UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 16, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

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

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. *See Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); *accord* LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

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

1. 16-11722-A-7 ISIDRO/MARIA SANCHEZ
JES-1
JAMES SALVEN/MV

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH VERA SANCHEZ-RAMIREZ
10-13-16 [24]

MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

Motion: Approve Compromise of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

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

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The parties request approval of a compromise that settles a dispute related to the transfer of a 2007 Chrysler 300, VIN 2C3LA63H37H606515 to Vera Sanchez-Ramirez prior to the petition date. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The terms and conditions of the compromise include a payment by Vera Sanchez-Ramirez in the amount of $5,000.00. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

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

IT IS ORDERED that the motion is granted. The court approves the parties' compromise, which settles a dispute related to the transfer of a 2007 Chrysler 300, VIN 2C3LA63H37H606515 to Vera Sanchez-Ramirez prior to the petition date. The terms and conditions of the compromise are that Vera Sanchez-Ramirez will pay the estate $5,000.00.

2. 16-10933-A-7 KURTIS/JANIE BIRTELL — MOTION TO AVOID LIEN OF FIDELITY CREDITOR SERVICE, INC.
DMG-2
KURTIS BIRTELL/MV
D. GARDNER/Atty. for dbt.
10-24-16 [22]

Final Ruling

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

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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien. This is true because the total amount of the responding party's lien, 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).

Additionally, it appears that multiple judicial liens affect this property. 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). Thus, one starts at the back of the priority lien in applying the statutory-impairment calculation. (In this case, it is possible that one of the two judicial liens would have been avoidable—or partially avoidable—had the multiple-lien analysis been correctly applied.)

In addition, the real property address is inconsistently provided in the motion and declaration and abstract of judgment. The motion gives the address as 1505 Zion Way, Frazier Park, CA. The declaration shows 15056 Zion Way, Pine Mountain Club, CA.

3. 16-10933-A-7 KURTIS/JANIE BIRTELL — MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A. (USA)
DMG-3
KURTIS BIRTELL/MV
D. GARDNER/Atty. for dbt.
10-24-16 [28]

Final Ruling

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

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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien. This is true because the total amount of the responding party's lien, all other liens, and the exemption amount ($218,081.42), does not exceed the property's value. Accordingly, a prima facie case has

not been made for relief under § 522(f).

In addition, the real property address is inconsistently provided in the motion and declaration and abstract of judgment.

4. 15-14040-A-7 RAYMOND/STEPHANIE LADD — CONTINUED OBJECTION RE: TRUSTEE'S FINAL REPORT 8-10-16 [17]

DAVID JENKINS/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Trustee's Final Report
Notice: LBR 9014-1(f)(1) / Continued hearing date; written opposition required
Disposition: Sustained
Order: Prepared by debtors' attorney

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors have objected to the trustee's final report in their "Response to Trustee's Final Report." This objection seeks to have the final report conform to the relief sought in the debtors' motion to extend time to file a claim on behalf of the IRS. The objection will be sustained.

Given the relief granted in the debtors' motion to extend time to file a claim, the IRS should be paid as a priority claim. *See* Tr.'s Final Report Ex. D. The proposed distribution should be modified to show full payment of the IRS's allowed priority claim of approximately $2,650.86.

5. 15-14040-A-7 RAYMOND/STEPHANIE LADD — CONTINUED MOTION TO EXTEND TIME
DRJ-1 — 8-29-16 [23]
RAYMOND LADD/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Extend Time to File Claim under Rule 3004 and Extend Time under § 726(a)
Notice: LBR 9014-1(f)(1) / Continued hearing date; written opposition required
Disposition: Granted in part, denied in part
Order: Civil minute order

COURT'S PREVIOUS TENTATIVE RULING FOR THE HEARING OCTOBER 13, 2016

Debtors Raymond M. Ladd and Stephanie V. Ladd ("Ladds") move (1) to ratify the "tardily filed proof of claim," i.e. Claim No. 11 for priority taxes on behalf of the Internal Revenue Service; (2) for "an extension of the deadline for filing a claim by the Debtors for the IRS as authorized by Federal Rule of Bankruptcy Procedure 3004"; and (3) "an extension of the deadline for the filing of a tardy priority claim that is payable with priority status pursuant to Title 11 USC Section 726(a)." Mot. at 1:19-24, August 29, 2016. Neither the trustee, nor any party in interest, opposes the motion.

DISCUSSION

The central aim of this motion is to move the surrogate priority claim filed by the debtors on behalf of the Internal Revenue Service from a second priority distribution, 11 U.S.C. § 726(a)(2)(C)(ii), to a first priority distribution, 11 U.S.C. §§ 726(a)(1), 507(a)(8). If the motion is granted, the priority scheme of § 726(a) will compel the Chapter 7 trustee to pay the claim in full from available funds when he distributes money to creditors. If it is not granted, the claim will not be paid by the trustee and, since it arises from pre-petition non-dischargeable taxes, that debt will follow the Ladds out the backdoor of the Bankruptcy Court and require payment by the debtors from their own funds.

Facts

The facts of this motion are not in dispute. In 2013, and 2014, the Ladds filed federal income tax returns that did not include certain 1099 income received during those years. As a consequence, the refund received by the debtors for those years was $2,650.86 in excess of the amount to which they were actually entitled.

In 2015, the debtors also filed tax returns and, without considering the overpaid refunds of 2013 and 2014, the Ladds were entitled to a federal tax refund of $3,876.00 and a state tax refund of $745.00.

On October 15, 2015, the debtors filed a Chapter 7 bankruptcy. James E. Salven was appointed the trustee. At the time the Ladds filed their Chapter 7 bankruptcy, they scheduled their federal and state income tax refunds as non-exempt. They anticipated that the Internal Revenue Service either would recoup the 2013, and 2014, overpayments from the 2015 refund (now due the Chapter 7 trustee) or would file a

priority proof of claim under 11 U.S.C. § 507(a)(8). Since the only anticipated claim with a higher distribution priority than the Internal Revenue Service was a modest administrative-expense claim by the trustee, 11 U.S.C. § 507(a)(2), the Ladds believed that even if the tax authority did not exercise its recoupment rights, that trustee Salven would have sufficient monies to pay expenses of administration and their pre-petition priority tax debt.

Salven convened the meeting of creditors on December 15, 2017. Finding assets, i.e., the federal and state income tax refunds, Salven reported the case as one with some assets for the payment of creditors. The Clerk of the Court filed and served a "Notice to File Proof of Claim Due to Possible Recovery of Assets," January 1, 2016, ECF 13, which set a claims bar date of April 5, 2016.

In due course, Salven received (and now holds) the Ladds' 2015 federal tax refund of $3,876.00 and 2015 state tax refunds of $745. Those amounts aggregate $4,621.00.

For reasons not clear, the Internal Revenue Service neither recouped its overpayment on the 2013, and 2014, tax years, nor filed a proof of claim. No secured or priority claims were filed. General unsecured creditors filed claims totaling $11,720.72.

On or about August 1, 2016, the Ladds first learned that the Internal Revenue Service had not recouped their 2013, and 2014, overpayment from the 2015 tax refund (now belonging to the estate).

On August 10, 2016, Salven filed his final report. It showed estate funds of $4,621, which comprised the debtors' 2015 federal and state tax refunds. Salven's compensation under 11 U.S.C. § 326(a) totaled $1,302.41, and, after deducting other administrative costs, i.e. bank charges, there remains $3,304.71 for payment to creditors. Salven proposes distribution of those funds to general unsecured creditors and not to priority debt due the Internal Revenue Service.

A Notice of the Trustee's Final Report and a summary of that report were mailed to the debtors and to creditors on August 12, 2016. Parties in interest were given 21 days to object to it.

On August 29, 2016, the debtors filed Claim No. 11 (reflecting 11 U.S.C. § 507(a)(8) priority taxes of $2,750.86) on behalf of the Internal Revenue Service, a notice of objection to Salven's final report, and the instant motion.

Analysis

11 U.S.C. § 726(a)

The key to this motion is Bankruptcy Code § 726(a). In the pertinent part, that section provides:

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of--(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or (B) the

date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is--(A) timely filed under section 501(a) of this title;(B) timely filed under section 501(b) or 501(c) of this title; or(C) tardily filed under section 501(a) of this title, if--(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and(ii) proof of such claim is filed in time to permit payment of such claim. . .”

11 U.S.C. § 726(a)(1)-(2).

Bankruptcy Code § 507 provides a distribution scheme for the priority claims described in Section 726(a)(1). As applicable here, the first claims to be paid within the § 507(a) scheme are administrative expenses of the Chapter 7 case and, if funds are available after payment of administration costs, the next claims to be paid in this case are the debtors’ pre-petition tax debts accrued within the three years prior to the date of the petition. 11 U.S.C. § 507(a)(8).

In plain language, Section 726(a)(1) provides that timely filed priority (administrative and priority taxes) are paid before other claims, if and only if they are “timely filed” or “tardily filed on or before the earlier of” 10 days after service of a “summary of the trustee’s final report” or the date on which the trustee commences distribution of funds.

Was the Surrogate Claim Timely or within the Safe Harbor?

Surrogate claims are governed by Federal Rule of Bankruptcy Procedure 3004. That rule provides, “If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.”

Here, the claims bar date was April 5, 2016. Notice to File Proof of Claim Due to Possible Recovery of Assets, January 1, 2016, ECF 13; see also Fed. R. Bankr. P. 3002(c)(5). As a result, the Ladds had 30 days thereafter, till May 5, 2016, to file a claim. They did not do so until August 29, 2016, more than three months after this deadline under Rule 3004.

Nor was the claim filed within the safe harbor of § 726(a). To fall within this safe harbor the Ladds must have filed the claim before the earlier of 10 days after service of the trustee’s final report or before distribution. The earliest date was service of the trustee’s final report on August 12, 2016. Since the claim was not filed until August 29, 2016, it does not fall within the safe harbor of § 726(a).

If the Surrogate Claim Was Untimely May the Court Now Enlarge Time?

The Ladds argue the applicability of Federal Rule of Bankruptcy Procedure 9006(b)(1) (excusable neglect). *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993).

This court disagrees this case applies. As a general proposition, claims deadlines cannot be extended. "The claim-filing deadline in Chapter 7, 12 and 13 cases ordinarily cannot be extended except as provided in FRBP 3002(c). [FRBP 9006(b)(3); see *In re Coastal Alaska Lines, Inc.* (9th Cir. 1990) 920 F2d 1428, 1431-1433 (Chapter 7); Matter of Greenig (7th Cir. 1998) 152 F3d 631, 634 (Chapter 12)]." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, 17:200 (Rutter Group 2016). That treatise acknowledges only two exceptions: five classes of claims described in Rule 3002(c) and extraordinary circumstances. The only vaguely applicable portion of Rule 3002 is subdivision (c)(1), which governs claims due the government. But that rule limits its reach to claims "filed by a governmental unit," not by the debtor on its behalf. As a consequence, Rule 3002(c) does not provide shelter to the debtors.

Extraordinary circumstances are limited in reach. "The Ninth Circuit has established two "extraordinary circumstances" exceptions to the claim-filing deadline: 1) [17:1201] Creditor misled by court notice: Late claims have been allowed as timely when the creditor relied on a court notice setting an erroneous claim-filing deadline … unless the late filing would prejudice other parties. [In re Anwiler (9th Cir. 1992) 958 F2d 925, 927-929] 2) [17:1202] Timely filing prevented by "force majeure": Late-filed claims have also been allowed where catastrophic circumstances beyond the creditor's control—e.g., earthquake, flood, fire, or explosion—made a timely filing absolutely impossible. [In re Edelman (9th Cir. BAP 1999) 237 BR 146, 151-154—earthquake rendering it impossible for creditor's attorney to enter his office on day of deadline was not sufficient ground to treat late-filed claim as timely]." March, Ahart and Shapiro, *California Bankruptcy Guide: Bankruptcy*, § 17:1200.6-1202 (Rutter Group 2016).

Argument can be made that *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993), was decided three years after *In re Coastal Alaska Lines, Inc.* (9th Cir. 1990) 920 F2d 1428, 1431-1433 (Chapter 7), the watershed case in the Ninth Circuit, and overruled it. The argument is a fair one but falls short. No known authority, case, or second source, so holds. Commentators limit the reach of *Pioneer Investment Services Co.* to Chapter 11 cases. One commentator noted citing *Pioneer Inv. Services Co.*, "The court may extend the deadline for filing proofs of claim in a Chapter 11 case, either before or after the deadline has expired." March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, Enforcement of Claims and Interests, Filing or Amending Proof of Claim or Interest § 17:1205-1207 (Rutter Group 2016).

Moreover, the Ninth Circuit Bankruptcy Appellate Panel confronted the issue in a Chapter 7 case six years after *Pioneer Investment Services Co.* was decided. *See In re Edelman*, 237 B.R. 146 (9th Cir. BAP 1999). There the court rejected the argument that in Chapter 7 the court possessed equitable powers, in that case based on an earthquake that occurred before the claims bar date, to enlarge the time to file a proof of claim. Consider the following quoted material from *In re Edelman* case:

"The time within which proofs of claim must be filed in Chapter 7 cases is governed by Rule 3002(c). That Rule requires filing within ninety days after the date first set for the meeting of creditors called under § 341(a), with five exceptions: (1) governmental units may file within 180 days after the date of the order for relief and

such period may be extended for cause; (2) the court may extend the time for filing by infants or incompetent persons, or their representatives, if extension serves the interest of justice and will not unduly delay the administration of the case; (3) a claim arising from a judgment in favor of the bankruptcy estate for money or property, or denying or avoiding an interest in property, may be filed within 30 days after the judgment becomes final; (4) a claim arising from the rejection of an executory contract or unexpired lease of the bankruptcy debtor may be filed within such time as the court may direct; (5) claims may be filed within ninety days after the clerk's office mails a notice of possible dividend.

Enlargement of time is permitted to some extent by Rule 9006, but enlargement is limited with respect to the time fixed by certain rules, including Rule 3002(c):

'The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.'

Rule 9006(b)(3). As set forth above, Rule 3002(c) provides only five exceptions to the ninety day filing period, none of which applies to this case . . . . In *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428 (9th Cir.1990) . . . , the Ninth Circuit considered whether bankruptcy courts have discretion, based on equitable jurisdiction and the powers granted by § 105, to enlarge the time for filing claims in Chapter 7 cases, despite the strictures of Rule 9006(b)(3) and Rule 3002(c): 'This argument is inconsistent with the express limitations imposed by Rule 9006(b)(3) on the bankruptcy court's discretion to extend time. Several courts have rejected Zidell's argument, holding that "Bankruptcy Rule 3002(c) is peremptory and that a bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists." [citations and footnote omitted] We agree with these cases and hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists. [footnote omitted]' *Coastal Alaska*, at 1432–33.7 And see *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 389, 113 S.Ct. 1489, 1495, 123 L.Ed.2d 74 (1993) . . . , which points out that, while Rule 9006 generally permits enlargement of time based on a showing of excusable neglect: 'Subsections (b)(2) and (b)(3) of Rule 9006 enumerate those time requirements excluded from the operation of the 'excusable neglect' standard. One of the time requirements listed as excepted in Rule 9006(b)(3) is that governing the filing of proofs of claim in Chapter 7 cases. Such filings are governed exclusively by Rule 3002(c).'

Creditor acknowledges that excusable neglect is not a defense against failure to abide by the requirements of Rule 3002(c), but argues that an 'Act of God' is a different basis for relief and one that is not foreclosed by *Coastal Alaska*. It is true that the creditor in *Coastal Alaska* merely failed to file timely rather than having been prevented from filing timely (as Creditor alleges is the situation here), but that case nevertheless does address the precise issue of whether bankruptcy courts have any discretion to alter the limitations imposed by Rule 3002(c), and its ruling that such discretion does not exist is unqualified. The holding is that 'the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists', not that enlargement is not permitted

under the facts of that case, or that enlargement is not permitted in the absence of an 'Act of God' or similarly-caused impossibility or prevention. The rule of *Coastal Alaska* simply is that no source of discretion exists—neither equitable jurisdiction, nor § 105, nor anything else—and a source is not created even if a good reason is presented for why a source should exist. To excuse lateness that is caused by prevention would be to exercise discretion that *Coastal Alaska* has found bankruptcy courts do not possess. Creditor cites *Pioneer*, which recognizes the concept of prevention by 'Act of God' but does so in the context of considering what constitutes excusable neglect, whereas excusable neglect (as *Pioneer* points out and as Creditor concedes) does not apply to Rule 3002(c). Creditor offers no authority in support of courts having discretion to alter the requirements of Rule 3002(c) under circumstances of prevention or impossibility, nor does there appear to be any. *Coastal Alaska* does cite less extreme examples of situations in which courts have seen fit to enlarge time under Rule 3002(c) (e.g., erroneous information from court clerk's office, lack of notice of bar date, etc.) but finds that 'we do not believe that those cases can be reconciled with Rule 3002(c)", *id.*, at 1433." (emphasis added).

In re Edelman, 237 B.R. 146, 151–53 (B.A.P. 9th Cir. 1999) (emphases added).

For each of these reasons, the motion will be denied.

NEW RULING MODIFYING THE PREVIOUS TENTATIVE RULING

The court's ruling has changed. The court will grant the motion in part and deny the motion in part. After further consideration, the court hereby adopts and modifies its previous tentative ruling as follows. The facts will remain unchanged except for the deadline (stated below) for the debtors to file the claim under Rule 3004.

Extension of Deadlines under Rule 3002(c)

The binding case law and other authorities discussed in the court's prior ruling address the deadline for filing proofs of claim only under Rule 3002(c), and they hold that such deadline may not be extended in Chapter 7, Chapter 12, and Chapter 13 cases except as provided in Rule 3002(c). These authorities further hold that the court has no discretion to alter the limitations of Rule 3002(c) based upon excusable neglect. *See* Fed. R. Bankr. P. 9006(b)(1), (3); *see also In re Barker*, No. 14-60028, 2016 WL 6276078, at *4 (9th Cir. Oct. 27, 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled).

Extension of Deadline under Rule 3004

Such authorities and sources do not apply to extensions of the deadline in Rule 3004, which contains the pertinent deadline at issue here. Rule 9006(b)(3) is the pivotal rule that precludes the court's discretion to extend deadlines for filing proofs of claim under Rule 3002(c). But Rule 9006(b)(3) does not list Rule 3004 as a rule to which it applies. Therefore, Rule 9006(b)(1) applies to Rule 3004's deadline. *See In re Sprague*, No. 12-41099-JDP, 2013 WL 6670576, at *3-4 (Bankr. D. Idaho Dec. 18, 2013). And excusable neglect is a valid reason for the court to extend the deadline in that rule. *See id.*

Standards for Excusable Neglect

Federal Rule of Bankruptcy Procedure 9006(b)(1) permits the court in its discretion to extend some deadlines for cause shown before the deadline to act has expired or before the deadline as extended by a prior order has expired. Rule 9006(b)(1) also gives the court discretion to extend some deadlines after the deadline has expired so long as (1) a motion is brought for such an extension, (2) cause is shown, and (3) excusable neglect is shown.

Not all deadlines and time periods may be extended. *See* Fed. R. Bankr. P. 9006(b)(1)-(3).

The Supreme Court has identified the standards for excusable neglect in this context. The excusable-neglect factors include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498 (1993); *accord In re Sprague*, No. 12-41099-JDP, 2013 WL 6670576, at *4 (Bankr. D. Idaho Dec. 18, 2013).

Analysis

The court finds that those standards apply to the debtors' circumstances so that the deadline should be extended. No creditors have opposed to argue that they are prejudiced by the extension of the Rule 3004 deadline.

The delay in seeking an extension has been considerable. The deadline for the IRS to file the claim was April 12, 2016 (180 days after the order for relief). Fed. R. Bankr. P. 3002(c)(1). The debtors' deadline to file a surrogate claim on the IRS's behalf was May 12, 2016. Fed. R. Bankr. P. 3004. But the debtors were unaware of the need to seek an extension until August 1, 2016 because they expected, reasonably, that the IRS would recover the overpayments from 2013 and 2014 by recoupment from the 2015 refund or by filing a proof of claim. This motion was filed only 28 days after the debtors' became aware of the problem (it was filed on August 29, 2016).

The court finds unobjectionable the reasons for the delay. Debtors are not within control of the means or procedures that a sophisticated creditor collects on its priority claim. They could not be expected to know that the IRS would unexpectedly fail to file a proof of claim by its deadline or fail to recoup the overpayments from the 2015 refund. And the debtors have acted in good faith.

Accordingly, the court will extend the debtors' deadline for filing Claim No. 11 under Rule 3004 to the date that such claim was actually filed. The claim will be deemed timely filed.

Request for Extension of the § 726(a) Deadline

Finally, the debtors' motion requests "an extension of the deadline for the filing of a tardy priority claim that is payable with priority status pursuant to Title 11 USC Section 726(a)." This relief will be denied because it is no longer necessary. Claim No. 11 will be deemed a timely filed claim under § 726(a)(1).

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.

Raymond M. Ladd and Stephanie V. Ladd's motion has been presented to the court. Having considered the well-pleaded facts of the motion, and the arguments and authorities provided in support,

IT IS ORDERED that the motion is granted in part and denied in part. The court grants the motion's request to extend the deadline for filing a claim by the Debtors on behalf of the IRS as authorized by Federal Rule of Bankruptcy Procedure 3004. This deadline is extended to August 29, 2016, the date this proof of claim was filed by the debtors. The court further ratifies the Claim No. 11 for priority taxes filed on behalf of the Internal Revenue Service.

IT IS FURTHER ORDERED that the court denies the request to extend the deadline for filing a tardy priority claim. The deadline for the filing of a tardy priority claim under § 726(a)(1) will not be extended because the claim filed by the debtors is deemed a timely priority claim under § 726(a)(1) as a result of this order.

6. 16-12553-A-7 RAUL SANCHEZ — MOTION TO AVOID LIEN OF THE NATIONAL COLLECTION AGENCY, INC.
PSC-1
RAUL SANCHEZ/MV
10-7-16 [17]

PATRICIA CARRILLO/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Liens Plus Exemption: $175,895.09
Property Value: $170,000
Judicial Lien Avoided: $5895.09

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

7. 16-12553-A-7 RAUL SANCHEZ — MOTION TO AVOID LIEN OF GCFS, INC
PSC-2
RAUL SANCHEZ/MV
PATRICIA CARRILLO/Atty. for dbt.
10-7-16 [20]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Liens Plus Exemption: $188,348.63
Property Value: $170,000
Judicial Lien Avoided: $18,348.63

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's

interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

8. 16-13159-A-7 KARINA RODRIGUEZ — OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS PFT-2
10-5-16 [11]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines
Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing
Disposition: Conditionally denied in part, granted in part
Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. *See* 11 U.S.C. §§ 105(a), 343, 707(a); *see also In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at a scheduled meeting of creditors under 11 U.S.C. § 341. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the next continued date of the creditors' meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the next continued creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will no longer be set at 60 days following the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

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

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for November 28, 2016, at 12:00 p.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, *see* Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, *see* Fed. R. Bankr. P. 1017(e).

9. 15-10966-A-7 RODNEY HARON
FW-5
ROBERT HAWKINS/MV

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LVHR CASINO, LLC
10-14-16 [188]

TIMOTHY SPRINGER/Atty. for dbt.
PETER FEAR/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).

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 that settles a $195,000 preference dispute with LVHR Casino LL. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 191. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

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

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

Robert A. Hawkin'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 Exhibit A and filed at docket no. 191.

10. 15-10966-A-7 RODNEY HARON
FW-6
ROBERT HAWKINS/MV

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PARIS LAS VEGAS OPERATING COMPANY, LLC AND HARVEYS TAHOE MANAGEMENT COMPANY, INC.
10-18-16 [194]

TIMOTHY SPRINGER/Atty. for dbt.
PETER FEAR/Atty. for mv.

Final Ruling

Motion: Approve Compromise
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

DISCUSSION

A motion to approve a compromise under Rule 9019 must be served on the debtor, all creditors, and other parties in interest. Fed. R. Bankr. P. 2002(a)(3). Service is demonstrated by filing a certificate of service. LBR 9014-1(e)(2). The motion is supported by a certificate of service.

CIVIL MINUTE ORDER

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

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

Robert A. Hawkins' motion to approve compromise has been presented to the court.

IT IS ORDERED that the motion is denied without prejudice.

11. 16-13371-A-7 MARIA VILLALOBOS — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
AMERICAN HONDA FINANCE CORPORATION/MV
THOMAS GILLIS/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
10-31-16 [15]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. 10-62372-A-7 MIGUEL DUARTE — MOTION TO AVOID LIEN OF ALLEN ELIA
ER-2
MIGUEL DUARTE/MV
EDDIE RUIZ/Atty. for dbt.
10-27-16 [45]

Tentative Ruling

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

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

Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

Here, no exemption has been claimed in the property subject to the responding party's lien. *See* Am. Schedule C, ECF No. 44. Accordingly, a prima facie case has not been made for relief under § 522(f).

Additionally, the motion fails to provide the value of the real property on which the judicial lien to be avoided. The relevant date for such value is the value on the date of the filing of the petition. 11 U.S.C. § 522(a)(2).

13. 16-12272-A-7 YVONNE ANI
THA-2
YVONNE ANI/MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
10-14-16 [19]

Final Ruling

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

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such

lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

14. 16-12788-A-7 PBB-1 — LESTER COSTA AND BETHANY HAND — MOTION TO AVOID LIEN OF LOANME, INC. — 10-10-16 [15]

LESTER COSTA/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

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

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's

interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

15. 16-11289-A-7 IMELDA AVILA
JES-1
JAMES SALVEN/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION FOR TURNOVER OF PROPERTY
10-13-16 [21]

No tentative ruling.