

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 31, 2019 at 10:30 a.m.

1.	<u>13-33203</u> -E-7 <u>DPR-1</u>	JERRY/KARYN PEELER David Ritzinger	MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC 12-31-18 [32]
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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).

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

Sufficient Notice Provided. The Proof of Service states that the Amended Notice of Hearing regarding the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 2, 2019. ^{FN.1}. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

FN.1. Debtor filed its Original Notice on December 31, 2018 and provided notice the same day. Dckts. 33, 37. The Original Notice sought to set the hearing on the Motion for January 30, 2019 in front of the Honorable Christopher M. Klein. Subsequently, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice resetting the hearing . Dckt. 38.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for January 31, 2019. Dckt. 39.

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 Beneficial California, Inc. (“Creditor”) against property of Jerry Lee Peeler and Karyn Nora Peeler (“Debtors”) commonly known as 206 Amherst Court, Vacaville, California (“Property”).

A judgment was entered against Debtors in favor of Creditor in the amount of \$9,116.53. An abstract of judgment was recorded with Solano County on March 30, 2010, that encumbers the Property.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$219,099.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$254,442.00 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 § 703.140 (b)(1) in the amount of \$1000.00 on Amended Schedule C. Dckt. 29.

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 in excess of \$219,099.00 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 Jerry Lee Peeler and Karyn Nora Peeler (“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 Beneficial California, Inc., California Superior Court for Solano County Case No. FCM110733, recorded on March 30, 2010, Document No. 201000028371, with the Solano County Recorder, against the real property commonly known as 206 Amherst Court, Vacaville, 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.

Pro Se

**TO PAY FEES
1-4-19 [19]**

Final Ruling: No appearance at the January 31, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on January 6, 2019. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$31.00 due on December 21, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

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

The Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.