

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

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

DAY: MONDAY
DATE: SEPTEMBER 26, 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. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[DNL-6](#)

MOTION FOR AUTHORITY TO USE ESTATE FUNDS
8-25-2022 [\[119\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Matter: Motion for Reimbursement of Administrative Expenses and to Authorize Use of Estate Funds

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

Disposition: Continued to October 31, 2022, at 9:00 a.m.

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 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).

The chapter 7 trustee moves for an order: 1) allowing as a Chapter 7 administrative expense \$6,147.67 advanced by the trustee for insurance premiums for liability and loss of estate property; 2) authorizing the trustee to use estate funds to reimburse the trustee for the insurance expense of \$6,147.67; 3) authorizing the trustee to use estate funds to pay future insurance obligations in an amount not to exceed \$5,000.00; and 4) authorizing the trustee to pay the secured portion of the following claims, in amounts not to exceed those stated below:

INTERNAL REVENUE SERVICE	\$200,000.00
U.S. BANK, N.A.	\$105,000.00
WILMINGTON SAVINGS FUND SOCIETY	\$ 52,000.00

ADMINISTRATIVE EXPENSES

The Chapter 7 trustee is obligated to preserve the assets of the bankruptcy estate. *See Bennett v. Williams*, 892 F2d 822, 823 (9th Cir. 1989).

The trustee requests an order approving expenses for the payment of insurance premiums and authorizing reimbursement for the expense under 11 U.S.C. §330(a) (1) (B).

The Chapter 7 trustee paid insurance premiums, totaling \$6,147.67, for liability and loss of estate property. The court will allow the expense in the amount of \$6,147.67. The court finds that that

expenses for which reimbursement is sought were actual and necessary. The court will authorize the reimbursement of \$6,147.67.

USE OF ESTATE FUNDS

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 must show reasonable business judgment to obtain court approval of transactions outside the ordinary course of business. "The bankruptcy court has considerable discretion in deciding whether to approve or disapprove the use of estate property by a debtor in possession, in the light of sound business justification." *In re Walter*, 83 B.R. 14, 17 (B.A.P. 9th Cir. 1988).

The trustee may use, sell, or lease property under subsection (b) or (c) of this section--

. . .

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

11 U.S.C. § 363(d) (2).

"The Trustee is presently holding estate funds aggregating about \$927,960.61, consisting of: (a) \$656,091.00 crop insurance proceeds; and (b) \$271,869.91 deposit account funds. See *Motion*, ECF No. 119, 3:14-16. Additionally, "[t]he Trustee anticipates that the funds on hand are sufficient to pay all allowable unsecured claims in full." *Id.*, 4:18-19.

However, the court notes that when the motion was filed only three claims had been filed. The claims bar date, which has now passed, was September 13, 2022. Six claims were filed timely after the trustee signed his declaration in support of the motion. The court notes that one late claim was also filed. It is unclear to the court how, or if, the additional claims impact the trustee's calculations and proposed payments to secured creditors.

Anticipated Insurance Premiums

The trustee requests an order approving the use of estate funds to pay no more than \$5,000.00 in anticipated insurance premiums to preserve the estate.

While the court acknowledges the trustee's duty to preserve estate assets the motion does not state which assets will be insured or when the payments for the insurance come due. It appears to the

court that after review of and objection to claims, if any, that the trustee will be ready to disburse funds to creditors.

U.S Bank

The trustee seeks an order approving use of estate funds to pay the mortgage arrears owed to U.S. Bank in an amount not to exceed \$105,000.00. The \$352,019.00 obligation owed to U.S. Bank encumbers acreage and a shop valued at \$400,000.00, leaving equity in the approximate amount of \$47,981.00. See *Motion*, ECF No. 119, 3:3.

Neither the trustee's motion, nor the trustee's declaration state that the trustee intends to liquidate the real property encumbered by the U.S. Bank loan. Neither has U.S. Bank appeared in opposition to or support of this motion. According to the motion the trustee is already holding funds sufficient to pay all unsecured creditors and the claims bar date has passed.

The motion further alleges that payment to U.S. Bank serves a business purpose. However, neither the motion, nor the trustee's declaration describes the business purpose and how the estate would benefit from the payment of monies to U.S. Bank instead of proceeding to examination of and objection to claims, if any, and disbursement of funds to creditors.

On August 30, 2022, the court entered an order confirming that the automatic stay never took effect in this case pursuant to 11 U.S.C. § 362(c)(4)(A)(i)-(ii), and that U.S. Bank (and any successors or assigns) may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property. See *Order*, ECF No. 127. The trustee has not demonstrated a reasonable business purpose in this context.

Wilmington Savings Fund Society

The trustee seeks an order approving use of estate funds to pay the mortgage arrears owed to Wilmington Savings Fund Society in an amount not to exceed \$52,000.00. Wilmington Savings holds a security interest in the debtors' residence, identified in the motion. Pursuant to the motion there is no equity in this property. See *Motion*, ECF No. 119, 3:19.

Neither the trustee's motion, nor the trustee's declaration state that the trustee intends to liquidate the real property encumbered by the Wilmington Savings loan. Neither has Wilmington Savings appeared in opposition to or support of this motion. According to the motion the trustee is already holding funds sufficient to pay all unsecured creditors.

The motion further alleges that payment to Wilmington Savings serves a business purpose. However, neither the motion, nor the trustee's declaration describes the business purpose and how the estate would benefit from the payment of monies to Wilmington Savings instead of proceeding to examination of and objection to claims, if any, and disbursements to creditors.

On September 1, 2022, the court confirmed that the automatic stay never took effect in this case pursuant to 11 U.S.C. § 362(c)(4)(A)(i)-(ii), and that Wilmington Savings Fund (and any successors or assigns) may immediately proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the subject property. See *Order*, ECF No. 132. The trustee has not demonstrated a reasonable business purpose in this context.

Internal Revenue Service

The trustee seeks an order paying the secured portion of the claim filed by the Internal Revenue Service. The trustee has not demonstrated, nor stated, a reasonable purpose in making payment to this creditor.

The court will continue the hearing on this motion to allow the trustee to supplement the evidentiary record.

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 hearing on the trustee's application is continued to October 31, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than October 17, 2022, the trustee shall file and serve additional evidence, analysis and argument in support of his position.

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

STATUS CONFERENCE RE: VOLUNTARY PETITION
5-3-2022 [[1](#)]

NIKKI FARRIS/ATTY. FOR DBT.

No Ruling

3. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[WW-4](#)

MOTION TO COMPEL ABANDONMENT
8-24-2022 [\[116\]](#)

MARK WOLFF/ATTY. FOR DBT.
DEBTORS DISCHARGED: 01/24/2022
TRUSTEE NON-OPPOSITION

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

ABANDONMENT

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

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

NOTICE

Rule 6007(b)

A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. Unless otherwise directed by the court, *the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.* A party in interest may file and serve an objection within 14 days of

service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court.

Fed. R. Bankr. P. 6007(b) (emphasis added).

The certificate of service filed in this case does not include an attachment which shows that all creditors were served with the motion as required by Rule 6007. The certificate shows that the movant attempted to limit notice under LBR 2002-3. See *Certificate of Service*, ECF No. 120, p. 2, item 3; p. 3, item 5.

A party may not limit notice in a motion to compel abandonment unless directed by the court. It appears that the movant believes the recently enacted LBR 2002-3 provides such a direction.

LBR 2002-3

Without further order of the court, the provisions of Fed. R. Bankr. P. 2002(h) are applicable to chapter 7, chapter 12 and chapter 13 cases *that otherwise satisfy the provisions of that subdivision*. The Clerk of the Court or any party in interest giving notice required by Fed. R. Bankr. P. 2002(a) may limit such notice to those persons specified in Fed. R. Bankr. P. 2002(h).

LBR 2002-3 (emphasis added).

In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, *the court may direct that all notices required by subdivision (a) of this rule be mailed only to:*

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

Fed. R. Bankr. P. 2002(h) (emphasis added).

Rule 2002(h) only allows limited notice in applicable motions listed in Rule 2002(a). Thus, LBR 2002-3 does not authorize, nor contemplate, limited service in any motion which is not included in Fed. R. Bankr. P. 2002(a). Moreover, Fed. R. Bankr. P. 6007 specifically requires notice to all creditors in motions to compel abandonment of estate property.

The court will deny the motion without prejudice as notice was not provided to all creditors as required by Rule 6007.

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.

4. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[KJH-10](#)

CONTINUED MOTION FOR COMPENSATION FOR KIMBERLY HUSTED,
CHAPTER 7 TRUSTEE
8-3-2022 [[1832](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: Continued from August 29, 2022

Disposition: Approved

Order: Civil minute order

Compensation: \$147,106.73

Reimbursement of Expenses: \$1,261.48

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).

BACKGROUND

The hearing on this motion was continued from August 29, 2022, to allow the movant to supplement and clarify the evidentiary record.

Kimberly Husted, the chapter 7 trustee, seeks an order allowing final compensation. Ms. Husted is the successor trustee in this case. The previously appointed interim trustee, Michael McGranahan has received final compensation of \$71,593.37 and reimbursement of

expenses of \$993.90 pursuant to the court's order dated March 22, 2021, ECF No. 1621. An interim award of compensation and reimbursement of expenses was also approved for Ms. Husted.

How the trustee had calculated the amount requested in the motion for reimbursement of expenses was unclear. The trustee filed and served a supplemental declaration on September 9, 2022. See *Declaration*, ECF No. 1857. The court is satisfied with the evidentiary record.

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.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 330(a) on an interim basis.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation),

Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

In support of the continued hearing on this application, Hefner, Stark and Marois, LLP, filed a Certificate of Service, ECF No. 1859. That form was signed "Luz Samosa," who apparently is a paraprofessional employed by that firm. The Certificate of Service represents a textbook example of the proper use of the new local rules and form Certificate of Service. The applicant has properly limited notice of the application. Fed. R. Bankr. P. 2002(a)(6), 2002(h); LBR 2002-3. Section 4 properly lists the documents served. ECF No. 1859, p. 2. Section 5 is supported by the Clerk's official list of those parties that have filed a Request for Special Notice. *Id.* at p. 5. Section 6(B)(1) properly attaches the Clerk's Official Matrix of Registered Users of the Court's electronic-filing system. Section 6(B)(2) is supported by a properly filtered list of creditors, e.g., those that have filed a Proof of Claim. The firm and Ms. Samosa are to be commended on their precise and skillful application of the new local rules.

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 \$147,106.73 and reimbursement of expenses in the amount of \$1,261.48. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 330(a) 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. [18-27665](#)-A-7 **IN RE: CORY MADISON**
[HSM-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK
AND MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY(S)
9-1-2022 [\[52\]](#)

MARK BRIDEN/ATTY. FOR DBT.
DEBTOR DISCHARGED: 04/01/2019

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Application: Second and Final
Compensation: \$12,352.00
Reimbursement of Costs: \$25.02

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

COMPENSATION AND EXPENSES

In this Chapter 7 case, 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 \$12,352.00 and reimbursement of expenses in the amount of \$25.02.

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.

LIMITED NOTICING AND STANDARDIZED CERTIFICATE OF SERVICE

As of July 5, 2022, this court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring

attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

While its use is not yet mandatory Hefner, Stark and Marois, LLP, attorney for the movant, used the standardized Certificate of Service, EDC 7-005 in memorializing the service of documents in this motion. The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

With one exception the Certificate of Service, ECF No. 58, is an example of the proper completion of EDC 7-005. Section 3 purports to limit notice under Fed. R. Bankr. 2002(h). This is a motion to for compensation which would qualify for limited notice under the rule. However, limited notice was not given in this case as the Clerk's Matrix was attached to the Certificate of Service, indicating that all creditors were served. Thus, service of the motion was proper.

The court appreciates counsel's use of the Form EDC 7-005, Certificate of Service.

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 \$12,352.00 and reimbursement of expenses in the amount of \$25.02. 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.

6. [22-21383](#)-A-7 **IN RE: ALBERTO ARANZA**
[LDD-2](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
8-18-2022 [23]

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

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: 134 W 13 Street, Chico, California

Judicial Lien Avoided: \$4,821.52 - Cavalry SPV I, LLC
All Other Liens:
- Deed of Trust - \$256,969.00 Guidance Res/US Bank
Exemption: \$141,231.00
Value of Property: \$398,200.00

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 Cavalry SPV I, LLC, 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.