

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

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

DAY: MONDAY
DATE: MAY 2, 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. [21-23433](#)-A-7 **IN RE: DANIEL CLOUSE**
[UST-3](#)

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)
4-8-2022 [\[33\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Tentative Ruling

Motion: Extend Trustee and U.S. Trustee's Deadline for Objecting to Discharge under § 727(a) and for Dismissal 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).

On January 12, 2022, the court approved a stipulation extending the deadline for the US Trustee to object to the debtor's discharge pursuant to § 727 and the concurrent deadline for the US Trustee to file a motion to dismiss or convert pursuant to § 707(b)(3). The deadline was extended to April 8, 2022. See ECF No. 25.

The United States Trustee has filed a motion to further extend the deadlines to object to the discharge of the debtor under 11 U.S.C. § 727 and to move for dismissal of the case under 11 U.S.C. § 707(b).

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.*

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 the concurrent deadline to file a motion to dismiss or convert under § 707(b). This deadline to object to discharge and/or to move for dismissal will be extended through June 8, 2022.

The court notes that the motion was not served upon creditor CBNA. As the creditor will not be harmed by the court's ruling the court will grant the motion.

2. [19-23553](#)-A-7 **IN RE: SHAWN/HEATHER WHITNEY**
[GMR-3](#)

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY,
ACCOUNTANT(S)
3-28-2022 [\[407\]](#)

JOHN DOWNING/ATTY. FOR DBT.
DEBTORS DISCHARGED: 08/17/2021

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$4,957.50

Expenses: \$86.12

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, Gabrielson and Company, accountants 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 \$4,957.50 and reimbursement of expenses in the amount of \$86.12. The chapter 7 trustee, Geoffrey Richards has indicated his support of the motion, ECF No. 409.

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 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.

Gabrielson and Company'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 final basis. The court allows final compensation in the amount of \$4,957.50 and reimbursement of expenses in the amount of \$86.12.

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.

3. [08-38758](#)-A-7 **IN RE: GEORGE/SYLVA LANDEROS**
[PGM-1](#)

MOTION TO AVOID LIEN OF GURINDER S. GREWEL, M.D.
3-24-2022 [\[55\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/03/2009

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order avoiding the lien of Gurinder S. Grewel, M.D.

"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).

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).

The motion appears to have been served on the attorney whose name appears on the abstract of judgment attached to the motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial

lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

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 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. [08-38758](#)-A-7 **IN RE: GEORGE/SYLVIA LANDEROS**
[PGM-2](#)

MOTION TO AVOID LIEN OF JOHN & JUDY HUSARY
3-24-2022 [[61](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/03/2009

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order avoiding the lien of John Husary and Judy Husary.

"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).

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).

The motion appears to have been served on the attorney whose name appears on the lis pendens filed concurrently with the motion as an exhibit. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the

judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

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 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. [19-26964](#)-A-7 **IN RE: LYNN HARRINGTON**
[GMR-3](#)

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY,
ACCOUNTANT(S)
3-29-2022 [\[77\]](#)

KAREN PINE/ATTY. FOR DBT.
DEBTORS DISCHARGED: 03/02/2020

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$1,555.00

Expenses: \$91.28

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, Gabrielson and Company, accountants 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 \$1,555.00 and reimbursement of expenses in the amount of \$91.28. The chapter 7 trustee, Geoffrey Richards has indicated his support of the motion, ECF No. 80.

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 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.

Gabrielson and Company'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 final basis. The court allows final compensation in the amount of \$1,555.00 and reimbursement of expenses in the amount of \$91.28.

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.

6. [22-20675](#)-A-7 **IN RE: BOB HORNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-5-2022 [\[15\]](#)

DENNISE HENDERSON/ATTY. FOR DBT.
DEBTOR DISMISSED: 4/11/2022

Final Ruling

The case having been dismissed on April 11, 2022, the matter is dropped as moot.

7. [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
3-24-2022 [\[37\]](#)

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. 37.

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) (emphasis added).

A proof of service was filed in this matter, see ECF No. 43. However, the proof of service does not indicate that Portfolio Recovery Associates, LLC was properly served with the motion and supporting documents as required by Rule 7004(b) (3). The motion was not served 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.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c) (3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion for sanctions filed by the debtor on February 17, 2022, ECF No. 28.

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.