

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 17, 2022 at 10:30 a.m.

1. <u>17-25481</u> -E-7	JOHN ROSE	MOTION TO ABANDON
<u>HSM</u> -10	Paul Pascuzzi	11-3-22 [<u>120</u>]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice and Office of the United States Trustee on November 3, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Abandon is granted.
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After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property

in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Kimberly J. Husted (“the Chapter 7 Trustee”) requests that the court authorize her to abandon the estate’s interest in a prepetition alleged personal injury cause of action from Sacramento County Superior Court, case number 34-2014-00170221 (“Rose v. Taggard, et al”). The jury awarded John Rose (“Debtor”) \$25,000 for HIPPA violations (“Assets”). The Declaration of Kimberly J. Husted has been filed in support of the Motion and provides testimony that the value of the Property is \$25,000.00.

On August 18, 2017 Debtor filed a voluntary Chapter 7 case. Post-petition, a jury awarded \$25,000 to Debtor for HIPPA violations in October 2022. However, the award of \$25,000 is below from the \$100,000 that was initially hoped for during the settlement stage. Trustee is concerned that the defendant’s counsel has indicated that they intend to file a post-trial motion to offset the jury award that would go to the Estate. Further, Trustee is uncertain whether the defendant will appeal or take steps to delay the jury award. Such actions would result in further administrative costs that will render the award inconsequential in value. The court determines that the Assets are of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Assets.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by Kimberly J. Husted (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and Assets identified as \$25,000 for HIPPA violations from the estate’s interest in the personal injury case, *Rose v. Taggard, et al.*, California Superior Court for Sacramento County Case No. 34-2014-00170221, STK-CV-LCCR-2019-13217, is abandoned to John Rose by this order, with no further act of the Chapter 7 Trustee required.

FINAL RULINGS

2. [20-00202-E-0](#) IN THE MATTER OF THOMAS CONTINUED STATUS CONFERENCE RE:
[RHS-1](#) OSCAR GILLIS, FEE RUBRIC RECOVERY OF OVERPAYMENT OF
LEGAL FEES AND ENFORCEMENT OF
FEE RUBRIC ORDER AND RELATED
ORDERS
6-23-22 [[248](#)]

The Status Conference has been continued to 10:30 a.m. on January 19, 2023, by prior order of the court.

3. [22-22472-E-7](#) LOVEVELLE/MAKEBA LANG MOTION TO AVOID LIEN OF
[TLC-3](#) Tamie Cummins CENTRAL
STATE CREDIT UNION
10-4-22 [[18](#)]

Final Ruling: No appearance at the November 17, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on October 4, 2022. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Central State Credit Union (“Creditor”) against property of the debtor, Lovevelle and Makeba Lang (“Debtor”) commonly known as 826 N. Harrison Street, Stockton, California 95203 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,605.53. Exhibit A, Dckt. 22. An abstract of judgment was recorded with San Joaquin County on September 25, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$365,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens and tax liens that total \$251,673.69 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 22. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 22.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided in excess of \$13,326.31 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Lovevelle and Makeba Lang (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Central State Credit Union, California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2019-13217, recorded on September 25, 2020, Document No. 2020-126982, with the San Joaquin County Recorder, against the real property commonly known as 826 N. Harrison Street, Stockton, California 95203 is avoided in its entirety for all amounts in excess of \$13,326.21 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.