

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Michael Jay Berger (SBN 100291) Law Offices of Michael Jay Berger 9454 Wilshire Blvd., 6th Fl Beverly Hills, CA 90212 Tel.: (310) 271-6223 Fax: (310) 271-9805 Michael.berger@bankruptcypower.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Gina Marie Romeo</p>	<p>FOR COURT USE ONLY</p> <div data-bbox="1047 262 1432 535" style="border: 1px solid black; padding: 5px; text-align: center;"><p>FILED & ENTERED</p><p>OCT 12 2017</p><p>CLERK U.S. BANKRUPTCY COURT Central District of California BY tatum DEPUTY CLERK</p></div> <p style="color: red; text-align: right;">CHANGES MADE BY COURT</p>
<p><u>NOT FOR PUBLICATION</u></p> <p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION</p>	
<p>In re:</p> <p>GINA MARIE ROMEO</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 2:13-bk-14625-RK CHAPTER: 7</p>
	<p style="text-align: center;">ORDER <input type="checkbox"/> GRANTING <input checked="" type="checkbox"/> DENYING MOTION TO AVOID LIEN UNDER 11 U.S.C. § 522(f) (REAL PROPERTY)</p> <p><input checked="" type="checkbox"/> No hearing held <input type="checkbox"/> Hearing held Date: Time: Courtroom: Place:</p>
<p>Creditor Holding Lien to be Avoided (name): GILLIGAN LAW CORPORATION</p>	

The Motion was: ☐ Opposed ☒ Unopposed ☐ Settled by stipulation

Pursuant to 11 U.S.C. § 522(f), Debtor moved to avoid a judicial lien on real property claimed to be exempt. The court finds and orders as follows:

1. ☐ Notice of this Motion complied with LBR 9013-1(d).
2. ☒ Notice of this Motion complied with LBR 9013-1(o).
 - a. ☒ There was no opposition and request for hearing.
 - b. ☐ Hearing requested and held as indicated in the caption.

The real property to which this order applies is as follows:

a. Street address (*specify*): **1380 W. Capitol Dr., #318, San Pedro, California 90732**

Legal description (*specify*): **AN UNDIVIDED 1/73RD INTEREST IN LOT 1 OF TRACT NO. 31395, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1038 PAGES 23 AND 24 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY** ☐ See attached page

3. Recording information regarding lien to be avoided:

a. Date of recordation of lien (*specify*): **6/21/2011**.

b. Recorder's instrument number or map/book/page number (*specify*): **ND 056850**

4. ☐ Motion granted:

a. ☐ The judicial lien sought to be avoided impairs an exemption to which Debtor would otherwise be entitled under 11 U.S.C. § 522(d)

b. ☐ The judicial lien is void and unenforceable:

(1) ☐ In its entirety

(2) ☐ In the following amount *only*: \$ _____. The balance of \$ _____ remains a valid and enforceable lien against the property.

c. Unless otherwise ordered, any claim(s) that were secured by the avoided lien(s) are to be treated as general unsecured claim(s) and are to be paid pro-rata with all other unsecured claims.

6. ☒ Motion denied on the following grounds: ☐ with prejudice ☒ without prejudice

a. ☐ Insufficient notice

b. ☐ Insufficient evidence of the exempt status of the property in question

c. ☐ Failure to comply with FRBP 7004(b)(3) or FRBP 7004(h).

d. ☐ Insufficient evidence of fair market value.

e. ☐ Motion is incomplete.

f. ☒ Other (*specify*):

11 U.S.C. § 522(f)(1)(A) allows the avoidance of a judicial lien. The lien Debtor seeks to avoid appears to be both consensual and statutory. There is not enough evidence in the Motion to show the lien Debtor seeks to avoid is a judicial lien. Exhibit 5 to the Motion, Creditor's Notice of Lien, states that the lien was granted in favor of Gillian Law Corporation "... by contract, dated October 8, 2007. Said lien is specifically authorized under CCP§491.410(b) ...". Although a copy of the contract that Debtor had with Creditor is not attached to the Notice of Lien, it seems clear the lien on its face is based, in part, on a contract which would suggest the lien is also consensual and not judicial. In addition, under 11 U.S.C. § 101(53), a statutory lien arises "solely by force of a statute on specific circumstances or conditions . . . but does not include security interest or judicial liens . . .". Considering the lien Debtor seeks to avoid is a "specifically authorized under CCP§491.410(b)," the lien appears to be a statutory lien. Therefore, based on the evidence provided, Debtor

///

has not shown that this lien which appears to be consensual and statutory is an avoidable judicial lien under 11 U.S.C. § 522(f)(1)(A) (or alternatively, an avoidable nonpossessory, nonpurchase-money security interest in certain personal property within the meaning of 11 U.S.C. § 522(f)(1)(B), which alternative does not appear to be applicable here since the subject exempt property is real property). The court denies the Motion without prejudice to give Debtor an opportunity to file an amended motion with additional evidence in support of a claim that the lien is avoidable under 11 U.S.C. § 522(f)(1), but the court would expect that Debtor will provide legal points and authorities in support of such an amended motion since none were submitted with this motion in order to support an argument that a lien on its face appears to be statutory and consensual lien may be avoided under 11 U.S.C. § 522(f)(1).

7. ☐ The court further orders as follows (*specify*):

☐ See attached page

###

Date: October 12, 2017



Robert Kwan
United States Bankruptcy Judge