.

## Undisputed Facts:

1. Lisa Lucas obtained a judgment against Jeffrey Kahn. Lakota and Lucas signed an Assignment of Judgment that was filed with the State court.
2. By separate contract, Lakota agreed to pay over to Lucas about 66% of what he enforced from the judgment against Kahn. The expenses of Lakota would not be a part of the contract.
3. Lakota is in the business of enforcing judgments fully assigned to him by entities in California courts.
4. Jeffrey Kahn filed chapter 13 in the Bankruptcy Court of this State and that effected the enforcement of judgment now owned by Lakota.
5. Kahn eventually began to make payments to his trustee on the judgment. All documents assisting Lakota in getting those payments were made by Lakota and without the knowledge or consideration of Lucas. All court hearings in that matter were attended by Lakota alone and with consultation with Lucas.
6. All decisions made concerning how to enforce the judgment against Kahn were made by Lakota.
7. Mr. Lakota will state for the record herein, and will, for the purposes of this filing, state under oath, with the knowledge of the penalty of perjury, that he has never been convicted of a felony in any court of law.



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| <p>Disputed Facts:</p> <ol style="list-style-type: none"> <li>1. Did Defendant have a fraudulent intent to deprive Plaintiff of her portion of the monies received on the Judgment.</li> <li>2. Was Defendant's conduct deliberate or intentional.</li> </ol>   | <p>Disputed Facts:</p> <ol style="list-style-type: none"> <li>1. Lucas believes that the full and final assignment of a judgment is not full and final.</li> </ol>  |
| <p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> </ol>  | <p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> <li>2.</li> <li>3.</li> </ol>  |
| <p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. Damages of \$3,931.71</li> <li>2. Punitive damages of \$6,068.29.</li> </ol>  | <p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. Dismissal, with prejudice, the adversary action before the Court today.</li> </ol>  |
| <p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. 11 U.S.C. § 523(a)(4)</li> <li>2. California Penal Code 506, 506(a)</li> <li>3. 11 U.S.C. § 523(a)(6)</li> <li>4. California Civil Code § 3294</li> <li>5. Detailed Case and Treatise Citations included in the Pretrial Conference Brief.</li> </ol> | <p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. Defendant has read the Points of Law filed by the Plaintiff can refutes them completely.</li> <li>2. Points of law refuting those by Plaintiff are not identified in the Pretrial Conference Statement</li> </ol> |
| <p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None identified</li> </ol>   | <p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> </ol>   |

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| <p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Lisa Lucas</li> <li>2. Mathew Lakota</li> <li>3. Custodian of Records for Former Chapter 13 Trustee Jan Johnson</li> <li>4. Custodian of Records for Chapter 13 Trustee Russell Greer.</li> </ol>   | <p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Mathew Lakota</li> <li>2. Lisa Lucas</li> </ol> |
| <p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. Debtor's Motion to Confirm Amended Chapter 13 Plan, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-BJ</li> <li>2. Amended Chapter 13 Plan, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-131</li> <li>3. Order Confirming Chapter 13 Plan Filed on December 9, 2016, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-131</li> <li>4. Certificate of Service, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-131</li> <li>5. Proof of Claim, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-131</li> <li>6. Proof of Claim, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Action No. 16-26950-A-131</li> <li>7. Certificate of Service, United States Bankruptcy Court, Eastern District of California,</li> </ol> | <p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> </ol>                       |

Sacramento Division, Action No.  
16-26950-A-131.

8. Creditor's Response to Debtor's  
Objection to Claim, United States Bankruptcy  
Court, Eastern District of California, Sacramento  
Division, Action No. 16-26950-A-BJ

9. Order on Objection to Proof of Claim  
Filed by Mathew M. Lakota, United States  
Bankruptcy Court, Eastern District of California,  
Sacramento Division, Action No. 16-26950-A-BJ

10. Acknowledgment of Assignment of  
Judgment, Superior Court of California, County  
of Butte, Action No. FL036366

11. Abstract of Judgment - Civil and Small  
Claims, Superior Court of California, County of  
Butte, Action No. FL036366

12. Memorandum of Costs After Judgment,  
Acknowledgment of Credit and Declaration of  
Accrued Interest, Superior Court of California,  
County of Butte, Action No. FL035366

13. Memorandum of Costs After Judgment,  
Acknowledgment of Credit and Declaration of  
Accrued Interest, Superior Court of California,  
County of Butte, Action No. FL035366

14. Acknowledgement of Assignment of  
Judgment, Superior Court of California, County  
of Butte, Action No. CD13590

15. Acknowledgement of Assignment of  
Judgment, Superior Court of California, County  
of Butte, Action No. 16SC00673

16. Acknowledgement of Assignment of  
Judgment, Superior Court of California, County  
of Butte, Action No. 16SC00672

17. Acknowledgement of Assignment of  
Judgment, Superior Court of California, County  
of Butte, Action No. 16UD00681

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| 18. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16SC00863               |  |
| 19. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. DSC09748                |  |
| 20. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16SC02835               |  |
| 21. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16UD03121               |  |
| 22. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16UD00451               |  |
| 23. | Acknowledgement of Assignment of Judgment, Superior Court of 8 California, County of Butte, Action No. 17SC00915             |  |
| 24. | Transfer Order in Aid of Execution, Superior Court of California, County of Butte, Action No. 16SC02758                      |  |
| 25. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16UD01680               |  |
| 26. | Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 17CV01228               |  |
| 27. | First Amended Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16UD01680 |  |
| 28. | Acknowledgement of Assignment of Judgment and Claim, Superior Court of California, County of Butte, Action No. 17UD03374     |  |
| 29. | Complaint for Money Due on Account   |  |

Stated; Revolving Account, Superior Court of California, County of Butte, Action No. 18CV00526

30. Acknowledgement of Assignment of Judgment and Claim, Superior Court of California, County of Butte, Action No. 16SC02671

31. Acknowledgement of Assignment of Judgment and Claim, Superior Court of California, County of Butte, Action No. 18UD00630

32. Complaint for Money Due on Account Stated; Revolving Account, Superior Court of California, County of Butte, Action No. 3 18CV01448

33. Request to File New Litigation by Vexatious Litigant and Complaint for Money Due on Account Stated; Revolving Account, Superior 6 Court of California, County of Butte, Action No. P145-148

34. Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 16SC00891

35. Acknowledgement of Assignment of Judgment, Superior Court of 10 California, County of Butte, Action No. 18SC01035

36. Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 19UD01446

37. Acknowledgement of Assignment of Judgment, Superior Court of California, County of Butte, Action No. 19SC00665

38. Minute order from court date stating "Notice is waived", Superior Court of California, County of Butte, Action No. 18CV03834

39. Creditor's Complaint to Determine that Debt is Non-Dischargeable, the United States

Bankruptcy Court, Eastern District of California,  
Sacramento Division, Action No. 17-27428

40. Plaintiff's Response to Defendants'  
Motion for Summary Judgment, the United States  
Bankruptcy Court, Eastern District of California,  
22 Sacramento Division, Action No.  
17-23968-A-7

41. Felony complaint, Superior Court of  
California, County of Butte, Action No.  
CM017766

42. Clerk's minutes from sentencing and  
Terms & Conditions of Formal Probation,  
Superior Court of California, County of Butte,  
Action No CM017766

43. Complaint, Superior Court of  
California, County of Butte, Action No.  
18CV03834

44. Order After Hearing, Superior Court of  
California, County of Butte, Action No.  
18CV03834

45. Notice of Motion for Issue Sanctions,  
Evidence Sanctions, Or Terminating Sanctions  
for Mathew M. Lakota's Failure to Comply with  
Discovery Order, and Monetary Sanctions;  
Memorandum of Points and Authorities, Superior  
Court of California, County of Butte, Action No.  
18CV03834

46. Civil Subpoena (Duces Tecum) for  
Personal Appearance and Production of  
Documents, Electronically Stored Information,  
and Things at Trial or Hearing and Declaration  
[Mathew M. Lakota]

47. Agreement between and signed by Lisa  
Ann Lucas and Mathew M. Lakota

48. Lisa Lucas' Form Interrogatories -  
Limited Civil Cases (Economic Litigation)  
propounded to Mathew M. Lakota 4/26/2019  
P259-262 Mathew M. Lakota's First Amended

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| <p>Answers to Lisa Lucas' Interrogatories</p> <p>49. Statement of Punitive Damages Sought</p> <p>50. Records from Bankruptcy Trustee, Jan P. Johnson</p> <p>51. Order Granting Motion for Issues Sanctions, Superior Court of California, County of Butte, Action No. 18CV03834</p>   |   |
| <p>Discovery Documents:</p> <p>1. Transcript to the July 23, 2019 deposition of Matthew Lakota</p> <p>(i) Page 7 line 18 to 21</p> <p>(ii) Page 12 line 12 to Page 17 line 8</p> <p>(iii) Page 19 lines 18 to 22</p> <p>(iv) Page 20 line 10 to Page 22 line 3</p> <p>(v) Page 23 line 8 to Page 24 line 4</p> <p>(vi) Page 25 lines 5 to 21</p> <p>(vii) Page 26 lines 11 to 14</p> <p>(viii) Page 26 lines 22 to 25</p> <p>(ix) Page 31 lines 4 to 8</p> <p>(x) Page 31 lines 16 to 19</p> <p>(xi) Page 33 lines 5 to 24</p> <p>(xii) Page 34 line 3 to Page 35 line 10</p> <p>(xiii) Page 36 lines 14 to 19</p> <p>(xiv) Page 43 line 7 to Page 44 line 44</p> <p>(xv) Page 48 lines 3 to 11</p> | <p>Discovery Documents:</p> <p>1. None Identified</p> |

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| (xvi) Page 53 lines 1 to 152<br><br>2. Lisa Lucas' Form Interrogatories - Limited Civil Cases (Economic Litigation) propounded to Mathew M. Lakota Interrogatories 115.2, 150.1, 150.5, 150.7, and 150.8, and Mathew M. Lakota's First Amended Answers to the Interrogatories. |   |
| Further Discovery or Motions:<br><br>1. None Identified  | Further Discovery or Motions:<br><br>1. None Identified |
| Stipulations:<br><br>1. None Identified  | Stipulations:<br><br>1. None Identified                 |
| Amendments:<br><br>1. None Identified  | Amendments:<br><br>1. None Identified                   |
| Dismissals:<br><br>1. None Identified  | Dismissals:<br><br>1. None Identified                   |
| Agreed Statement of Facts:<br><br>1. None Identified   | Agreed Statement of Facts:<br><br>1. None Identified    |
| Attorneys' Fees Basis:<br><br>1. None sought.  | Attorneys' Fees Basis:<br><br>1. None Identified        |
| Additional Items<br><br>1. None Identified   | Additional Items<br><br>1. None Identified              |
| Trial Time Estimation: 3 Hours   | Trial Time Estimation: 4 Hours                          |



**VEROS CREDIT, LLC VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is XXXXX.**

Veros Credit, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Dodge Ram 1500, VIN ending in 8688 ("Vehicle"). The moving party has provided the Declaration of Diana Verdin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Martin De Anda Cerda ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of \$504.94 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$1,009.88. *Id.*

#### **Kelley Blue Book or NADA Valuation Report Provided**

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

#### **TRUSTEE'S NON-OPPOSITION**

The Court's Docket reflects on October 5, 2021, Sheri L. Carello, Chapter 7 Trustee, having no opposition to Veros Credit, LLC's Motion for Relief from Automatic Stay.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 4, 2021. Dckt. 26. Debtor asserts that he has cured the pre-petition loan default for the 2010 Dodge Ram 1500 and will have all post-petition payments current prior to the hearing date on this motion.

## **MOVANT'S REPLY**

On November 11, 2021, Veros Credit, LLC, ("Movant"), filed a Reply to the Debtor's Opposition to Motion For Relief from Automatic Stay, Dckt. 30. The Reply states the Debtor has not met the burden of proof to show that the Movant is adequately protected. Debtor's sole argument is that he has cured the pre-petition default and will cure the post-petition default. Further, Debtor provides copies of two receipts in the amount of \$1,000.00 and \$100.00 paid through a third-party processor, MoneyGram. However, there is no evidence that Movant has received the funds from MoneyGram.

Additionally, the Movant argues the Debtor's opposition lacks any reference to relief from stay under section 362(d)(2) and fails to provide evidence to rebut Movant's Declaration in its initial motion. The Movant concedes if the Debtor's \$1,100.00 was received and he does cure all pre-petition arrears, the court is not precluded from granting Movant's motion on another basis.

This Chapter 7 case was filed on August 30, 2021. On November 10, 2021, the Chapter 7 Trustee's Notice of No Distribution was filed. Dckt. 29. There are no assets for the Trustee to administer in this case.

The Deadline for filing Objections to Discharge is December 27, 2021. Notice, § 9; Dckt. 5. If no objections to entry of discharge are filed, Debtor's discharge will be entered shortly thereafter and the automatic stay shall terminate as to the Debtor. 11 U.S.C. § 362(c)(2)(C).

On Schedule A/B, Debtor lists owning four vehicles, several of which are "long in the mileage tooth." Dckt. 1 For the 2010 Dodge Ram, Debtor states the vehicle has a value of \$18,000 and that someone else also has an interest in this vehicle. This may be Debtor's spouse.

At the hearing, **XXXXXXXXXX**

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$18,175.14 before accrued finance charges and \$19,363.25 after accrued finance charges as of September 27, 2021, (Declaration, Dckt. 13), while the value of the Vehicle is estimated between \$10,080.00 and \$12,981.00, as stated on the Kelly Blue Book Valuation Report.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is

a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.~~

### **Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

~~—————Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.~~

~~—————No other or additional relief is granted by the court.~~

~~The court shall issue an order substantially in the following form holding that:~~

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

~~The Motion for Relief from the Automatic Stay filed by Veros Credit, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2010 Dodge Ram 1500, VIN ending in 8688 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

~~No other or additional relief is granted.~~

5. [21-23221](#)-E-7 DEANDRA JACKSON

STATUS CONFERENCE AND FINAL  
HEARING RE: MOTION TO  
RECONSIDER DISMISSAL OF CASE  
10-26-21 [\[24\]](#)

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 11/10/21 [Dckt 29]. Debtor may appear telephonically.

|  |
|--|
| <b>The Status Conference is <span style="color: red;">XXXXXXX</span></b> |
|--|

The court entered an order vacating the dismissal of this case. The court noted that Debtor has had eight prior cases filed and dismissed since 2014 in this court. The court set this Status Conference to allow Debtor to address how she will diligently prosecute this case.

At the Status Conference XXXXXXX

# FINAL RULINGS

6. [21-20705-E-7](#) [KMM-1](#) NEAL/KAREN WELLS  
Catherine King MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-30-21 [26]  
TOYOTA MOTOR CREDIT  
CORPORATION VS.

**Final Ruling:** No appearance at the November 18, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 12, 2021. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota Prius, VIN ending in 9844 (“Vehicle”). The moving party has provided the Declaration of Donna Delahanty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Neal James Wells (“Debtor”). Karen Lee Wells (“Joint Debtor”) is not listed in the written contractual agreement, but Debtor and Joint Debtor have the property listed in their Schedule A/B. Dckt. 17. Debtor and Joint Debtor filed a Statement of Intention on April 14, 2021, that states they intend to surrender the property over to Movant. Dckt. 16.

Movant argues Debtor has not made six post-petition payments, with a total of \$1,412.12 in post-petition payments past due. Declaration, Dckt. 28.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,079.83 (Declaration, Dckt. 28), while the value of the Vehicle is determined to be \$10,257.00, as stated in Schedules A/B and D filed by Debtor, which is less than the debt secured by the asset.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### 11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

### Prior Discharge

Debtor was granted a discharge in this case on June 1, 2021. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

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

The Motion for Relief from the Automatic Stay filed by Toyota Motors Credit Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Toyota Prius, VIN ending in 9844 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Neal James Wells (“Debtor”) and Karen Lee Wells (“Joint-Debtor”), the discharge having been granted in this case, the Motion is denied as moot, the stay having terminated as to the Debtor as provided in 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.