



**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 16, 2024**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [24-23202](#)-A-7     **IN RE: TYRA FRIZELLE AND DEREK BROWN**  
[UST-1](#)

CONTINUED MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS  
CASE UNDER SEC. 707(B) AND/OR MOTION TO EXTEND TIME  
10-28-2024    [[20](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.  
WITHDRAWN BY M.P.

**Final Ruling**

The United States Trustee filed a notice of withdrawal of its motion, ECF No. 27. Fed. R. Civ. P. 41. Accordingly, this motion will be removed from the calendar. No appearances are required.

2. [19-22509](#)-A-7     **IN RE: ULISES MEZA**  
[DNL-9](#)

MOTION TO SELL  
11-18-2024    [[181](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/07/22

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

**Final Ruling**

The hearing on this motion is continued to January 21, 2025, at 10:30 a.m. No later than 14 days prior to the hearing the parties shall file a joint status report.

3. [24-23328](#)-A-7     **IN RE: MATTHEW MILLER**  
[MIL-1](#)

AMENDED MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.  
11-21-2024    [\[39\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of Wells Fargo Bank, N.A.

The motion will be denied without prejudice as follows.

### **MOTION IS NOT SUPPORTED BY ADMISSIBLE EVIDENCE**

The motion to avoid lien is not supported by any admissible evidence as required. LBR 9014-1(d)(3)(D). There is no declaration filed with the motion nor is there any documentary evidence which shows that a judicial lien exists. Moreover, the court notes that the debtor is attempting to avoid multiple judicial liens. There is no evidence in support of the motion regarding the priority of each of the liens to be avoided.

### **SERVICE**

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).

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

**CIVIL MINUTE ORDER**

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

Debtor's motion to avoid judicial lien 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.

4. [24-23328](#)-A-7     **IN RE: MATTHEW MILLER**  
[MIL-2](#)

MOTION TO AVOID LIEN OF DISCOVER FINANCIAL  
11-12-2024    [\[27\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of Discover Financial.

The motion will be denied without prejudice as follows.

### **SERVICE**

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).

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

**CIVIL MINUTE ORDER**

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

Debtor's motion to avoid judicial lien 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.

5. [24-24830](#)-A-7     **IN RE: LIDIA NUNEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-19-2024    [[23](#)]

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.



6. [23-21431](#)-A-7     **IN RE: STELLA HERNANDEZ**  
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-7-2024    [\[87\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
REILLY WILKINSON/ATTY. FOR MV.  
GOLDEN 1 CREDIT UNION VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 5615 Digger St, Sacramento, California

**Cause:** delinquent payments, 6 months/\$5,184.18

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 Golden One Credit Union seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 7 trustee does not oppose the motion.

### **STAY RELIEF**

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

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

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

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

#### **CIVIL MINUTE ORDER**

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

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

The Golden One Credit Union'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 5615 Digger St, Sacramento, California, 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.

7. [22-20257](#)-A-7     **IN RE: CRAIG ROWLAND**  
[DNL-10](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY,  
MOTION FOR COMPENSATION FOR GUILD REAL ESTATE, BROKER(S)  
11-25-2024    [\[68\]](#)

LUCAS GARCIA/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTOR DISCHARGED: 09/13/22

### **Tentative Ruling**

**Motion:** Sell Real Property Free and Clear; Compensate Real Estate Broker

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 50302 & 50288 Conifer Drive, Soda Springs, California (Conifer Drive Properties).

**Buyer:** Greg McIver and Elise McIver

**Sale Price:** \$460,000.00

**Sale Type:** Private sale subject to overbid opportunity

Chapter 7 trustee, J. Michael Hopper, seeks an order under 11 U.S.C. §§ 363(b), (f): (1) approving the sale of the subject property; (2) approving compensation to Guild Real Estate, in the amount of \$27,600.00 (6% of the gross sale price), or the appropriate commission resulting from an overbid; (3) waiving the 14-day stay period of Fed. R. Bankr. P. 6004(h); (4) authorizing the Trustee Hopper to pay undisputed portions of liens and encumbrances from escrow; (5) providing that the sale of the Subject Property shall be free and clear of any liens, encumbrances, or claims of interest that have been or could be asserted by the Partnership, and each of its partners.

Claim No. 6 filed by Randolph C. Rowland, trustee of the Pauline Rowland Revocable Trust contends that: (a) the Conifer Drive Properties are property of a partnership established by an agreement between the Debtor, Pauline, and HERMAN T. SCHAUER; and (b) an approximate \$116,000.00 obligation secured by the Debtor's interest in the Partnership.

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).

## **BACKGROUND**

### Approval of Compromise

The court previously approved a stipulation between: J. Michael Hopper, Chapter 7 trustee; Randolph C. Rowland, trustee of the Pauline Rowland Revocable Trust; Eric Schauer; and Lorrie O'Brien. Order, ECF No. 50. Stipulation ECF No. 46.

The Stipulation provided for: (1) Sale of Subject Properties by the Chapter 7 Trustee Hopper; (2) Proceeds of sale distributed - 1/3 to Rowland; 1/3 to Bankruptcy Estate; 1/6 to Schauer; and 1/6 to O'Brien; (3) Bankruptcy Estate funds to be held in segregated account by Trustee Hopper; and (4) lien securing obligation of Claim No. 6 shall attach to the same extent and priority as against the debtor's interest in the Partnership and the Conifer Drive Properties.

### Approval of Employment

The court also approved the employment of Guild Real Estate as the estate's real estate broker. Order, ECF No. 65.

## **SALES**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

### **SALE FREE AND CLEAR UNDER § 363(f)**

The sale will be free and clear of the lien asserted by Claim No. 6 on the subject real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f).

The order shall state that the sale is free and clear of only the lien identified in this ruling and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale.

## **BROKER COMPENSATION**

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

8. [24-22469](#)-A-7     **IN RE: JENNIFER RODRIGUE**  
[SCR-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME  
11-13-2024    [\[127\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
SAMUEL RAY/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

Michael Turon's Motion to Extend Deadline to File a Complaint Objecting to Discharge, will be continued to allow: (1) the moving party to serve the debtor with the motion; (2) file a certificate of service which shows service on the debtor; and (3) to allow the debtor to file written opposition to the motion.

### **SERVICE**

Except as provided in Federal Rule of Civil Procedure 5(d)(1)(B), a certificate of service, compliant with LBR 7005-1, shall be filed in support of each motion, opposition, reply or other pleading; *if the motion, opposition, reply or other pleading is only served on registered users of the court's electronic-filing system, Fed. R. Bankr. P. 9036 (b)(1), (c), no Certificate of Service is required.*

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.
- 3) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LBR 9014-1(e) (emphasis added).

A certificate of service was not filed in this matter. Accordingly, the court cannot determine if the debtor was served with the motion. Fed. R. Bankr. P. 9013, 9014, LBR 7015-1, 9014-1(e).

While counsel for the debtor was served with the motion pursuant to Fed. R. Civ. P. 5 *as incorporated by* Fed. R. Bankr. P. 7005, LBR 9014-1(e), the debtor must also be served with the motion under Fed. R. Bankr. P. 9013, 9014.

The court notes that the debtor has filed opposition to the motion. However, this motion is related to the movant's Motion to Compel (SCR-2). A certificate of service was not filed in that matter and the motion was filed pursuant to LBR 9014-1(f)(2). The court has continued the Motion to Compel and will be continue the instant motion to the same date and time to avoid inconsistent rulings.

IT IS ORDERED that the hearing on Michael Turon's Motion to Extend Deadline to File Complaint Objecting to Discharge will be continued to January 21, 2025, at 10:30 a.m. No later than December 23, 2024, the movant shall serve the moving papers on the debtor and shall file a certificate of service with the court evidencing service no later than December 23, 2024.

IT IS FURTHER ORDERED that no later than January 13, 2025, the debtor shall file and serve a response, if any, and any admissible evidence in response to the motion.

9. [24-22469](#)-A-7     **IN RE: JENNIFER RODRIGUE**  
[SCR-2](#)

MOTION TO COMPEL  
12-2-2024    [\[134\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
SAMUEL RAY/ATTY. FOR MV.

### **Final Ruling**

Michael Turon's Motion to Compel, which also seeks an order for contempt, will be continued to allow: (1) the moving party to serve the debtor with the motion; (2) file a certificate of service which shows service on the debtor; and (3) to allow the debtor to file written opposition to the motion.

### **SERVICE**

Except as provided in Federal Rule of Civil Procedure 5(d)(1)(B), a certificate of service, compliant with LBR 7005-1, shall be filed in support of each motion, opposition, reply or other pleading; *if the motion, opposition, reply or other pleading is only served on registered users of the court's electronic-filing system, Fed. R. Bankr. P. 9036 (b)(1), (c), no Certificate of Service is required.*

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

- 3) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LBR 9014-1(e) (emphasis added).

A certificate of service was not filed in this matter. Accordingly, the court cannot determine if the debtor was served with the motion. Fed. R. Bankr. P. 9013, 9014, 7004. LBR 7015-1, 9014-1(e). While counsel for the debtor was served with the motion pursuant to Fed. R. Civ. P. 5 *as incorporated by* Fed. R. Bankr. P. 7005, LBR 9014-1(e), the debtor must also be served with the motion under Fed. R. Bankr. P. 9013, 9014.

IT IS ORDERED that the hearing on Michael Turon's Motion to Compel will be continued to January 21, 2025, at 10:30 a.m. No later than December 23, 2024, the movant shall serve the moving papers on the debtor and shall file a certificate of service with the court evidencing service on the debtor.

IT IS FURTHER ORDERED that no later than January 13, 2025, the debtor shall file and serve a response, if any, and any admissible evidence in response to the motion.

10. [23-20793](#)-A-7     **IN RE: DOUGLAS RODRIGUEZ**  
[DNL-4](#)

MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANT(S)  
11-14-2024    [\[74\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
DEBTOR DISCHARGED: 08/15/23

### **Final Ruling**

**Application:** Approval of Employment; allowance of final compensation

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Compensation:** Flat fee of \$3,400

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

In this Chapter 7 case, trustee J. Michael Hopper seeks an order approving the employment of Bachecki, Crom & Co., LLP, (BCC) as accountant for the estate and for the payment to BCC of \$3,400 as an allowance of final compensation.

#### **EMPLOYMENT**

The court may approve a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person").

#### **COMPENSATION AND EXPENSES**

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).

In this case the accountant will confer and advise the trustee and his general counsel regarding estate tax issues and will file the final state and federal tax returns.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

From the information provided in the motion and supporting papers, the court will approve the employment. The court further authorizes payment of the amount specified in the application without further hearing or order.



11. [23-23697](#)-A-7     **IN RE: SAM/CHREB ROS**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-14-2024    [[90](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
TOYOTA MOTOR CREDIT CORPORATION VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2022 TOYOTA C-HR

**Cause:** delinquent installment payments 6 months/\$3,873.01

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.

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 petition was filed on October 18, 2023. A Chapter 13 Plan was never confirmed, and the case was converted to Chapter 7 on October 7, 2024.

### **DEFAULT OF RESPONDENT**

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

### **STAY RELIEF**

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

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

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2022 TOYOTA C-HR, 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.