

**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: JUNE 28, 2021**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**COURT REOPENING**

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

**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. [12-31810](#)-A-7     **IN RE: BRIAN/COLLEEN WELLS**  
[BLF-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GUAJARDO & MARKS; FERRER, POIROT, & WANSBROUGH; GOLDWATER LAW FIRM; THE TAUTFEST FIRM; AYLSTOCK, WITKIN, KREIS AND OVERHOLZ FOR JESSICA GLITZ, JUSTIN G. WITKIN, ET AL.

5-26-2021    [\[47\]](#)

MARK HANNON/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.  
DEBTORS DISCHARGED: 10/09/2012

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Movant to prepare

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, 1) Guajardo & Marks, LLP, 2) Ferrer, Piorot & Wansbrough, 3) Goldwater Law Firm P.C., 4) The Tautfest Firm, PLLC, and 5) Aylstock, Witkin, Kreis & Overholz, PLLC, collectively special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$48,000.00 and reimbursement of expenses in the amount of \$2,472.29.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original

terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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

2. [12-31810](#)-A-7     **IN RE: BRIAN/COLLEEN WELLS**  
[BLF-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT  
5-26-2021     [\[40\]](#)

MARK HANNON/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.  
DEBTORS DISCHARGED: 10/09/2012

**Final Ruling**

**Motion:** Approve Compromise of Controversy

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

**Disposition:** Granted

**Order:** Civil minute order

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

**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. 1982). 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 parties request approval of a compromise. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The material terms and conditions of the compromise are set for in the trustee's motion to approve compromise 1:25-2:6, ECF No. 40. Compensations and expenses due professionals are subject to a separate motion. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### **CIVIL MINUTE ORDER**

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Michael D. McGranahan'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 approves the parties' compromise, which settles a dispute with respect to a biomedical product for a gross amount of \$120,000. The material terms and conditions of the compromise include motion to approve compromise 1:25-2:6, ECF No. 40. The "Court Ordered MDL Assessment" of 5% is also approved.

IT IS FURTHER ORDERED that nothing in this order shall be construed to approve or disapprove compensation due professionals and that the court will rule on those motions separately.

3. [21-21816](#)-A-7     **IN RE: TAJADA WELDON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-1-2021     [[19](#)]

CASE DISMISSED: 06/07/2021

#### **Final Ruling**

The case having been dismissed, the order to show cause is discharged as moot.

4. [20-25322](#)-A-7     **IN RE: JOGINDER SINGH**  
[BLF-5](#)

MOTION TO SELL  
5-25-2021    [[47](#)]

DAVID ARIETTA/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Estate's nonexempt interest in SAI Trucking, Inc.

**Buyer:** Mahinder Singh

**Sale Price:** \$5,000.00

**Sale Type:** Private sale subject to overbid opportunity

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.

The initial overbid, if any, shall be at least \$6,000.00. Any further overbids, if any, shall be in increments of at least \$1,000.00.

5. [21-21736](#)-A-7     **IN RE: STEPHANIE SILVA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-26-2021    [\[11\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.  
JENNIFER WANG/ATTY. FOR MV.  
FIRST INVESTORS FINANCIAL SERVICES VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2015 Chrysler 200

**Cause:** delinquent installment payments 4 months/\$963.88

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.

### **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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate

protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 4 prepetition payments are past due. The debtor also stated intent to surrender the vehicle, ECF No. 1. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected.

Cause exists to grant relief under § 362(d)(1). 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.

#### **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.

First Investors Financial Services' 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 2015 Chrysler 200, 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.

6. [10-44547](#)-A-7     **IN RE: JERRY/SUSAN BROWN**  
[MWB-3](#)

MOTION TO AVOID LIEN OF FIRST MUTUAL BANK, WASHINGTON  
CORPORATION  
5-25-2021    [\[47\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 12/20/2010

**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:** 11574 Ridgewood Rd., Redding, CA 96003

**Judicial Lien Avoided:** \$19,561.54 (First Mutual Bank, Washington Corporation)

**All Other Liens:**

-Deed of trust (Bank of America) \$108,000.00

**Exemption:** \$112,000.00

**Value of Property:** \$220,000.00

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).

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.

7. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA (N.A.)  
4-26-2021    [\[21\]](#)

GURJIT SRAI/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 07/29/2013

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**NO EXEMPTION CLAIMED**

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the

protections of that section. See *Goswami*, 304 B.R at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service for Capital One Bank U.S.A. (N.A.).

8. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-2](#)

MOTION TO AVOID LIEN OF GLOBAL ACCEPTANCE CREDIT COMPANY  
L.P.  
4-26-2021    [\[25\]](#)

GURJIT SRAI/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 07/29/2013

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **NO EXEMPTION CLAIMED**

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service for Global Acceptance Credit Company L.P. There was further no reference made in the proof of service to Global Acceptance Credit Company L.P.

9. [13-25159](#)-A-7     **IN RE: ARVINDER KAUR**  
[GSS-3](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC  
4-26-2021    [[29](#)]

GURJIT SRAI/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 07/29/2013

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**NO EXEMPTION CLAIMED**

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt . . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

## **INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service for Asset Acceptance, L.L.C. There was further no reference to Asset Acceptance, L.L.C. in the proof of service.

10. [21-20459](#)-A-7     **IN RE: GABRIELA CORREA**  
[NCK-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
5-10-2021    [[52](#)]

NOEL KNIGHT/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **11 U.S.C. § 706(a) and L.B.R. 9014-1(d) (3) (B)**

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

Those directly affected by the requested relief stated in a motion must be served the motion and supporting papers. L.B.R. 9014-1(d) (3) (B) (iv).

Here the debtor has only provided a motion that states only that this case has not been previously converted under sections 1112 or 1307, and that debtor is "eligible to be debtors under chapter 13 of

the Bankruptcy Code." The motion is not accompanied by any declaration or supporting documents. The debtor violated L.B.R. 9014-1(d)(3)(B)(iv) by failing to provide the necessary supporting documents to this motion to convert. The court will therefore deny this motion without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion for conversion under § 706(a) has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion,

IT IS ORDERED that the motion is denied without prejudice.

11. [18-20774](#)-A-7     **IN RE: S360 RENTALS, LLC**  
[DL-11](#)

MOTION FOR COMPENSATION FOR WALTER R DAHL, TRUSTEE'S  
ATTORNEY  
5-12-2021    [[459](#)]

W. SHUMWAY/ATTY. FOR DBT.

#### **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

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, Dahl Law, 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 \$4,998.00 and reimbursement of expenses in the amount of \$38.60.

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.

Dahl Law'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 \$4,998.00 and reimbursement of expenses in the amount of \$38.60.

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.

12. [21-20183](#)-A-7     **IN RE: NAOMI ALFORD**  
[PGM-1](#)

CONTINUED MOTION TO AVOID LIEN OF NUT TREE RETAIL, LLC  
4-29-2021    [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 06/02/2021

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** Nut Tree Retail, LLC

-Amount as Originally Entered: \$241,543.29 (Abstract of Judgment ¶ 6, ECF No. 24)

-Date Judgment Entered: August 27, 2010 (Abstract of Judgment ¶ 7, ECF No. 24)

-Amount Paid Against Judgment: \$0.00

-Days Elapsed Between Entry of Judgment and Petition Date: 3,800 (August 27, 2010, and January 21, 2021)

-Daily Interest ( $\$241,543.29 \times 10\% \div 365$ ): \$66.18

-Aggregate Judgment as of Petition Date: \$493,027.29

**All Other Liens:**

-First trust deed: \$296,488.62 (Wells Fargo Bank)  
-Second trust deed: \$10,701.11 (Cal FHA)  
-Third trust deed: \$8,540.00 (Cal FHA)

**Exemption:** \$300,000 (Schedule C, ECF No. 1; Cal. Code of Civ. Proc. 704.730)

**Value of Property:** \$500,000 (Alford decl. ¶ 12, ECF No. 23)

**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).

**LAW**Section 522(f)

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 operative date for determining lien avoidance under § 522(f) is the date of the petition. *In re Chiu*, 266 B.R. 743, 751 (9th Cir. BAP 2001), *aff'd* 304 F.3d 905 (9th Cir. 2002); *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (the petition date is the "operative date to make all § 522(f) determinations"). It controls: (1) the debtor's right to claim a particular exemption and the amount of that exemption, *Owen v. Owen* (1991) 500 U.S. 305, 314 fn. 6 (1991); *In re Reaves*, 285 F.3d 1152, 1156 (9th Cir. 2002); *In re Chiu*, 266 B.R. at 751; (2) the value of the property claimed exempt, 11 USC § 522(a)(2); *In re Dore*, 124 B.R. 94, 96 (Bankr. S.D. Cal. 1991); *In re Harris*, 120 B.R. 142, 148 (Bankr. S.D. Cal. 19909); and (3) the amount of the lien. *In re Salanoa* (BC SD CA 2001) 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001); March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Avoidance and Turnover Actions* § 21:1470 et seq. (Rutter Group December 2020).

## California Law on Post-Judgment Interest

"Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied." Cal. Civ. Proc. Code § 685.010; *Hyundai Securities Co. Ltd. v. Lee*, 232 Cal.App.4th 1379, 1390 (2015); *Lucky United Properties Investment, Inc. v. Lee*, 213 Cal.App.4th 635, 642 (2013). Interest accrues from the date judgment is entered. Cal. Code of Civ. Proc. 685.020. In most cases, interest is not compounded. *Big Bear Properties, Inc. v. Gherman*, 95 Cal.App.3d 908, 914-915 (1979); *Mendez v. Kurten*, 170 Cal.App.3d 481, 487 (1985); *Westbrook v. Fairchild*, 7 Cal.App.4th 889, 894-895 (1992). Generally, interest ceases upon tender of full satisfaction. Cal. Code of Civ. Proc. 685.030(b) ("If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full"). *Wertheim, LLC v. Currency Corp.*, 35 Cal.App.5th 1124, 1132 (2019); *Bell v. Farmers Ins. Exchange*, 137 Cal.App.4th 835, 839-840 (2006).

### **DISCUSSION**

The facts are not in dispute and are as set forth above. Generally, the court agrees with the debtor/movant's analysis of § 522(f) lien avoidance. But unlike the debtor, the court believes that the amount of the lien is \$493,013.02 (principal plus accrued interest-as calculated above). As one source noted:

*The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed, plus costs added after judgment and accrued interest on the judgment, minus any payments, partial satisfactions and amounts no longer enforceable. [CCP § 695.210; Lucky United Properties Investment, Inc. v. Lee 185 Cal.App.4th 125, 139 (2010); see Gray1 CPB, LLC v. SCC Acquisitions, Inc. 233 Cal.App.4th 882, 891-892 (2015) –attorney fees claimed but not awarded by the court are not part of the § 695.210 calculation (judgment debtor's payment of judgment plus accrued interest fully satisfied judgment where post-judgment attorney's fees were not included in judgment)].*

Ahart, California Practice Guide: *Enforcing Judgments and Debts, Enforcement of Judgments* § 6:12 (Rutter Group June 2021) (emphasis added).

The responding party's judicial lien, all other liens, and the exemption amount together (\$1,108,757.02) exceed the property's value (\$500,000) by an amount greater than or equal to the judicial lien.

As a result, the responding party's judicial lien will be avoided entirely.