

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: JUNE 7, 2021
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

COURT REOPENING

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be

heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("880," not "808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-20512](#)-A-7 **IN RE: PENI MCMULLEN**
[MET-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
5-17-2021 [\[13\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

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

Judicial Lien Avoided: \$14,700.00

All Other Liens: \$247,301.00

Exemption: \$202,699.00

Value of Property: \$450,000.00

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 respondent'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 judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

2. [20-23122](#)-A-7 **IN RE: THE MASTERS OF BEVERAGES, LLC**
[HSM-7](#)

MOTION TO SELL
5-7-2021 [\[52\]](#)

THOMAS WILLOUGHBY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: IP Assets

Buyer: Upstate Beverage Holding, Inc.

Sale Price: \$50,000.00

Sale Type: Private sale subject to overbid opportunity

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 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.

3. [20-23029](#)-A-7 **IN RE: SEAN RILEY**
[DB-1](#)

CONTINUED OBJECTION TO CLAIM OF W. PATRICK GARCIA, CLAIM
NUMBER 4
1-8-2021 [\[77\]](#)

RONALD HOLLAND/ATTY. FOR DBT.
JAMIE DREHER/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Since the parties requested that the court drop this matter if the trustee's motion to approve settlement is approved, ECF No. 95, and since the said motion was approved, ECF No. 106, the court will drop this matter from the calendar. The court will issue a civil minute order.

4. [12-39147](#)-A-7 **IN RE: GAYANE MIKAYELIAN**
[SS-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
5-20-2021 [\[33\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
DEBTORS DISCHARGED: 02/11/2013

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$4,340.95

All Other Liens: \$394,982.05

Exemption: \$10.00 (Amended Schedule C, ECF No. 30)

Value of Property: \$190,751.00

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).

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

5. [20-25649](#)-A-7 **IN RE: ADELA GAUNIA**
[CLH-2](#)

MOTION TO COMPEL ABANDONMENT
5-7-2021 [\[24\]](#)

CINDY HILL/ATTY. FOR DBT.
DEBTOR DISCHARGED: 04/13/2021; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted only as to the discharge exception litigation

Order: Prepared by moving party pursuant to the instructions below

Property Description: Discharge exception litigation, *Gaunia v. RML Children's Home Inc. et al*, Case No. 2019-02156, and any right to collect judgments resulting therefrom

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

Since the described property's value is stated as "unknown" in the debtor's Schedule A/B (ECF No. 1), the debtor claimed an exemption of \$0.00 on the property (ECF No. 1), the trustee filed a non-opposition to this motion to abandon and no creditor has objected to abandonment, the court concludes that the property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such property is warranted. The order will compel abandonment of only the property that is described in the motion.

6. [12-21255](#)-A-7 **IN RE: GINA MARQUIS**

MOTION TO AVOID LIEN OF MERCHANT SERVICES, INC.
5-12-2021 [\[34\]](#)

GINA MARQUIS/ATTY. FOR MV.
DEBTORS DISCHARGED: 05/14/2012

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT 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 for Merchant Services, ECF No. 34. The motion has not been served on Merchant Services either, *Id.*

7. [19-24759](#)-A-7 **IN RE: AK BUILDERS AND COATINGS, INC**
[HSM-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
5-7-2021 [\[203\]](#)

MICHAEL NOBLE/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, Hefner, Stark & Marois, 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 \$39,496.50 and reimbursement of expenses in the amount of \$586.47.

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.

Hefner, Stark & Marois, 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 \$39,496.50 and reimbursement of expenses in the amount of \$586.47.

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.

8. [19-25173](#)-A-7 **IN RE: MO/JAS CONSTRUCTION, INC.**
[BLF-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
5-10-2021 [\[76\]](#)

T. O'TOOLE/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

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 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).

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 Clobbeck*, 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 California state taxes of \$2,400.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

9. [19-25173](#)-A-7 **IN RE: MO/JAS CONSTRUCTION, INC.**
[BLF-6](#)

MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN,
LLP, ACCOUNTANT(S)
5-10-2021 [\[80\]](#)

T. O'TOOLE/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, Ryan, Christie, Quinn & Horn, LLP, accountant 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 \$2,560.00 and reimbursement of expenses in the amount of \$0.00.

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.

Ryan, Christie, Quinn & Horn, 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 \$2,560.00 and reimbursement of expenses in the amount of \$0.00.

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. [19-25173](#)-A-7 **IN RE: MO/JAS CONSTRUCTION, INC.**
[BLF-7](#)

MOTION FOR COMPENSATION FOR LORIS L BAKKEN, TRUSTEES
ATTORNEY(S)
5-10-2021 [\[86\]](#)

T. O'TOOLE/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, Loris L. Bakken, 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 \$4,613.40 and reimbursement of expenses in the amount of \$323.40.

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.

Loris L. Bakken'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 \$4,613.40 and reimbursement of expenses in the amount of \$323.40.

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. [19-20783](#)-A-7 **IN RE: JASON SINGLETON AND ALLISON PEREZ-SINGLETON**
[MKM-2](#)

MOTION TO AVOID LIEN OF TIDEWATER FINANCE COMPANY
5-5-2021 [\[26\]](#)

MICHAEL MOORE/ATTY. FOR DBT.
DEBTORS DISCHARGED: 05/28/2019

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Judicial Liens Avoided: \$2,517.52 (Tidewater Finance Company),
\$3,052.95 (Midland Funding, LLC)

All Other Liens: \$213,753.00

Exemption: \$76,326.53

Value of Property: \$295,650.00

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 (\$295,650.00), does not exceed the property's value (\$295,650.00). Accordingly, a prima facie case has not been made for relief under § 522(f).

12. [19-20783](#)-A-7 **IN RE: JASON SINGLETON AND ALLISON PEREZ-SINGLETON**
[MKM-3](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC
5-5-2021 [\[31\]](#)

MICHAEL MOORE/ATTY. FOR DBT.
DEBTORS DISCHARGED: 05/28/2019

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Judicial Liens Avoided: \$2,517.52 (Tidewater Finance Company),
\$3,052.95 (Midland Funding, LLC)

All Other Liens: \$213,753.00

Exemption: \$76,326.53

Value of Property: \$295,650.00

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 (\$295,650.00), does not exceed the property's value (\$295,650.00). Accordingly, a prima facie case has not been made for relief under § 522(f).

13. [21-20183](#)-A-7 **IN RE: NAOMI ALFORD**
[PGM-1](#)

MOTION TO AVOID LIEN OF NUT TREE RETAIL, LLC
4-29-2021 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Since posting its original rulings, the court has changed its intended ruling on this matter.

Final Ruling

On the Court's own motion, this matter will be continued to June 28, 2021 at 9:00 a.m.

14. [21-21098](#)-A-7 **IN RE: GAYLE GRIFFITHS**
[UST-1](#)

MOTION FOR REVIEW OF FEES AND/OR MOTION TO DISGORGE FEES
5-3-2021 [\[15\]](#)

DENNISE HENDERSON/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
DEBTOR DISMISSED: 04/16/2021

Final Ruling

Motion: Motion for Review of Fees and/or Motion to Disgorge Attorneys' Fees

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

Disposition: Granted

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 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).

Here the U.S. Trustee moves for the court to review and disgorge attorney's fees paid to Dennise S. Henderson, pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2017.

LAW

A bankruptcy court may review the reasonableness of pre-petition payments received by a debtor's attorney for services rendered or to be rendered in "contemplation of or in connection with" a bankruptcy case. 11 U.S.C. §§ 329(a), (b). The court also may order the return of any such payments, to the extent that they exceed the reasonable value of the services provided by the debtor's attorney. See *id.*; see also *In re C & P Auto Transport, Inc.*, 94 B.R. 682, 687 (Bankr. E.D. Cal. 1988) ("If the prepetition payments exceed the reasonable value of the services, the court may order refund to the extent of the excessive payment. 11 U.S.C. § 329(b)."); see also *In re Clark*, 223 F.3d 859, 863 (8th Cir. 2000) (a court has broad discretion to disallow and require disgorgement of attorney compensation found to be excessive).

To facilitate the court's review, attorneys for debtors must disclose all payments received in contemplation of or in connection with bankruptcy within one-year of the debtor's bankruptcy filing. See 11 U.S.C. § 329(a); Fed. R. Bankr. P. 2016(b); see also *In re PFG Construction, Inc.*, 2010 WL 6259962, at *3 (B.A.P. 9th Cir. Nov. 12, 2010) ("Attorneys for the debtor under all chapters of the Bankruptcy Code are required by § 329 and Rule 2016(b) to disclose all funds paid by their debtor client within one year of the filing of the bankruptcy").

Ultimately, the debtor's attorneys bear the burden to justify their fees under Section 329. See *In re Jastrem*, 253 F.3d 438, 443 (9th Cir. 2001).

ANALYSIS

Ms. Henderson, who is now representing the debtor for the fourth case since 2019, has failed to timely file the debtor's required schedules and statements, causing the court to enter a "Notice of Incomplete Filing," ECF No. 6, and eventually case dismissal without entry of discharge. Therefore, Ms. Henderson failed to effectively represent the debtor in such a way that disgorgement of her fees is warranted. *In re Vargas*, 257 B.R. 157, 166-67 (Bankr. D. N.J. 2001) (disgorgement is appropriate where the services rendered were ineffective); see also *In re Egwim*, 291 B.R. 559, 572 (Bankr. N.D. Ga. 2003) ("If the lawyer does nothing more than prepare the petition, statement, schedules, and related documents and attend the § 341 meeting, the lawyer has done little more than a petition preparer.").

Ms. Henderson also failed to file the compensation disclosure required by 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b), despite the U.S. Trustee's request that she do so. This failure warrants disgorgement of Ms. Henderson's fees. See *In re Lewis*, 113 F. 3d 1040, 1045-46 (9th Cir. 1997) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees regardless of their excessiveness or reasonableness.") (emphasis added).

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 U.S. Trustee's Motion to Review and/or Disgorge Fees 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 as prayed.