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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **LOS ANGELES DIVISION**

11 In re:

12 MARCELINO TORRES,

16 Debtor(s).

Case No.: 2:18-bk-20818-NB

CHAPTER 13

13 **AMENDED MEMORANDUM DECISION**  
14 **GRANTING IN PART, DENYING IN PART**  
15 **MOTION TO AVOID LIEN UNDER 11 U.S.C.**  
16 **§ 522(f)**

Hearing:

17 Date: March 21, 2019

18 Time: 8:30 a.m.

Courtroom: 1545

19  
20 At the above-captioned time and place, a hearing was held on the debtor's  
21 motion under 11 U.S.C. § 522(f) (the "Motion", dkt. 22) to avoid the lien held by JNC,  
22 Inc. ("JNC") that is secured by the debtor's principal residence located at 8612 Olney  
23 Street, Rosemead, California 91770 (the "Property"). By agreement of the parties at the  
24 above-captioned hearing, the matter was taken under submission for a final ruling  
25 based on the written record (dkt. 22, 26, 32, 43, 46) without oral testimony.

26 (1) Background. The key issue is whether or not (a) the aggregate dollar  
27 amount owed on all non-avoided liens on the Property (including JNC's lien), plus  
28 Debtor's exemption, exceeds (b) the value of the Property as of the relevant date. See

1 § 522(f)(2). The parties have not briefed what date is relevant but, as stated at previous  
2 hearings in this matter, this Court will use the date on which the bankruptcy petition was  
3 filed (the “Petition Date”), which was September 17, 2018. This Court does so by  
4 analogy to the reasoning set forth in a tentative decision in another case. *In re*  
5 *Gutierrez*, 503 B.R. 458 (Bankr. C.D. Cal. 2013) (applying petition date to “*Lam*” motion  
6 under § 506).

7 (2) Senior Liens and Homestead Exemption. There is no remaining dispute  
8 that the debt on the first deed of trust as of the Petition Date was \$372,474.09. Nor is  
9 there any remaining dispute that Debtor’s homestead exemption is \$100,000. So JNC’s  
10 lien only survives to the extent the value of the Property exceeds the sum of those two  
11 numbers – *i.e.*, to the extent the value as of the Petition Date exceeds **\$472,474.09**.

12 (3) Competing Appraisals. The debtor’s appraisal values the Property at  
13 **\$465,000** as of 9 days after the Petition Date (September 26, 2018) (dkt. 22 at PDF p. 7  
14 & Ex. 7). JNC’s appraisal values the Property at **\$520,000** as of the same date (dkt.  
15 43-1). Both appraisals, as usual, rely on sales or listings of properties that they assert  
16 are comparable (“Comps”), and adjust the prices of those Comps to arrive at a value for  
17 the Property. JNC’s appraisal uses six Comps, of which ## 1, 3 and 5 are the same as  
18 Debtor’s ## 4, 1 and 3, respectively. The following discussion compares the two  
19 appraisals based on considerations that commonly have the most impact.

20 (4) Proximity and Precise Location of Comps. This is a significant factor.  
21 Although all of the parties’ Comps are fairly close to the Property, the subject property is  
22 particularly close to the Interstate 10 freeway. Debtor adjusts his Comp #3 (JNC’s  
23 Comp #1) by -\$20,000 because that Comp is not next to a freeway. JNC makes only  
24 a -\$10,000 adjustment. Based on the parties’ maps and pictures, Debtor’s adjustment  
25 is more persuasive. Likewise, JNC makes no adjustment for its Comp ## 2 and 3 not  
26 being near a freeway, based on its description of the locations as “Traffic Street” and  
27 “Sides Traffic Street,” but based on the maps and photographs this Court finds that the  
28 location of JNC’s Comp ## 2 and 3 both warrant a -\$20,000 adjustment. This

1 consideration weighs in favor of Debtor's appraisal.

2 (5) Condition of the Comps relative to the Property. The condition of Comps  
3 can be difficult to determine without a physical inspection, and the condition of any  
4 property is somewhat subjective and difficult to quantify, but on the present record the  
5 following observations apply to the relative conditions of the Comps and the Property.  
6 Debtor's appraisal makes an across-the-board \$50,000 adjustment based on Debtor's  
7 estimate of numerous allegedly necessary repairs or upgrades. That adjustment was  
8 backed up, later on, by a contractor's estimate dated November 16, 2018 (after Debtor's  
9 appraisal was done). See dkt. 32, Ex. B. The contractor's estimate states that it is "for  
10 an Electrical Upgrade [e.g., a new 200 Amp service panel and new romex wiring], New  
11 Copper Water Lines, and New Concrete Driveway." *Id.* JNC's appraiser includes a  
12 detailed critique of this \$50,000 adjustment, based on his testing and analysis of the  
13 existing electrical and plumbing systems and his observation of the driveway, all backed  
14 up with photographs. See dkt. 43-2 at PDF p. 6 and dkt. 43-3 at PDF pp. 3-6. This  
15 Court is almost entirely unpersuaded by Debtor's \$50,000 adjustment. JNC's appraiser  
16 also notes that the subject Property "shows less than typical physical depreciation due  
17 to periodic updating and routine maintenance made throughout the years" and notes  
18 that the windows "are dual pane vinyl type and appear to have been installed within the  
19 past 12-15 years." Dkt. 43-2 at PDF p. 2. Again, this is backed up by photographs. In  
20 contrast, this Court is almost entirely persuaded by JNC's adjustments to some  
21 individual Comps (JNC's Comps ## 3 and 6) based on their "Average-Good" condition  
22 as compared with the Property's "Average" condition, and JNC's adjustment of -\$15,000  
23 for "Upgrades" (for JNC's Comp #3/Debtor's Comp #1). Debtor's appraiser critiques  
24 that adjustment as not being large enough (dkt. 46, p. 4:20-28) and based on the details  
25 that she provides this Court is somewhat persuaded. Balancing these various matters,  
26 this consideration (condition of the Comps relative to the subject Property) weighs very  
27 substantially but not entirely in favor of JNC's appraisal.

28 (6) Adjustments for Bed and Bath Counts and Interior Square Footage.

1 Appraisals traditionally adjust Comps for bed and bath counts, or square footage, or  
2 some combination of those things, and any one of those methods is acceptable.  
3 Debtor's adjustments are slightly larger than JNC's, and in this Court's view slightly  
4 more persuasive.

5 (7) Sale Date of Comps. This can be a significant consideration in some  
6 situations. Sale dates close to the valuation date generally are preferable (in a market  
7 that may be rising or falling). JNC's appraisal includes graphs showing a broad trend  
8 slightly upward in the greater geographic area during the time when the Comps' sales  
9 closed, and some volatility within the zip code or city limits. See JNC's Appraisal, Ex. 4  
10 (dkt. 43-3 at PDF p.3). But both appraisers use Comps fairly close to the Petition date –  
11 from 0 to 5 months before – with no adjustment for these dates. This factor does not  
12 appear to be a significant distinction between the appraisals in this case.

13 (8) Sale Type of Comps. Actual sales are superior to listings, and arms-  
14 length non-distressed sales are preferable to the alternatives, such as "short" sales.  
15 Again, this does not appear to be a significant factor in this case.

16 (9) Appraiser's Experience/ Credibility. Both appraisers appear to have  
17 substantial experience and their analysis appears to be careful (e.g., including  
18 disclaimers for areas as to which they lack expertise). There was no live testimony from  
19 which to judge credibility. JNC's appraiser admits that his Comp #2 "appears to be an  
20 above market sale" (dkt. 43-2 at PDF p. 9) and therefore is given less weight, which  
21 helps his credibility; but, as Debtor's appraiser points out, JNC's appraiser has not  
22 adequately addressed why his opinion of value increased as much as it did from his  
23 earlier "drive by" appraisal. As for Debtor's appraiser, her reliance on Debtor's "cost to  
24 cure" is not very credible, but that reliance appears to be subject to her general  
25 disclaimers as to the limits of her expertise, so that does not count much against her.  
26 On balance, this does not appear to be a significant consideration.


27 (10) Valuation Decision. Taking into consideration all of the record presented,  
28 and in particular the matters noted above, I find that as of the relevant date the Property

1 had a value of **\$498,000**.

2 (11) Conclusion. Based on the foregoing findings of fact and conclusions of  
3 law, JNC's lien, in the amount of \$63,514.18 (dkt. 26, p. 6:13), is reduced to \$25,525.91  
4 (\$498,000 - \$472,474.09 = \$25,525.91) and the excess is avoided. Pursuant to LBR  
5 9021-1(b)(1)(B), Debtor is directed within 7 days to serve and lodge via LOU a  
6 proposed order granting in part and denying in part Debtor's Motion "for the reasons  
7 stated" in this Memorandum Decision.

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24 Date: April 18, 2019

  
Neil W. Bason  
United States Bankruptcy Judge