

**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: TUESDAY
DATE: JULY 5, 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. [21-23212](#)-A-7 **IN RE: JOHN/DIANE KNITTER**
[DNL-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR MINTON HOMETOWN PROPERTIES, INC., BROKER(S)
6-6-2022 [\[34\]](#)

PATRICIA WILSON/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTORS DISCHARGED: 12/20/2021

No Ruling

2. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[AP-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR
MOTION FOR RELIEF FROM AUTOMATIC STAY
5-26-2022 [\[32\]](#)

WENDY LOCKE/ATTY. FOR MV.
U.S. BANK NATIONAL ASSOCIATION VS.; RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014(f)(2) no written opposition required

Disposition: Continued to July 18, 2022, at 9:00 a.m.

Order: Civil minute order

Subject Property: 5084 Maxwell-Sites Road, Maxwell, California

Movant, U.S. National Bank Association seeks an order confirming the absence of the automatic stay or in the alternative relief from the automatic stay of 11 U.S.C. § 362(a).

The chapter 7 trustee, Geoffrey Richards has filed a response to the motion and requested a continuance of the hearing until July 18, 2022, at 9:00 a.m.

The trustee has indicated that the First Meeting of Creditors will be held on June 14, 2022, and the trustee has recently requested that the debtors provide additional documents for the meeting. The trustee has not yet received these documents. The trustee has been informed that the debtors have recently retained Nichole Farris to serve as their counsel in this bankruptcy case. See ECF No. 67.

The movant filed a reply on June 21, 2022, indicating its support of the continued hearing date and time. See ECF No. 77.

The court will continue the hearing on this motion to allow the trustee to examine the debtors and investigate the subject property.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 18, 2022, at 9:00 a.m.

3. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-27-2022 [\[41\]](#)

NICHOLE GLOWIN/ATTY. FOR MV.
WILMINGTON SAVINGS FUND SOCIETY, FSB VS.; RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014(f)(2) no written opposition required

Disposition: Continued to July 18, 2022, at 9:00 a.m.

Order: Civil minute order

Subject Property: 5145 Fairview Road, MAXWELL, California

Movant, Wilmington Savings Fund Society, FSB seeks an order confirming the absence of the automatic stay or in the alternative relief from the automatic stay of 11 U.S.C. § 362(a).

The chapter 7 trustee, Geoffrey Richards has filed a response to the motion and requests a continuance of the hearing until July 18, 2022, at 9:00 a.m.

The trustee has indicated that the First Meeting of Creditors will be held on June 14, 2022, and the trustee has recently requested that the debtors provide additional documents for the meeting. The trustee has not yet received these documents. The trustee has been informed that the debtors have recently retained Nichole Farris to serve as their counsel in this bankruptcy case. See ECF No. 70.

The court will continue the hearing on this motion to allow the trustee to examine the debtors and investigate the subject property.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to July 18, 2022, at 9:00 a.m.

4. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-4](#)

MOTION FOR CONTEMPT
6-20-2022 [\[73\]](#)

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

Final Ruling

Motion: Contempt

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

Disposition: Withdrawn

Order: Civil minute order

Chapter 7 trustee J. Michael Hopper has filed a motion for contempt. There has been no opposition filed by the respondent/debtor. On June 27, 2022, the trustee filed a notice of withdrawal of his motion, ECF No. 81.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A).

Here no other parties have opposed the motion.

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.

IT IS ORDERED that the motion is withdrawn.

5. [18-23455](#)-A-7 **IN RE: NICHOLAS/TRISHA RUSHING**
[JLK-2](#)

MOTION TO AVOID LIEN OF CENTRAL STATE CREDIT UNION
6-16-2022 [\[37\]](#)

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

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3459 Tupelo Drive, Stockton, California

Judicial Lien Avoided: \$26,287.22 Central State Credit Union

All Other Liens:

- Deed of Trust - Quickn Loans \$261,091.00

Exemption: \$100,000.00

Value of Property: \$350,000.00

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 avoiding the judicial lien of Central State Credit Union under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-4](#)

CONTINUED MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[63\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from May 16, 2022

Disposition: Granted

Order: Prepared by moving party

Subject Property: 372 North Sibley Ave., Stockton, California

Judicial Lien Avoided: \$60,514.13 - USE Credit Union

Abstract Recorded: August 20, 2021

All Other Liens:

- Deed of Trust: \$134,999.32 - Select Portfolio Servicing, Inc.

- Judicial Lien: \$60,514.13 USE Credit Union - recorded August 12, 2019

- Judicial Lien: \$60,514.13 USE Credit Union - recorded June 8, 2021

Exemption: \$300,000.00

Value of Property: \$409,000.00

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be

a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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 liens against the subject real property, listed in the reverse order of their priority are: (i) \$60,514.13 USE Credit Union - abstract recorded August 20, 2021, (ii) \$60,514.13 USE Credit Union - abstract recorded June 8, 2021, (iii) \$60,514.13 USE Credit Union - abstract recorded August 12, 2019. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$300,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$616,541.72. The value of the property is \$409,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

7. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-5](#)

CONTINUED MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[72\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from May 16, 2022

Disposition: Granted

Order: Prepared by moving party

Subject Property: 372 North Sibley Ave., Stockton, California

Judicial Lien Avoided: \$60,514.13 - USE Credit Union

Abstract Recorded: August 12, 2019

All Other Liens:

- Deed of Trust: \$134,999.32 - Select Portfolio Servicing, Inc.

Exemption: \$300,000.00

Value of Property: \$409,000.00

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

LIEN-AVOIDANCE STANDARDS

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

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 liens against the subject real property, listed in the reverse order of their priority are: (i) \$60,514.13 USE Credit Union - abstract recorded August 20, 2021, (ii) \$60,514.13 USE Credit Union - abstract recorded June 8, 2021, (iii) \$60,514.13 USE Credit Union - abstract recorded August 12, 2019. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$300,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$434,999.32. The value of the property is \$409,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

8. [22-20170](#)-A-7 **IN RE: ROBERT RICO**
[RWF-6](#)

CONTINUED MOTION TO AVOID LIEN OF USE CREDIT UNION
4-14-2022 [\[81\]](#)

ROBERT FONG/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from May 16, 2022

Disposition: Granted

Order: Prepared by moving party

Subject Property: 372 North Sibley Ave., Stockton, California

Judicial Lien Avoided: \$60,514.13 - USE Credit Union

Abstract Recorded: June 8, 2021

All Other Liens:

- Deed of Trust: \$134,999.32 - Select Portfolio Servicing, Inc.
- Judicial Lien: \$60,514.13 USE Credit Union - recorded August 12, 2019

Exemption: \$300,000.00

Value of Property: \$409,000.00

The debtor seeks an order avoiding the judicial lien of USE Credit Union under 11 U.S.C. § 522(f).

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).

LIEN-AVOIDANCE STANDARDS

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

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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 liens against the subject real property, listed in the reverse order of their priority are: (i) \$60,514.13 USE Credit Union - abstract recorded August 20, 2021, (ii) \$60,514.13 USE Credit Union - abstract recorded June 8, 2021, (iii) \$60,514.13 USE Credit Union - abstract recorded August 12, 2019. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$300,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$495,513.45. The value of the property is \$409,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

9. [22-20481](#)-A-7 **IN RE: ROGER SHERWOOD**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-27-2022 [\[26\]](#)

BONNIE BAKER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
MEB LOAN TRUST IV VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2703 Sacramento Drive, Redding, California

Value of Collateral: \$450,000.00

Aggregate of Liens: \$ 464,621.86

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.

The movant seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

DEFAULT OF RESPONDENT

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

STAY RELIEF

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceed the value of the collateral and the debtor has no equity in the property. 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.

Moreover, the court notes that the debtor filed a Statement of Intention indicating that he intends to surrender the subject property. See ECF No. 17.

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.

MEB Loan Trust IV, as serviced by Specialized Loan Servicing LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2703 Sacramento Drive, Redding, 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.

10. [22-20581](#)-A-7 **IN RE: MURRAY PETERSEN**
[HMS-1](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-3-2022 [\[34\]](#)

GALEN GENTRY/ATTY. FOR DBT.
HANK SPACONE/ATTY. FOR MV.
DEBTOR DISCHARGED: 06/15/2022

Final Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2019 Honda CRV

Sale Type: Public internet auction

Auctioneer: West Auctions, Inc. - approved

Compensation: 15% of gross sales proceeds - approved

Reimbursement of Expenses: Actual, not to exceed \$800.00 - approved

Hank Spacone, the chapter 7 trustee, seeks an order authorizing the sale of a 2019 Honda CRV at public auction. The trustee further seeks an order approving the employment of West Auctions, Inc. to conduct the sale and approval of the compensation and reimbursement of expenses as stated above in this ruling.

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).

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.

11. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON
DRUG AND ALCOHOL ABUSE, INC.
[DNL-3](#)**

MOTION TO ABANDON AND/OR MOTION FOR AUTHORITY TO USE ESTATE
FUNDS

6-14-2022 [\[41\]](#)

GALEN GENTRY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Authorize Abandonment of Property of the Estate and Use of
Estate Funds

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

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

Order: Prepared by moving party pursuant to the instructions below

Asset Description: Furniture, fixtures, equipment, records

Value: None

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).

Susan Smith, the chapter 7 trustee, moves for an order as follows:
1) authorizing her abandonment of the bankruptcy estate's interest
in the business property described in the motion, ECF No. 41; 2)
authorizing the trustee to destroy and dispose of documents and
computers containing personal identifiable information located at
the prior business sites of the debtor; and 3) authorizing the use
of estate funds in an amount not to exceed \$10,000.00 to remove,
haul, and dispose of the furniture, fixtures and equipment, and to
destroy, haul, and dispose of the personal identifiable information.

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).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The debtor conducted business in five different sites located in California. Each of the locations was leased and are currently leased or continuing month-to-month occupation. See Motion, ECF No. 41, 2:1-7. Since the filing of the petition the business sites have not been used except to store the property described in the motion. Located at the various sites are the following assets previously used in the operation of the business: furniture, fixtures, and equipment. These assets are listed in the debtor's Schedule A/B and described in detail in the trustee's motion. See Motion, ECF No. 41, 3:16-28, 4:1-8.

Also located at the business sites are books, records, and computers containing personal identifiable information.

The trustee has stated as follows:

It is my opinion that: (a) the FFE [furniture, fixtures, equipment] and PII [personal identifiable information] Material, including the computers used to store same, are of inconsequential value and benefit to the estate; and (b) the estate would benefit from the relief sought herein because continued use of the Sites to store the FF&E and PII Material exposes the estate to potential administrative liability to the Lessors for rent and to the owners of the PII Material under applicable privacy laws.

Declaration, ECF No. 43, 4:1-5.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. Continued storage of the assets at the various business sites presents a risk of liability to the estate for rent, as well as liability for continued security of the personal identifiable information.

An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion. The trustee's motion to authorize the abandonment of the assets, and for disposal and destruction of the personal identifiable information will be granted.

11 U.S.C. § 363(b)

(b) (1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,

. . .

11 U.S.C. § 363(b) (1).

The trustee requests approval to use estate funds in an amount not to exceed \$10,000.00 to properly dispose of the furniture, fixtures and equipment, and to dispose and destroy the personal identifiable information.

The court finds that an order authorizing the use of estate funds is warranted and will grant the trustee's motion.

12. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON
DRUG AND ALCOHOL ABUSE, INC.**
[DNL-4](#)

MOTION TO ABANDON
6-14-2022 [[46](#)]

GALEN GENTRY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: Real Property Leases

Value: None

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 chapter 7 trustee moves for an order authorizing her abandonment of the bankruptcy estate's interest in the following real property leases previously used in the operation of the debtor's business:

1) 3316-3320 Beverly Blvd., Montebello, California; 2) 11046 Main Street, El Monte, California; 3) 333 University Ave., Suite 300, Sacramento, California; 4) 2436 Wabash Avenue, Los Angeles,

California; and 5) 327 N. St. Louis, Los Angeles, California. See Motion, ECF No. 46, 2:1-8.

The leases indicated in the trustee's motion include the Sacramento lease, which was not listed in the debtor's Schedule G. The motion also corrects an erroneous address in the same Schedule regarding the El Monte lease. *Id.*, 2:9-12.

ABANDONMENT

The filing of a petition "creates an estate [which] is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "The scope of [§ 541] is broad and includes causes of action." *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir. 1986) (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 & n.9 (1983)).

It is well-established that property of the estate "includes property not identified or listed on the bankruptcy schedules." *In re Blixseth*, 454 B.R. 92, 98 (B.A.P. 9th Cir. 2011).

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).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The trustee has investigated the leases and states:

It is my business judgment that: (a) the Leases create an unnecessary and burdensome expense to the estate; and (b) no meaningful value would be realized by the estate if the Lease was assumed and assigned to a third party.

Declaration, ECF No. 48, 3:1-3.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.