

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

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

DAY: MONDAY
DATE: OCTOBER 4, 2021
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A
8-26-2021 [37]

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Capital One Bank (USA), N.A.
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|---------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, the judicial lien of Capital One Bank (USA) N.A. will be avoided.

The court will grant the motion to avoid Capital One Bank (USA) N.A.'s judicial lien.

2. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
8-26-2021 [\[42\]](#)

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Capital One Bank (USA), N.A.
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|---------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, Capital One Bank's junior judicial lien is also avoidable.

The court will grant the motion to avoid Capital One Bank (USA) N.A.'s judicial lien.

3. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-4](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
8-26-2021 [\[47\]](#)

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Discover Bank
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|------------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate amount |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, Discover Bank's junior judicial lien is also avoidable.

The court will grant the motion to avoid Discover Bank's judicial lien.

4. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-5](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
8-26-2021 [52]

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Discover Bank
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|------------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate amount |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, Discover Bank's junior judicial lien is also avoidable.

The court will grant the motion to avoid Discover Bank's judicial lien.

5. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-6](#)

MOTION TO AVOID LIEN OF SOUTHERN COUNTIES OIL CO.
8-26-2021 [57]

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Southern Counties Oil Co.
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|------------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate amount |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, Southern Counties Oil Co.'s junior lien is also avoidable.

The court will grant the motion to avoid Southern Counties Oil Co.'s judicial lien.

6. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-7](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
8-26-2021 [62]

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: Capital One Bank (USA) N.A.

Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|------------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate amount |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore, Capital One Bank (USA) N.A.'s junior judicial lien is avoidable.

The court will grant the motion to avoid Capital One Bank (USA) N.A.'s judicial lien.

7. [21-21529](#)-A-7 **IN RE: AMAL ELDER**
[HWW-8](#)

MOTION TO AVOID LIEN OF W.H. BRESHEARS, INC.
8-26-2021 [[67](#)]

HANK WALTH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 08/25/2021

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Respondent: W.H. Breshears, Inc.
Subject Property: 4880 East Peach Avenue, Manteca, CA
Most Senior Judicial Lien: \$3,541.86 Capital One Bank (USA) N.A.
Consensual Liens: \$ 645,963.00 Nationstar Mortgage, LLC
Statutory Lien: \$3,714.75 City of Modesto
Junior Judicial Liens:

| <u>Lienholder</u> | <u>Recording Date</u> | <u>Amount</u> |
|-----------------------------|-----------------------|------------------|
| County of San Joaquin | 09/29/11 | \$ 6,429.06 |
| Capital One Bank (USA),N.A. | 10/18/11 | \$ 2,937.36 |
| Discover Bank | 09/19/13 | \$44,657.83 |
| Southern Counties Oil Co. | 05/16/14 | \$31,465.68 |
| Capital One Bank (USA),N.A. | 08/18/14 | \$10,485.50 |
| W. H. Breshears, Inc. | 12/22/16 | \$56,691.95 |
| Discover Bank | 01/03/17 | duplicate amount |

Exemption: \$300,000.00
Value of Property: \$ 871,889.00

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).

LIEN-AVOIDANCE STANDARDS

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).

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 court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' 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, Capital One Bank (USA) N.A.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Capital One Bank (USA) N.A.'s lien may be avoided; the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$953,219.61. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Capital One Bank (USA) N.A.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f). Therefore *Breshears, Inc.*'s junior judicial lien is avoidable.

The court will grant the motion to avoid *W.H. Breshears, Inc.*'s judicial lien.

8. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-37](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PCM SALES, INC.
9-3-2021 [\[1688\]](#)

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

Final Ruling

Motion: Motion to Compromise Controversy/Approve Settlement

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. has filed a motion for approval of a settlement with PCM Sales, Inc. pursuant to Fed. R. Bankr. P. 9019(a).

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.*

LBR 9014-1(D)(3)(d)

Movant has failed to provide sufficient evidence for the court to rule on this motion. The motion is not accompanied by a declaration. LBR 9014-1(d)(3)(D) provides:

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

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

The hearing on this motion will be continued until November 15, 2021, at 9:00 a.m. to allow the movant to provide the supporting declaration.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1688 and Certificate of Service, ECF No. 1691 were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1691. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that movant shall file and serve additional evidence in support of its motion not later than October 11, 2021. Any additional evidence shall be served on all interested parties concurrently with the amended notice indicated in the preceding paragraph.

9. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-38](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RED RIVER LOGISTICS, LLC
9-3-2021 [[1692](#)]

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

Final Ruling

Motion: Motion to Compromise Controversy/Approve Settlement

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. has filed a motion for approval of a settlement with Red River Logistics, LLC pursuant to Fed. R. Bankr. P. 9019(a).

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.*

LBR 9014-1(D) (3) (d)

Movant has failed to provide sufficient evidence for the court to rule on this motion. The motion is not accompanied by a declaration. LBR 9014-1(d) (3) (D) provides:

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

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

The hearing on this motion will be continued until November 15, 2021, at 9:00 a.m. to allow the movant to provide the supporting declaration.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1692 and Certificate of Service, ECF No. 1695 were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1695. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1695, is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that movant shall file and serve additional evidence in support of its motion not later than October 11, 2021. Any additional evidence shall be served on all interested parties

10. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-39](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INTEGRA SUPPLY LLC
9-3-2021 [[1696](#)]

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

Final Ruling

Motion: Motion to Compromise Controversy/Approve Settlement

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. has filed a motion for approval of a settlement with Integra Supply LLC pursuant to Fed. R. Bankr. P. 9019(a).

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.*

LBR 9014-1(D)(3)(d)

Movant has failed to provide sufficient evidence for the court to rule on this motion. The motion is not accompanied by a declaration. LBR 9014-1(d)(3)(D) provides:

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

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

The hearing on this motion will be continued until November 15, 2021, at 9:00 a.m. to allow the movant to provide the supporting declaration.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1696 and Certificate of Service, ECF No. 1699 were filed on September 3, 2021. The court that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1699. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1699, is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that movant shall file and serve additional evidence in support of its motion not later than October 11, 2021. Any additional evidence shall be served on all interested parties concurrently with the amended notice indicated in the preceding paragraph.

11. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-40](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JACKSON MOVING & STORAGE, INC.
9-3-2021 [\[1700\]](#)

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

Final Ruling

Motion: Motion to Compromise Controversy/Approve Settlement

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. has filed a motion for approval of a settlement with Jackson Moving & Storage, Inc. pursuant to Fed. R. Bankr. P. 9019(a).

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.*

LBR 9014-1(D)(3)(d)

Movant has failed to provide sufficient evidence for the court to rule on this motion. The motion is not accompanied by a declaration. LBR 9014-1(d)(3)(D) provides:

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

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

The hearing on this motion will be continued until November 15, 2021, at 9:00 a.m. to allow the movant to provide the supporting declaration.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1700 and Certificate of Service, ECF No. 1703 were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1703. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1703 is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that movant shall file and serve additional evidence in support of its motion not later than October 11, 2021. Any additional evidence shall be served on all interested parties concurrently with the amended notice indicated in the preceding paragraph.

12. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-41](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MCA FINANCIAL GROUP, LTD.
9-3-2021 [\[1704\]](#)

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

Final Ruling

Motion: Motion to Compromise Controversy/Approve Settlement

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

Kimberly J. Husted, the duly appointed chapter 7 trustee of the Estate of ECS Refining, Inc. has filed a motion for approval of a settlement with MCA Financial Group, Ltd. pursuant to Fed. R. Bankr. P. 9019(a).

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.*

LBR 9014-1(D)(3)(d)

Movant has failed to provide sufficient evidence for the court to rule on this motion. The motion is not accompanied by a declaration. LBR 9014-1(d)(3)(D) provides:

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

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

The hearing on this motion will be continued until November 15, 2021, at 9:00 a.m. to allow the movant to provide the supporting declaration.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1704 and Certificate of Service, ECF No. 1707 were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1707. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1707 is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that movant shall file and serve additional evidence in support of its motion not later than October 11, 2021. Any additional evidence shall be served on all interested parties concurrently with the amended notice indicated in the preceding paragraph.

13. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-42](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND
MCCARTHY LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S)
9-3-2021 [[1708](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.

Final Ruling

Motion: Motion for Compensation

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

Disposition: Continued to November 15, 2021, at 9:00 a.m.

Order: Civil Minute Order

COMPENSATION AND EXPENSES

In this Chapter 7 case, Diamond McCarthy LLP, Counsel for the trustee, has applied for an allowance of compensation and reimbursement of expenses in multiple adversary proceedings. Some of the adversary proceedings are not yet resolved as they remain on the court's calendar as Motions to Compromise Controversy and Approve Settlement. The motions are identified with the following motion control numbers: DMC-37; DMC-38; DMC-39; DMC-40; and DMC-41. Each of these motions has been continued until November 15, 2021, at 9:00 a.m.

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). Here, the movant was employed under § 328 on a contingent fee basis. Order, ECF No. 1111. Most (though not all) of the settlements for which fees are sought have been continued to November 15, 2021, for final hearings. As a result, for many of the matters, the court is unable to calculate the fee due until such time as it approves the motion for compromise.

As the Motions to Compromise Controversy and Approve Settlement have been continued the court will continue this motion to coincide with the hearings on those motions.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion for Compensation, ECF No. 1708, and Certificate of Service, ECF No. 1712 were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1712. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two

months prior to the Certificate of Service, ECF No. 1712 is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this motion will be continued until November 15, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on all interested parties not later than October 11, 2021. The amended notice shall inform all parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

14. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-43](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SNELL & WILMER LLP
9-3-2021 [[1717](#)]

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

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).

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).

BACKGROUND

Plaintiff Kimberly J. Husted, the duly appointed Chapter 7 Trustee of the Estate of ECS Refining, Inc. moves for approval of a compromise with Snell & Wilmer LLP under Federal Rule of Bankruptcy Procedure 9019(a)1. The terms of the compromise are contained in a Settlement Agreement, a copy of which is submitted as Exhibit A to the Motion.

The settlement provides for payment of \$2.3 million to the Trustee for the benefit of the Estate in settlement of the breach of fiduciary duty and legal malpractice claims brought by the Trustee against Snell & Wilmer in a complaint filed in the Superior Court of California, San Joaquin County entitled Kimberly J. Husted, Chapter 7 Trustee of the Estate of ECS Refining, Inc. v. Snell & Wilmer LLP, STK -UV-UPN-2019-5196. The Trustee and Defendant will grant each other full and complete mutual releases. The proposed settlement is the product of concerted efforts by the Trustee, the Defendant, and Defendant's malpractice insurer. The Parties, along with the insurer, took part in extensive arms' length negotiations under the direction of the Honorable Randall J. Newsome, retired Chief Judge for the U.S. Bankruptcy Court for the Northern District of California at an all-day mediation held on July 27, 2021. The settlement is a result of the efforts expended that day.

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 movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1717, and Certificate of Service, ECF No. 1721, were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1721. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1721, is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

Because the motion to approve the compromise is otherwise in order, the court will not raise the staleness of the matrix and will rule on the merits. But the movant is apprised that future motions should be supported by a more version of the Clerk's matrix.

CIVIL MINUTE ORDER

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

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

Kimberly J. Husted's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 1720.

15. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[DMC-44](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND
MCCARTHY LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S)
9-3-2021 [[1722](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
CHRISTOPHER SULLIVAN/ATTY. FOR MV.

Final 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).

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).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Diamond McCarthy LLP, special litigation 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 \$708,198.48 and reimbursement of expenses in the amount of \$86,879.74.

"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).

On May 10, 2019, the court entered the Order Granting the Application to Employ Diamond McCarthy as Special Counsel Pursuant to a Contingent Fee Arrangement. ECF No. 1111. Diamond McCarthy's (Applicant's) employment was authorized pursuant to § 328(a) of the Bankruptcy Code. The Order approved a fee arrangement, whereby Applicant would be compensated when the Trustee received a recovery, either through settlement, judgment, or otherwise. Pursuant to the Contingency Fee Arrangement Applicant earns a contingency fee based on a percentage of the estate's Recovery.

Specifically, the Contingency Fee Arrangement provided that in the event the Trustee and the estate receive a recovery Applicant is entitled to: (i) thirty two percent (32%) of all Net Recoveries so received, and (ii) reimbursement of all unpaid Expenses to be paid from any Recovery. See Exhibit A, ECF No. 1094, ¶5(c).

The Contingency Fee Arrangement further defined the terms impacting the calculation of the award as follows: "Net Recovery" or "Net Recoveries" means "Gross Recovery" less any "Expenses" as that term is defined in paragraph 6 of the fee agreement approved by the Court, ECF No. 1094, ¶¶5(a). "Expenses" are limited to out-of-pocket costs incurred in connection with the Contingency Litigation Claims, which Diamond McCarthy shall advance, and are subject to Bankruptcy Court approval under 11 U.S.C. §§ 330 and 331, ECF No. 1094, ¶6.

The settlement provides significant recovery to the Estate (\$2.3 million). The complexity of the issues, the difficulty of the work performed, the significant investment of professional time and the high level of skill and expertise exhibited by Diamond McCarthy's professionals, all support payment of the Earned Contingency Fee.

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

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The Motion ECF No. 1722, and Certificate of Service, ECF No. 1726, were filed on September 3, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents was dated July 2, 2021. See ECF No. 1726. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated two months prior to the Certificate of Service, ECF No. 1726, is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

Because the motion for compensation is otherwise in order, the court will not raise the staleness of the matrix and will rule on the merits. But the movant is apprised that future motions should be supported by a more version of the Clerk's matrix.

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.

Diamond McCarthy LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$708,198.48 and reimbursement of expenses in the amount of \$86,879.74.

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.

16. [20-21655](#)-A-7 **IN RE: CAREY SHANE**
[MBS-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA
8-26-2021 [\[39\]](#)

MATTHEW SMITH/ATTY. FOR DBT.
DEBTOR DISCHARGED: 06/22/2020; JOINT DEBTOR DISCHARGED:
06/22/2020

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

Subject Property: 1220 Cunningham Drive, Dixon, CA
Respondent: Bank of America
Judicial Liens: Bank of America - \$13,598.33
Bank of America - \$9,882.85
Bank of America - \$19,392.94

Consensual Liens:
Mortgage Solution Financial - Deed of Trust \$270,769.36
Exemption: \$75,000.00
Value of Property: \$432,822.00

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).

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).

BACKGROUND

The order for relief in this case was entered on March 19, 2020. ECF No. 1. A discharge was entered in this case on June 22, 2020, ECF No. 18, and the case was subsequently closed.

On May 28, 2021, an order was entered re-opening the case, ECF No. 23. On April 27, 2021, the debtor claimed her interest in the subject property exempt under California Code of Civil Procedure § 704.730. See Amended Schedule D, ECS No. 15. The debtor claimed 100% of the fair market value up to the statutory limit as exempt. No objections to the claim of exemptions have been filed. The debtor clarifies the dollar amount of the claimed exempt in the Declaration of Carey Sue Shane in Support of Motion to Avoid Lien as follows: "I have claimed an exemption on the subject property of \$75,000." ECF No. 41, 2:13.

Debtor seeks to avoid three judicial liens acquired by Bank of America. Bank of America holds three judicial liens against the subject property. On December 10, 2019, three Abstracts of Judgment were filed sequentially in Solano County in the total amount of \$42,874.12 (\$9,882.85 in case number FCM163932; \$13,598.33 in case number FCM163933; and \$19,392.94 in case number FCM163934). See Exhibits in Support of Motion to Avoid Judicial Lien, ECF No. 42, Exhibits 4-6.

The debtor owns the property with her spouse Isaiah Shane. "This property was acquired during my marriage to Isaiah J. Shane with community property funds and therefore is a community property asset." ECF No 41, 2:9-10. The debtor was still married at the time the petition was filed as indicated in the Statement of Financial Affairs, Item 1, ECF No. 1.

Debtor's spouse Isaiah J. Shane is a co-debtor on the note and deed of trust securing the subject property. See debtor's Schedule H Codebtors, ECF No. 1, which lists Isaiah J. Shane as a co-debtor, and which shows his address as matching the address of the subject property.

VALUE OF PROPERTY AND AMOUNT OF EXEMPTIONS

In applying the statutory-impairment formula of section 522(f)(2)(A), the court must determine the value of the debtor's interest in property in the absence of liens. See 11 U.S.C. § 522(f)(2)(A). Section 522 explicitly refers to the petition date as the operative date for determining the value of the debtor's

property unless the property became property of the estate after the petition date. See *id.* § 522(a).

Use of the petition date to determine the value of the property, as well all other rights relating to lien avoidance under § 522(f)(2)(A), is supported by case law in this circuit.

"Under the so-called 'snapshot' rule, bankruptcy exemptions are fixed at the time of the bankruptcy petition." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) (citing *White v. Stump*, 266 U.S. 310, 313, 45 S.Ct. 103 (1924)). In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the petition date. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199. The bankruptcy appellate panel has also indicated that the focus in determining exemption rights should be "the petition date, not the current date." *Mbaba v. Clark Fergus & Assocs. (In re Mbaba)*, No. CC-05-1401-PaBK, 2006 WL 6810948, at *5 (B.A.P. 9th Cir. Aug. 15, 2006).

The bankruptcy appellate panel has held:

[T]he well-established rule [is] that the critical date for determining exemption rights is the petition date. "[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property[.]" A debtor's § 522(f) lien avoidance rights are also determined as of the petition date. "Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date." *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003) (third, fourth, and fifth alterations in original) (citations omitted) (quoting *Culver, LLC v. Chiu (In re Chiu)*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), *aff'd*, 304 F.3d 905 (9th Cir. 2002)).

Thus, "[i]t is well settled that the petition date is the operative date to value the debtor's residence and the homestead [exemption] for section 522(f) purposes." *Mbaba*, 2006 WL 6810948, at *5 (citing *In re Salanoa*, 263 B.R. 120, 124 (Bankr. S.D. Cal. 2001); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)). "This approach is consistent with *Dewsnup* because it allows a lien creditor to enjoy the increase in value if the lien is not avoided. However, it also preserves the parties' rights as they existed on the petition date to the extent the lien is avoidable under § 522(f)." *Salanoa*, 263 B.R. at 124. It is also consistent with Ninth Circuit precedent that allows a debtor to avoid a lien under § 522(f) even when the debtor "[no longer has] an interest in the property at the time it moves to avoid." *Chiu*, 304 F.3d at 908.

The debtor has valued the subject property at \$432,822.00. See Amended Schedule A/B, ECF No 14. Further the debtor has claimed exempt \$75,00.00 in the subject property.

SECTION 541(a)

The entire value of the subject property is part of the bankruptcy estate under § 541(a). Bankruptcy Code § 541(a) provides:

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

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) *All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--*

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a) (emphasis added).

The community's liability for obligations of a debtor is determined by state law. In California the general presumption is as follows:

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

Cal. Fam. Code § 910.

The debtor has provided no evidence in her motion that the provisions of Cal. Fam. Code § 910 are inapplicable. In the absence of any such evidence the court assumes the community is liable for the obligations owed to Bank of America.

The debtor contends that her spouse is entitled to one half of the community interest outside the bankruptcy estate. The debtor's calculation awards to her spouse, and thereby subtracts, a fifty percent ownership interest, from the § 522(f) formula. This subtracts \$81,026.32 from the community property interest in the subject property in contravention of § 541(a). See Motion to Avoid Judicial Lien, ECF No. 39, 3:3. The debtor has acknowledged that the subject property is owned jointly with her spouse as community property. If so, the full value of the property is subject to the formula and must be included in the calculation. The debtor's attempt to subtract this interest from the calculation under § 522(f) is incorrect. The court finds that the full value of the subject property is part of the bankruptcy estate and therefore subject to claims of creditors.

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

To apply the formula of § 522(f)(2)(A) the court must add the following sums:

Bank of America judicial lien - \$13,598.33
Bank of America judicial lien - \$9,882.85
Bank of America judicial lien - \$19,392.94
Mortgage Solution Financial - Deed of Trust \$270,769.36
Exemption: \$75,000.00

These amounts total: \$388,643.48.

This sum is less than the value of the subject property which is \$432,822.00.

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

FAILURE TO COMPLY WITH LOCAL RULE 9014-1

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be

"the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

Counsel for the debtor has used the same motion control number (MBS-1) in this matter that he used in two previous motions to avoid lien. See ECF No. 26, filed June 1, 2021, and ECF No. 30 filed July 12, 2021. Counsel is advised that he is required to comply with all the Federal Rules of Bankruptcy Procedure and the Eastern District Local Bankruptcy Rules in his pleading practice before this court. Failure to comply with the rules in the future may result in the court summarily denying relief or issuance of an Order to Show Cause for sanctions.

The court will deny this motion as Bank of America's judicial liens do not impair the exemption claimed in the subject property. This is because the total amount of Bank of America's liens, all other liens, and the exemption amount, does not exceed the property's value.

CIVIL MINUTE ORDER

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

Debtor's Motion to Avoid Judicial Lien of Bank of America has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the Motion to Avoid Lien of Bank of America is denied without prejudice.

17. [21-23159](#)-A-7 **IN RE: BRITANI DAVIS**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-14-2021 [\[20\]](#)

VINCENT FROUNJIAN/ATTY. FOR MV.
HONDA LEASE TRUST VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Continued to November 30, 2021, at 9:00 a.m.

Order: Civil minute order

Subject: 2020 Honda Civic

Lessor: American Honda Finance

Movant: Honda Lease Trust

Statement of Intention:

-Lease listed in the Statement of Intention: yes

-Stated Intention: assume

11 U.S.C. § 521(a)(2):

-First Date Scheduled for 341 Meeting of Creditors: October 12, 2021

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).

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.

BACKGROUND

Honda Lease Trust moves the court for an order granting relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1); 362(d)(2)(A); and 362(d)(2)(b). Movant also requests Waiver of the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3).

The subject of the motion is a 2020 Honda Civic, leased by the debtor. Payments are delinquent pursuant to the lease in the amount of \$1,008.31. See Declaration of Creditor in Support of Motion for Relief from the Automatic Stay, ECF No. 22, 2:25-28. The balance owed under the lease is \$21,562.39. *Id.* 3:1. Because debtor's agreement is a lease movant contends that the debtor does not acquire ownership and/or any equity in the vehicle. *Id.* 3:2-3. The

creditor values the vehicle between \$19,000 (trade in value) and \$22,925.00 (clean retail). *Id.*, 2:4-5.

The debtor filed her chapter 7 case on September 3, 2021. Included with the petition the debtor filed Schedule G Executory Contracts identifying American Honda Finance as the leaseholder of the 2020 Honda (subject property). See Schedule G, ECF No. 1. On September 3, 2021, the debtor also filed a Statement of Intentions which shows her intent to assume the lease of American Honda Finance. See Statement of Intentions, ECF No. 1, Part 2. The chapter 7 341 Meeting of Creditors is scheduled to be held on October 12, 2021, at 11:00 a.m. Additionally, the debtor has filed a Complaint for Restitution of Possession of Personal Property, ECF No. 11. In that document the debtor indicates that the subject property was repossessed by the leaseholder on August 26, 2021, *Id.* 2:17-19. Debtor further alleges that upon the filing of her case that she notified the movant of the filing of the bankruptcy and demanded return of the subject property, and that it had not yet been returned. *Id.* 2:20-27.

STAY RELIEF

Filing a Chapter 7 petition imposes the stay, protecting the debtor, the debtor's property, and property of the estate. 11 U.S.C. § 362(a). The stay terminates: (1) when the case has run its course, i.e., as to the debtor, when debtor is granted or denied a discharge and as to the estate, when the property leaves the estate, 11 U.S.C. § 362(c); (2) by order of the court after noticed motion, 11 U.S.C. § 362(d); or (3) by operation of law, see e.g., § 362(c)(3), (4). Among the operative provisions of law that lift the stay is 11 U.S.C. § 362(h).

As a rule, 11 U.S.C. § 365 gives the trustee the authority to assume a lease. This is ordinarily not the prerogative of the debtor. However, under certain limited circumstances a chapter 7 debtor may also assume a lease under the provisions of §§ 521(a) and 362(h).

11 U.S.C. § 521(a)(2) provides as follows:

(a) The debtor shall--

...

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to

redeem such property, or that the debtor intends to reaffirm debts secured by such property; and (B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph.

11 U.S.C. § 521 (a) (2).

Additionally, 11 U.S.C. § 362(h) provides:

(h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a) (2)–

A) to file timely any statement of intention required under section 521(a) (2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a) (2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

11 U.S.C. § 362(h) (emphasis added).

In this case the debtor has timely filed her Statement of Intentions and specified her intent to assume the lease. The chapter 7 341

Meeting of Creditors is scheduled to take place on October 12, 2021, at 11:00 a.m. Thus, the period for the debtor to assume the lease has not yet expired.

Finally, in pertinent parts, § 365 provides:

(d) (1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

...

(p) (1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

(2) (A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a) (2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

11 U.S.C. § 365(d) (1), (p) (1)-(2) (emphasis added).

As described in subdivision (p) (2) assumption by the debtor is a three-step process: (1) notifying the lessor in writing that the debtor wishes to assume the lease; (2) the lessor's notification of the debtor of its willingness to assume the lease, including conditioning assumption on any cure; and (3) within 30 days of creditors demand for cure, the debtor's written notification of its acceptance. 11 U.S.C. § 365(p) (2); *In re Bailly*, 522 B.R. 711, 713-14 (Bankr. M.D. Fla. 2014). If the debtor completes the process, the lease is deemed assumed by the debtor, and not by the estate. 11 U.S.C. § 365(d) (2) (B).

In this case the debtor has timely filed her Statement of Intentions and specified her intent to assume the lease. The chapter 7 341 Meeting of Creditors is scheduled to take place on October 12, 2021, at 11:00 a.m. Given the opportunity afforded the debtor under the Bankruptcy Code the court believes the motion for relief is premature. If movant has possession of the subject property, then the continuance poses no risk to it. The court will continue the matter until November 30, 2021, at 9:00 a.m.

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.

Honda Lease Trust's motion for relief from the automatic stay has been presented to the court.

IT IS ORDERED that the motion is continued until November 30, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the moving party shall serve an amended notice of the continued hearing date on the debtor and all interested parties not later than October 11, 2021. The amended notice shall inform the debtor and all interested parties that any opposition to the motion must be in writing, served, and filed with the court not later than 14 days prior to the hearing on the motion.

IT IS FURTHER ORDERED that the movant shall file and serve a status report not later than November 16, 2021. The report must, at a minimum, detail the status of the debtor's assumption of the lease. The status report shall be served upon the debtor and all interested parties.

IT IS FURTHER ORDERED that the automatic stay of 11 U.S.C. § 362 shall remain in place until the court fully resolves this matter.

18. [21-21899](#)-A-7 **IN RE: CHRISTINE SPRADLIN**
[MOH-1](#)

MOTION TO AVOID LIEN OF SECOND ROUND SUB, LLC
8-23-2021 [\[24\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 09/07/2021

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 2530 Oro Quincy Hwy, Oroville, California

Judicial Lien Avoided: \$3,321.32 (Second Round Sub, LLC)

All Other Liens:

-Consensual Lie: \$167,569.91 (Owed solely by non-filing spouse)

Exemption: \$300,000.00

Value of Property: \$372,858.00

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.