

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

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

**DAY: MONDAY**  
**DATE: MARCH 28, 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. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-11](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A.  
2-15-2022    [\[50\]](#)

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. *Service of the motion was not made by certified mail* or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

The court notes that the Amended Schedule D filed in this case appears to contain an error regarding the value of the debtor's real property and the amount of the consensual lien. See ECF No. 34. The amounts in Columns A and B appear to be reversed. Prior to filing any further motion to avoid lien in this case the debtor shall file and serve a further amendment correcting the error. See Fed. R. Bank. P. 1009.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied without prejudice.

IT IS FURTHER ORDERED that prior to the filing of any further motion to avoid judicial lien in this case that the debtor shall file and serve an amendment correcting Schedule D as necessary.

2. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-12](#)

MOTION TO AVOID LIEN OF GLOBAL ACCEPTANCE CREDIT COMPANY  
L.P.  
2-15-2022     [\[54\]](#)

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks to avoid three judicial liens encumbering real property located at 1961 Basque Drive, Tracy, California, under 11 U.S.C. § 522(f). The liens are held by the following companies: Capital One Bank USA, N.A.; Asset Acceptance, LLC; and Global Acceptance Credit Company.

### **REVERSE-PRIORITY ANALYSIS**

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

The motion to avoid the judicial lien of Capital One Bank USA, N.A. (GSS-11) has been denied without prejudice because the motion was not properly served under Fed. R. Bankr. P. 7004. All three of the motions to avoid judicial lien must be heard at the same time to insure consistent rulings in the reverse priority analysis.

Because the motion against Capital One Bank USA, N.A. was denied the court will deny this motion without prejudice.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied without prejudice.

3. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-13](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE LLC  
2-15-2022    [\[58\]](#)

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks to avoid three judicial liens encumbering real property located at 1961 Basque Drive, Tracy, California, under 11 U.S.C. § 522(f). The liens are held by the following companies: Capital One Bank USA, N.A.; Asset Acceptance, LLC; and Global Acceptance Credit Company.

### **REVERSE-PRIORITY ANALYSIS**

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

The motion to avoid the judicial lien of Capital One Bank USA, N.A. (GSS-11) has been denied without prejudice because the motion was not properly served under Fed. R. Bankr. P. 7004. All three of the motions to avoid judicial lien must be heard at the same time to insure consistent rulings in the reverse priority analysis.

Because the motion against Capital One Bank USA, N.A. was denied the court will deny this motion without prejudice.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied without prejudice.

4. [21-22976](#)-A-7      **IN RE: THE DESIGN BUILD COMPANY, LLC**  
[DNL-8](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH CAYMUS BUILDERS, LLC, DANIEL CORDERO, AND ED  
ROUTHIER  
2-25-2022    [\[112\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

**Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

**Parties:** Caymus Builders, LLC; Daniel Cordero; Ed Routhier (a.k.a. Caymus Parties)

**Subject:** Placer County Superior Court Case #SCV0041958, as to named parties

**Terms:** Payment of \$5,000.00 by the Caymus Parties to the bankruptcy estate; mutual general releases of named parties only

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).

Chapter 7 trustee J. Michael Hopper seeks an order approving the compromise of the controversy between the Caymus Parties specifically identified above and the bankruptcy estate in Placer County Superior Court Case #SCV0041958. The court notes that the trustee is still in the process of pursuing claims against numerous third parties as indicated in the motion. The compromise is sought only as to the three named parties: Caymus Builders, LLC, Daniel Cordero, and Ed Routhier.

**APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the

litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement submitted concurrently with the motion as an exhibit, ECF No. 115. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as an exhibit and filed at docket no. 115.

5. [19-26480](#)-A-7     **IN RE: HAYWARD/TONI CONN**  
[TBG-3](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY  
AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE  
INJUNCTION  
2-17-2022    [\[28\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/27/2020

### **Final Ruling**

**Matter:** Motion for Sanctions for Violation of Automatic  
Stay/Discharge Injunction

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor has filed a motion for Sanctions for Violation of the Automatic Stay and Motion for Sanctions for Violation of the Discharge Injunction against Creditor Portfolio Recovery Associates, LLC. *See Motion*, ECF No. 28.

The motion for sanctions is a contested matter. Service on the responding party must comply with Fed. R. Bankr. P. 7004. *See Fed. R. Bankr. P. 9014(a), (b)*.

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

### **RULE 7004(b) (3)**

(b) Service by first class mail

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

. . . .

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Fed. R. Bankr. P. 7004(b)(3).

A proof of service was filed in this matter, see ECF No. 34. However, the proof of service does not indicate that Portfolio Recovery Associates, LLC was ever served with the motion and supporting documents as required by Rule 7004(b)(3). As the respondent has not been served 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:

The debtor's Motion for Sanctions for Violation of the Automatic Stay and Motion for Sanctions for Violation of the Discharge Injunction 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.

6. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[CLH-3](#)

OBJECTION TO HOMESTEAD EXEMPTION  
2-28-2022    [\[267\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
CINDY HILL/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Objection:** Objection to Homestead Exemption

**Notice:** LBR 9014-1(f)(1), written opposition filed by debtors

**Disposition:** Continued to April 19, 2022, at 9:00 a.m.

**Order:** Civil minute order if appropriate

Creditors Teresita C. Balocating, Sheila Vetch D. Gulle, Mary Rose Jimenez, Rodolfo Jimenez, Janita H. Robes, Simplicio D. Robes, Dan Christopher Matias Robes, and Teodora P. Jennings object to the debtors' claimed homestead exemption in Amended Schedule C, filed on January 25, 2022, see ECF No. 225.

The court notes that the chapter 7 trustee, Sheri Carello, has filed a similar objection to the debtors' claim of homestead exemption and will continue the hearing on this objection to April 19, 2022, at 9:00 a.m. to coincide with the hearing on the trustee's objection.

#### **CIVIL MINUTE ORDER**

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



IT IS ORDERED that the objection is continued to April 19, 2022, at 9:00 a.m.

7. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-5](#)

MOTION TO EMPLOY RICHARD SILVESTRI AS SPECIAL COUNSEL  
2-24-2022    [\[248\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

8. [15-27697](#)-A-7     **IN RE: ROMEO/SONIA GAPASIN**  
[SSA-7](#)

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S  
ATTORNEY  
3-3-2022    [\[112\]](#)

CHARLES HASTINGS/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 03/01/2016

**Tentative Ruling**

**Application:** Allowance of First and Final Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Allowed Compensation:**    \$8,460.00

**Allowed Reimbursement of Expenses:**    \$572.24

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

**COMPENSATION AND EXPENSES**

In this Chapter 7 case, Steven S. Altman, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$8,460.00 and reimbursement of expenses in the amount of \$572.24.

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 a first and final basis.

#### **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.

Steven S. Altman's application for allowance of final 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 on a first and final basis. The court allows final compensation in the amount of \$8,460.00 and reimbursement of expenses in the amount of \$572.24.

9. [21-23199](#)-A-7     **IN RE: KUMAR/SANDHYA RANI KALAGARA**  
[FF-1](#)

MOTION TO COMPEL ABANDONMENT  
2-23-2022    [\[17\]](#)

GARY FRALEY/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 12/20/2021  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

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

**Notice:** LBR 9014-1(f)(1); non-opposition filed by chapter 7 trustee

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to the instructions below

**Subject:** 115 Austin Drive, Folsom, California

**Value:** \$545,000.00

**1st Trust Deed:** PHH Mortgage Services \$475,000.00

**Exemption:** \$416,749.00

**Non-Exempt Equity:** \$0

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 compelling the chapter 7 trustee to abandon the bankruptcy estate's interest in real property located at 115 Austin Drive, Folsom, California. The chapter 7 trustee, Kimberly Husted, has filed a non-opposition to the motion.

#### **ABANDONMENT**

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order will authorize abandonment of only the asset(s) described in the motion. The court will grant the motion.