

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

Chief Judge Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: MONDAY**  
**DATE: JANUARY 9, 2023**  
**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. [11-28028](#)-A-7      **IN RE: JAMES/TERRI COOK**  
[FW-2](#)

MOTION TO EMPLOY JENNIFER RETHMEIER AS SPECIAL COUNSEL  
AND/OR MOTION TO EMPLOY LATOYA CHAMBERS AS SPECIAL COUNSEL  
12-9-2022    [\[30\]](#)

JESSICA DORN/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.  
DEBTORS DISCHARGED: 07/18/2011

### **Tentative Ruling**

**Motion:** Employ Special Counsel

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

**Disposition:** Approved

**Order:** Prepared by moving party

**Special Counsel:** Jennifer Rethmeyer, the law firm of Dalimonte Rueb Stoller, LLP; and Latoya Chambers, the law firm of Ferrer, Poirot & Wansbrough

**Subject of Representation:** injuries arising out of pre-petition receipt of defective biomedical product

**Employment:** 11 U.S.C. §§ 327, 328

**Terms of Employment:** contingent, 40% of gross recovery, plus costs

Unopposed applications 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).

Irma Edmonds, chapter 7 trustee, has moved to employ Jennifer Rethmeyer, the law firm of Dalimonte Rueb Stoller, LLP; and Latoya Chambers, the law firm of Ferrer, Poirot & Wansbrough as special counsel to represent the estate on a contingent fee basis with respect to the matters described herein. Jennifer Rethmeyer, the law firm of Dalimonte Rueb Stoller, LLP; and Latoya Chambers, the law firm of Ferrer, Poirot & Wansbrough have previously represented the debtor(s) with respect to the same matter.

Prior to the date of the petition, the debtor(s) sustained an injury resulting from a defective biomedical product, for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

Irma Edmonds, chapter 7 trustee, has moved to employ Jennifer Rethmeyer, the law firm of Dalimonte Rueb Stoller, LLP; and Latoya Chambers, the law firm of Ferrer, Poirot & Wansbrough as special counsel to represent the estate on a contingent fee basis with respect to the matters described herein. Jennifer Rethmeyer, the

law firm of Dalimonte Rueb Stoller, LLP; and Latoya Chambers, the law firm of Ferrer, Poirot & Wansbrough have previously represented the debtor(s) with respect to the same matter (the Liability Claim).

Proposed Special Purpose Counsel joined the Liability Claim with numerous other claims against the manufacturer of the device in a Multi-District Litigation ("MDL"). The manufacturer of the device, in an effort to resolve the claim, has submitted an offer to Proposed Special Purpose Counsel of \$191,437.89.

The United States Trustee re-opened the case by order dated February 1, 2022, and the trustee was re-appointed to administer the asset.

The attorneys have significant firsthand experience with this case. The trustee deems it appropriate that Proposed Special Purpose Counsel be retained to assist in administering the proceeds from the offer of settlement for the Liability Claim. See Edmonds Declaration 2:9-12, ECF No. 32.

Proposed Special Counsel proposes to divide the 40% contingency fee on the same terms previously agreed to with the Debtor: 50/50 between Dalimonte Rueb & Stoller and Ferrer, Poirot & Wansbrough, plus reimbursement of costs incurred. See Motion, 3:15-17, ECF No. 30.

#### **EMPLOYMENT**

Chapter 7 trustees may employ counsel to represent the estate. 11 U.S.C. § 327. Employment may be for all purposes or for a limited purpose. The burden of proving eligibility is on the applicant. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 154 (8th Cir. BAP 2005). Where the trustee seeks to employ special counsel that has previously represented the debtor employment is governed by § 327(e). That section provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

In most instances, "in the best interest of the estate" means reasonably likely to recover non-exempt assets that may be administered for creditors, 11 U.S.C. § 704(a)(1). Proposed special counsel must not hold or represent "any adverse interest" to the debtor or to the estate "with respect to the matter on which the attorney is to be employed." Adverse interest means "the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3)

possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holding, Inc.*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008). See *In re Grant*, 507 B.R. 306, 308-10 (Bankr. E.D. Cal. 2014) (holding that there is adverse interest where the attorney to be employed asserts a charging lien—at least if avoidable, or where the debtor argues that the proceeds of the action are exempt under applicable law).

Where the applicant wishes to define the terms of employment it may also seek approval under § 328. The section provides:

The trustee...with the court's approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, 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.

11 U.S.C. § 328(a).

The court will grant the motion. The court authorizes employment of law firms of Dalimonte Rueb Stoller, LLP and Ferrer, Poirot & Wansbrough as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment of a contingency fee of forty percent (40%) to be split equally between the two firms, plus costs incurred under 11 U.S.C. § 328(a). Compensation and reimbursement of expenses shall only be paid upon the court's approval of a motion seeking approval of the settlement and payment of propose special purpose counsel. Fed. R. Bankr. P. 9019.

The trustee shall submit an order granting the motion which is consistent with this ruling.

#### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

### Multiple Certificates Filed

*A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*

LBR 9014-1(e) (2) (emphasis added).

The movant has filed multiple certificates of service in support of the motion. See Certificates of Service, ECF Nos. 35, 36. Only one certificate of service may be filed in support of a motion. Multiple certificates make it difficult for the court to determine if adequate service was made in each matter. If the second certificate was intended to be an amended certificate in this particular matter, it was not so designated.

### Outdated Certificate of Service

The movant has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

Each of the certificates of service indicate that they are the form in use as of September 2022. At the bottom of each certificate it states as follows: "EDC Form 7-005, New 09/2022". See Certificate of Service, page 1, ECF Nos. 35, 36.

### Use of Form EDC 7-005 is Mandatory

*The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.*

LBR 7005-1(emphasis added).

The movant's third-party servicer has not used the court's official form in memorializing service in this case.

### Altered Certificate of Service

The court has previously noted that the form certificates used in this matter are outdated. Form EDC 7-005 was updated in October 2022 to add information to the form including but not limited to the following: (1) the addition of "Fewer than all creditors, check at least one below" in Section 5; (2) the warnings contained in Section 6B2a; and (3) Section 7 in its entirety. Each of these items represents a change from the September 2022 version of EDC Form 7-005 and each newly appear in the current October 2022 version.

The form certificates of service appear to have been altered in this case as each contain all the provisions identified above by the court. Yet the certificates also indicate that they are the September 2022 versions of the form which did not contain any of these provisions. The court concludes that Form EDC 7-005 has been altered which contravenes LBR 7005-1 requiring use of the Official Certificate of Service Form.

2. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-1](#)

CONTINUED MOTION TO AVOID LIEN OF LEON BURNS  
10-28-2022    [\[10\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Leon Burns under 11 U.S.C. § 522(f). The lien was issued by the State of California, Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 13.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 54.

The debtor has failed to file any further evidence or argument in support of her motion.

## **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). 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).

### Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

## **CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of Leon Burns 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 is denied without prejudice.

3. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-2](#)

CONTINUED MOTION TO AVOID LIEN OF SOLOMIYA VECHERKOVSKIY  
10-28-2022    [\[15\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Solomiya Vecherkovsky under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 18.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 55.

The debtor has failed to file any further evidence or argument in support of her motion.

### **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). 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).

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of Solomiya Vecherkovsky 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 is denied without prejudice.

4. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-3](#)

CONTINUED MOTION TO AVOID LIEN OF JOHN ST. PETER  
10-28-2022    [\[20\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of John St. Peter under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 23.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 60.

The debtor has failed to file any further evidence or argument in support of her motion.

**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). 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).

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of John St. Peter 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 is denied without prejudice.

5. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-4](#)

CONTINUED MOTION TO AVOID LIEN OF DEAN LAMSON  
10-28-2022    [\[25\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Dean Lamson under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 28.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 61.

The debtor has failed to file any further evidence or argument in support of her motion.

**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). 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).

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of Dean Lamson 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 is denied without prejudice.

6. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-5](#)

CONTINUED MOTION TO AVOID LIEN OF NOEMI PROUT  
10-28-2022    [\[30\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the judicial lien of Noemi Prout under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 98.2(g)(1). See Exhibit D, ECF No. 33.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 62.

The debtor has failed to file any further evidence or argument in support of her motion.

### **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). 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).

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.*

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of Noemi Prout 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 is denied without prejudice.

7. [22-22563](#)-A-7     **IN RE: ZELDA TROUTMAN**  
[MS-6](#)

CONTINUED MOTION TO AVOID LIEN OF LABOR COMMISSIONER OF THE  
STATE OF CALIFORNIA  
10-28-2022    [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from December 12, 2022

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 10548 Italia Way Rancho Cordova, California

The debtor seeks an order avoiding the lien of the Labor Commissioner of the State of California under 11 U.S.C. § 522(f). The lien was issued by the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to California Labor Code § 90.8(a). See Exhibit D, ECF No. 38.

The hearing on this motion was continued to allow the debtor to file further evidence and argument proving that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). The court ordered as follows:

IT IS ORDERED that the motion is continued to January 9, 2023, at 9:00 a.m. No later than December 27, 2022, the debtor shall file and serve additional legal briefing and evidence in support of her motion.

IT IS FURTHER ORDERED that if the debtor fails to file and serve additional legal briefing and evidence by December 27, 2022, the court will rule on this matter without further notice or hearing.

Order, ECF No. 63.

The debtor has failed to file any further evidence or argument in support of her motion.

### **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). 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).

Labor Code § 98.2(g)(1)

*As an alternative to a judgment lien*, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

Cal. Lab. Code § 98.2(g)(1) (emphasis added).

It appears that the lien the debtor seeks to avoid is a statutory lien. In this case the debtor has not proven that the lien is a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). Accordingly, a prima facie case has not been made for relief under § 522(f).

The court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Avoid Lien of the Labor Commissioner of the State of California 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 is denied without prejudice.

8. [22-21692](#)-A-7     **IN RE: EVERGREEN ARBORISTS, INC.**  
[FLC-2](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC  
STAY

12-8-2022    [\[192\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
STEVEN FOX/ATTY. FOR MV.  
TRUSTEE NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Approval of Stipulation for Relief from the Automatic Stay

**Notice:** LBR 9014-1(f)(1); non-opposition filed by trustee

**Disposition:** Granted

**Order:** Prepared by the movant pursuant to the instructions below

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

The movant has filed a motion to approve a stipulation for relief from the automatic stay of 11 U.S.C. § 362(a). Federal Rule of Bankruptcy Procedure 4001(d)(3) authorizes the court to approve or disapprove a stipulation for relief from the automatic stay. The Stipulation is submitted with the motion as Exhibit A, ECF No. 194.

On December 19, 2022, the Chapter 7 trustee, Nikki Farris, filed a non-opposition to the motion.

Under this rule, the court hereby approves the stipulation for relief from stay filed. The movant shall attach the stipulation to the proposed order as an exhibit.

### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case there is a problem with the use and completion of the standardized Certificate of Service, EDC 7-005.

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

#### Improper Attachment

Attachment 6B2 is incorrect as it is not the clerk's official matrix list of creditors. A custom list may only be used if the service is upon 6 or fewer parties. Here the service list far exceeds this number. Therefore, the clerk's matrix must be used to assure accuracy and for the court's efficient verification of parties served.