

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

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

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

**RULINGS**

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

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

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

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

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

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

**ERRORS IN RULINGS**

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

1. [22-22314](#)-A-7     **IN RE: MARIA GARCIA**  
[EJS-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-31-2022    [\[26\]](#)

GEORGE BURKE/ATTY. FOR DBT.  
ERIC SCHWAB/ATTY. FOR MV.  
SMOKETREE 520, LLC VS.

### **Final Ruling**

**Motion:** Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

**Notice:** Continued from November 21, 2022

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 3332 Holly Branch Court, #445, Sacramento, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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).

Smoketree 520, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against

debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

#### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

The hearing on this matter was continued to allow the movant to serve the moving papers on parties which have filed a request for special notice in this case.

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

#### Outdated Certificate of Service

The movant has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

The Certificate of Service used to serve the special notice creditor indicates that it is the form in use as of June 2022. See Certificate of Service, ECF No. 35.

#### Clerk's Official Matrix of Special Notice Parties is Mandatory

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the

*Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

LBR 7005-1(a) (emphasis added).

The attachment showing service upon the special notice creditor is incorrect, it is simply a copy of the request for special notice filed by the creditor and not the Clerk's Official list of persons who have filed Requests for Special Notice. See Certificate of Service, ECF No. 35.

The court notes that this certificate was filed during a period of time when the court's system for generating the required matrix was inoperable. Therefore, the court will, in this instance, allow the non-compliant matrix of special notice creditors and grant the motion. Future motions will require compliance with all aspects of LBR 7005-1.

#### **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.

Smoketree 520, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 3332 Holly Branch Court, #445, Sacramento, California and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

2. [22-22617](#)-A-7     **IN RE: MICAH FRAZIER**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-26-2022    [\[18\]](#)

SHERYL ITH/ATTY. FOR MV.  
EXETER FINANCE LLC VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2014 Nissan Maxima

**Value of Collateral:** \$10,125.00

**Aggregate of Liens:** \$17,142.76

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

Exeter Finance, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

### **DEFAULT OF RESPONDENT**

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

### **STAY RELIEF**

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. As a consequence, the motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2014 Nissan Maxima, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

3. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION  
8-15-2022    [\[1\]](#)

RICK MORIN/ATTY. FOR DBT.

**No Ruling**

4. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[DB-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO SET TRIAL DATE  
10-18-2022    [\[23\]](#)

RICK MORIN/ATTY. FOR DBT.

**No Ruling**

5. [22-22020](#)-A-7     **IN RE: RICHARD SAUER**  
[RJM-2](#)

MOTION TO REQUIRE PETITIONING CREDITOR TO POST A BOND  
11-22-2022    [\[43\]](#)

RICK MORIN/ATTY. FOR DBT.

**No Ruling**

6. [21-23522](#)-A-7     **IN RE: JOSEPH SMITH**  
[WW-5](#)

CONTINUED MOTION TO COMPEL ABANDONMENT  
9-26-2022    [\[125\]](#)

MARK WOLFF/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/24/2022

RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Notice:** Continued from October 31, 2022

**Disposition:** Denied without prejudice

**Order:** Civil Minute Order

**Subject:** 2518 U Street, Sacramento, California

**ORAL ARGUMENT NOT NECESSARY**

The issues in this matter having been sufficiently briefed by the debtor and the Chapter 7 trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument).

The hearing on the debtor's motion to compel abandonment of the estate's interest in the subject property was continued from October

31, 2022, to allow the Chapter 7 trustee to file a statement of position.

J. Michael Hopper, the Chapter 7 trustee, has responded to the motion. See Response, ECF No. 135. The debtor has exempted a partial interest (5%) in the subject property. The remaining interest (95%) is claimed by the debtor's mother, Diane Bender. Ms. Bender has filed a claim in this case, Claim No. 8. The trustee has commenced an adversary proceeding against Diane Bender to avoid the transfer effected by a 2011 Deed conveying 95% of the debtor's prior interest in the subject property to Ms. Bender, and authorize the sale of Bender's remaining interest in the subject property, if any. See Adversary Complaint, 22-02103, E.D. Cal. Bankr. (2022), ECF No. 1.

Given the Chapter 7 trustee's response and adversary complaint the motion to compel abandonment is premature. The court will deny the motion without prejudice pending the outcome of the adversary proceeding.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied without prejudice.

7. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-1](#)

MOTION TO AVOID LIEN OF LEON BURNS  
10-28-2022     [\[10\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Leon Burns under 11 U.S.C. § 522(f). The lien was issued by the State of California, Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 13.

### **LIEN AVOIDANCE**

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

### Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the*

employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not yet been made for relief under § 522(f).

The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

#### **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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

8. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-2](#)

MOTION TO AVOID LIEN OF SOLOMIYA VECHERKOVSKIY  
10-28-2022    [\[15\]](#)

MARK SHMORGON/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Solomiya Vecherkovsky under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 18.

## **LIEN AVOIDANCE**

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

### Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not yet been made for relief under § 522(f).

The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

## **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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file

and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

9. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-3](#)

MOTION TO AVOID LIEN OF JOHN ST. PETER  
10-28-2022    [\[20\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of John St. Peter under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 23.

### **LIEN AVOIDANCE**

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

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on*

real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not yet been made for relief under § 522(f). The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

#### **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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

10. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-4](#)

MOTION TO AVOID LIEN OF DEAN LAMSON  
10-28-2022    [\[25\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Dean Lamson under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 28.

### **LIEN AVOIDANCE**

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

#### Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien*

attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

Cal. Lab. Code § 98.2(g) (1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f) (1) (B). Accordingly, a prima facie case has not yet been made for relief under § 522(f).

The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

#### **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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

11. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-5](#)

MOTION TO AVOID LIEN OF NOEMI PROUT  
10-28-2022    [[30](#)]

MARK SHMORGON/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Noemi Prout under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g) (1). See Exhibit D, ECF No. 33.

## **LIEN AVOIDANCE**

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

### Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not yet been made for relief under § 522(f).

The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

## **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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

12. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-6](#)

MOTION TO AVOID LIEN OF LABOR COMMISSIONER OF THE STATE OF CALIFORNIA  
10-28-2022     [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to January 10, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the lien of the Labor Commissioner of the State of California under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 90.8(a). See Exhibit D, ECF No. 38.

### **LIEN AVOIDANCE**

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

Labor Code § 90.8(a)

*As an alternative to a judgment lien, the Labor Commissioner may create a lien on real property to secure the amount due to the Labor Commissioner under any citation, findings, or decision that has become final and may be entered as a judgment, including those that have become final under Sections 1197.1, 226.5, 1023, and 1289. The lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due from the cited parties named in the final citation, findings, or decision, with the county recorder of any county in which the parties' real property may be located. The lien attaches to all interests in real property of those parties located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure, with the same priority as a judgment lien.*

Cal. Lab. Code § 90.8(a) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not yet been made for relief under § 522(f).

The court will continue the hearing on this matter to allow the debtor to provide authority regarding her contention that the lien is a judicial lien which may be avoided under § 522(f).

**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 January 10, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

13. [22-22290](#)-A-7     **IN RE: AMD METAL WORKS, INC**  
[HJN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-3-2022    [\[64\]](#)

MARK WOLFF/ATTY. FOR DBT.  
HOLLY NOLAN/ATTY. FOR MV.  
MITSUBISHI HC CAPITAL AMERICA, INC. VS.  
DEBTOR AND TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2021 Ford F550 and 2021 Ford Flatbed Body

**Value of Collateral:** \$46,685.00

**Aggregate of Liens:** \$50,460.04

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

### **DEFAULT OF RESPONDENT**

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

Mitsubishi HC Capital America, Inc., seeks relief from the automatic stay of 11 U.S.C. §362(a) regarding its interest in a 2021 Ford F550 and 2021 Ford Flatbed Body. The Chapter 7 trustee has filed a non-opposition to the motion. The debtor has filed a non-opposition to the motion. See Non-Opposition, ECF No. 70.

### **STAY RELIEF**

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

476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g) (2).

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. As a consequence, the motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

#### **SERVICE AND NOTICE**

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

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

The movant filed a completed Certificate of Service, ECF No. 69. However, there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

Service is correct in this motion for relief from stay. However, the attachments affixed to the certificate are not properly completed. Form EDC 7-005 requires the use of the Clerk's Matrix for Electronic Users and Special Notice Creditors. The lists of these creditors attached as Attachment 6B1 and 6B3 are not the Clerk's Matrixes. Thus, the Certificate does not comply with LBR 7005-1. Because proper notice was given in this matter the court will grant the motion despite the incorrect usage of the form. Future motions may be denied pursuant to LBR 1001-1(g) should the certificate not comply with LBR 7005-1.

#### **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.

Mitsubishi HC Capital America, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or

otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2021 Ford F550 and 2021 Ford Flatbed Body, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

14. [22-21692](#)-A-7     **IN RE: EVERGREEN ARBORISTS, INC.**  
[JML-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-28-2022    [\[178\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
JUDY LAM/ATTY. FOR MV.  
GLOBAL RENTAL CO., INC. VS.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Global Rental Co., Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied for improper service under LBR 7005-1.

#### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

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

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

#### Clerk's Official Matrix is Mandatory

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form *shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

LBR 7005-1(a) (emphasis added).

In this case the movant has failed to affix the Clerk's Official Matrix to the Certificate of Service. The list affixed to the certificate contravenes LBR 7005-1. The motion is denied without prejudice.

## EXHIBITS

Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may be filed in one document, which shall be identified as "Exhibits to [Motion/Application/Opposition/...]."

LBR 9004-2(d)(1).

The exhibits in support of this motion have been attached to the declaration instead of filed as a separate document. LBR 9004-2(d)(1) requires the exhibits to be filed as separate documents.

## CIVIL MINUTE ORDER

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

Global Rental Co., Inc.'s Motion for Relief From Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

15. [22-21993](#)-A-7     **IN RE: MARVIN CAREY**  
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE  
A MOTION TO DISMISS CASE UNDER SEC. 707(B)  
11-18-2022    [\[13\]](#)

ERIC SCHWAB/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.  
TRUSTEE NON-OPPOSITION

## Tentative Ruling

**Motion:** Extend Trustee and U.S. Trustee's Deadline for Objecting to Discharge under § 727(a), and extend Time to File Motion to Dismiss under § 707(b)

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

The United States Trustee (UST) seeks an order extending the time to object to the debtor's discharge under 11 U.S.C. § 727. The UST also seeks an order extending the time to file a Motion to Dismiss under 11 U.S.C. § 707(b).

#### **EXTENSION OF TIME**

##### Section 727

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

##### Section 707(b)

Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse.

Fed. R. Bankr. P. 1017(e)(1).

The meeting of creditors was first set for hearing on September 20, 2022.

Based on the motion and supporting papers, the court finds that cause exists to extend the trustee and U.S. Trustee's deadline for objecting to discharge under § 727(a) and for the filing of a motion to dismiss under § 707(b). Both the deadline to object to discharge and to file a motion to dismiss will be extended through March 1, 2023.

16. [22-22595](#)-A-7     **IN RE: DARIN/FAE FORDYCE**  
[CK-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
11-14-2022    [\[15\]](#)

CATHERINE KING/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

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

**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 debtors seek an order converting their case from Chapter 7 to Chapter 13. The debtors have disposable income to fund a plan. See Schedule I, ECF No. 1.

### **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.

### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

In this case the service of the motion on all parties indicated in the Certificate of Service and attached matrix was correctly effected. However, the service has not been correctly memorialized in the Certificate of Service, ECF No. 18.

First, service under Rule 7004 is not required in this matter nor has service been accomplished with the special noticing required under the rule. Service under Fed. R. Civ. P. 5 is correct as to all parties which has been accomplished via first class mail. Second, the proper box in Form EDC 7-005 has not been checked regarding Rule 5 service. That box is 6B2a, which shows that all parties on the Clerk's Matrix were served by first class mail.

**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 debtors' 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.

17. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-22](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES  
ATTORNEY(S)  
11-14-2022    [\[469\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Approved:**    \$203,970.00

**Expenses Approved:**    \$9,357.58

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

### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$203,970.00 and reimbursement of expenses in the amount of \$9,357.58.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

### **CIVIL MINUTE ORDER**

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

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

Desmond, Nolan, Livaich & Cunningham's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows interim compensation in the amount of \$203,970.00 and reimbursement of expenses in the amount of \$9,357.58. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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