UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 21, 2021 at 10:30 a.m.

1.	**12-92152-E-7 TMO-2**	**ARMANDO VERA AND ANGELA BUSTAMANTE Mark O'Toole**	**MOTION TO AVOID LIEN OF CACH, LLC. 9-30-21 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on September 30, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of the debtor, Armando Vera and Angela Bustamante ("Debtor") commonly known as 4121 Orchard Hills Drive, Salida, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,958.75. Exhibit A, Dckt. 23. An abstract of judgment was recorded with Stanislaus County on November 7, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $152,601.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $263,350.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $7,958.75 on Amended Schedule C. Dckt. 26.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Armando Vera and Angela Bustamante ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Cach, LLC, California Superior Court for Stanislaus County Case No. 666723, recorded on November 30, 2011, Document No. 2011-0101778-00, with the Stanislaus County Recorder, against the real property commonly known as 4121 Orchard Hills Drive, Salida, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. **20-90544-E-7** **MICHELLE PIMENTEL-MONTEZ** **SCHEDULING CONFERENCE RE: MOTION TO COMPEL AND/OR MOTION TO PRODUCE DOCUMENTS**
20-9012 **DB-3**

LIONUDAKIS ET AL V. PIMENTEL-MONTEZ

9-2-21 [31]

Plaintiff's Atty: Jamie P. Dreher; Paul Gaus
Defendant's Atty: David C. Johnston

Adv. Filed: 11/2/20
Answer: 11/28/20

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Set by order of the court dated 10/6/21 [Dckt 41]. Jamie Dreher, Esq. and Paul Gaus, Esq. to appear, telephonic appearances permitted.

The Motion to Compel is xxxxxxx

The Motion to Compel and Motion to Produce Documents filed by Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Removal, Inc. ("Plaintiffs"). The court has learned that Defendant-Debtor's counsel is unable to practice law during the period from late September 2021 to late November 2021.

In preparing the ruling on this Motion in preparation for the September 30, 2021 hearing, the court noted that an affirmative Non-Opposition to this Motion had been filed. The court incorrectly believed that this Non-Opposition was filed by the party against whom the Motion was filed. The court posted a "final ruling," which is now stated in the Civil Minutes for the hearing. Dckt. 40.

In preparing this Order, the court recalled that Defendant-Debtor's counsel was not currently able to practice law. Then, in reviewing the affirmative Statement of Non-Opposition filed and placed on the Docket in this Case, Dckt. 38, the court realized that it was not filed by Defendant-Debtor, but by Plaintiffs, the Movant.

The practice in this District is that a "Statement of Non-Opposition" is filed by the party against whom the relief is requested. This is to inform the court that the relief may be granted and no hearing is required.

The present Statement of Non-Opposition has been filed by counsel for Plaintiff Phillip Lionudakis; Lionudakis Firewood, Inc; and Lionudakis Orchard Removal, Inc. Dckt. 38. this pleading is titled:

> STATEMENT OF NON-OPPOSITION OF PLAINTIFFS' MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION, AND TO PRODUCE DOCUMENTS

This title indicates that Defendant-Debtor is affirmatively stating he has no opposition to the requested relief. However, that is inaccurate.

However, the court's belated review of the details Statement of Non-Opposition is that it is Plaintiff merely stating that no opposition to the Motion has been filed. To accurately state what the pleading is and the description in the Docket by the case manager, the alternative accurate titles for this pleading include:

> NOTICE OF NO OPPOSITION TO MOTION FILED BY PARTY AGAINST WHOM RELIEF HAS BEEN REQUESTED
>
> or
>
> MOVANT STATUS REPORT THAT NO OPPOSITION HAS BEEN FILED TO MOTION

The court recalls discussing the proper titling of such Notice of No Opposition Having Been Filed with other counsel from Plaintiff's' Counsel's law firm. Apparently that attorney did not communicate the court's concerns over the accuracy of the title and the possible misrepresentation of the document which could occur.

The court having misunderstood the filing of the Statement of Non-Opposition entered on the Docket as having been an affirmative statement by Defendant-Debtor; the court's error resulting in a final ruling having been made in error by the court, the court vacated the civil minutes and reset the hearing on this Motion.

The Statement of Non-Opposition is signed by Paul R. Gaus, Esq., an attorney with the Downey Brand Law Firm which is representing the Plaintiff. The other attorney from that Law Firm included on the pleading is Jamie Dreher, Esq.

On October 18, 2021, an *Ex Parte* Application was filed by Jamie Dreyer, Esq. requesting that the court excuse Paul R. Gaus, Esq., the attorney signing the Statement of Non-Opposition, from having to appear at the October 21, 2021 hearing. The *Ex Parte* Application states that Mr. Gaus is no longer with the Downey Brand firm, with his last day of employment having been October 1, 2021. The Application alleges on "mere" information and belief that Mr. Gaus has taken up a position with the state judiciary. No declaration is provided in support or information as to why the Downey Brand firm can only allege on information and belief as to Mr. Gaus having taken a state judiciary position.

A review of the Downey Brand website reflects that Mr. Gaus is not listed as an attorney with that firm. The California State Bar lists Mr. Gaus' address as the Downey Brand Firm's Sacramento Office. http://members.calbar.ca.gov/fal/Licensee/Detail/319979.

The court granted the Ex Parte Application, leaving Mr. Dreyer the attorney to stand alone before the court to address this affirmative statement of and alleged Non-Opposition.

At the hearing, **xxxxxxx**

3.	**17-90494-E-7** **SSA-10**	**DALJEET MANN** **Pro Se**	**MOTION TO SELL** **9-20-21 [111]**

Item 3 thru 5

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 20, 2021. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxxxx .

The Bankruptcy Code permits Irma Edmonds, the Chapter 7 Trustee ("Movant"), as the judgment creditor in Adversary Proceeding 18-9012, to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2520 Piazza Ct, Modesto, California, 95356 ("Property"). The Trustee is "selling" the Property by enforcing the judgement she has obtained and having the Sheriff or U.S. Marshal conduct an execution sale under California enforcement of judgment law, which is incorporated into Federal Rule of Civil Procedure 69 and Federal Rule of Bankruptcy Procedure 7069 for the enforcement of a monetary judgment.

The proposed terms of the sale are:

A. The sale is to be conducted as a judgment enforcement sale under the procedures for the sale as provided in California Code of Civil Procedure § 704.750 Federal Rule of Civil Procedure, and as may be directed by further order of this court.

B. The property is Judgment Debtor Ninder Mann's Property, which is the Property mentioned above. The estate has a written appraisal of $745,000. Exhibit 4, Dckt. 113.

C. The Property has two superior mortgages: (1) First Mortgage for $281,915.88 and (2) Second Mortgage for $120,134.00 (total of $402,049.88 in superior liens). *See* Dckt. 111.

D. Deducting this value from the appraisal, this leaves a residual net equity of $342,950.12 in the Property.

The "sale" is to be conducted by the Sheriff or Marshal, not the Trustee since the property being "sold" is not property of the bankruptcy estate. The property of the bankruptcy estate is the Judgement obtained in Adversary Proceeding 18-9012 and the right to enforce said judgment.

California Code of Civil Procedure § 704.750 provides for a judgment creditor to obtain an order for the sale of a dwelling as a method of enforcing a monetary judgment.

§ 704.750. Application for order for sale

(a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to the superior court of the county where the dwelling is located.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674 or, in the case of a judgment described in Section 697.320, a certified copy of the judgment.

(3) The judgment creditor shall pay the filing fee for a motion as provided in subdivision (a) of Section 70617 of the Government Code.

After an order authorizing a sale, the basic provisions for such a sale by the levying officer (in this case the Sheriff or Marshal) are set for in California Code of Civil Procedure §§ 701.510 *et seq.* As discussed in Witkin California Procedure, while the sale extinguishes the judgment lien for the judgment being enforced and junior liens, a purchaser acquires the property subject to all liens and interests senior to that of the judgment lien for which the sale is being conducted.

1) Extinguishment of Liens. **A sale extinguishes the lien under which the property is sold, subordinate liens, and state tax liens** (as defined in Govt.C. 7162). (C.C.P. 701.630; see C.C. 2910 [extinction of lien on sale in satisfaction of secured claim]; *Mitchell v. Alpha Hardware & Supply Co.* (1935) 7 C.A.2d 52, 57, 45 P.2d 442 [execution sale under superior lien freed property of inferior liens; junior lienholders were only entitled to excess proceeds]; *Little v. Community Bank* (1991) 234 C.A.3d 355, 360, 286 C.R. 4 [tax liens of Internal Revenue Service are excepted from provisions of C.C.P. 701.630; C.J.E.R., Judges Benchbook: Civil Proceedings—After Trial § 6.128; Rutter Group, 2 Enforcing Judgments and Debts § 6:713; C.E.B., 2 Debt Collection Practice 2d, § 9.39]; on interest of subordinate lienholders in share of excess proceeds, see C.C.P. 701.810, infra, § 158.)

(2) Interest Acquired by Purchaser. The purchaser acquires the judgment debtor's entire interest in the property; i.e., the interest liable for satisfaction of the judgment on the date the judgment became a lien on the property, and any interest in the property subject to the lien acquired before the date of sale. (C.C.P. 701.640; see Law Rev. Com. Comment to C.C.P. 701.640 [interest in property includes that acquired before date of sale "assuming that the lien has been maintained"]; *Noble v. Beach* (1942) 21 C.2d 91, 94, 130 P.2d 426 [sheriff's sale had same force and effect as debtor's conveyance of quitclaim deed on date of sale]; Rutter Group, 2 Enforcing Judgments and Debts § 6:710 et seq.; C.E.B., 2 Debt Collection Practice 2d, § 9.39.)
. . .
The execution **purchaser takes subject to prior interests, such as deeds, mortgages, and deeds of trust**, of which the purchaser has actual or constructive notice. (*See Whitney v. Sherman* (1918) 178 C. 435, 439, 173 P. 931; *Slaker v. McCormick-Saeltzer Co.* (1918) 179 C. 387, 388, 177 P. 155; *Fowler v. Lane Mortg. Co.* (1922) 58 C.A. 66, 69, 207 P. 919 [unrecorded leasehold, tenant in open possession]; *Richman v. Bank of Perris* (1929) 102 C.A. 71, 88, 282 P. 801; *Sutter Inv. Co. v. Keeling* (1932) 123 C.A. 323, 326, 11 P.2d 418; *Withington v. Shay* (1941) 47 C.A.2d 68, 75, 117 P.2d 415; *Carpenter v. Devitt* (1942) 49 C.A.2d 473, 475, 122 P.2d 79; Manig v. Bachman (1954) 127 C.A.2d 216, 221, 273 P.2d 596 [actual possession of stranger to record title]; *20th Century Plumbing Co. v. Sfregola* (1981) 126 C.A.3d 851, 853, 179 C.R. 144 [deed of trust recorded after judgment lien but before execution sale had priority].) But, at least in certain circumstances, an execution purchaser who buys for value without notice is a *bona fide* purchaser and takes free from prior interests. (*See Riley v. Martinelli* (1893) 97 C. 575, 580, 32 P. 579; *Widenmann v. Weniger* (1913) 164 C. 667, 672, 130 P. 421; *Pepin v. Stricklin* (1931) 114 C.A. 32, 34, 299 P. 557; *McCune v. McCune* (1937) 23 C.A.2d 295, 297, 72 P.2d 883; *20th Century Plumbing Co. v. Sfregola, supra* [noting split of authority

whether judgment creditor making credit bid can be *bona fide* purchaser; citing cases]; 5 Miller & Starr 3d § 11:119; 12 Summary (10th), Real Property, §§ 328, 333.)

Effect of Sale., 8 Witkin, Cal. Proc. 5th Enf Judgm § 156 (2020)

In Footnote 2 to the Motion, the Trustee states, "It is the intent of the Trustee to pay off the first and second deed of trust holders from the sale proceeds and administrative expenses." Dckt. 111 at 4. It is not explained how the Trustee can obtain from an execution purchaser payment of an amount for the Property as if it were free and clear of all liens, and then the Trustee subsequently pay those liens. The court is unaware of an execution sale process for which title may be transferred free and clear of liens and interests, with such amounts attaching to the proceeds and paid as later ordered by the court as Congress provides in 11 U.S.C. § 363(f).

At the hearing, counsel for the Trustee addressed this payment of senior liens, **xxxxxxx**

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines a proposed sale is in the best interest of the Estate because the Trustee-Judgment Creditor has a judgment lien on the Property stemming from: (1) the Judgment entered on March 15, 2019 valued at $436,128.75 and (2) a separate lien of $132,935.00 plus interest and costs thereon. Exhibit 1, 4, Dckt. 113.

The subject judgment is superior to any claim of homestead or exemption granted thus far. The subject judgment is recorded as an abstract of judgment in Stanislaus County. *Id.* at Exhibit 2. Trustee wishes to sell the property pursuant to Cal. Civ. Proc. § 704.750 for the benefit of the bankruptcy estate and it's creditors, for which the secured creditors holding superior mortgages have filed declarations in support of this sale. *See* Dckt. 116-117. As the property has residual net equity of $342,950.12, after paying senior mortgage holders, the enforcement action can be paid against the debtor on behalf of the estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmond, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Irma Edmond, the Chapter 7 Trustee is authorized to exercise her rights as a Judgment Creditor in Adversary Proceeding 18-9012 to have an execution sale of real property of the Judgment Debtor in the Adversary Proceeding as provided under applicable California Enforcement of Judgment Law,

including, California Code of Civil Procedure §§ 701.510 et seq. and 704.750, as incorporated into Federal Rule of Civil Procedure 69 and Federal Rule of Bankruptcy Procedure 7069, by the State Sheriff or US Marshal for the Property commonly known as 2520 Piazza Ct, Modesto, California 95356, with the Trustee authorized to take all action necessary to enforce such rights as a judgment creditor, including, but not limited to,

A. Applying the sale proceeds to the costs of the execution sale, including securing a litigation guarantee from First American Title.

B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. **17-90494-E-7** **DALJEET MANN** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NINDER MANN AND JASLEEN MANN**
SSA-9 **Pro Se** **9-16-21 [104]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on September 16, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant" or "Trustee") requests that the court approve a compromise and settle competing claims and defenses with Ninder Mann, Daljeet Mann and Jasleen Mann

("Judgment Debtors"). The claims and disputes to be resolved by the proposed settlement are Irma Edmonds v.Ninder Mann and Jasleen Mann, Adv. No. 18-09012 and the subsequent liens on 2520 Piazza Court, Modesto, California 95356 ("Property").

Movant and Judgment Debtors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 106):

A. Judgment Debtors collectively agree to pay Trustee $140,000.00 in satisfaction of the following outstanding judgments against all parties within 60 days of the court's approval ("Settlement Payment"): (1) $436,128.74 against Ninder Mann; (2) $36,112.74 against Jasleen Mann; and (3) an equitable lien against the Property of $132,935.00.

B. Judgment Debtors, upon execution of the agreement, shall deposit $10,000.00 with Trustee, or her representative, credited against settlement agreement.

C. The F&M Bank accounts turned over to the United States Marshall, holding a sum of approximately $13,693.25 in levied funds, will be credited against the Settlement Payment if the Trustee receives a remittance within the 60 day period ascribed in the Settlement.

D. The Settlement will be subject to "overbid" assuming a party other than the Judgment Debtors' are the successful bidder at the time, and that party will promptly pay the Trustee the sum ordered and receive, from the Trustee, an assignment of judgment in this matter.

E. Following the execution of this agreement and the $10,000.00 payment mentioned in Sub-section B (Exhibit 1, Agreement Subsection 3, Dckt. 106), the Trustee will file and prosecute a motion for approval of the Settlement. The 60 day window will begin upon the court's approval of the Settlement Payment.

F. Trustee's counsel will prepare a Release of *Lis Pendens* against Property if the Judgment Debtors are the successful parties in this matter and the court approves the Settlement payment.

G. Both Parties agree that (1) the Bankruptcy court shall retain jurisdiction on this matter; (2) both will cooperate fully with each other in performance of the agreement; and (3) each party in this settlement will otherwise bear their own fees and costs.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is

appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

The proposed settlement permits Movant to immediately list for sale and then sell Settlor's interests in the real property commonly known as 2520 Piazza Court, Modesto, California ("Property"), and said sale will be conducted by a United States Marshall bidding procedure. This procedure will allow Settlors to bid against the judgment value and avoid incurring additional costs in satisfaction of their lien.

Probability of Success

Movant argues that all litigation would be a continuation of post-judgment activities to collect the aforementioned balances. Movant argues that while home's suggested value is $745,000, there is a first and second mortgage currently against the residence totaling $402,050.28. Deducting this value from the appraisal, this leaves a residual net equity of $342,950.12 in the home. This does not include the suggested deferred maintenance costs to the floors and pool area of $14,005.00.

While there is an equitable lien superior to Judgment Debtor Ninder Mann's homestead claim in the amount of $132,935.00, along with the two separate judgments, once this lien is satisfied, Judgment Debtor Ninder Mann could still claim a homestead. This would allow minimal recoupment of further equity after the sale of the residence. *See* Cal. Civ. Proc. 704.730. Movant has weighed these costs and determined the probability of success in ongoing litigation would, even with any exemptions claimed, be in Movant's favor. The court should grant this settlement to expedite unnecessary litigation costs of approximately $4,000.00.

Difficulties in Collection

Movant argues the settlement amount of $140,000.00, in consideration to the wealth of the judgment debtors creates difficulty in collection. Furthermore, Movant suggests that Debtor's income, assets, liabilities, costs of further litigation, and attendant delays suggest that the ongoing litigation would create difficulties in collecting from Debtors. Movant suggests the Settlement is fair and equitable in light of these factors creating difficulty for collection. Movant argues the amount to be paid in light of these factors weighs in their favor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues the major asset in this case is the Judgment Debtors' residence, ("the Property"). Movant restates the current equitable lien is valued at $132,935.00, and the Property has two superior mortgages: a First Mortgage for $281,915.88 and Second Mortgage for $120,134.00 (total of $402,049.88 in superior liens). Additionally, the property has deferred maintenance needs of $14,005.00.

Movant states court approval is required for the sale of the residence, with those costs required to move through court. The costs of moving through court and the present superior liens are contrasted against the uncertainty of whether a bidder will appear and what price they will pay in light of these mortgages and costs. Movant argues these steep costs and hurdles would make ongoing litigation expensive and difficult to recover their judgment from.

Moreover, COVID has created restrictions on eviction. These financial and regulatory complications, Movant argues, would grant the estate favor in enforcing the Settlement.

Paramount Interest of Creditors

Movant states the previous settlement proposal was for $20,000.00. This proposal was not approved by the court. This settlement is seven times the previous proposal. There are few assets held by Judgment Debtors at this time. Movant argues that in the interest and deference given to the Trustee and Creditors, the court should find this factor in Movant's favor.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it would allow an expeditious and less costly procedure for the Judgment Debtors to repay their debt while being able to bid on the Property. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Ninder Mann, Daljeet Mann and Jasleen Mann ("Judgment Debtors") is granted, and the respective rights and interests of the parties are settled on the

terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 106).

5.	**17-90494-E-7** **SSA-11**	**DALJEET MANN** **Pro Se**	**MOTION FOR ADMINISTRATIVE EXPENSES** **9-21-21 [124]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds ("Movant") requests payment of administrative expenses in the amount of $3,807.00, for providing for advance litigation guarantee and sheriff expenses to Daljeet Singh Mann ("Debtor").

DISCUSSION

Movant argues as part of the Motion for Authorization for Sale of Real Property Residence and Instructions to the Sheriff for sale procedure, Movant requires additional funds to secure a litigation guarantee from First American Title and secure Sheriff assistance. Movant specifies that $1,807.00 will be required for First American Title services and approximately $2,000.00 for securing sheriff services. Movant argues that these expenses are necessary for enforcing the underlying judgment against judgment debtor Ninder Mann for the benefit of Daljeet Singh Mann's bankruptcy estate and it's creditors.

Furthermore, Movant notes that the bankruptcy estate is solvent enough for the Trustee to pay this obligation in part with a sum in hand of $4,861.34.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant the Trustee or her Professionals working on behalf of advancement of the bankruptcy estate would qualify under the Bankruptcy Code. The Professionals in question are securing the subject Property at 2520 Piazza Ct., Modesto, CA and they are securing property for the debtor's estate.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing services for the enforcement of the judgment against Ninder Mann and litigation guarantee from First American Title of Modesto for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $3,807.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Irma Edmonds ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay Irma Edmonds $3,807.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

6. 20-90107-E-7 PAUL DASILVA MOTION TO SELL
WF-2 Jessica Dorn 9-16-21 [73]

Items 6 thru 7

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, [the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as ownership interests in DaSilva Dairy Farm, L.P., and Rossetti's Market, LLC. ("Property").

The proposed purchaser of the Property is DaSilva Dairy Farm, L.P., and the terms of the sale are:

A. Purchaser is to pay $300,00.00 for the interests.

B. Purchaser agrees to reduce its claim to $225,000.00 and to subordinate this claim to all other timely filed claims.

C. The buyer has already provided a $50,000.00 deposit to the Trustee.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Agreement will generate sufficient funds to pay administrative claims and unsecured claims in full. The estate will have sufficient funds to pay all non-subordinated pre-petition and post-petition claims and have an additional approximately $198,000.00 left to pay toward subordinated claim of DaSilva Dairy Farm, L.P. Further, because the interests are of minority value they will be difficult to market and sell.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to DaSilva Dairy Farm, L.P. or nominee ("Buyer"), the Property commonly known as ownership interests in DaSilva Dairy Farm, L.P., and Rossetti's Market, LLC. ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $300,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 77, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

7. **20-90107-E-7** **PAUL DASILVA** **MOTION FOR ADMINISTRATIVE EXPENSES**
WF-3 **Jessica Dorn** **9-16-21 [79]**

Final Ruling: No appearance at the October 21, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Administrative Expenses is granted.

Michael D. McGranahan ("Movant") requests payment of administrative expenses in the amount of $6,427.00 and $7,770.00 for providing 2020 and 2021 State Income Tax Liability to Paul Alexander DaSilva ("Debtor").

DISCUSSION

Movant argues the bankruptcy estate's California income tax for 2020 and 2021 should be considered administrative expenses under Section 503(b) of the Bankruptcy Code.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant seeks to pay the bankruptcy estate's California income tax for 2020 and 2021 as administrative expenses.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing 2020 and 2021 State Income Tax Liability was from the administration of the bankruptcy estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $6,427.00 and $7,770.00.

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

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

The Motion for Allowance of Administrative Expense filed by Michael D. McGranahan ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay Michael D. McGranahan $6,427.00 and $7,770.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

8. **20-90710-E-12** **LESLIE JENSEN** **MOTION TO COMPROMISE**
HSM-1 **David Johnston** **CONTROVERSY/APPROVE**
9-30-21 [167]

SETTLEMENT AGREEMENT WITH
MICHAEL J. DYER, LESLIE F. JENSEN

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Approval of Compromise is xxxxx.

Leslie F. Jensen, Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Leslie F. Jensen, L&L Investments, LLC, Michael J. Dyer, The Dyer Law Firm, and Krista Osmers ("Settlor"). The claims and disputes to be resolved by the proposed settlement are an Abstract Judgment to be paid to the Osmers by Jensen.

The summaries the relief requested and grounds in the Motion (167) as follows (references to the paragraph numbers in the Motion):

> 5. In July 2017, the Osmers obtained a judgment against Debtor in the principal amount of $318,142.95, which accrues interest at 10% per annum.
>
> 6. Osmers recorded an abstract of Judgment in Stanislaus County on July 7, 2020.

7. Osmers obtained an Order for Examination of Judgment Debtor on July 14, 2020. The Examination was commenced and has not been completed.

8. Debtor commenced this bankruptcy case on October 29, 2020 (which the court notes is 107 days after the Order for Examination was issued, but the date of when the Order was served on Debtor is not stated).

10. On February 1, 2021, Osmers filed a complaint for nondischargeability of debt (the Judgment obligation).

16. On July 21, 2021, the Osmers assigned their interest in the Judgment to Dyer Law (their lawyers in that State Court Action and in this Bankruptcy Case).

18-19. Dyer Law, as the successor in interest, and Debtor have engaged in mediation to resolve their disputes concerning whether the Debtor qualifies for relief under Chapter 12, and whether the case should be dismissed or converted to Chapter 7.

The basic terms of the Settlement are stated in Paragraph 21 of the Motion to be (identified by subparagraph alphabetic designation):

b. While Debtor remains in bankruptcy and there is no default in the Settlement by Debtor, Dyer will not take any action to enforce the Judgement.

c. The Settlement provides for payment of $350,000.00 to Dyer by Debtor no later than October 15, 2021. The source of the monies to make the $350,000.00 payment by October 15, 2021 (which expired six days before the hearing on this Motion) is not identified in the Motion.

d. On or before September 30, 2021, L&L Investments, LLC shall provide an unconditional guarantee payment of the Settlement obligation of Debtor. If Debtor defaults, both the Debtor and the guarantor will obligated to pay the full amount due under the Judgment (not the discounted $350,000 Settlement amount).

f. Dyer and Jensen agree that upon payment of the Settlement amount, the Debtor's bankruptcy case will be dismissed.

g. Contemporaneous with the dismissal of Debtor's bankruptcy case, Dyer will dismiss the Adversary Proceeding with prejudice.

h. Upon the dismissing of the bankruptcy case and the clearing of the Settlement payment to Dyer, Dyer will record a satisfaction of judgment.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is

appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Jensen is confident in her position with respect to the Claims, and her ability to confirm a chapter 12 plan herein, Jensen recognizes that Dyer and others contend otherwise, and that litigation always involves risk of loss. Through the proposed Settlement Agreement, Jensen mitigates the risk of failing to obtain confirmation of her chapter 12 plan and subsequently seeing this case either dismissed or potentially converted to a case under another chapter of the Bankruptcy Code.

Difficulties in Collection

Jensen is not collecting from Dyer or any other party. Jensen is paying Dyer, at a discount, to resolve the outstanding Judgment.

Expense, Inconvenience, and Delay of Continued Litigation

Should this chapter 12 case and the adversary proceeding continue, there is no question that the warring parties will conduct both informal and formal discovery, engage in pre-trial law and motion practice, including trial preparation, and thereafter proceed to trial. Settlement of the Claim at issue allows Jensen and others the ability to reasonably mitigate risks in these important respects.

Paramount Interest of Creditors

Jensen will resolve a long-running battle with Osmers/Dyer through the proposed settlement, and will do so on terms that are financially beneficial to her and the bankruptcy estate. Further, the anticipated dismissal of the Chapter 12 case and the adversary proceeding will enable Jensen to preserve much needed resources to satisfy claims of her other creditors.

Review of Debtor's Declaration

Debtor provides her Declaration in support of the Motion to Approve Compromise. Dckt. 170. The court notes that in paragraph 1 of the Declaration Debtor states that while she has personal knowledge of some of the facts to which she testifies to, others are stated "merely" on information and believe, because she believes them to be true.

With the respect to testimony being provided by a witness which must be based on personal knowledge, Fed. R. Evid. 602, at the hearing **xxxxxxx**

Debtor's testimony repeats the background facts concerning the State Court litigation and Judgement, and the motions to dismiss and covert this Chapter 12 case. Debtor does testify as to why she believes that this Settlement and dismissal of the bankruptcy case is in the interest of all her creditors, stating:

> 23. I believe the paramount interest of creditors is to see this case concluded. Fundamentally, I will resolve a long-running battle with Osmers/ Dyer through the proposed Settlement, and will do so on terms that are financially beneficial to me and the bankruptcy estate. Moreover, the anticipated dismissal of the chapter 12 case and the Adversary Proceeding will allow me to preserve much needed resources to satisfy the claims of my other creditors. Upon dismissal of this case, those creditors will no longer be restricted vis- a-vis their rights against me. In short, they will benefit from approval of the proposed Settlement because the bankruptcy case will be dismissed and they will once again enjoy all available rights and remedies under non-bankruptcy law.

Declaration, ¶ 23; Dckt. 170.

Debtor does not provide an analysis (statement of facts) as to how she reaches this conclusion. Additionally, Debtor does not state the source of the $350,000.00 in cash funds which she has access to during this bankruptcy case to pay the Settlement amount.

Review of Assets, Creditors, and Claims

Under penalty of perjury, Debtor has disclosed all of her assets on Amended Schedule A/B. Dckt. 22 at 5-12. The court summarizes the substantial assets below.

Specific Significant Assets		Encumbrances on Such Assets
Briarwood Point - Real Property Debtor has 50% Interest	$348,000	($195,420)
Legend Dr. - Real Property	$477,000	($297,439)
Homestead Exemption	($175,000)	($318,142) Plus Interest Creditor Judgment Lien
Bank Accounts	$26,500	

L&L Investments	$50,000	
PV Condo 10% Interest	$5,000	
Maui and Cabo Timeshares	$4,000	
Business Accounts Receivables	$55,000	

From the above, the source of a $350,000 cash settlement payment by October 15, 2021 is unclear.

In looking at the Schedules, excluding the Dyer Law claim on the assigned Judgment, Debtor lists ($2,473,795) in general unsecured claims owed to other creditors. Amended Schedule E/F, Dckt. 22 at 17-26.

A review of the Proofs of Claim filed in this case shows that ($4,656,552) in general unsecured claims have been filed. This includes a $2,000,000 claim by Iraj Sahahi, Proof of Claim 7-1, a debt Debtor disputes on Amended Schedule E/F.

Under the proposed Settlement Debtor states having $350,000 in cash assets to pay the Settlement amount, after which Debtor will leave bankruptcy and her other creditors will be left to pursue whatever assets she has in excess of the apparently undisclosed $350,000 in cash.

At the hearing, **xxxxxxx**

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

~~Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement resolves the dispute and avoids litigation that would result in additional delay and expense to the estate. The Motion is granted.~~

~~The court shall issue an order substantially in the following form holding that:~~

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

~~The Motion to Approve Compromise filed by Leslie F. Jensen, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Leslie F. Jensen, L&L Investments, LLC, Michael J. Dyer, The Dyer~~

~~Law Firm, and Krista Osmers ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 172).~~

9. 20-90115-E-7 KRO-2 | **ALI MUTHANA** | **Gurjeet Rai** | **CONTINUED MOTION TO REVOKE DISCHARGE OF DEBTOR(S) 6-10-21 [47]**

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

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

Sufficient Notice Provided. No Certificate of Service was filed with the court.

At the hearing all parties in interest appeared, documenting that service had been made.

The Motion to Revoke Discharge of Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Revoke Discharge is xxxxx.

KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, a Professional Law Corporation, creditor with an unsecured claim in the amount of $81,393.27 ("Objector"), filed the instant Motion to Revoke Debtor's Discharge on June 11, 2021.

The instant case was filed under Chapter 7 on February 11, 2020. Debtor received a discharge on June 11, 2020. Dckt. 15. Objector argues that Ali Saeed Muthana ("Debtor") is not entitled to a discharge in the instant bankruptcy case for the following reasons:

1. the discharge was obtained through the fraud of the debtor and Kroloff did not know of such fraud until after the granting of such discharge, pursuant to U.S.C. § 727(d)(1); and

2. Debtor acquired property that is property of the estate or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition or entitlement to such property, or to deliver or surrender such property to the trustee, pursuant to 11 U.S.C. § 727(d)(2).

DISCUSSION

The revocation of a discharge is governed by 11 U.S.C. § 727(d), which Bankruptcy Code section provides in part,

> (d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—
>
> > (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
> >
> > (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee[.]

11 U.S.C. § 727(d). The standard for a determination of fraud that would allow for revocation of a discharge is a heightened standard. As explained in Collier on Bankruptcy,

> Section 727(d)(1) provides that, if the other requisites are present, the court may revoke the discharge if it "was obtained through the fraud of the debtor." This language requires, at a minimum, that the discharge would not have been granted but for the fraud alleged. The fraud required to be shown is fraud in fact, such as the intentional omission of assets from the debtor's schedules. The fraud required to be shown must involve intentional wrong, and does not include implied fraud or fraud in law, which may exist without the imputation of bad faith or immorality.6

6 Collier on Bankruptcy P 727.17 (16th 2021).

Here, partners at a law firm that represented the Debtor pre-petition, testify that they read, meaning "heard someone else say," that Debtor had won the lottery, that he won $5 million, and thus the money exists and must have gone somewhere. The witnesses do not testify that they have personal knowledge of such winnings, but only that they heard someone else say in newspaper articles, and then it being reference in a pleading filed in a state court action. [Fn.1.]

FN. 1. Federal Rules of Evidence 601 et seq., requiring that a witness have personal knowledge of the fact as to which that person testifies under penalty of perjury, and not merely knows that someone else states that they know.

Creditor argues that Debtor engaged in fraud because not only did Debtor did not disclose the lottery winning of $5 million four year prior to the filing but also Debtor must own additional liquid assets or other property purchased with those lottery winnings that were not disclosed in the bankruptcy petition.

First, what the Objector presents as evidence is hearsay. The information provided by creditors are details obtained from newspaper articles. With one exception, no evidence is presented by this sophisticated party, a law firm, that is anything other than the reference to newspapers where Objector had at its disposal the tools of Discovery.

The one exception is Exhibit E, a Motion *in Limine* filed by an attorney for Debtor in a state court action, in which the attorney for Debtor states:

> This has particular relevance to this action in that one cross-defendant ALI MUTHANA was fortunate enough to be the recipient of a portion of California Lottery winnings during the pendency of this action.

Exhibit E, Motion *in Limine*, p.2:8-9; Dckt. 49. This Motion has a filed date in the upper right hand corner of September 30, 2016. That is four years before Debtor commenced this Chapter 7 bankruptcy case.

Objector presents no evidence from the California Lottery as to what Debtor won or how much he received. Objector does not mention subpoenas for bank records of the Debtor, given that the check or checks would have to be deposited and the funds therefrom traceable. Objector themselves represent that in doing research as to whether other assets were held, Objector appears to have only come across the lottery prize. Objector does not allude to any other assets and it may be that there aren't any than those listed on Debtor's Schedules.

Debtor's Response

The court then has Debtor testifying that he had won "only $1,160.001.99" and not the $5 million as argued by the Objector. Debtor has presented the court with evidence that a net payment amount of $1,160,001.99 was paid to Debtor, Debtor made an additional tax payment of $100,000.00, and that the amount paid to Debtor was deposited at a Wells Fargo account. Declaration, Dckt. 54, see also Exhibits 1 and 2, Dckt. 53.

In essence, the basis of the Objection is that Debtor won some money five years before the bankruptcy case was filed, there obviously must be assets somewhere relating thereto that could be used to pay Debtor's creditors, and therefore the Debtor's discharge should be revoked on this supposition.

The court cannot revoke and then deny a debtor his discharge where what is presented is speculative based on newspapers with a simple reason that since Debtor won the lottery the money must be or must have gone somewhere. Actual evidence is required.

Creditor is sophisticated in the law. There are many tools available to conduct discovery, whether within the contested matter through the Federal Rules of Civil Procedure (Fed. R. Civ. P. 28-37, Fed. R. Bankr. P. 7028-7037, 9014(c)) or through Federal Rule of Bankruptcy Procedure 2004. Creditor has had these tools, obviously (as attorneys) are aware of these tools, and presumably used them to the extent possible to present evidence to carry Creditor's burden of proof.

In his Declaration, attorney Kerry Krueger, a shareholder of Creditor, testifies that he personally started representing the Debtor in 2016. Then, in 2019 represented Debtor in another matter. Mr. Krueger then testifies that when Debtor obtained his discharge (which was June 11, 2020), "I did not know that Debtor had recently won $5 million in the California Lottery . . . ." Declaration, ¶ 4; Dckt. 50. The winning is alleged to have occurred five years earlier, which may be "recent" in some respects, and five long, financially crushing years in others.

While admitting in the Declaration that he was aware, apparently in 2019, that Debtor had some lottery winnings, he assumed that they were only a couple thousand dollars. It was after subsequently learning that it was higher, he had a paralegal engage in on-line research to find articles about the winnings.

In the Motion, Creditor repeatedly makes reference to the news articles making reference to the Debtor splitting a $10,000,000 lottery winning, so therefore Debtor received $5,000,000. The copy of the Lottery payment to Debtor provided as Exhibit 1, Dckt. 53, includes the following information:

a. "LOTTERY TOTAL PRIZE AMOUNT.....$1,546,666.66"

b. "INITIAL GROSS PAYMENT AMOUNT....$1,546,666.66"

c. "INITIAL FEDERAL TAX WITHHELD.....$1,160,001.99"

(emphasis in original). Thus, the amount paid to Debtor, based on evidence presented, was $1,160,000.99. The court takes judicial notice, it commonly being known in the jurisdiction, that the large lottery prices are stated in the dollar amount of the total payments made over a 30 year period. The winner has the option to elect to take a present value discounted lump sum cash payment in place of the 30 year "annuity."

The California Lottery maintains its official State website at https://www.calottery.com/. At that webpage examples of the 30 year payout and the discounted cash value are provided, with examples including:

PowerBall $274,000,000 prize, with estimated cash value of $197,700,000 (28% discount)

SuperLotto Plus $9,000,000 prize, with estimated cash value of $6,400,000 (28.8% discount)

Mega Millions $265,000,000 prize, with estimated cash value of $185,600 (30% discount)

It would not be surprising to see a Lottery winner take the lump sum cash payment.

While theorizing that assets must exist and while contending that something else must be disclosed, at the end of the day, creditor merely presents the court with conjecture, speculation, hearsay, and circumstantial, "it has to be," evidence. Creditor has not provided the court with creditor, personal knowledge evidence of the winnings, has not presented the court with bank records, has not presented with Lottery records, and not presented the court with evidence of there being Lottery winnings hidden away by the Debtor five years after the Debtor won the money.

On Schedule I, Debtor lists his employment as that of a cashier, and having been that for the six years preceding the bankruptcy filing, and as of the February 11, 2020 filing of the bankruptcy case, having gross monthly earnings of $3,000. Dckt. 1 at 29-30. After taxes and withholdings, Debtor states his take

home pay is $2,870.25. *Id*. On Schedule J, Debtor lists a spouse (for whom no income is shown) and two children, who were minors during the five years preceding the filing of the bankruptcy case. *Id*. at 31-32. The expenses listed on Schedule J, for which Debtor states his expenses exceed income by ($1,329.75) a month are meager for a family of two adults and two teenage sons.

On the Statement of Financial Affairs Debtor states having wages of $18,000 in 2019 and $16,500 in 2018. *Id*. at 38.

If Debtor had $1,000,000 in 2015 and "lived like a millionaire" while making cashier wages as shown on the Statement of Financial Affairs., for 2015, 2016, 2017, 2018, and 2019, the $1,000,000 would represent "only" $200,000 a year. Monthly, that breaks down to $16,666.66 a month. Large when compared to $3,000 or less a month as a cashier, but not never-ending deep money.

Looking at Schedules D and E/F, Debtor doesn't have much in claims, other than Creditor for the legal fees and ($625,000) for being on the wrong end of a judgment. *Id*. at 19-24. That judgment creditor, identified as Maiyesa Basidiq, who is identified as the defendant in a San Joaquin County Superior Court Action, a 2014 case. Creditor's attorneys were brought into that case in 2019 to represent Debtor when his prior counsel passed away for the trial and post-trial motions.

August 19, 2021 Hearing

At the hearing, counsel for the Trustee reported that the Trustee is actively investigating the lottery winning proceeds and the transfer of such monies by the Debtor. Counsel for Objecting Creditor discussed with the court the need to proceed with discovery and the diligent prosecution of this Motion.

In light of the ongoing investigation by the Chapter 7 Trustee and the issues raised, the court continues the hearing to allow for the diligent prosecution of this Motion. [Fn.2.]

FN. 2. Though not currently shown by Creditor, if Debtor has hidden lottery winnings, the Chapter 7 Trustee and others using the discovery tools available should be able to ferret out where such monies are. And if so, revocation of the Debtor's discharge would be the least of Debtor's worries, and he would then likely need to engage the service of defense counsel as this matter would be elevated to the United States District Court and the United States Attorney.

October 13, 2021 Trustee Status Report

The Trustee filed a Discovery Update Status Report on October 13, 2021, Dckt. 59. The report states the Trustee obtained an order under Rule 2004 authorizing a subpoena for documents to California Lottery. California Lottery responded and provided documents confirming Debtor won an award in September 2015 of $1,160,000.00 and was paid on November 17, 2015.

The Trustee obtained an order under Rule 2004 authorizing the examination of Ali Muthana and production of documents. Mr. Muthana produced bank statements and other documents. The bank statements showed Mr. Muthana deposited the winnings into a Wells Fargo Bank account, a portion was used to buy real property located at 2022 Whitefall Court, Ceres California. The remainder was withdrawn

in installments during the following 2-3 months, the Trustee is unable to trace the funds following withdrawal.

The Debtor testified he obtained a loan against the Whitefall Court property in May 2019 for approximately $237,000.00. The Trustee cannot trace the funds beyond these withdrawals. Further, Debtor transferred the Whitefall Court property during the Chapter 7 bankruptcy case for no consideration to his stepson, Bader A. Suwaid. The Debtor purportedly refinanced the existing loan on the property with a new loan form GNN Real Estate & Mortgage, Inc.

Additionally, Trustee has obtained orders authorizing the examination of Basma Muthana and three entities purportedly owned by Ms. Muthana. Trustee has been unable to serve Ms. Muthana because she has been reportedly out of the country per Debtor's testimony.

Lastly, Trustee commenced Adversary Proceeding No. 21-9008 against Mr. Suwaid and GNN Real Estate and Mortgage, Inc. on July 26, 2021, seeking to avoid the post-petition transfer of the Whitefall property. The court continued the status conference to December 2, 2021 to enable one of the Defendant's counsel to recover form COVID-19. No discovery has been conducted.

October 14, 2021 Creditor Status Report

The Unsecured Creditor, Kroloff, Blecher, Smart, Perry & Christopherson, a Professional Law Corporation, filed a Discovery Update Status Report on October 14, 2021, Dckt. 62. The Creditor states the prize awarded to the Debtor was less than previously thought by the Creditor, but still a significant sum. This was evidence through the 2004 documents California Lottery turned over.

Creditor has examined the Bank Statements the Debtor has turned over and are interested in the November and December 2015 bank statements. The Creditor indicates that large amount withdrawals were made by the Debtor in the month of December. Creditor indicates that the Debtor's bank account balance went form $1,160,000.00 on December 1, 2015 to $7,469.00 by December 28, 2015. When asked about this Debtor cannot remember what the money went to. He testified it went to purchasing a home and gambling.

Creditor and counsel for the Trustee have communicated regarding the Trustee attempting to obtain documents relating to the Debtor's daughter, Basma Muthana and the three entities purported to be owned by her. Creditor has learned Trustee is in the process of obtaining records from the bank for the Debtor's large withdrawals to determine if they were made via wire transfer, cash, or cashier's check. Trustee will also seek to obtain financial records form Ms. Muthana regarding her businesses and whether the withdrawals by Debtor have any relation to an ownership stake in said businesses.

The information the Creditor needs to prove their argument for the Motion to Revoke Discharge is the same information the Trustee is attempting to obtain. Creditor indicates it would be a waste of time and resources to subject the Debtor and Ms. Muthana to the same examinations under a separate Rule 2004 order. Further, Creditor would have the same challenges in serving Ms. Muthana as the Trustee.

Bank Statement Exhibits

The Trustee has provided a copy of a June 27, 2019 Wells Fargo Bank statement for Debtor's account. Dckt. 60. The transactions for that one month include:

Electronic Deposit, 5/29/2019.....$236,895

Withdrawal Made in A Branch/Store, 5/31/2019.....($20,000)
Withdrawal Made in A Branch/Store, 5/31/2019.....($20,030)
Withdrawal Made in A Branch/Store, 5/31/2019.....($50,000)
Withdrawal Made in A Branch/Store, 5/31/2019.....($56,000)
Withdrawal Made in A Branch/Store, 5/31/2019.....($90,090)

The Trustee's Status Report does not indicate the status of obtaining the documentation from Wells Fargo Bank of how the withdrawals were documented (cashier's check, money order, electronic transfer) and tracing of those funds. While stating that the Trustee is "unable to trace the funds," it does not indicate this withdrawal documentation and where checks or electronically transferred funds were negotiated. There is no indication in the Status Report that Wells Fargo Bank handed Debtor suitcases of cash for the $236,000 withdrawals made in one day.

Creditor has provided a copy of a December 28, 2015 Wells Fargo Bank Statement for Debtor and Bader A Kassim Suwaid. Dckt. 63. The beginning balance on December 1, 2015, is $1,160,763. For the month of December 2015, the withdrawals and deposits include:

12/9/2015 Edeposit.....$49,000
12/9/2015 Purchase Bank Check or Draft.....($44,173.87)
12/11/2015 Withdrawal Made in Branch/Store.....($ 8,000)
12/11/2015 Purchase Bank Check or Draft.....($104,506.29)
12/11/2015 Purchase Bank Check or Draft.....($747,824.04)
12/15/2015 Withdrawal Made in Branch/Store.....($ 10,000)
12/16/2015 Withdrawal Made in Branch/Store.....($ 17,500)
12/18/2015 Edeposit.....$ 4,000
12/21/2015 Purchase Bank Check or Draft.....($265,000)

The Creditor's Status Report does not indicate the status of obtaining the documentation from Wells Fargo Bank of how the withdrawals were documented (cashier's check, money order, electronic transfer) and tracing of those funds.

October 21, 2021 Hearing

At the hearing, XXXXXXXXXX

10. 20-90327-E-7 SSA-6 | **PHILIP/DALLIA ENGLE** | **CONTINUED CONDITIONAL OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**

Gurjeet Rai

Items 10 thru 11

8-25-21 [101]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is xxxxxxx.

REVIEW OF MOTION

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee") objects to Philip S. Engle and Dallia D. Engle's ("Debtor") claimed homestead exemption under California law because of recorded tax liens on Debtor's real property.

On Schedule C, Debtor claimed a $175,000.00 homestead exemption in the real property identified as 5119 Curtis Street, Salida, California 95363 pursuant to California Code of Civil Procedure Section 704.730(a)(3)(A). The California homestead exemption pursuant to that section allows a debtor to claim an exemption of $175,000.00 where the "judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead... a person 65 years of age or older."

Trustee does not contest the amount of Debtor's claimed exemptions. Instead, Trustee contends any homestead claim and ultimate distribution rights will be subordinate to the Trustee's rights and remedies pursuant to 11 U.S.C. § 724, as well as valid tax liens.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Pursuant to 11 U.S.C. § 522(c)(2), exempt property remains liable for debts secured by a lien that is not avoided or for which a notice of such things as a federal tax lien has been filed. The homestead exemption does not have precedence over the tax liens. 11 U.S.C. § 552(c)(2)(B). Trustee contends that the Debtor's homestead exemption claim should be allowed, but subordinated to the tax liens validly filed by the Franchise Tax Board (Claim 5-1) and Internal Revenue Service (Claim 7-2) pursuant to Trustee's rights of subordination under Bankruptcy Code Sections 724(a), 726, and 551.

11 U.S.C. § 724(a) provides that the "trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title."

In 11 U.S.C. § 726(a) Congress provides for the order of distribution in a Chapter 7 case, stating (emphasis added):

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
>
> (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—
>
> > (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or
> >
> > (B) the date on which the trustee commences final distribution under this section;
>
> (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—
>
> > (A) timely filed under section 501(a) of this title;
> >
> > (B) timely filed under section 501(b) or 501(c) of this title; or
> >
> > (C) tardily filed under section 501(a) of this title, if—
> >
> > > (I) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title [11 USCS § 501(a)]; and

> (ii) proof of such claim is filed in time to permit payment of such claim;
>
> (3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title [11 USCS § 501(a)] other than a claim of the kind specified in paragraph (2)(C) of this subsection;
>
> (4) **fourth, in payment of any allowed claim**, whether secured or unsecured, **for any fine, penalty**, or forfeiture, or for multiple, exemplary, or punitive damages, **arising before the earlier of the order for relief or the appointment of a trustee**, to the extent that such fine, penalty, forfeiture, or damages **are not compensation for actual pecuniary loss suffered by the holder of such claim**;
>
> (5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and
>
> (6) sixth, to the debtor.

The 11 U.S.C. § 726(a)(4) distribution includes claims for fines and penalties owed to the creditor.

When read together, Sections 724(a) and 726(a)(4) "establish a statutory basis to allow the trustee to avoid tax penalty liens of the IRS and Franchise Tax Board." *In re Bolden*, 327 B.R. 657, 663-664 (Bankr. C.D. Cal. 2005).

When a lien is avoided, it does not disappear but as provided in 11 U.S.C. § 551, "any transfer avoided under section...724(a) of this title...is preserved for the benefit of the estate." Therefore, after the avoiding the tax penalty liens under Section 724(a), the lien is preserved as a matter of federal Bankruptcy Law for the benefit of the estate. Accordingly, Trustee's right to avoid the tax liens and then enforce those liens Sections 724(a) and 726(a)(4) as senior to Debtor's homestead exemption in the unencumbered value of the property.

Debtor appears to argue that they should have been allowed to sell the property, not the Trustee, and then pay the tax liens so as to have the rights of the Trustee and Bankruptcy Estate forfeited. That Debtor would prefer to have monies applied to tax penalties in their own financial interest, to the prejudice of the bankruptcy estate and creditors, is not a surprise. However, such desire does not trump federal law as enacted by Congress.

The relief Debtor requests in the Opposition appears to actually be consistent with the law. Debtor asserts the right to a $175,000 homestead exemption. Opposition ¶ 7; Dckt. 109. Further that the recovery by the Bankruptcy Estate be limited to the amount of the subordinated tax claim. *Id*.

As a matter of California and Federal tax law, the Debtor's homestead exemption is not effective against such claims and liens.

> The homestead exemption does not have precedence over the tax liens. Generally, a debtor is not entitled to claim a homestead exemption on property that is subject to an IRS levy. Treas. Reg. on Proc. and Admin. § 301.6334-1(c); *United States v. Estes*, 450 F.2d 62, 65 (5th Cir. 1971); *Davenport v. United States*, 136 B.R. 125,

127-28 (Bankr. W.D. Ky. 1991) (a state-created homestead exemption is ineffective against a federal tax lien, but the proceeds of a sale of property are subject to a valid tax lien under § 522).

In re Bolden, 327 B.R. 657, 632-633 (Bankr. C.D. Cal. 2005).

Under California law the homestead exemption, whether automatic or recorded, does not preclude the recording of a lien against a debtor's homestead property and that lien being enforced senior in priority to the homestead exemption.

§ 7170. Attachment; Validity

(a) Except as provided in subdivisions (b) and (c), **a state tax lien attaches to all property and rights to property whether real or personal**, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state. A **state tax lien attaches to a dwelling notwithstanding the prior recording of a homestead declaration** (as defined in Section 704.910 of the Code of Civil Procedure).

October 21, 2021 Hearing

At the hearing, XXXXXXXXXX

11. 20-90327-E-7 PHILIP/DALLIA ENGLE
21-9007

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-22-21 [1]

MCGRANAHAN V. ENGLE ET AL

Plaintiff's Atty: Steven S. Altman
Defendant's Atty:
Gurjeet S. Rai [Philip Scott Engle; Dallia Desamito Engle]
Unknown [State of California-Franchise Tax Board]
Isaac M. Hoenig [United States of America-Internal Revenue Service]

Adv. Filed: 6/22/21
Answer: 7/20/21 [Philip Scott Engle; Dallia Desamito Engle]
Amd. Answer: 8/12/21 [Philip Scott Engle; Dallia Desamito Engle]
Answer: 8/26/21 [United States, Department of Justice]

Nature of Action:
Validity, priority or extent of lien or other interest in propety
Declaratory judgment

Notes:
Continued from 8/19/21

The Status Conference is xxxxxxx

AUGUST 19, 2021 STATUS CONFERENCE

On August 9, 2021, the Plaintiff-Trustee filed a Status Conference Statement. Dckt. 11. Plaintiff-Trustee advises the court that counsel for Defendant-Debtor advises Plaintiff-Trustee that the answer filed does not comply with the requirements set forth in Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, it not admitting or denying the allegations in the Complaint. Defendant-Debtor's Amended Answer was filed on August 12, 2021. Dckt. 13.

The Internal Revenue Service and the California Franchise Tax Board have not filed their answers, after having been granted extensions of time by Plaintiff-Trustee. The extension for the Internal Revenue Service is to August 26, 2021. Stipulation pursuant to L.B.R. 7012-1, Dckt. 10.

Plaintiff-Trustee advises the court that in light of not all named defendants having filed answers, it is too early for the court to set deadlines and other pre-trial dates at this time. The court concurs.

SUMMARY OF COMPLAINT

The Complaint filed by Michael D. McGranahan, the "Plaintiff-Trustee", Dckt. 1 , asserts claims to determine the extent, validity, and priority of a lien, and for payment of administrative expenses. The

Complaint alleges that in Defendant-Debtor Phillip and Dallia Engle's Chapter 7 bankruptcy case the court authorized the Plaintiff-Trustee to sell real property free and clear of liens and encumbrances, with such liens and encumbrances attaching to the proceeds of sale. The Plaintiff-Trustee is currently holding $327,404.47 in proceeds from that sale.

In the First Claim for Relief, the Plaintiff-Trustee seeks to avoid and preserve for the Bankruptcy Estate a lien of the Defendant Internal Revenue Service for a penalty of $37,383.24, plus interest, that encumbers the proceeds of the sale. It is further asserted that the avoided and preserved lien is senior in priority to any claim of exemption in the Property by Defendant-Debtor.

In the Second Claim for Relief, the Plaintiff-Trustee seeks the same form of relief against the Defendant California Franchise Tax Board and Defendant-Debtor for a $6,636.11, plus interest, tax penalty for which a lien is asserted to encumber the sales proceeds.

In the Third Claim for Relief, Plaintiff-Trustee requests a "declaration" that Plaintiff-Trustee and his counsel are entitled to slightly less than $50,000 in fees and costs for the "preservation and disposition" of the Property. It is asserted that all of the Defendants dispute Plaintiff-Trustee and his counsel's right to be paid from the sale proceeds. For this Third Claim, the statutory grounds are stated to be 11 U.S.C. §§ 506, 724, 736.

REVIEW OF ANSWERS

Defendant-Debtor filed an Answer on July 20, 2021. Dckt. 8. The Answer does not admit and deny the allegation in the Complaint. It merely states that Defendant-Debtors may claim a homestead exemption and they are entitled to an accounting.

Defendant Internal Revenue Service has filed an Answer admitting and denying specific allegations in the Complaint. Dckt. 17. This defendant asserts that 28 U.S.C. § 2201 does not provide for jurisdiction in the bankruptcy court for actions involving Federal taxes.

Defendant California Franchise Tax Board filed its Answer on October 14, 2021. Dckt. 24. The Answer admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Michael D. McGranahan alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),(B), (K), (O). Complaint ¶¶ 1, 2, Dckt. 1

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. Plaintiff Michael D. McGranahan alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),(B), (K), (O). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant xx admit the allegations of

jurisdiction and that this is a core proceeding. Answer ¶¶ xx, xx, xx; Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **xxxxxxx, 2021**.

c. Expert Witnesses shall be disclosed on or before **xxxxxxx , 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2021**.

d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2021**.

e. Dispositive Motions shall be heard before **xxxxxxx, 2021**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxxx , 2021.**

12. 18-90029-E-11 FWP-13 **JEFFERY ARAMBEL** **Pro Se** **CONTINUED MOTION TO ABANDON 4-8-21 [1410]**

Items 12 thru 13

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Abandon is xxxxx.

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are

burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, XXXXXXXXXX

13. 18-90029-E-11 FWP-18 JEFFERY ARAMBEL Pro Se

CONTINUED MOTION TO ABANDON 8-26-21 [1513]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Abandon is xxxxx.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon 100% membership interest in JEA2, LLC ("Property"). The Property is encumbered by the liens of Summit, securing claims in the aggregate of $43,652,766.22. The Declaration of Juanita Schwartzkopf has been filed in support of the Motion and provides testimony that there is no realizable equity in the Property.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to abandon the Property.

October 21, 2021 Hearing

At the hearing, XXXXXXXXXX

14. 10-90281-E-7 21-9005 LORRAINE/GARY ERWIN

MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-9-21 [23]

Items 14 thru 15

ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor, Plaintiff-Debtor's Bankruptcy Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by the Federal Rules of Civil Procedure 55(b) incorporated into the Federal Rules of Bankruptcy Procedure 7055. Federal Rules of Civil Procedure 55(b) requires notice at least 7 days before the hearing *if* the party against whom default judgment is sought has appeared personally or by a representative. Here, Defendant has failed to appear personally. Therefore, notice is not required for the entry of default judgment.

The Motion for Entry of Default Judgment is denied without prejudice.

Lorraine Dennise Erwin and Gary Richard Erwin ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on September 9, 2021. Dckt. 23. Plaintiff-Debtor seeks an entry of default judgment against U.S. BANK, N.A. ("Defendant") in the instant Adversary Proceeding No. 21-09005.

The instant Adversary Proceeding was commenced on May 24, 2021. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 24, 2021. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 13.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant U.S. BANK NA and pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on August 13, 2021. Dckt. 18.

REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint for injunctive relief against Defendant. Dckt. 1. The Complaint contains the following general allegations as summarized by the court:

A. Plaintiff-Debtor Lorraine Dennise Erwin and Gary Richard Erwin are joint legal owners of subject property: 1320 Oak Leaf Cir. Oakdale, CA 95361 ("The Property"). *Id.* at ¶ 1, 2.

B. Plaintiff purchased the Property and obtained fee simple title by a grant dated October 27, 2004. *Id.* at ¶ 12.

C. One of the purchase money mortgages held by Defendants U.S. Bank N.A. and U.S. Bancorp, serviced formerly by Defendant Saxon, is a second mortgage to Plaintiff-Debtor to secure the Property. *Id.* at ¶ 13.

D. The obligation is evidenced by a Note and secured by Deed of Trust. *Id.*

E. The Deed of Trust exists on official records of the government as a recorded lien (the Lien) and cloud of title on the Property. *Id.*

F. The Lien presents a current and permanent cloud of title, reducing the value and utility of the Property. *Id.* at ¶ 14.

G. Plaintiff-Debtor's filed a Chapter 13 bankruptcy on January 28, 2010. *Id.* at ¶ 16.

H. Defendant Saxon filed a Proof of Claim on behalf of U.S. Bank N.A. as their registered agent and servicer. *Id.*

I. The Chapter 13 filing was converted to a Chapter 7 case and the debtor was discharged. *Id.*

J. Plaintiff-Debtor received a personal injury settlement to which the court re-opened the bankruptcy proceeding to disburse the new assets to creditors. *Id.*

K. Defendants U.S. Bank N.A. and U.S. Bancorp cannot locate the corporate records and accounts relating to the Property and Lien. *Id.* at ¶ 20.

L. Defendant Saxon went out of business, so communication with them has also been unsuccessful. *Id.* at ¶ 19.

First Claim for Relief - Quiet Title

Plaintiff-Debtor alleges the following for the First Cause of Action:

A. Cause of Action for Quiet Title - Plaintiffs seek quiet title by adverse possession regarding the Lien on the Property as of the date of filing the complaint.

Prayer

Plaintiff-Debtor requests the following relief in the Complaint's prayer:

A. Plaintiff-Debtor's title in and to the Property be quieted, Plaintiff-Debtors are the owners in fee simple, Defendants have no interest in the property adverse to the Plaintiff-Debtors, including the Lien.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion."

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

DISCUSSION

The Motion/Points and Authorities/Affidavit running 13 pages in length [Fn.1.] provides extensive discussion on the law relating to entry of default judgments but little on adverse possession as it applies to a lien or the legal right of a person to have a deed of trust for a lien they obtained stripped from the property because they cannot identify the current owner of the obligation.

FN. 1. In addition to the substantive law concerns, Plaintiff does not comply with the Local Bankruptcy Rules requiring that the motion, points and authorities, declaration, exhibits must be filed as separate documents. L.B.R. 9004-2, 9014-1(d).

Possible Deficient Service of Supoena

Attached to the Complaint is a Summons issued by Jeffrey P. Allsteadt, Clerk of the Bankruptcy Court. Mr. Allsteadt is the Clerk of the Bankruptcy Court for the Northern District of Illinois. https://www.ilnb.uscourts.gov/. The Certificates of Service, Dckts. 6-7, state that "service of this summons" was made by the person signing the Certificate. No copy is attached and it is not clear which Summons, the Norther District of Illinois or the Eastern District of California was served.

Well Pleaded Facts in Complaint

As summarized above, Plaintiff-Debtor purchased the property that is encumbered by the Deed of Trust. Plaintiff-Debtor purchased the property with the obligation secured by the Deed of Trust at issue, with the money obtained through the loan secured by the Deed of Trust.

Without regard to the validity of the Deed of Trust, Plaintiff-Debtor disputes the Deed of Trust because it encumbers his Property to secure the loan Plaintiff-Debtor obtained to purchase the Property.

Plaintiff-Debtor has attempted to locate the owner of the obligation to pay the debt secured by the Deed of Trust, but has been unable to find anyone to take his money.

Plaintiff-Debtor asserts that the court should "quiet title" based on adverse possession of the Property owned by Plaintiff-Debtor.

What these well pleaded facts appear to state is that Plaintiff-Debtor admits he owes the obligation secured by the Deed of Trust, but is unable to pay the undisputed obligation because there is no one to take his money.

Adverse Possession Claim for Relief

The first, and only, cause of action is to seek quiet title through adverse possession. Dckt. 1 at ¶ 23. Both the complaint and the motion, however, fail to present any law on adverse possession.

In 12 Witkin Summary 11th Real Property § 233, the elements that must be met in order for a Plaintiff to obtain title through adverse possession are reviewed, which discussion includes occupying the property in an averse and hostile manner to other persons who may assert right to possession of the property. The lien interests at issue are not possessory interest that conflict with Plaintiff-Debtor, the undisputed owner of the Property, being in possession.

Over the years the California courts have addressed assertions that the Doctrine of Adverse Possession may be used to remove a lien from real property. The California Supreme Court addressed this issue in 1954 in *Laubish v. Roberdo*, 43 Cal.2d 703, 706 (1954), stating (emphasis added):

> In at least two respects Mrs. Cowan failed to establish title by adverse possession. To be considered hostile, the acts relied upon must operate as an invasion of the right of the party against whom they are asserted. (*City of San Diego v. Cuyamaca Water Co.*, 209 Cal. 105, 133 [287 P. 475].) The situation here is analogous to a mortgagor-mortgagee relationship. **A mortgagor or his grantee in possession of mortgaged property** may not set up the statute of limitations against the mortgagee; the possession of the mortgagor **is presumed to be amicable and in subordination to the mortgage**. (*Comstock v. Finn*, 13 Cal.App.2d 151, 157; *Baumgarten v. Mitchell*, 10 Cal.App. 48, 51.)

Recently the District Court of Appeal addressed this issue in Bailey v. Citibank, N.A., 66 Cal. App. 5th 335, 352 - 357 (2021). The Court of Appeal's statement of California law relating to adverse possession and liens includes the following (emphasis added):

> At its most basic level, **the doctrine of adverse possession relates to possessory estates, i.e., it involves possession of property hostile to the corresponding rights of the true owner.** (*Gilardi v. Hallam, supra*, 30 Cal.3d 317, 321; *Sorensen v. Costa, supra*, 32 Cal.2d 453, 460 [statute accrues when owner deprived of possession]; *see Unger v. Mooney* (1883) 63 Cal. 586, 590.) Here, however, **Citibank's interest** in the property until it obtained fee title under the 2018 trustee's deed **was not that of an owner with a right of possession, but merely that of a trust deed beneficiary**. **Therefore**, under the particular facts of this case, prior to Citibank gaining possessory rights at the time of the foreclosure sale and delivery of the trustee's deed in 2018, **plaintiffs' occupation of the property was not hostile to Citibank's**

rights as a secured lienholder, and therefore the five-year statute was not running against Citibank under the undisputed facts of this case.

In our discussion of these principles, an elaboration of the nature of the interest held by a trust deed beneficiary, i.e., Citibank's interest prior to foreclosure, is helpful. "'[**D]eeds of trust, except for the passage of title [to the trustee] for the purpose of the trust, are practically and substantially only mortgages with a power of sale … .**'" *(Monterey S.P. Partnership v. W. L. Bangham, Inc.* (1989) 49 Cal.3d 454, 460 [261 Cal. Rptr. 587, 777 P.2d 623].)"**In practical effect**, if not in legal parlance, **a deed of trust is a lien on the property**." (*Ibid.*) It conveys title to the trustee only so far as may be necessary to the execution of the trust for purposes of security. (*Ibid*.) Thus, "[t]he right to possession does not pass to the trustee or the beneficiary under a trust deed in the absence of a special agreement." (*Snyder v. Western Loan & Bldg. Co.* (1934) 1 Cal.2d 697, 701 [37 P.2d 86].) **To summarize, a deed of trust carries none of the incidents of ownership of the property**, other than the trustee's right to convey upon default, and in the absence of a special agreement **conveys no right of possession to the trustee or beneficiary**. (*Ibid.; MacLeod v. Moran* (1908) 153 Cal. 97, 99; *Zolezzi v. Michelis* (1948) 86 Cal.App.2d 827, 830.) Because of their similarities, deeds of trust and mortgages are generally treated as analogous under the law. (*See, e.g., Monterey S.P. Partnership v. W. L. Bangham, Inc., supra*, 49 Cal.3d at pp. 460–461; *Snyder v. Western Loan & Bldg. Co., supra*, 1 Cal.2d at pp. 701–702.) "[T]he substantial rights of the parties should not be altered because of the more or less accidental form which the security takes." (Wilson v. McLaughlin (1937) 20 Cal.App.2d 608, 611 [67 P.2d 710] (Wilson).) **For these reasons, in the context of adverse possession law it is appropriate to apply the cases discussing the status of mortgagees to that of the situation here of a trust deed beneficiary.**

For purposes of a claim of adverse possession, "**[t]o be considered hostile, the acts relied upon must operate as an invasion of the right of the party against whom they are asserted**." (*Laubisch v. Roberdo, supra*, 43 Cal.2d 702, 706, citing *City of San Diego v. Cuyamaca Water Co.* (1930) 209 Cal. 105, 133 [287 P. 475].) Because, as here, **a trust deed beneficiary does not have a right of possession**, but stands in substance as a lienholder, **the occupation of the property by a person seeking to acquire title by adverse possession would not be considered hostile to the trust deed beneficiary whose rights under the preexisting trust deed would be unaffected.** (*See Comstock v. Finn* (1936) 13 Cal.App.2d 151, 156–158 [applying this principle in context of a mortgagee].) . . .

Comstock v. Finn, supra, 13 Cal.App.2d 151 (*Comstock*) further exemplifies the application of these principles. . . . In affirming the judgment [denying relief pursuant to adverse possession against a mortgagee], Comstock relied on two distinct rationales. The first was **the general rule that the possession of property by a mortgagor or his or her assignees "'cannot be adverse'" to the mortgagee** unless or until the possessor's conduct has invaded the mortgagee's rights under the mortgage. (*Id.* at p. 156.) Based on this rule, *Comstock* held the trial court had reasonably concluded that the **possession of the property, although open and notorious, was not hostile to the rights of the mortgagee**. (*Id.* at p. 157.)

> The second rationale relied on by *Comstock* was based on the recognition that a mortgagee ordinarily does not have a right of possession. (*Comstock, supra,* 13 Cal.App.2d at pp. 156–157.) *Comstock* explained the significance of this fact at length: "A further reason appears why the judgment must be affirmed. **In California a mortgage does not give the mortgagee right of possession of the mortgaged premises** in the absence of a special agreement to that effect. . . .
> . . .
> Based on the entire analysis presented in Comstock, the principle that emerges is that **where a mortgage was recorded prior to the start of the period of alleged adverse possession, the possession of the land will not be deemed hostile or adverse to the rights of the mortgage holder or to a successor thereof**, until such time as a right to possession of the property is acquired under the mortgage through foreclosure and delivery of the trustee's deed. *(Comstock, supra*, 13 Cal.App.2d at pp. 155–158; *see Harvey v. Nurick* (1968) 268 Cal.App.2d 213, 215 [since a mortgage does not give the mortgagee the right of possession in the absence of a special agreement, the adverse possession statute does not begin to run in the possessor's favor "until foreclosure and … the delivery of the trustee's deed"].) *Comstock* also made the following important clarification of the case law: "There are cases holding that a person in possession may gain title by adverse possession, against a mortgagee, where the adverse possession antedated the mortgage. Those cases are not controlling here, as in the instant case the asserted adverse possession started, if at all, subsequent to the date and recordation of the mortgage." (Comstock, supra, 13 Cal.App.2d at p. 158.)

Though not presented by Plaintiff-Debtor, it appears that well established California law provides that adverse possession is not a Doctrine that can be applied to a deed of trust beneficiary or mortgagee prior to that beneficiary or mortgagee having the right to be in possession of the property. [Fn.1.]

FN. 1. As required by the principles enunciated in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, FN. 15 (2010), while a federal judge is dependent on the parties to present the evidence from which factual determinations are to be made, the federal judge should correctly state and apply the law, even if such law is not presented or the requested relief is not opposed:

> In other contexts, we have held that courts have the discretion, but not the obligation, to raise on their own initiative certain nonjurisdictional barriers to suit. *See Day v. McDonough*, 547 U.S. 198, 202, 209, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006) (statute of limitations); *Granberry v. Greer*, 481 U.S. 129, 134, 107 S. Ct. 1671, 95 L. Ed. 2d 119 (1987) (*habeas corpus* petitioner's exhaustion of state remedies). Section 1325(a) does more than codify this principle; it requires bankruptcy courts to address and correct a defect in a debtor's proposed plan even if no creditor raises the issue.

Lost Note

Additionally, the Plaintiff-Debtor suggests that a valid Note secured by a Deed of Trust, existing on official government records, and properly recorded, can become invalid simply due to the holder not

being able to locate the Note. A question then exists as to whether an individual can clear debt because a note is "lost." The Plaintiff-Debtor has again failed to provide any grounds to support such a conclusion. The court declines to conduct legal research on Plaintiff-Debtor's behalf to support their arguments.

Further, in the Complaint no claim is asserted seeking relief based on a "Lost Note."

Movant has not provided any legal grounds for relief requested in the Complaint.

The Motion is denied without prejudice.

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

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

The Motion for Entry of Default Judgment filed by Lorraine Dennise Erwin and Gary Richard Erwin ("Plaintiff-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is denied without prejudice.

15. 10-90281-E-7 LORRAINE/GARY ERWIN
21-9005

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-24-21 [1]

ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL

Plaintiff's Atty: Darren Marcus Salvin
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 9/30/21 to be conducted in conjunction with the hearing on the Motion for Entry of Default Judgment.

The Status Conference is xxxxxxx

OCTOBER 21, 2021 STATUS CONFERENCE

At the October 21, 2021 Status Conference, counsel for plaintiff xxxxxxx

16. 21-90385-E-7 ISMAEL RAMIREZ ZAVALA AND NORA OSORTO
Travis Poteat

MOTION TO COMPEL ABANDONMENT
9-16-21 [9]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Ismael Ramirez Zavala and Nora Fidelina Osorto ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as 2016 and 2013 Freightliners ("Property"). The Property is encumbered by the lien of Ascentium and Murphy Bank, securing a claim of $43,200.00 and $9,800.00. The Declaration of Ismael Ramirez Zavala and Nora Fidelina Osorto has been filed in support of the Motion and values the Estate's interest in the Property at $0.00.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court

determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Ismael Ramirez Zavala and Nora Fidelina Osorto ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 2016 and 2013 Freightliners and listed on Schedule [A / B] by Debtor is abandoned by the Chapter 7 Trustee, Gary Farrar ("Trustee") to Ismael Ramirez Zavala and Nora Fidelina Osorto by this order, with no further act of the Trustee required.

FINAL RULINGS

17. 21-90186-E-7 SSA-1 | **SARGON BEBLA** Steve Altman | **MOTION TO AVOID LIEN OF 4701 STODDARD LLC, 9-1-21 [55]**

Items 17 thru 19

Final Ruling: No appearance at the October 21, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2021. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of 4701 Stoddard LLC et al. ("Creditor") against property of the debtor, Sargon Bebla ("Debtor") commonly known as 7731 E. Keyes Rd., Hughson, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $71,871.87. Exhibit 1, Dckt. 59. An abstract of judgment was recorded with Stanislaus County on November 5, 2020, that encumbers the Property. *Id*.

In the Motion, Debtor lists the following liens against this property and order of priority:

7731 E. Keyes Rd., Hughson, California Value	$1,050,000.00

Wescon Central Deed of Trust Deed of Trust Recorded..... March 31, 2017	($527,359.66)
Homestead Exemption Schedule C, Dckt. 1	($360,000.00)
	==========
Value in Property for Junior Judgment Liens	$162,640.34
Judgment Liens	
Ascentium Capital, LLC Judgment Lien Recorded..... March 18, 2020	($665,917.59)
Fowler Brothers Abstract of Judgment Recorded.....July 21, 2020	($15,021.32)
Stoddard, LLC Judgement Lien Recorded.....November 5, 2020	($71,871.87)

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $1,050,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $527,359.66 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of $360,000.00 on Schedule C. Dckt. 1.

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

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sargon Bebla ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of 4701 Stoddard LLC et al., California Superior Court for Stanislaus County Case No. CV-18-004958, recorded on November 5, 2020, with the Stanislaus County Recorder, against the real property commonly known as 7731 E. Keyes Rd., Hughson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. 21-90186-E-7 SSA-2 | **SARGON BEBLA** / **Steve Altman** | **MOTION TO AVOID LIEN OF FOWLER BROTHERS FARMING INC., ET AL.** **9-9-21 [72]**

Final Ruling: No appearance at the October 21, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Fowler Brothers Farming, Inc., et al. ("Creditor") against property of the debtor, Sargon Bebla ("Debtor") commonly known as 7731 E. Keyes Rd., Hughson, California 95326 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,021.32. Exhibit 5, Dckt. 77. An abstract of judgment was recorded with Stanislaus County on July 21, 2020, that encumbers the Property. *Id.*

In the Motion, Debtor lists the following liens against this property and order of priority:

7731 E. Keyes Rd., Hughson, California Value	$1,050,000.00
Wescon Central Deed of Trust Deed of Trust Recorded..... March 31, 2017	($527,359.66)
Homestead Exemption Schedule C, Dckt. 1	($360,000.00)
	==========
Value in Property for Junior Judgment Liens	$162,640.34
Judgment Liens	
Ascentium Capital, LLC Judgment Lien Recorded..... March 18, 2020	($665,917.59)
Fowler Brothers Abstract of Judgment Recorded.....July 21, 2020	($15,021.32)
Stoddard, LLC Judgement Lien Recorded.....November 5, 2020	($71,871.87)

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $1,050,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $527,359.66 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of $360,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sargon Belba ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Fowler Brothers Farming, Inc., et al. , California Superior Court for Stanislaus County Case No. CV-19-003500, recorded on July 21, 2020, Document No. 2020-0051496-00, with the Stanislaus County Recorder, against the real property commonly known as 7731 E. Keyes Rd., Hughson, California 95326, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19. 21-90186-E-7 SSA-3 | **SARGON BEBLA** / **Steve Altman** | **MOTION TO AVOID LIEN OF ASCENTIUM CAPITAL, LLC** **9-29-21 [88]**

Final Ruling: No appearance at the October 21, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Ascentium Capital, LLC ("Creditor") against property of the debtor, Sargon Belba ("Debtor") commonly known as 7731 E. Keyes Rd., Hughson, California 95326 ("Property"). The Motion requests the lien be avoided for all amounts

in excess of $162,640.40 (which is the value of the property in excess of senior liens and Debtor's homestead exemption).

A judgment was entered against Debtor in favor of Creditor in the amount of $665,917.59. Exhibit 1, Dckt. 93. An abstract of judgment was recorded with Stanislaus County on March 9, 2020, that encumbers the Property. *Id*.

In the Motion, Debtor lists the following liens against this property and order of priority:

7731 E. Keyes Rd., Hughson, California Value	$1,050,000.00
Wescon Central Deed of Trust Deed of Trust Recorded..... March 31, 2017	($527,359.66)
Homestead Exemption Schedule C, Dckt. 1	($360,000.00)
	==========
Value in Property for Junior Judgment Liens [Fn.1.]	$162,640.34
Judgment Liens	
Ascentium Capital, LLC Judgment Lien Recorded..... March 18, 2020	($665,917.59)
Fowler Brothers Abstract of Judgment Recorded.....July 21, 2020	($15,021.32)
Stoddard, LLC Judgement Lien Recorded.....November 5, 2020	($71,871.87)

FN. 1. It appears that there may be a slight rounding difference between the $1,62,640.40 and the number as computed above. The court accepts Debtor's calculation in ruling on this Motion.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $1,050,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $665,917.59 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an

exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of $360,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only $162,640.40 in value in the Property to to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sargon Belba ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Ascentium Capital, LLC, California Superior Court for Stanislaus County Case No. CV-18-004958, recorded on March 18, 2020, Document No. 2020-0019356-00, with the Stanislaus County Recorder, against the real property commonly known as 7731 E. Keyes Rd., Hughson, California, 95326, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.