

**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: AUGUST 15, 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. [19-27507](#)-A-7     **IN RE: KENNETH/LIELANIE STEERS**  
[GMR-4](#)

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY,  
ACCOUNTANT(S)  
7-14-2022    [\[280\]](#)

WALTER DAHL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 04/06/2021

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Allowed:**    \$8,736.50

**Reimbursement of Expenses:**    \$68.75

**Application:**    Second and Final

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 & Company, accountant for the trustee, has applied for an allowance of its second and final request for compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$8,736.50 and reimbursement of expenses in the amount of \$68.75.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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 & 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 \$8,736.50 and reimbursement of expenses in the amount of \$68.75. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

2. [19-27507](#)-A-7     **IN RE: KENNETH/LIELANIE STEERS**  
[GMR-5](#)

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7  
TRUSTEE(S)  
7-14-2022    [\[286\]](#)

WALTER DAHL/ATTY. FOR DBT.  
HOWARD NEVINS/ATTY. FOR MV.  
DEBTORS DISCHARGED: 04/06/2021

### Final Ruling

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Allowed:**    \$49,372.44

**Reimbursement of Expenses:**    \$1,184.86

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).

Chapter 7 trustee, Geoffrey Richards, applies for allowance of final compensation and reimbursement of expenses. The trustee seeks an order approving \$49,372.44 in compensation and reimbursement of expenses in the amount of \$1,184.86.

#### **COMPENSATION AND EXPENSES**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

#### **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 chapter 7 trustee's application for allowance of 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 to the trustee compensation in the amount of \$49,372.44 and reimbursement of expenses in the amount of \$1,184.86.

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. [19-27507](#)-A-7     **IN RE: KENNETH/LIELANIE STEERS**  
[HSM-21](#)

MOTION TO RESERVE ASSETS UPON CLOSING OF THE CASE  
7-14-2022    [\[271\]](#)

WALTER DAHL/ATTY. FOR DBT.  
HOWARD NEVINS/ATTY. FOR MV.  
DEBTORS DISCHARGED: 04/06/2021

**Final Ruling**

**Motion:** Reserve Assets Upon Closing of Case  
**Notice:** LBR 9014-1(f)(1); 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).

Chapter 7 trustee, Geoffrey Richards, seeks an order reserving the bankruptcy estate's rights in an asserted 2016 Tax Refund Claim, in an amount exceeding \$15,000.00. Despite the trustee's efforts to collect the 2016 Tax Refund Claim from the Internal Revenue Service, he has not yet been successful, and the IRS has not explained to the trustee why the refund has not yet been sent. Due to the complexity of filing the amended returns for 2016, as well as apparent staffing issues at the IRS, the ultimate collectability of the funds is in doubt. To reduce bank service charges, currently costing approximately \$800.00 per month, and ongoing administrative

expenses, the trustee seeks to close this case now, distribute the funds he has collected, and reserve the 2016 Tax Refund Claim.

Therefore, the trustee requests an order that the 2016 Tax Refund Claim not be abandoned when this case closes. If however, the refund has not been received, then the trustee proposes that on the fifth anniversary of entry of the order closing this case, the entire 2016 Tax Refund Claim shall be deemed abandoned unless the trustee has requested that the court enter an order to the contrary.

**Section 554(c)**

*Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.*

11 U.S.C. § 554(c) (emphasis added).

[I]f the court expressly excepts a duly scheduled asset from the "technical" abandonment created by the closing of the case, that asset may be administered if the case is reopened for that purpose.

*In re DeLash*, 260 B.R. 4, 7 (Bankr. E.D. Cal. 2000).

[A]s permitted in the preamble of section 554(c), the court may expressly order that a scheduled asset will not be abandoned when the case is closed. This permits a trustee to close the case yet preserve for the estate an asset with possible future value even though it has no immediately realizable value.

*Id.*, 9.

Because the benefit to the estate is potentially significant, and because the costs incurred each month if the estate remains open, the court will grant the trustee's motion. The estate's interest in the 2016 tax refund shall be reserved and will not be abandoned upon the closing of the estate. However, if the refund has not been received by the trustee, then on the fifth anniversary of entry of the order closing this case, the entire 2016 Tax Refund Claim shall be deemed abandoned unless the trustee has requested that the Court enter an order to the contrary.

4. [19-27507](#)-A-7     **IN RE: KENNETH/LIELANIE STEERS**  
[HSM-22](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK  
AND MAROIS, LLP FOR HOWARD NEVINS, TRUSTEES ATTORNEY(S)  
7-14-2022    [\[274\]](#)

WALTER DAHL/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 04/06/2021

**Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Approved  
**Order:** Civil minute order

**Compensation Allowed:** \$40,213.00  
**Reimbursement of Expenses:** \$281.10  
**Application:** Third and Final

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, Hefner, Stark and Marois, LLP, 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 \$40,213.00 and reimbursement of expenses in the amount of \$281.10. This is the applicant's third and final motion for allowance of compensation and reimbursement of expenses.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Hefner, Stark and Marois, LLP'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 \$40,213.00 and reimbursement of expenses in the amount of \$281.10. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.



5. [21-23522](#)-A-7     **IN RE: JOSEPH SMITH**  
[WW-3](#)

MOTION TO COMPEL ABANDONMENT  
7-18-2022    [\[94\]](#)

MARK WOLFF/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/24/2022  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The debtor seeks an order compelling the chapter 7 trustee's abandonment of real property.

### **LBR 9014-1**

Evidence. Every motion or other request for relief shall be *accompanied by evidence* establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D) (emphasis added).

Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e)(1), (2).

On July 18, 2022, the debtor served only the motion and notice of motion on all parties in interest as required by Fed. R. Bankr. P. 6007(b). Although the debtor's declaration in support of the motion refers to Exhibits, no supporting exhibits were filed with the motion or served on any party. See Certificate of Service, Item No. 4, ECF No. 97. This violates LBR 9014-1(d)(3)(D), which requires that all motions be accompanied by evidence.

On July 28, 2022, the debtor filed Exhibits in support of his motion. See ECF No. 101. However, no Certificate of Service was filed proving that the supporting documents were served on any party. This violates LBR 9014-1(e)(1), (2) which requires that service of the Exhibits must be made on or before the date they were

filed with the court, and that the Certificate of Service must be filed not later than 3 days after they are filed with the court.

All parties in interest were not served with the evidence in support of the motion.

#### **DEBTOR'S REPLY**

On August 4, 2022, the debtor filed a reply to the motion. However, given the service defect previously discussed in this ruling the court need not reach the issues raised in the reply.

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 to Compel Abandonment 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. [19-23553](#)-A-7     **IN RE: SHAWN/HEATHER WHITNEY**  
[BHS-3](#)

MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES  
ATTORNEY(S)  
7-14-2022    [[417](#)]

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

#### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Allowed:**    \$7,650.00

**Reimbursement of Expenses:**    \$104.80

**Application:**    First and Final

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, Barry H. Spitzer, 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 \$7,650.00 and reimbursement of expenses in the amount of \$104.80.

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.

Barry H. Spitzer'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 \$7,650.00 and reimbursement of expenses in the amount of \$104.80.

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.

7. [22-21383](#)-A-7     **IN RE: ALBERTO ARANZA**  
[LDD-1](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC  
7-7-2022    [\[12\]](#)

LINDA DEOS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject Property:** 134 West 13<sup>th</sup> Street, Chico, California

**Judicial Lien Avoided:** \$4,821.53 - Cavalry SPV I, LLC

**All Other Liens:**

- Deed of Trust Guidance Res/US Bank - \$256,969.00

**Exemption:** \$70,615.50

**Value of Property:** \$398,200.00

The debtor seeks an order avoiding the judicial lien of Cavalry SPV I, LLC.

### **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

## Section 541

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c) (2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) *All interests of the debtor and the debtor's spouse* in community property as of the commencement of the case that is--
  - (A) under the sole, equal, or joint management and control of the debtor; or

. . .

11 U.S.C. § 541(a) (2) (A) (emphasis added).

California Law provides that real property acquired during the marriage with community funds is presumed to be community property, even if title is held in joint tenancy.

Further, we hold that when a married couple uses community funds to acquire property with joint tenancy title on or after January 1, 1975, the property is presumptively community property under Family Code section 760 in a dispute between the couple and a bankruptcy trustee.

*In re Brace*, 9 Cal. 5th 903, 912, 470 P.3d 15, 18 (2020).

The debtor claims a one-half interest in the subject property. See Schedule A/B, ECF No. 1. However, the debtor also indicates in Schedule A/B that the subject property is *community property*. *Id.* The debtor lists the subject property as his address on the Petition. See Petition, ECF No. 1. Under section 541 the debtor's interest in the property includes the entire ownership and value of the subject property. The debtor has not claimed an exemption in the property sufficient to avoid the judicial lien.

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

## CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Judicial Lien has been presented to the court. Having considered the motion together with papers filed in

support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

8. [22-20989](#)-A-7     **IN RE: CYNTHIA CAMPBELL**  
[CRG-1](#)

MOTION TO AVOID LIEN OF THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA  
7-13-2022     [\[18\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

Subject Property:    3016 Whitney Ave, Sacramento, California

**Judicial Lien Avoided:** \$9,952.10 - The Regents of the University of California

**All Other Liens:**

- Deed of Trust \$210,377.37 CalVet Home Loans

- Deed of Trust \$45,609.00 Navy Federal Credit Union

**Exemption:** \$300,000.00

**Value of Property:** \$505,000.00

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 The Regents of the University of California.

### **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.

9. [21-22496](#)-A-7     **IN RE: LILLIAN/ISAGANI SISAYAN**  
[DNL-18](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT  
7-14-2022     [\[418\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.

#### **Tentative 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).

#### **COMPROMISE AGREEMENT**

Chapter 7 trustee, Kimberly Husted, the debtors, and claimants TERESITA C. BALOCATING, SHEILA VETCH D. GULLE, f.k.a. SHEILA DU, MARY ROSE JIMENEZ, RODOLFO JIMENEZ, JUANITA H. ROBES, SIMPLICIO D. ROBES, DAN CHRISTOPHER MATIAS ROBES, and TEODORA P. JENNINGS (collectively "Claimants") have reached a settlement and compromise which resolves existing litigation between the parties. The trustee seeks an order approving the compromise as reflected in a Settlement Agreement which was filed and served concurrently with this motion as Exhibit A, ECF No. 421.

The Settlement Agreement resolves existing disputes between the parties including: Sacramento County Superior Court Case No. 34-2015-00187360; Sacramento County Superior Court Case No. 34-2020-00290629 ("CUFTA Case"; amounts allowed under Claim No. 1 filed in this bankruptcy proceeding; and determination of debt dischargeability under 11 U.S.C. § 523.

#### **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 concurrently with the motion as an exhibit. See Exhibit A, ECF No. 421. 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.

#### **UPDATED ACCOUNTING**

On August 5, 2022, the trustee filed a supplemental accounting regarding monies paid to the claimants who are parties to the stipulation. The monies paid reduce the amount of the claim to be paid in this proceeding. See ECF Nos. 434, 435. Absent objection at the hearing on this matter the court will grant the motion consistent with the claim accounting provided in the supplemental documents.

#### **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.

Kimberly Husted'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 Exhibit A and filed at docket no. 421.