



**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: MAY 6, 2024**  
**CALENDAR: 10:30 A.M. CHAPTER 7 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### 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. However, 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.

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1. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-10](#)

CONTINUED MOTION TO AVOID LIEN OF SYSCO SACRAMENTO, INC.  
3-22-2024    [\[91\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/08/24

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from April 22, 2024

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 1624 Albatross Way, Rocklin, California

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the judicial lien of Sysco Sacramento, Inc., under 11 U.S.C. § 522(f). The court notes that two previous motions to avoid this lien were denied without prejudice either because the debtors failed to provide admissible evidence of the judicial lien or properly serve the motion. This motion will also be denied without prejudice as follows.

### **SERVICE**

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 was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. Amended Certificate of Service, Attachment 6A1, ECF No. 110. Attachment 6A1 shows that the respondent "CSC-Lawyers Incorporating Service Attn Agent: Becky DeGeorge" was served with the motion. *Id.*, Attachment 6A1. However, the Abstract of Judgment shows that the judgment creditor is Sysco Sacramento, Inc., Exhibit B, ECF No. 94. Accordingly, the motion will be denied without prejudice.

## 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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The debtors have claimed a \$321,956.84 exemption in the subject property under C.C. P. § 704.730. Amended Schedule C, ECF No. 34.

- (a) The amount of the homestead exemption is the greater of the following:
  - (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
  - (2) Three hundred thousand dollars (\$300,000).
- (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, *Division of Labor Statistics*, for the most recent one-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

Cal. Civ. Proc. Code § 704.730.

"[E]xemptions claimed under statutes like these are limited to the dollar value claimed in the exemption. *In re Gebhart*, 621 F.3d 1206, 1210 (9th Cir. 2010).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, **and the exemption amount**, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **AMENDED SCHEDULE C**

On April 16, 2024, the debtors filed an amended Schedule C claiming an exemption in the amount of \$432,896.59 in the subject property. This does not resolve the opposition for two reasons. First, parties have 30 days from the service of the Amended Schedule C to object to the claim of exemption. As the amendment was served on April 16, 2024, it is unclear if any parties intend to object. Second, as the court has previously stated, proof of the debtors' exemption in the property is part of the debtors' prima facie case in a motion to avoid a judicial lien. This must be plead at the outset of the motion and not in response to creditor opposition or the court's tentative ruling. The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

Debtors' Motion to Avoid Judicial Lien 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.

2. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-11](#)

CONTINUED MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT  
BUREAU, INC.  
3-22-2024    [\[96\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/08/24

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** **Notice:** Continued from April 22, 2024

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 1624 Albatross Way, Rocklin, California

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the judicial lien of Creditors Adjustment Bureau, Inc., under 11 U.S.C. § 522(f). The creditor opposes the motion. The court notes that two previous motions to avoid this lien were denied because the debtors either failed to provide admissible evidence of the judicial lien or to properly serve the motion. This motion will also be denied without prejudice as follows.

### **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the

amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

### Creditor Opposition

The creditor opposes the motion, ECF No. 116. The creditor contends that there is non-exempt equity to which its judgment lien attaches. The debtors have claimed a \$321,956.84 exemption in the subject property under C.C.P. § 704.730. Amended Schedule C, ECF No. 34.

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, *Division of Labor Statistics*, for the most recent one-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

Cal. Civ. Proc. Code § 704.730.

"[E]xemptions claimed under statutes like these are limited to the dollar value claimed in the exemption. *In re Gebhart*, 621 F.3d 1206, 1210 (9th Cir. 2010).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, **and the exemption amount**, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

### **REVERSE-PRIORITY ANALYSIS**

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).

Another motion to avoid judicial lien on the same subject real property was denied for improper service, (TBG-10). To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court also denies this motion without prejudice.



## DEBTOR REPLY

On April 15, 2024, the debtors filed a reply, ECF No. 117. The reply states that the debtors will file an amended Schedule C to resolve the creditors opposition. On April 16, 2024, the debtors filed an amended Schedule C claiming an exemption in the amount of \$432,896.59 in the subject property. This does not resolve the opposition for two reasons. First, parties have 30 days from the service of the Amended Schedule C to object to the claim of exemption. As the amendment was served on April 16, 2024, it is unclear if any parties intend to object. Second, as the court has previously stated, proof of the debtors' exemption in the property is part of the debtors' prima facie case in a motion to avoid a judicial lien. This must be plead at the outset of the motion and not in response to creditor opposition or the court's tentative ruling. The motion will be denied without prejudice.

## CIVIL MINUTE ORDER

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

Debtors' Motion to Avoid Judicial Lien 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. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-12](#)

CONTINUED MOTION TO AVOID LIEN OF PERRIN BERNARD SUPOWITZ,  
LLC  
3-22-2024    [\[101\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/08/24

## Tentative Ruling

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** ~~Notice:~~ Continued from April 22, 2024  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**Subject:** 1624 Albatross Way, Rocklin, California

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the judicial lien of Perrin Bernard Supowitz, LLC, under 11 U.S.C. § 522(f). The court notes that two previous motions to avoid this lien were denied because the debtors either failed to provide admissible evidence of the judicial lien or to properly serve the motion. This motion is one of four motions to avoid a judicial lien filed by the debtors regarding the subject property. This motion will be denied without prejudice as follows.

## **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The debtors have claimed a \$321,956.84 exemption in the subject property under C.C.P. § 704.730. Amended Schedule C, ECF No. 34.

- (a) The amount of the homestead exemption is the greater of the following:
  - (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
  - (2) Three hundred thousand dollars (\$300,000).
- (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, *Division of Labor Statistics*, for the most recent one-year period ending on December 31 preceding the adjustment, with each

*adjusted amount rounded to the nearest twenty-five dollars (\$25).*

Cal. Civ. Proc. Code § 704.730.

"[E]xemptions claimed under statutes like these are *limited to the dollar value claimed in the exemption*. *In re Gebhart*, 621 F.3d 1206, 1210 (9th Cir. 2010) (emphasis added).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, **and the exemption amount**, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **REVERSE-PRIORITY ANALYSIS**

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).

Another motion to avoid judicial lien on the same subject real property was denied for improper service, (TBG-10). To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court also denies this motion without prejudice.

#### **AMENDED SCHEDULE C**

On April 16, 2024, the debtors filed an amended Schedule C claiming an exemption in the amount of \$432,896.59 in the subject property. This does not resolve the opposition for two reasons. First, parties have 30 days from the service of the Amended Schedule C to object to the claim of exemption. As the amendment was served on April 16, 2024, it is unclear if any parties intend to object. Second, as the court has previously stated, proof of the debtors' exemption in the property is part of the debtors' prima facie case in a motion to avoid a judicial lien. This must be plead at the outset of the motion and not in response to creditor opposition or the court's tentative ruling. The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:  
Debtors' Motion to Avoid Judicial Lien 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. [23-23407](#)-A-7     **IN RE: RAYMOND/MARLEN GALLO**  
[TBG-9](#)

CONTINUED MOTION TO AVOID LIEN OF AKF, INC., DBA FUNDKITE  
3-22-2024     [\[86\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/08/24

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** **Notice:** Continued from April 22, 2024  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**Subject:** 1624 Albatross Way, Rocklin, California

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the judicial lien of AKF, Inc. DBA Fundkite under 11 U.S.C. § 522(f). The court notes that two previous motions to avoid this lien were denied because the debtors either failed to provide admissible evidence of the judicial lien or to properly serve the motion. This motion is one of four motions to avoid a judicial lien filed by the debtors regarding the subject property. This motion will be denied without prejudice as follows.

### **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no

liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The debtors have claimed a \$321,956.84 exemption in the subject property under C.C.P. § 704.730. Amended Schedule C, ECF No. 34.

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, *Division of Labor Statistics, for the most recent one-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).*

Cal. Civ. Proc. Code § 704.730.

"[E]xemptions claimed under statutes like these are *limited to the dollar value claimed in the exemption*. In *re Gebhart*, 621 F.3d 1206, 1210 (9th Cir. 2010) (emphasis added).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, **and the exemption amount**, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

DEBTOR REPLY

#### **REVERSE-PRIORITY ANALYSIS**

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).

Another motion to avoid judicial lien on the same subject real property was denied for improper service, (TBG-10). To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court also denies this motion.

### **AMENDED SCHEDULE C**

On April 16, 2024, the debtors filed an amended Schedule C claiming an exemption in the amount of \$432,896.59 in the subject property. This does not resolve the opposition for two reasons. First, parties have 30 days from the service of the Amended Schedule C to object to the claim of exemption. As the amendment was served on April 16, 2024, it is unclear if any parties intend to object. Second, as the court has previously stated, proof of the debtors' exemption in the property is part of the debtors' prima facie case in a motion to avoid a judicial lien. This must be plead at the outset of the motion and not in response to creditor opposition or the court's tentative ruling. The motion will be denied without prejudice.

### **CIVIL MINUTE ORDER**

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

Debtors' Motion to Avoid Judicial Lien 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. [24-20707](#)-A-7      **IN RE: JOHNNY GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-11-2024    [\[27\]](#)

### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

6. [23-21409](#)-A-7     **IN RE: MICHAEL/ERIN CHRISTENSEN**  
[NBF-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
4-3-2024    [\[106\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.  
DEBTORS DISCHARGED: 10/18/23

### **Tentative Ruling**

**Motion:** Allow Administrative Expense [Estate Taxes]  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Federal Taxes Allowed:**    \$4,700.00  
**State Taxes Allowed:**    \$750.00

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).

Chapter 7 trustee, Nikki B. Farris, seeks an order allowing payment of estate taxes.

### **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

## 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.

The chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows federal taxes of \$4,700 and California state taxes of \$750 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

7. [23-24511](#)-A-7      **IN RE: JASPREET KAUR**  
[DWE-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-4-2024    [\[22\]](#)

SETH HANSON/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
U.S. BANK NATIONAL ASSOCIATION VS.

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2021 Tesla Model Y Utility 4D Standard Range Electric

**Cause:** delinquent installment payments 4 months/\$3,497.80

**Statement of Intention:** Surrender

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

U.S. Bank National Association seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

### DEFAULT OF RESPONDENT

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).

#### **STAY RELIEF**

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and pre-petition and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

## **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.

U.S. Bank National Association's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2021 Tesla Model Y Utility 4D Standard Range Electric, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. [19-26714](#)-A-7     **IN RE: STEVEN/SHARON HARPER**  
[BHS-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH FIRE VICTIMS TRUST AND/OR MOTION TO ABANDON ,  
MOTION FOR ADMINISTRATIVE EXPENSES  
4-3-2024    [\[64\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
BARRY SPITZER/ATTY. FOR MV.  
DEBTORS DISCHARGED: 02/24/20

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy; Abandonment of Estate Assets; Allow Payment of Tax Claims

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Parties to Compromise:** Chapter 7 Estate, Fire Victims Trust Fund

**Dispute Compromised:** Mass Tort Claim, damages to debtors during 2018 Butte Camp Fire

**Summary of Material Terms:** \$367,285.36 paid in two installments

**Federal Estate Taxes:** \$30,000

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).

Chapter 7 trustee, Geoffrey Richards, seeks an order which: (1) approves the settlement of a mass tort claim between the estate and the Fire Victims Trust Fund; (2) allows payment of \$30,000 in federal taxes resulting from the settlement; and (3) abandons the portion of the settlement amount which is not necessary for payment of claims or administration of the estate.

A separate motion for the approval of compensation for special counsel has been heard and granted by the court (BHS-4).

### **FACTS**

The debtors sustained damages resulting from the November 2018 Butte County wildfires prior to the filing of the instant case. The claim for damages is administered in the following case: *In re PG&E Corporation and Pacific Gas & Electric Company*, Case No. 19-30088, N.D. Cal. Bankr. (2019).

The debtors' claims for damages are assets of the instant bankruptcy estate and have been settled. The settlements of each of the debtors' claims are reflected in the Settlement Ledger filed

concurrently with the motion as Exhibit B., ECF No. 68. The amount to be paid on account damages sustained by the debtors is \$367,285.36 and will be paid in two installments.

The first installment will satisfy all claims in the instant case. Accordingly, the trustee seeks abandonment of the remaining distribution as it is of inconsequential value to the estate. The trustee states that claims totaling \$27,500.70 have been filed in this case. Declaration of Geoffrey Richards, ECF 67.

The trustee further states that after consultation with an accountant that he has determined that federal taxes in the amount of \$30,000 will be owed because of the settlement reached in the claim for damages. *Id.*

An initial disbursement of \$220,371.21 will be made by the Fire Victims Trust Fund. After payment of litigation costs and attorney compensation to special counsel the balance of \$173,746.97 will be paid to the bankruptcy estate. Receipt of these funds will allow the trustee to pay all claims, administrative expenses, and to fully administer the estate. *Id.*

#### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

The court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion and filed as Exhibit B (Settlement Ledger) ECF No. 68.

## **ABANDONMENT**

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

### **11 U.S.C. § 554(a)**

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Because payment of the first installment due under the Fire Victims Settlement will satisfy payment of all claims and expenses in administering the bankruptcy estate, the trustee contends that the remaining payment due under the settlement is not necessary to administer the instant bankruptcy estate.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.

## **ALLOWANCE OF ADMINISTRATIVE EXPENSE**

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

The trustee contends that approximately \$30,000 will be owed in federal taxes, resulting from the settlement agreement. The court will authorize payment of the taxes.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b) (1) (B).

The moving party shall submit an order which is consistent with this ruling.

9. [19-26714](#)-A-7     **IN RE: STEVEN/SHARON HARPER**  
[BHS-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SKIKOS,  
CRAWFORD, SKIKOS & JOSEPH FOR CARAGH MCMASTER, SPECIAL  
COUNSEL(S)  
4-3-2024    [\[71\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 02/24/20

### **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

**Compensation Allowed:**    \$44,074.24

**Reimbursement of Expenses:**    \$2,550.00

**Distribution:**    50% to each special counsel

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).

### **FACTS**

The debtors sustained damages resulting from the November 2018 Butte County wildfires prior to the filing of the instant case. The claim for damages is administered in the following case: *In re PG&E Corporation and Pacific Gas & Electric Company*, Case No. 19-30088, N.D. Cal. Bankr. (2019). The debtors' claims for damages are assets of the instant bankruptcy estate.

An order authorizing the employment of special counsel Skikos, Crawford, Skikos & Joseph, and Johnson Law Group, to represent the

bankruptcy estate in this matter was entered on January 4, 2022, ECF No. 34.

#### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, Skikos, Crawford, Skikos & Josphe, and Johnson Law Group, each special counsel for the trustee, have applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$44,074.24 and reimbursement of expenses in the amount of \$2,550.00. Each of the firms appointed to represent the estate shall received 50% of the compensation and expenses allowed.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only '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.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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.

Skikos, Crawford, Skikos & Josphe, and Johnson Law Group'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 \$44,074.24 and reimbursement of expenses in the amount of \$2,550.00, with each law

firm receiving 50% of the amounts allowed in payment of expenses and compensation.

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.

10. [23-23129](#)-A-7     **IN RE: JOHN/ANGELA BOWMAN**  
[TBG-4](#)

CONTINUED MOTION TO AVOID LIEN OF TRI COUNTIES BANK  
3-12-2024    [\[61\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 12/26/23

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from April 22, 2024

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Judicial Lien:** \$66,040.57 Tri Counties Bank,

### **All Other Liens:**

- Consensual [Deed of Trust] \$444,297 PennyMac Loan Services
- Statutory Liens Totaling \$109,792

**Exemption:** \$1

**Value of Property:** \$653,037

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the lien of Tri Counties Bank. under 11 U.S.C. § 522(f). For the following reasons the motion will be denied without prejudice.

### **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f) (2) (A).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **REVERSE-PRIORITY ANALYSIS**

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).

#### Insufficient Evidence

The debtors have failed to support the motion with any exhibits which evidence the existence of a judicial lien held by the respondent. The court notes that multiple motions have been filed to avoid liens on the subject property. The court is required to determine the priority of each lien. Without an abstract of judgment for each lien the court is unable to determine whether a lien exists, and the priority of a given judicial lien. 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 debtors' Motion to Avoid Judicial Lien 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.

11. [23-23129](#)-A-7     **IN RE: JOHN/ANGELA BOWMAN**  
[TBG-5](#)

CONTINUED MOTION TO AVOID LIEN OF AMUR EQUIPMENT FINANCE,  
INC.

3-12-2024    [\[65\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 12/26/23

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from April 22, 2024

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Judicial Lien:** \$100,425.69 Amur Equipment Finance, Inc.

#### **All Other Liens:**

- Consensual [Deed of Trust] \$444,297 PennyMac Loan Services
- Statutory Liens Totaling \$109,792

**Exemption:** \$1

**Value of Property:** \$653,037

**Attorney Stephen Brown is ordered to personally appear at the hearing on this motion on May 6, 2024, at 10:30 a.m. Appearance by Zoom or telephone is not permitted.**

The debtors seek an order avoiding the lien of Amur Equipment Finance, Inc. under 11 U.S.C. 522(f). For the following reasons the motion will be denied without prejudice.

### **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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily

defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

#### **REVERSE-PRIORITY ANALYSIS**

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).

#### **Insufficient Evidence**

The debtors have failed to support the motion with any exhibits which evidence the existence of a judicial lien held by the respondent. The court notes that multiple motions have been filed to avoid liens on the subject property. The court is required to determine the priority of each lien. Without an abstract of judgment for each lien the court is unable to determine whether a lien exists, and the priority of a given judicial lien. 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 debtors' Motion to Avoid Judicial Lien 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.

12. [24-20533](#)-A-7     **IN RE: MICHAEL/ALEESHA TAYLOR**  
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-26-2024    [\[13\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
CHAD BUTLER/ATTY. FOR MV.  
BANK OF AMERICA, N.A. VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion will be denied without prejudice for the following reasons.

### **SPECIAL NOTICE CREDITORS**

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Atlas Acquisitions, LLC. See ECF No. 12.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, Section 5, ECF No. 19. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

### **NOTICE**

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

### Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex

parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including,

without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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:

Bank of America, N.A.'s Motion for Relief From the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

13. [24-21336](#)-A-7     **IN RE: GERARDO/ESTRELLA VEGA**  
[MWP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-19-2024    [\[20\]](#)

MARTIN PHILLIPS/ATTY. FOR MV.  
TERRENCE O SHAUGHNESSY, ET AL. VS.

#### **Tentative Ruling**

**Motion:** Stay Relief under § 362(d)(4)

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

**Disposition:** Granted

**Order:** Civil minute order

**Petition Filed:** April 1, 2024

**Subject:** 8861 Fox Creek Drive, Stockton, California

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).

Terrence O'Shaughnessy, Trustee of the Terrence and Sylvia O'Shaughnessy Family Trust Dated May 12, 1995, requests this court make determinations pursuant to 11 U.S.C. § 362(d)(4). Relief is also sought for cause under 11 U.S.C. § 362(d)(1).

## **FACTS**

### Instant Bankruptcy Case

The debtors' estate includes a 10% interest in the subject property. The interest was deeded to the debtor Gerardo Vega on April 1, 2024, which is the same date the petition in this case was filed. Exhibit 6, ECF No. 23.

On April 2, 2024, Schedules A/B were filed in this case which listed the subject property and the debtors' purported 10% interest in the property, ECF No. 10. On April 16, 2024, Amended Schedules A/B were filed on April 18, 2024, which omit the subject property from Schedule A/B, ECF No. 19.

### Prior Bankruptcies Impacting the Subject Property

A foreclosure sale was scheduled for February 14, 2024, with respect to the subject property. On February 13, 2024, a 10% interest in 8861 Fox Creek Drive, Stockton, California was granted in the following case: *In re Todd and Felisa Espinoza*, 24-20129, E.D. Cal. Bankr. (2024). The *Espinoza* case was dismissed March 15, 2024, for failure of the debtors to appear at the required meeting of creditors. An order On Automatic Stay Relief With Findings Under 11 U.S.C. § 362(d)(4) was entered on April 5, 2024, Id., ECF No. 50. However, the movant was unable to record the prior order before the instant bankruptcy was filed.

On March 12, 2024, a fractional interest in 8861 Fox Creek Drive, Stockton, California, was granted to Isaac and Barbara Juarez. *In re Isaac and Barbara Juarez*, 24-20986, E.D. Cal. Bankr. (2024). The *Juarez* case was filed March 13, 2024, and dismissed on March 25, 2024, for failure timely to file required documents.

## **SECTION 362(d)(4)**

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014)

("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d) (4) .

The court finds, pursuant to 11 U.S.C. § 362(d) (4) (A), that the filings of the petitions were part of a scheme to delay, hinder, or defraud creditors that involved transfer of all or part ownership of, or other interest in, 8861 Fox Creek Drive, Stockton, California, without the consent of the secured creditor or court approval.

The court further finds, pursuant to 11 U.S.C. § 362(d) (4) (B), that the filings of the petitions were part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting 8861 Fox Creek Drive, Stockton, California.

Because relief has been granted under 11 U.S.C. § 362(d) (4) the court need not grant relief under (d) (1) .

#### **CIVIL MINUTE ORDER**

Terrence O'Shaughnessy, Trustee of the Terrence and Sylvia O'Shaughnessy Family Trust Dated May 12, 1995's motion for relief from the automatic stay under § 362(d) (4) has been presented to the court. Having rendered findings of fact and conclusions of law orally on the record pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to real property commonly known as 8861 Fox Creek Drive, Stockton, California.

IT IS FURTHER ORDERED, under 11 U.S.C. § 362(d) (4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.



14. [24-21341](#)-A-7     **IN RE: CEDAR POINT RECOVERY, LLC**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN  
SHOULD NOT BE APPOINTED  
4-2-2024     [\[8\]](#)

AARON LIPTON/ATTY. FOR DBT.

**No Ruling**

15. [24-20959](#)-A-7     **IN RE: OCTOPUS P AND L INVESTMENTS LLC**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-26-2024     [\[16\]](#)

4/22/2024 FILING FEE PAID \$338

**Final Ruling**

As the fee has been paid in full, the order to show cause is  
discharged. The case will remain pending.