

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 4, 2016
CALENDAR: 10:00 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. [12-15405](#)-A-7 EDWARD BERNIER
PK-2
EDWARD BERNIER/MV
HARRIET GOLDFARB/Atty. for dbt.

MOTION TO AVOID LIEN OF PLAVAN
COMMERCIAL FUELING, INC.
4-13-16 [[35](#)]

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: \$252,164.22

Property Value: \$230,000

Judicial Lien Avoided: \$22,164.22

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.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR COMPENSATION FOR M.
MKK-2 DEVELOPMENT INC. KATHLEEN KLEIN, ACCOUNTANT(S),
M. KLEIN/MV FEE: \$2374.50, EXPENSES:
\$457.26
10-1-13 [[106](#)]
- HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Pending resolution of the appeals in the adversary proceedings involving Verlyn Gaines and Henry Nunez, the application is dropped from calendar. This matter may be restored to calendar on 28 days notice. Notice shall be provided to all person who would have been entitled to notice of the original application. A civil minute order will issue.

3. [15-11835](#)-A-7 JAMES/JAMIE CANNON CONTINUED MOTION TO AUTHORIZE
RSW-2 DEBTORS TO PROSECUTE OBJECTIONS
JAMES CANNON/MV TO PROOFS OF CLAIMS
2-17-16 [[357](#)]
- ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Authorize Debtors to Prosecute Claims Objections

Notice: Continued hearing date; originally noticed under LBR 9014-1(f)(2); written opposition filed

Disposition: Granted

Order: Prepared by the movant

In this matter, the debtors request authorization to bring claims objections. Their request has been opposed by creditor Toby Curtis. In the court's civil minutes from the original hearing on March 2, 2016, the court described the requirements for a debtor to have standing to bring claims objections in chapter 7. The court's original statement of the standing rules for chapter 7 debtors may have been incomplete, warranting further elaboration of standing principles in this context.

A chapter 7 debtor's standing to bring claims objections depends on whether the outcome of the claim objection affects the debtor in some way. See *Dellamarggio ex rel. Barker v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 346-47 (Bankr. E.D. Cal. 2004). "This [standing] requirement is satisfied by cognizable prospects of receiving a distribution or of a nondischargeable debt being affected." *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); see also Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:1362 (rev. 2012) (standing conferred by existence of surplus estate or an outcome that would affect a nondischargeable debt). The burden is on the debtor to show standing. See *An-Tze Cheng v. K & S Diversified Invs., Inc. (In re An-Tze Cheng)*, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004) (placing burden on objecting party to demonstrate standing), *aff'd*, 160 F. App'x 644 (9th Cir. 2005).

This basic two-part standard is stated in the alternative. In this case, the court focuses on the second part of the standard: a nondischargeable debt being affected. A debt can be nondischargeable because of a judgment denying or revoking a debtor's discharge, 11 U.S.C. § 727(a), (d), or because of a judgment determining that a particular debt is nondischargeable under § 523(a).

The cases reveal that a claim objection has the capacity to affect a nondischargeable debt in two conceptually distinct ways. First, when an estate is administratively solvent, i.e., the estate has sufficient funds to pay all administrative expenses including the trustee and professionals, the reduction of a particular claim (e.g., "Claim A") decreases the amount owed on another nondischargeable claim (e.g., "Claim B") by decreasing the total dollar amount of claims. Decreasing the total dollar amount of claims in an administratively solvent estate increases the pro rata amount paid to all claims, including nondischargeable claims for which the debtor remains personally liable post-bankruptcy. This is the type of effect that formed the basis for Mr. Curtis's argument at the prior hearing. And this type of effect has been recognized by other courts. See, e.g., *In re Lona*, 393 B.R. 1, 4 (Bankr. N.D. Cal. 2008) (referring to the effect of the allowance of a claim as a reduction in the pro rata share of funds for nondischargeable debt for which the debtor would be personally liable after bankruptcy).

Second, regardless of an estate's administrative solvency, a nondischargeable debt is affected when it is reduced by a successful objection to the claim evidencing that debt. This type of effect is also mentioned in the cases. See *In re Toms*, 229 B.R. 646, 651 (Bankr. E.D. Pa. 1999); *In re Parsons*, No. 09-02937, 2014 WL 1329541, at *1 (Bankr. D. Haw. Mar. 19, 2014) (stating a three-part standard for standing, in which one alternative is that the debtor will remain liable for all allowed claims against the estate).

The following excerpt from *In re Toms* illustrates this type of effect resulting from a debtor's claim objection:

"A second exception to the principle that chapter 7 debtors have no standing to object to claims exists for those claims which are not discharged by virtue of section 727.

A chapter 7 debtor's lack of standing to object to a claim is premised upon the notion that the allowance of the claim will have no affect on the debtor's rights; this notion, in turn, is premised upon the dischargeability of that claim. If the challenged claim is dischargeable, then the debtor will bear no legal responsibility for payment of the claim once a discharge order is entered, regardless of its allowance or disallowance. Absent a surplus, the amount of distribution made to that creditor does not affect the debtor. Any reduction in distribution to any claimant would result only in an increase in distributions made to allowed claimants, not to the debtor.

Conversely, if there were a claim asserted in a chapter 7 case which would not be discharged and which is not likely to be paid in full by the trustee, then the chapter 7 debtor will be legally responsible for payment of any remaining claim after the bankruptcy case is concluded. Due to this continuing obligation, the debtor has a pecuniary interest in the disallowance of the claim. Were the claim disallowed or reduced

in amount, the debtor's continuing liability after bankruptcy could be affected."

In re Toms, 229 B.R. at 651.

Furthermore, an order disallowing a claim has preclusive effect under the principles of res judicata. *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 529-30 (9th Cir. 1998) ([W]e have held that a bankruptcy court's allowance or disallowance of a claim is a final judgment."). If the debtor succeeds in bringing a claim objection to a claim evidencing a nondischargeable debt, then the disallowance of all or a portion of such claim has a concrete effect on the debtor's legal rights post-bankruptcy. The debtor has a pecuniary interest in the outcome of a claim objection that, if successful, would constitute a final, preclusive judgment reducing the debtor's own personal liability.

As mentioned in the court's previous ruling, a judgment denying both the debtors' discharge has been entered in this case. The court takes judicial notice of this judgment on its docket. Judgment, Mar. 14, 2016, ECF No. 431. As a result of this judgment, all the debtors' debt is nondischargeable. If the debtors should succeed in their claims objections, their liability for nondischargeable debt would be reduced. The order so reducing or eliminating such debt would be entitled to preclusive effect after bankruptcy. The debtors, therefore, have standing because the outcome of any claims objection they bring affects the amount of debt for which they will be liable. The debtors have a personal interest (reduction of their own personal liability) in the outcome of any claims litigation. Accordingly, the court need not reach the question, briefed thoroughly by Mr. Curtis, whether the debtors have a cognizable prospect of receiving a distribution in this case, or whether the estate's administrative solvency is such that nondischargeable claims will be reduced by a distribution made to creditors.

4. [15-11835](#)-A-7 JAMES/JAMIE CANNON
RSW-6
JAMES CANNON/MV
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO CLAIM OF TOBY
CURTIS, CLAIM NUMBER 12
3-21-16 [[419](#)]

No tentative ruling.

5. [15-11835](#)-A-7 JAMES/JAMIE CANNON
RSW-7
JAMES CANNON/MV
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO CLAIM OF TOBY
CURTIS, CLAIM NUMBER 13
3-21-16 [[422](#)]

No tentative ruling.

6. [13-17139](#)-A-7 VERNON/LINDA NICKELL
NES-2
VERNON NICKELL/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
PERSOLVE, LLC
4-1-16 [[23](#)]

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.

7. [13-17139](#)-A-7 VERNON/LINDA NICKELL MOTION TO AVOID LIEN OF UNIFUND
NES-3 CCR PARTNERS, INC.
VERNON NICKELL/MV 4-1-16 [[29](#)]
NEIL SCHWARTZ/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.

8. [16-11052](#)-A-7 MARILYN RAND ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-12-16 [[11](#)]
WILLIAM EDWARDS/Atty. for dbt.
FILING FEE PAID: \$335.00

Final Ruling

The fee paid, the order to show cause is discharged and the case shall remain pending.

9. [10-11054](#)-A-7 RONALD/SUSAN SMITH CONTINUED OBJECTION TO DEBTOR'S
KDG-7 CLAIM OF EXEMPTIONS
RANDELL PARKER/MV 2-12-16 [[130](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

[This matter will be called at the bottom of the 10:00 a.m. calendar.]

No tentative ruling.

10. [14-10458](#)-A-7 ERNIE MARTINEZ CONCRETE, MOTION FOR COMPENSATION FOR D.
DMG-1 INC. MAX GARDNER, TRUSTEES
ATTORNEY(S)
4-4-16 [[78](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Law Offices of Young Wooldridge, LLP, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3813 and reimbursement of expenses in the amount of \$273.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3813 and reimbursement of expenses in the amount of \$273.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

11. [16-10485](#)-A-7 EMB FARMS, LLC
RP-1
RANDELL PARKER/MV

MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
4-13-16 [[28](#)]

LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Vehicles described as two 2005 Honda Quads and a 2005 Suzuki 4x4 400

Sale Type: Public auction

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 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the

requirements of § 327(a), and the court will approve the auctioneer's employment.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

12. 12-13889 -A-7 ENRIQUETA BENAVIDES JSP-1 ENRIQUETA BENAVIDES/MV	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A. AND/OR MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK, INC., MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC 4-2-16 [24]
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NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted in part, denied without prejudice in part

Order: Prepared by the moving party

Debtor Enriqueta M. Benavides moves under 11 U.S.C. § 522(f)(1) to avoid the judicial liens of (1) Capital One Bank (USA) N.A.; (2) Financial Credit Network, Inc.; and (3) CitiBank (South Dakota), N.A.. The motion will be granted in part and denied without prejudice in part.

CAPITAL ONE BANK (USA) , N.A.:

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.

FINANCIAL CREDIT NETWORK, INC.:

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.

CITIBANK (SOUTH DAKOTA), N.A.:

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion is directed to CitiBank (South Dakota), N.A. Motion ¶ 3, filed April 2, 2016, ECF # 24. But the motion was served on Midland Funding, LLC. While the

court suspects that the debtor contends that Midland Funding is now holding CitiBank's rights, that fact is not reflected in the motion.

VIOLATIONS OF LOCAL RULES

The moving party is cautioned that future motions should comply with all applicable local rules and guidelines.

LBR 9014-1(c)(3):

"The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case." LBR 9014-1(c)(3).

Here, the moving party has recycled the docket control number. Compare, motion to reopen, filed March 28, 2016, ECF # 21, with motion to avoid lien, filed April 2, 2016, ECF #24.

LBR 9014-1(e)(2):

"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).

Here, the Proof of Service was filed some 23 days after service and does not comply with the rule.

13. [11-10492](#)-A-7 ESTER TUGADE MOTION TO AVOID LIEN OF
JSP-1 BENEFICIAL CALIFORNIA, LLC
ESTER TUGADE/MV AND/OR MOTION TO AVOID LIEN OF
CAPITAL ONE BANK (USA) N.A.
4-2-16 [[26](#)]
- FRANK SAMPLES/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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight."). Under the reverse-priority analysis, Beneficial California's judicial lien would be the last judicial lien to be avoided because it has a higher priority than the other judicial lien, though it is still subject to any senior consensual lien. In determining whether Beneficial California's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis, such as Capital One Bank, N.A.'s lien. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Beneficial California's judicial lien (\$15,620.04), plus all other liens (\$177,951 consensual lien) excluding judicial liens lower in priority such as Capital One Bank, N.A.'s lien, plus the exemption amount (\$1000) together equal \$194,571.04, a sum that exceeds the property's value by an amount greater than or equal to the debt secured by such judicial lien. As a result, Beneficial California's judicial lien may be avoided entirely.

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