

**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: WEDNESDAY
DATE: JUNE 8, 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. [21-23716](#)-A-7 **IN RE: TIMOTHY KRIEGER**
[RLC-2](#)

MOTION TO COMPEL ABANDONMENT
5-3-2022 [\[32\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/27/2022

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the businesses and other assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Property: 1999 Toyota Camry; 2018 Chrysler Pacifica; 2005 Acura MDX; household goods; clothing; firearms; bank accounts; interests in Futurity, Inc. and Hard Times Barbeque, Inc.

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 debtor seeks an order compelling the chapter 7 trustee's abandonment of the assets listed above. The chapter 7 trustee has indicated that he intends to administer the 2021 tax refunds which are specifically excluded from the debtor's 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); Fed. R. Bankr. P. 6007(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 businesses and other assets described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such assets is warranted. The order will compel abandonment of only the businesses and the other assets that are described in the motion.

2. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-3](#)

MOTION FOR TURNOVER OF PROPERTY
5-9-2022 [\[61\]](#)

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

Tentative Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor

Disposition: Granted

Order: Prepared by the movant

Subject Property: 2015 Toyota Prius

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).

The chapter 7 trustee, J. Michael Hopper, seeks an order compelling the turnover of a 2015 Toyota Prius for estate administration. The debtor has filed a response to the motion. However, the response consists of a statement and declaration by debtor's counsel indicating that the debtor has failed to respond to counsel's efforts to communicate with him about the turnover of the property and the trustee's motion. The response offers no substantive basis for opposing the motion. See Response, ECF Nos. 66-67.

TURNOVER

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The order shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than 7 days from the date of service of the order on this motion.

3. [22-20642](#)-A-7 **IN RE: LESTER ANTHONY BANGSAL**
[MET-2](#)

MOTION TO COMPEL ABANDONMENT
5-11-2022 [\[24\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); non-opposition filed by the trustee

Disposition: Granted

Order: Prepared by moving party

Subject: 1667 Matthew Drive, Fairfield, California

Value: \$179,190.00 fair market value of debtor's interest

1st Trust Deed: \$353,096.39 - Pennymac

Exemption: \$62,668.32.00 under C.C.P. section 704.730

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). 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 debtor seeks an order compelling the chapter 7 trustee's abandonment of 1667 Matthew Drive, Fairfield, California. The chapter 7 trustee has filed a non-opposition to the motion. The debtor's interest in the property has been fully exempted in properly filed Amended Schedule C, ECF No. 29.

ABANDONMENT

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).

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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

4. [18-23455](#)-A-7 **IN RE: NICHOLAS/TRISHA RUSHING**
[JLK-1](#)

MOTION TO AVOID LIEN OF CENTRAL STATE CREDIT UNION
5-11-2022 [\[31\]](#)

JAMES KEENAN/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/09/2018

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).

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 Central State Credit Union 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. [08-38758](#)-A-7 **IN RE: GEORGE/SYLVIA LANDEROS**
[PGM-3](#)

MOTION TO AVOID LIEN OF JOHN AND JUDY HUSARY
5-10-2022 [\[77\]](#)

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, under 11 U.S.C. § 522(f). The debtors have also filed a motion to avoid the lien of Gurinder S. Grewal, M.D. (PGM-4). The motion to avoid the lien of Gurinder S Grewal, M.D. has been denied without prejudice.

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).

Both motions pertain to judicial liens currently attached to the same real property. As such the analysis and/or defense of the Motion to Avoid Judicial Lien of Gurinder S Grewal, M.D. by a responding party might impact the analysis and result in this motion.

Other motions to avoid judicial liens on the same subject real property are being denied. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, 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 John Husary and Judy Husary 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. [08-38758](#)-A-7 **IN RE: GEORGE/SYLVIA LANDEROS**
[PGM-4](#)

MOTION TO AVOID LIEN OF GURINDER S. GREWEL, M.D.
5-10-2022 [\[83\]](#)

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. Grewal, 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).

While the motion has been served on the responding party at an address which appears to be his business address, the motion was not served on the responding party at the address listed in the court's docket. The court shows the address for the respondent is 5455 Durham Ferry, Tracy California, 95304. The court also notes that the name of the responding party is misspelled in the notice and the motion.

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.

7. [22-21181](#)-A-7 **IN RE: SUTTER MARINE, INC.**
[USA-1](#)

MOTION TO COMPEL ABANDONMENT
5-24-2022 [\[12\]](#)

SETH HANSON/ATTY. FOR DBT.
JEFFREY LODGE/ATTY. FOR MV.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); non-opposition filed by trustee

Disposition: Granted only as to the assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: All tangible and intangible personal property listed in debtor's schedules

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).

The United States Small Business Administration (SBA) seeks an order compelling the chapter 7 trustee to abandon all the debtor's tangible and intangible personal property. On May 25, 2022, the chapter 7 trustee, Geoffrey Richards filed a non-opposition to the motion.

The debtor is obligated to the SBA on a note currently totaling the amount of \$151,969.45. As security for the Note, the debtor executed a Security Agreement granting the SBA a security interest in all tangible and intangible personal property. On June 17, 2020, the SBA caused to be filed a UCC financing statement with the California Secretary of State. See Declaration of Deborah Romano, ECF No. 14, 2:1-15.

ABANDONMENT

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).

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); Fed. R. Bankr. P. 6007(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 assets named above are of inconsequential value to the estate as the movant has investigated the value of the assets and has been offered a price significantly lower than the amount of its secured claim. SBA is a creditor with an undisputed claim of \$126,128.00 (which increases with interest added) secured by all business assets. The estate has no interest in SBA's collateral, and it is of no benefit to the estate.

Although the debtor valued the personal property assets at \$216,292.74, the method of valuation is unknown. After investigation by the trustee, SBA, and a potential purchaser, the property was determined to be worth far less. See Motion, ECF No. 12, page 2. The court notes that the trustee has filed a non-opposition to the motion.

Additionally, there are significant costs associated with storage and or removal of the property. The property is not insured and there are liability risks. The property is currently stored on leased premises where the rent is due month to month. Thus, the property has no value or benefit to the estate and is in fact burdensome. An order compelling the trustee's abandonment of the property relieves the trustee of his duty under 11 U.S.C. § 704 to secure the property.

The court finds the assets described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such assets is warranted. The order will compel abandonment of only the assets that are described in the motion.

8. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[DNL-15](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LILLIAN MEYER TRAPSE SISAYAN AND ISAGANI
MALLARI SISAYAN
5-9-2022 [\[379\]](#)

STEPHAN BROWN/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

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 Sheri Carello seeks an order approving a compromise of the debtors' exemption claim against the real property commonly known as 9882 Cortino Way, Elk Grove, California. The motion requests approval of the exemption in the amount of \$300,000.00. The debtors and the trustee entered into a stipulation agreeing to the exemption. The Stipulation is submitted with this motion as Exhibit C, ECF No. 382.

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 filed in support of the motion as an exhibit. 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.

Sheri Carello'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 submitted in support of the motion as Exhibit C and filed at ECF No. 382.