

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

January 14, 2021 at 10:30 a.m.

1. [12-91671-E-7](#)  
[DCJ-10](#)

BOB/CANDI CRAWFORD  
David Johnston

MOTION TO AVOID LIEN OF MARK  
GUTIERREZ HAY COMPANY, LLC  
12-30-20 [\[148\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on December 30, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Mark Gutierrez Hay Company, LLC ("Creditor") against property of the debtor, Bob L. Crawford and Candi L. Crawford ("Debtors") commonly known as 16302 Morrison Road, Oakdale, California ("Property").

January 14, 2021 at 10:30 a.m.

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A judgment was entered against Debtor in favor of Creditor in the amount of \$387,481.77. Exhibit 4, Dckt. 151. An abstract of judgment was recorded with Stanislaus County on January 29, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$410,000 as of the petition date. Dckt. 14. The unavoidable consensual liens that total \$686,000 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Schedule C. Dckt. 14.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Bob L. Crawford and Candi L. Crawford ("Debtors") 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 judgment lien of Mark Gutierrez Hay Company, LLC, California Superior Court for Stanislaus County Case No. 2026634, recorded on January 29, 2019, Document No. 2019-0004783-00, with the Stanislaus County Recorder, against the real property commonly known as 16302 Morrison Road, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on December 11, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Patelco Credit Union ("Creditor") against property of the debtor, Angelica Erica Campos Velazquez ("Debtor") commonly known as 310 Los Olivos Way, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$17,533.57. Exhibit 4, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on September 15, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$345,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$285,283.63 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Angelica Erica Campos Velazquez (“Debtor”) 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 judgment lien of Patelco Credit Union, California Superior Court for Stanislaus County Case No. CV-20-001656, recorded on September 15, 2020, Document No. 2020-0070192-00, with the Stanislaus County Recorder, against the real property commonly known as 310 Los Olivos Way, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors in Possession, Debtors in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Approve Loan Modification is <span style="color: red;">XXXXX</span>.</b>
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The Motion to Approve Loan Modification filed by John Hst Yap and Irene Laiwah Loke ("Debtors in Possession") seeks court approval for Debtor to incur post-petition credit. The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2007-OH2, Mortgage Passthrough Certificates, Series 2007-OH1 / New Rez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor"), has agreed to a loan modification that will result in a \$6,514.78 per month mortgage payment. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 5.0%. The Maturity Date will be July 1, 2047.

The Motion is supported by the Declaration of John Hst Yap. Dckt. 146. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Debtor further testifies that if the loan modification is approved, the Property will be taken out of foreclosure status and the Debtor will be renting it out and will only keep it for as long as needed to sell it and potentially make a couple hundred thousand dollars in profit. *Id.*, at ¶ 5. The Property's value is expected to increase by 15-20% based on its proximity to the new Google Mega-Campus in San Jose. *Id.*

## Review of Financial Information

On Schedule A/B Debtor lists the Property as having a value of \$900,000. Dckt. 22 at 4. This value is stated as being based on “Valuation per Regina Zabaret, Realtor . . . on March 17, 2020.” *Id.* This is consistent with the valuation stated on Amended Schedule A/B. Dckt. 55.

In his Declaration Debtor in Possession John Yap testifies that he desires to retain this property, hoping that it will increase in value over the next several years, which he believes to be at least \$200,000.00. Declaration, ¶5; Dckt. 146. He believes that such great appreciation is reasonable since the property is located in Campbell, which he states is near downtown San Jose where the Google Mega-Campus is being built. *Id.*, ¶ 6.

Mr. Yap also testifies that his health is terrible and he hopes to save this property from foreclosure for the benefit of his co-debtor wife. *Id.*

The monthly payment for principal and interest, property taxes, and insurance is (\$6,514.78). In the Motion, but not included in Mr. Yap’s testimony, is the comment that the Debtor in Possession will turn this into a rental property, projecting \$4,500 a month in gross rents.

There is no economic analysis provided as to how the Debtor in Possession can afford this as a rental property, seeking to cash in on a projected couple hundred dollar future appreciation. There is a (\$2,000) a month shortfall off of the gross rents monies from what is just the monthly loan payment. No explanation is provided as to what additional expenses - such are repairs, maintenance, landlord insurance/umbrella coverage, and City or County rental fees, inspection fees, and vacancy periods.

The Debtor in Possession’s Monthly Operating Report for September 2020 states gross cash receipts of around \$11,000 (excluding stimulus money and store return creditors). These include \$4,000 of “consulting income.” It is not clear whether it is Mr. Yap’s, who is in very poor health, consulting income or that of his co-debtor spouse. Dckt. 142 at 4. On the Expense side, the Debtor in Possession lists (\$10,374) of expenses. Of this, only (\$2,602) a month is for the two Debtors monthly food and living expenses.

A review of the Statement of Financial Affairs filed on April 28, 2020, Dckt. 56 at 2-3, the Debtor lists the following income for 2020 and the two prior years:

2020 - January Through March 17 filing of the Case (3 Months)	John Yap	Avg. Per Month		Irene Loke	Avg. Per Month
Wage/Business	No			No	
Social Security	\$5,376	\$1,792		\$2,400	\$800
Pension	\$3,342	\$1,114		\$0	
Rental Income	\$14,416	\$4,805		\$0	
2019 (12 Months)					

Wage/Business	No		No	
Social Security	\$21,504	\$1,792	\$9,600	\$800
Pension	\$13,368	\$1,114	\$0	
Rental Income	\$89,072	\$7,423	\$0	
2018 (12 Months)				
Wage/Business	No		No	
Social Security	\$21,300	\$1,775	\$9,480	\$790
Pension	\$13,368	\$1,114	\$0	
Rental Income	\$31,200	\$2,600	\$0	

The Debtor's history of income does not show any significant wage or business income sources, except for the rental business which shows a substantially reduced amount post-petition (showing \$3,532 in September 2020 and averaging \$4,723 in the first six months of the case).

On Schedule I, the two debtors provide the following information concerning their income as of the commencement of this case:

- A. Both Debtors are retired and have no wage or salary income.
- B. Debtor John Yap has \$6,223 in net rental or business income.
- C. Debtor John Yap has \$1,647 a month in Social Security income.
- D. Debtor Irene Loke has \$800 a month in Social Security income.
- E. Debtor John Yap has \$1,114.00 a month in pension income.
- F. The two Debtor's aggregate income, before taxes, is \$9,784 a month.

Dckt. 22 at 29-39.

On Schedule J Debtor lists having expenses of (\$8,354) a month. *Id.* at 31-32. Of this, (\$3,212) is for home mortgage (and presumably taxes, and insurance), and (\$2,646) is for other real property mortgage (and presumably taxes and insurance). This is not part of the rental expense properties that are included in the rental income and expense statement attached to Schedule J. *Id.* at 33-36. No maintenance expenses are shown for this non-rental property.

Debtor John Yap concludes that by taking on this Million Dollar loan and making (\$6,514.78) in mortgage payments (and not considering any maintenance or other landlord expense), several hundred thousand dollars of equity can be realized in the next couple of years.

Assuming that Debtor receives \$4,500 a month in payments over the next two years, the gross rent would be \$54,000 a year. Without any other expense, just paying the mortgage, taxes, and insurance would be (\$78,168), a (\$2,014) negative cash flow. Even without considering other costs and expenses for a landlord and assuming no vacancies, the Debtor in Possession will have to fund a (\$48,336) shortfall.

Given Debtor Jon Yap's extremely poor health, it is not explained how this rental property would be managed. Reasonably, an additional expense for a property manager will be required.

Assuming the Property increases to \$1,200,000 in two years and is sold by the one of the two debtors, one economic analysis would be:

Gross Sales Price	\$1,200,000
Costs of Sale (Real Estate Commission and Escrow Fees Est. at 8%)	(\$96,000)
Estimate for Repairs	(\$5,000)
Mortgage	(\$1,000,000)
	-----
Estimated Net Monies in Escrow	\$99,000
Additional Monies Advanced by Debtor in Possession To Cover Mortgage Payment	(\$48,336)
	=====
Estimated Gain From Refinance and Sale	\$50,664

Therefore, assuming a 33.3% increase in value of the Property over the next two years, the gain from refinancing the property and advancing monies today would be the same as if the debt was not incurred and the Debtor in Possession merely saved the \$2,014+ a month rather than advance it to cover the cash flow shortfall.

No provision is made for Debtors to pay any state or federal taxes on their \$9,784 a month in income (after deduction of rental property expenses).

It is not clear how the Debtor in Possession can fund this debt or why it is in the reasonable economic interests of the bankruptcy estate.

At the hearing, counsel explained that this modification would fit into Debtor in Possession's "plan for a plan." Rather than having the Debtor in Possession rush to get a plan and disclosure statement



on file showing how this modification would fit into such a plan, the court continues the hearing to allow for the filing of supplemental pleadings provide such information.

### **Supplemental Pleadings**

Debtor filed the Declaration of John Hst Yap on January 5, 2021. Dckt. 162. Debtor testifies under penalty of perjury to the following:

1. Debtor is surrendering rental property commonly known as 1032 Deena Way, Fallon, Nevada, which runs a monthly, net negative cash flow.
2. Debtor is keeping two rental properties that are making a profit: 2412 6th Street and 1102 Sarah Belle Lane.
3. In order to account for the monthly negative cash flow that results from the loan modification subject of this motion, Debtor will increase the rent each year from here on out, which will result in a decrease of his out-of-pocket monthly costs. Debtor contends that due to the property being close to the new Google San Jose Mega Campus this will result in a significant increase in the Property's value.
4. Debtor will be paying a 5% to general unsecured claims, adding that he could "technically" file for Chapter 7 relief due to the lack of equity in all of his properties and pay nothing to these creditors with unsecured claims.
5. Debtor believes creditors will not object to the plan and has been working with Creditor Bank of New York Mellon to obtain this loan modification.

In support of the Declaration, Debtor filed Exhibit A titled Proposed Combined Plan of Reorganization and Disclosure Statement dated 1-5-2021. Dckt. 163. Exhibit A is accompanied by five exhibits.

Exhibit 5 of the Proposed Combined Plan and Disclosure Statement includes a breakdown of certain expenses the court alluded to at the prior hearing. This exhibit lists the following expenses:

1. Maintenance expense of \$50.00 a month for each of the three rental properties,
2. Property taxes and insurance escrowed with a total payment of
  - A. Property #1 2412 6th St., Hughson CA \$230.38
  - B. Property #2 1102 Sarah Belle Ln, Fallon, NV \$278.63
  - C. Property #3 1006 Lovell Campbell, CA \$1,134.50

Exhibit 5, Dckt. 163, at pp. 21-22.

While Debtor testifies that he will be surrendering the Deena rental property because it nets a negative monthly cash flow, Exhibit 3 lists the Lovell property as a property with negative monthly cash-flow of \$2,214.78, yet Debtor will not be surrendering this property and there is no mention of whether Debtor will be seeking to refinance this property. Looking at other expenses, on page 19, Debtor lists \$150.00 a month under Personal Expenses which include “e.g., recreation, clothing, laundry” for two adults. This amount does not seem realistic.

Debtor did not provide additional information on the following expenses: City or County rental fees, inspection fees, and vacancy periods that come with managing rental properties. The court is also concerned as to who will be managing these properties when Debtor has continuously informed the court that he is seriously ill.

Moreover, the court is still concerned over the lack of the specific expenses for income taxes and self-employed taxes for the “Net Consulting Income of approximately” \$4,000 a month. *Id.*, Exhibit 3, at p. 19. The expense listed as Payroll Taxes and Related Withholdings on Exhibit 3 is left blank. *Id.*, at p. 20.

### **January 14, 2021 Hearing**

At the hearing, **xxxxxxx**

## FINAL RULINGS

4. [13-91655-E-7](#)      **YIOBERT/GOLARA MAZLOUMI**      **MOTION TO AVOID LIEN OF CACH,**  
[SSA-1](#)      **Steve Altman**      **LLC**  
11-24-20 [\[40\]](#)

**Final Ruling:** No appearance at the January 14, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 24, 2020. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of Cach LLC ("Creditor") against property of the debtor, Youbert Mazloumi and Golara Mazloumi ("Debtors") commonly known as 1561 Atlantic Avenue, Ripon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,017.52. Exhibit 2, Dckt. 43. An abstract of judgment was recorded with San Joaquin County on August 13, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$375,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$343,000 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) in the amount of \$60,000 on Amended Schedule C. Dckt. 14.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Youbert Mazloumi and Golara Mazloumi ("Debtors") 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 judgment lien of Cach, LLC, California Superior Court for San Joaquin County Case No. 39-2011-00264492-CL-CL-TRA, recorded on August 13, 2012, Document No. 2013-104146, with the San Joaquin County Recorder, against the real property commonly known as 1561 Atlantic Avenue, Ripon, California, is avoided in its entirety to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the January 14, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 4, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. ("Creditor") against property of the debtor, Youbert Mazloumi and Golara Mazloumi ("Debtors") commonly known as 1561 Atlantic Avenue, Ripon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,906.19. Exhibit 7, Dckt. 43. An abstract of judgment was recorded with San Joaquin County on March 12, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$375,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$343,000 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) in the amount of \$60,000 on Amended Schedule C. Dckt. 14.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Youbert Mazloumi and Golar Mazloumi (“Debtors”) 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 judgment lien of Capital One Bank (USA) N.A., California Superior Court for San Joaquin County Case No. 39-2010-00249745-CL-CL-TRA, recorded on March 12, 2012, Document No. 2012-030694, with the San Joaquin County Recorder, against the real property commonly known as 1561 Atlantic Avenue, Ripon, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the January 14, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of the debtor, Youbert Mazloumi and Golara Mazloumi ("Debtors") commonly known as 1561 Atlantic Avenue, Ripon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,626.14. Exhibit 6, Dckt. 43. An abstract of judgment was recorded with San Joaquin County on September 7, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$375,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$343,000 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) in the amount of \$60,000 on Amended Schedule C. Dckt. 14.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Youbert Mazloumi and Golar Mazloumi (“Debtors”) 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 judgment lien of Midland Funding, LLC, California Superior Court for San Joaquin County Case No.39-2011-00257307-CL-CL-TRA, recorded on September 7, 2011, Document No. 2011-108014, with the San Joaquin County Recorder, against the real property commonly known as 1561 Atlantic Avenue, Ripon, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.