

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

AUGUST 13, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [14-12626](#)-A-7 JOSE HERNANDEZ
ALG-1
JOSE HERNANDEZ/MV

MOTION TO AVOID LIEN OF
MID-VALLEY PIPE AND SUPPLY,
INC.
7-3-14 [[15](#)]

JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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 "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.

The motion was mailed to E. Warren Gubler, Esq. of Gubler, Koch, Degn & Gomez LLP. This attorney and firm appears on copies of the abstract of judgment and writ of execution in the exhibits accompanying the motion.

But service on the attorney who represented the respondent in proceedings prior to bankruptcy, moreover, does not comply with Rule 7004(b)(3). "An implied agency to receive service is not established by representing a client in an earlier action." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

INSUFFICIENT FACTUAL GROUNDS

The motion does not allege factual grounds that warrant the relief requested. The motion seeks to avoid the respondent's lien on personal property. But the motion does not allege facts showing that a lien on personal property has been created.

The motion alleges that the respondent recorded an abstract of judgment on March 19, 2009. The court infers from this statement that the abstract was recorded in the real property records. The motion asserts that this recording created an involuntary lien on all the Debtor's real and personal property. The debtor requests that the lien be avoided only on personal property and states that the debtor owned no real property as of the petition date.

Under the Bankruptcy Code, a "judicial lien" is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). A lien is a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(37).

California statutory law provides for several different methods of creation of judicial liens on personal property. Some of the primary methods include filing a notice of judgment lien with the Secretary of State's office, see Cal. Civ. Proc. Code § 697.510(a), 697.530(a), levying under writ of execution, see *id.* § 697.710, and serving an order for a debtor's examination on the judgment debtor, see *id.* § 708.110(d).

The motion does not state facts showing that a judicial lien was created on the debtor's personal property. It does not state that a notice of judgment lien was filed with the Secretary of State's office. It does not describe a levy that occurred or other method for a judicial lien on personal property to arise. The exhibits include a copy of a writ of execution involving two bank levies that returned \$0.00. Levies on deposit accounts only create an execution lien on amounts on deposit at the time of service on the financial institution, including any deposits not yet finally collected. *Id.* § 700.140.

In summary, the motion does not provide factual grounds showing that a judicial lien exists on the personal property. Recording an abstract of judgment with the county recorder creates a judgment lien only on real property interests of the judgment debtor in the county where the lien is recorded. See Cal. Civ. Proc. Code §§ 697.310(a), 697.340(a). Recording a writ of execution and notice of levy with the county recorder may create a lien on specific types of personal property. *Id.* § 700.020(a). But recording the *abstract of judgment* does not create a lien on the judgment debtor's personal property. See *id.* § 697.310(a).

2. [10-19241](#)-A-7 JOHN KINSFATHER

TRUSTEE FINAL ACCOUNT AND
DISTRIBUTION REPORT
4-17-14 [[80](#)]

KEVIN O'CASEY/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [13-12161](#)-A-7 ERIC GARCIA
DRJ-2
ERIC GARCIA/MV

MOTION TO AVOID LIEN OF ROYAL
AND SUNALLIANCE INSURANCE
AGENCY, INC. DBA VIKING
INSURANCE COMPANY
7-8-14 [[19](#)]

DAVID JENKINS/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

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

4. [11-18763](#)-A-7 MARY/JERRY CARMONA
PBB-2
MARY CARMONA/MV
7-15-14 [[31](#)]
RICK BANKS/Atty. for dbt.

MOTION TO AVOID LIEN OF HSBC
CREDIT CENTER INC.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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

5. [13-14568](#)-A-7 TIMOTHY GREEN
ER-2
TIMOTHY GREEN/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
7-10-14 [[27](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The debtor moves to avoid multiple judicial liens on the real property located at 1537 N. Locan, Clovis, California. The present motion requests avoidance of one of these liens that is held by the respondent, but other motions on this calendar seek to avoid other judicial liens held by the same and other respondents.

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, the judicial lien of Lake Valley Retrievals, Inc. ("Lake Valley") would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens on the same property, though it is still subject to any senior consensual lien. The court has ruled in a different motion in this case (having docket control no. ER-4) that Lake Valley's lien is avoidable. Because this highest-priority judicial lien is avoidable under § 522(f) excluding all junior judicial liens from the impairment-calculation, the court infers that no nonexempt equity is available for any lower-priority judicial liens, including the lien held by the respondent to the present motion.

Stated differently, no equity is available for any judicial liens after taking into account the debtor's exemption and other consensual liens using the appropriate calculations. Therefore, the court need not apply the reverse-priority analysis in considering whether to avoid the respondent's lien.

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." All *Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and

holds a fractional 50% interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$332,910. To determine the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$129,929 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity in the property of \$202,981. The court multiplies this net equity amount by the moving party's fractional interest of 50% and finds that the value of this fractional interest is \$101,490.50.

Thus, the total of the responding party's judicial lien (\$18,200.69) plus the exemption amount (\$101,490.50) equals \$119,691.19. The value of the moving party's fractional interest in the property in the absence of liens equals \$101,490.50.

The responding party's judicial lien may be avoided in its entirety because the judicial lien and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien. Including other higher-priority liens in the impairment calculation would not change this result.

CONCLUSION

The lien of the respondent impairs the debtor's exemption pursuant to § 522(f) and *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007). The lien will be avoided in its entirety.

6. [13-14568](#)-A-7 TIMOTHY GREEN
ER-3
TIMOTHY GREEN/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
7-10-14 [[33](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The debtor moves to avoid multiple judicial liens on the real property located at 1537 N. Locan, Clovis, California. The present motion requests avoidance of one of these liens that is held by the respondent, but other motions on this calendar seek to avoid other judicial liens held by the same and other respondents.

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, the judicial lien of Lake Valley Retrievals, Inc. ("Lake Valley") would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens on the same property, though it is still subject to any senior consensual lien. The court has ruled in a different motion in this case (having docket control no. ER-4) that Lake Valley's lien is avoidable. Because this highest-priority judicial lien is avoidable under § 522(f) excluding all junior judicial liens from the impairment-calculation, the court infers that no nonexempt equity is available for any lower-priority judicial liens, including the lien held by the respondent to the present motion.

Stated differently, no equity is available for any judicial liens after taking into account the debtor's exemption and other consensual liens using the appropriate calculations. Therefore, the court need not apply the reverse-priority analysis in considering whether to avoid the respondent's lien.

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional 50% interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$332,910. To determine the value of the moving party's fractional interest in the property in the absence of liens, the court

first deducts consensual lien debt of \$129,929 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity in the property of \$202,981. The court multiplies this net equity amount by the moving party's fractional interest of 50% and finds that the value of this fractional interest is \$101,490.50.

Thus, the total of the responding party's judicial lien (\$14,000.89) plus the exemption amount (\$101,490.50) equals \$115,491.39. The value of the moving party's fractional interest in the property in the absence of liens equals \$101,490.50.

The responding party's judicial lien may be avoided in its entirety because the judicial lien and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien. Including other higher-priority liens in the impairment calculation would not change this result.

CONCLUSION

The lien of the respondent impairs the debtor's exemption pursuant to § 522(f) and *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007). The lien will be avoided in its entirety.

7. [13-14568](#)-A-7 TIMOTHY GREEN
ER-4
TIMOTHY GREEN/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF LAKE
VALLEY RETRIEVALS INC
7-10-14 [[39](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The debtor moves to avoid multiple judicial liens on the real property located at 1537 N. Locan, Clovis, California. The present motion requests avoidance of one of these liens that is held by the respondent, but other motions on this calendar seek to avoid other

judicial liens held by the same and other respondents.

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, the judicial lien of respondent Lake Valley Retrievals, Inc. ("Lake Valley") would be the last judicial lien to be avoided because it has a higher priority than the other judicial liens on the same property, though it is still subject to any senior consensual lien. Because this highest-priority judicial lien is avoidable under § 522(f) (as shown below) excluding all junior judicial liens from the impairment-calculation, the reverse-priority analysis is unnecessary.

Stated differently, no equity is available for any judicial liens after taking into account the debtor's exemption and other consensual liens using the appropriate calculations. Therefore, the court need not apply the reverse-priority analysis in considering whether to avoid the respondent's lien.

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional 50% interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$332,910. To determine the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$129,929 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity in the property of \$202,981. The court multiplies this net equity amount by the moving party's fractional interest of 50% and finds that the value of this fractional interest is \$101,490.50.

Thus, the total of the responding party's judicial lien (\$25,089.92) plus the exemption amount (\$101,490.50) equals \$126,580.42. The value of the moving party's fractional interest in the property in the absence of liens equals \$101,490.50.

The responding party's judicial lien may be avoided in its entirety because the judicial lien and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding

party's lien. Including other higher-priority liens in the impairment calculation would not change this result.

CONCLUSION

The lien of the respondent impairs the debtor's exemption pursuant to § 522(f) and *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007). The lien will be avoided in its entirety.

8. [13-14568](#)-A-7 TIMOTHY GREEN
ER-5
TIMOTHY GREEN/MV
EDDIE RUIZ/Atty. for dbt.

MOTION TO AVOID LIEN OF GRANT
MERCANTILE AGENCY
7-10-14 [[45](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

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 "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.

Furthermore, service on the attorney who filed the abstract of judgment will not suffice. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service or otherwise that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

9. [10-12470](#)-A-7 FRANK/MARIE SANCHEZ MOTION TO APPROVE LOAN
DRJ-2 MODIFICATION
FRANK SANCHEZ/MV 7-24-14 [[111](#)]
DAVID JENKINS/Atty. for dbt.

No tentative ruling.

10. [12-13170](#)-A-7 AUGUSTINE PENA MOTION FOR ADMINISTRATIVE
THA-8 EXPENSES
TRUDI MANFREDO/MV 7-17-14 [[553](#)]
FRANCISCO ALDANA/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.
NON-OPPOSITION

No tentative ruling.

11. [14-12575](#)-A-7 ALICE RODRIGUEZ AMENDED MOTION TO COMPEL
RCM-11 ABANDONMENT
ALICE RODRIGUEZ/MV 8-5-14 [[80](#)]
RICHARD MENDEZ/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to August 27, 2014; no later than August 15, 2014, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f)(2).

Order: Civil minute order

INSUFFICIENT NOTICE

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that under Rule 6007(a) requires notice to all creditors and parties in interest listed in Rule 6007(a), the same notice required by Rule 6007(a) should be required under when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b).

In this case, all creditors and parties in interest described in Rule 6007(a) have not received notice of the amended motion. (The court notes the trustee's non-opposition.) The court cannot grant the motion at this time due to insufficient notice of the amended motion.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

MERITS

At the continued hearing date, if the motion has been properly noticed as discussed, and no creditor opposes the motion at the continued hearing date, the court is inclined to grant the amended motion given that relief appears warranted based on the well-pleaded facts.

12. [14-11382](#)-A-7 GEORGETTE OLVERA
HDN-1
GEORGETTE OLVERA/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
STERLING JEWELERS, INC
7-8-14 [[31](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$131,045. To determine the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$120,797 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity in the property of \$10,248. Multiplying this net co-owned equity by 50% shows that the value of the moving party's fractional interest is \$5,124.

Thus, the total of the judicial lien (\$3,502.40), all other liens excluding the consensual liens already deducted from the property's value (\$0.00), plus the exemption amount (\$25,000.00) equals \$28,502.40. The value of the moving party's fractional interest in the property in the absence of liens equals \$5,124.00.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

10:30 a.m.

1. [14-13228](#)-A-7 EDWARD/LISA RIVERA PRO SE REAFFIRMATION AGREEMENT
WITH ALLY BANK
7-24-14 [[13](#)]

No tentative ruling.

2. [14-12293](#)-A-7 GINO CATTUZZO CONTINUED RE: REAFFIRMATION
AGREEMENT
6-26-14 [[10](#)]

JEFFREY ROWE/Atty. for dbt.

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-29 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JAMES SALVEN AND
SHERYL STRAIN
7-16-14 [[1252](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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).

The confirmed plan authorizes the Plan Administrator David Stapleton to settle litigation and compromise without court approval. Order Confirming Plan ¶ V(M), filed June 25, 2013, ECF 961. But it also authorizes Stapleton to seek court approval where he deems it necessary to carry his responsibilities. *id* at V(N). Having deemed such approval he now seeks approval of a settlement.

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 settlement provides that Ennis Commercial Properties will relinquish its ownership interest in real property described as 17 acres at Henderson and Westwood and 3.89 acres at Westwood and Henderson. Ennis Commercial Properties will be reimbursed \$76,511.24 and trustees of the Brian Ennis estate and Pam Ennis estate will withdraw claims of \$128,954.00, \$1,272,277.83 and \$74,140.00.

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

2. [10-62315](#)-A-11 BEN ENNIS
LRP-29
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY WITH THE PLAN
ADMINISTRATOR, THE CHAPTER 7
TRUSTEES FOR THE BANKRUPTCY
ESTATES OF PAM ENNIS, BRIAN
ENNIS, AND PLAN ADMINISTRATOR
FOR ENNIS COMMERCIAL
PROPERTIES, LLC
7-16-14 [[1622](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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).

The confirmed plan authorizes the Plan Administrator David Stapleton to settle litigation and compromise without court approval. Order Confirming Plan ¶ V(N), filed June 27, 2013, ECF 1203. But it also authorizes Stapleton to seek court approval where he deems it necessary to carry his responsibilities. *id* at V(R). Having deemed such approval he now seeks approval of a settlement.

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 settlement provides that when the Florin Road property sells the trustees of the Pam Ennis estate and Brian Ennis estate will each received one-third of the net proceeds of the sale and the Stapleton, the plan administrator will keep rents from the property, less \$17,500 payable to the Pam Ennis estate and less \$17,500 payable to the Brian Ennis estate. Stapleton will have primary responsibility for winding down the affairs of the Florin Road property.

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

3. [10-61725](#)-A-7 PAMELA ENNIS MOTION TO COMPROMISE
THA-8 CONTROVERSY/APPROVE SETTLEMENT
SHERYL STRAIN/MV AGREEMENT WITH MR. STAPLETON,
PLAN ADMINISTRATOR
7-16-14 [[172](#)]

RILEY WALTER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

This is a companion motion to the motion to approve compromise filed in *In re Ennis Commercial Properties, LLC*, No. 10-22709 (Bankr. E.D. Cal. 2010), docket control number LRP-29, and as the motion to approve compromise filed in *In re Ben Ennis*, No. 10-62315 (Bankr. E.D. Cal. 2010), docket control number LBR-29. For the reasons set forth in the Civil Minutes for each of those motions and cases, the motion is granted.

4. [10-61725](#)-A-7 PAMELA ENNIS CONTINUED STATUS CONFERENCE
[12-1160](#) AMENDED COMPLAINT
STRAIN V. ENNIS ET AL 10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to October 29, 2014, at 1:45 p.m. to allow the parties to complete settlement. If a judgment or dismissal has not been filed, not later than 7 days prior to the continued status conference date, the parties shall file a joint status report.

5. [13-17444](#)-A-11 A & A TRANSPORT, CO.,
HAR-14 INC.
A & A TRANSPORT, CO., INC./MV
HILTON RYDER/Atty. for dbt.
- MOTION FOR APPROVAL OF
AGREEMENT TO TERMINATE THE STAY
OF 11 U.S.C. 362
7-15-14 [[160](#)]

Final Ruling

Motion: Approval of Agreement to Terminate the Stay
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).

The debtor in possession has filed a motion for approval of an agreement to terminate the stay for the limited purpose of allowing litigation to pursue a personal injury claim solely against applicable insurance. The Hartford agrees to limit any recovery on account of the claim against the debtor, Jose Mora, and Does, only to available insurance proceeds. The Hartford waives any and all claims against the debtor's estate and Does on account of the personal injury claim. The agreement to terminate the stay is between the debtor in possession and the Hartford. For the reasons stated in the motion and supporting papers, the court will grant the motion and approve the stipulation.

6. [13-12358](#)-A-11 CENTRAL VALLEY SHORING,
INC.
LEONARD WELSH/Atty. for dbt.
- CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-2-13 [[1](#)]

No tentative ruling.

7. [13-12358](#)-A-11 CENTRAL VALLEY SHORING,
LKW-13 INC.
LEONARD WELSH/Atty. for dbt.
- CONFIRMATION OF PLAN
5-23-14 [[230](#)]

No tentative ruling.

8. [10-61970](#)-A-7 BRIAN ENNIS
THA-6
JAMES SALVEN/MV
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DAVID STAPLETON
AS PLAN ADMINISTRATOR
7-16-14 [[290](#)]

RILEY WALTER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Prepared by moving party

This is a companion motion to the motion to approve compromise filed in *In re Ennis Commercial Properties, LLC*, No. 10-22709 (Bankr. E.D. Cal. 2010), docket control number LRP-29, and as the motion to approve compromise filed in *In re Ben Ennis*, No. 10-62315 (Bankr. E.D. Cal. 2010), docket control number LBR-29. For the reasons set forth in the Civil Minutes for each of those motions and cases, the motion is granted.

9. [10-61970](#)-A-7 BRIAN ENNIS
[12-1161](#)
SALVEN V. ENNIS
10-16-12 [[7](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING
CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT

Final Ruling

This matter is continued to October 29, 2014, at 1:45 p.m. to allow the parties to complete settlement. If a judgment or dismissal has not been filed, not later than 7 days prior to the continued status conference date, the parties shall file a joint status report.

10. [13-13284](#)-A-11 NICOLETTI OIL INC.
KR-7
NICOLETTI OIL INC./MV
MOTION TO EXTEND EXCLUSIVITY
PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT
7-30-14 [[348](#)]

DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.