

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, January 11, 2023  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION  
[WJH-10](#)

CONTINUED OBJECTION TO CLAIM OF VOX FUNDING, LLC, CLAIM NUMBER 23  
6-9-2022 [[130](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

2. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION  
[WJH-15](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH VOX FUNDING, LLC  
12-9-2022 [[324](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

KR Citrus, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor in possession, moves the court for an order, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of disputes between Debtor and Vox Funding, LLC ("Vox"). Doc. #324.

Debtor objected to the claim filed by Vox based on Vox's contention that Vox owns accounts generated by Debtor. Declaration of James Reed, Doc. #326.

On a motion by the debtor in possession and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of 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 with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #324. There is a proposed settlement for Vox to have an allowed general unsecured claim of \$268,000. Doc. #324. The allowed claim is included in Class 5 of the pending chapter 11 plan, and of the payments proposed for Class 5, no less than \$15,385 per quarter will be paid to Vox beginning March 31, 2023 and quarterly thereafter. Id. Vox will vote to accept the revised plan that will be filed by Debtor. Id. Vox's collection suit pending in New York will be stayed pending completion of payments to Vox. Id. The class action suit filed in New York by Debtor's shareholder will be dismissed with prejudice. Id. Default in payment to Vox may give rise to resumption of the collection lawsuit against Debtor's shareholders. Id. There will be mutual releases between Debtor and Vox. Id. There is an incentive for early payment to Vox. Id. The settlement is fair, reasonable, and obtains an economically advantageous result. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between DIP and Vox is approved. DIP is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

3. [22-11226](#)-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**  
[FW-7](#)

MOTION TO EMPLOY WILKINS DROLSHAGEN & CZESHINSKI, LLP AS ATTORNEY(S)  
12-13-2022 [[82](#)]

ALVARENGA TRANSPORT, LLC/MV  
PETER FEAR/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit an order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the

U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the certificates of service filed in connection with this motion (Doc. ##86, 87) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, New 09/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##86, 87. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors and parties in interest, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Trustee, U.S. Trustee, Persons who have filed a Request for Notice, and Other Party(ies) in interest, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #87 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

Debtor in possession Alvarenga Transport LLC ("Debtor" or "DIP") moves pursuant to 11 U.S.C. § 327(c) for authorization to employ Wilkins Drolshagen & Czeshinski, LLP ("Defense Counsel") to serve as defense counsel in connection with a trucking accident lawsuit filed against Debtor and Debtor's principal, Jose Alvarenga ("Accident Claim"). Doc. #82.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

On behalf of Debtor, Debtor's principal Jose Alvarenga selected Defense Counsel because of Defense Counsel's experience and expertise in matters involving insurance coverage, trucking matters, and the continuity of its extant representation. Declaration of Jose Alvarenga, Doc. #85. Further, DIP believes Defense Counsel's employment is necessary to the administration of this

bankruptcy case and in the best interest of Debtor. Alvarenga Decl., Doc. #85. DIP proposes to pay Defense Counsel from funds of the DIP. Doc. #82; Alvarenga Decl., Doc. #85.

Defense Counsel has verified that Defense Counsel has no connection with Debtor, its creditors, attorneys, accountants, any other party in interest, or the United States Trustee, except for Defense Counsel's previous representation of Debtor and Jose Alvarenga, Debtor's principal, in the Accident Claim and Defense Counsel's continued representation of Debtor's principal, Jose Alvarenga, in the Accident Claim. Declaration of James Wilkins, Doc. #84. Defense Counsel believes it is a disinterested person as defined in 11 U.S.C. § 101(14). Wilkins Decl., Doc. #84.

Section 327(c) further provides that a professional is not disqualified for employment under 11 U.S.C. § 327 "solely because of such [professional's] employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c). Here, Debtor has noticed this motion to the United States trustee, all creditors and other parties in interest. Doc. ##86, 87. Neither the United States trustee nor any creditor has objected to Debtor's employment of Defense Counsel.

After review of the evidence, the court finds that Defense Counsel does not represent or hold an adverse interest to Debtor or to the estate with respect to the matter on which Defense Counsel is to be employed.

Accordingly, DIP's motion to employ Defense Counsel in connection with the Accident Claim pursuant to 11 U.S.C. § 327(c) is GRANTED. The order authorizing employment of Defense Counsel shall specify that any compensation or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

4. [22-11541](#)-A-11      **IN RE: STRATEGIC INNOVATIONS LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
9-1-2022    [\[1\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

5. [22-11541](#)-A-11     **IN RE: STRATEGIC INNOVATIONS LLC**  
[UST-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11  
TO CHAPTER 7  
12-7-2022    [[54](#)]

TRACY DAVIS/MV  
DAVID JOHNSTON/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.  
RESPONSIVE PLEADINGS

NO RULING.

6. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
5-8-2022    [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [22-11612](#)-A-7      **IN RE: JENNIFER TOLBERT**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
12-19-2022    [[18](#)]

NO RULING.

1. [21-11034](#)-A-7     **IN RE: ESPERANZA GONZALEZ**  
[JES-5](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
12-2-2022    [\[202\]](#)

JAMES SALVEN/MV  
D. GARDNER/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services through November 18, 2022. Doc. #202; Ex. A, Doc. #205. Movant provided accounting services valued at \$2,296.00, and requests compensation for that amount. Doc. #202. Movant requests reimbursement for expenses in the amount of \$212.69. Doc. #202. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) analyze cash receipts to determine tax year end; (3) input various tax return data to tax system; (4) process and finalize tax returns; and (5) prepare, file and serve fee application. Declaration of James E. Salven, Doc. #204; Ex. A, Doc. #205. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$2,296.00 and reimbursement for expenses in the amount of



\$212.69. Trustee is authorized to make a combined payment of \$2,508.69, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [18-14546](#)-A-7     **IN RE: LANE ANDERSON**  
[LNH-6](#)

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S)  
12-10-2022    [[126](#)]

SCOTT LYONS/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Lisa Noxon Holder, PC ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from January 22, 2019 through November 30, 2022. Doc. #126. Movant provided legal services valued at \$18,172.00, and requests compensation for the amount of \$14,537.60 based on a 20% discount from fees earned. Doc. #126. Movant requests reimbursement for expenses in the amount of \$1,062.60. Doc. #126. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) preparing motion to pay administrative taxes; (3) drafting and revising 9019 compromise motion resolving adversary proceeding; (4) preparing motion to sell West Sweet Court property; (5) preparing and revising motion to sell equity in Lemon Cove property; (6) drafting adversary proceeding complaint to avoid transfer of the

orange grove to John Frank Rodgers; and (7) preparing and filing first and final fee application. Declaration of Lisa Holder, Doc. #129; Ex. A, Doc. #130. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$14,537.60 and reimbursement for expenses in the amount of \$1,062.60. Trustee is authorized to make a combined payment of \$15,600.20 representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [22-11664](#)-A-7     **IN RE: ADARIAN BARR AND EVELYN ARREOLA**  
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-14-2022    [\[18\]](#)

NOBLE FEDERAL CREDIT UNION/MV  
SUSAN HEMB/ATTY. FOR DBT.  
SHERYL NOEL/ATTY. FOR MV.  
DISCHARGED 1/10/23

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted in part and denied as moot in part.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the movant failed to list the documents served in section 4 of the certificate of service form or include an appended list numbered Attachment 4 listing the documents served. Doc. #24. An amended proof of service that corrects the deficiency was filed on January 10, 2023. Doc. #26.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 10, 2023. Doc. #25. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Noble Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Jeep Cherokee Sport SUV 4D ("Vehicle"). Doc. #18.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,171.08. Doc. #23.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$16,000.00 and the debtors owe \$27,642.50. Decl. of Zach Filgas, Doc. #21.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

4. [22-11891](#)-A-7      **IN RE: DANIEL DIAZ**  
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-14-2022    [\[13\]](#)

BANK OF THE WEST/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
MARY TANG/ATTY. FOR MV.  
RESPONSIVE PLEADING

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the

relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #18. However, Federal Rules of Bankruptcy Procedure 4001(a)(1) and 9014 require service of a motion for relief from stay be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant properly checked Section 7 of the Certificate of Service form by checking Rule 7004 Service § 6A(1): First Class Mail in Section 7 of the Certificate of Service form. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

The movant, Bank of the West ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Kia Soul ("Vehicle"). Doc. #13. The debtor does not oppose the motion. Doc. #20.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least six complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,981.82. Doc. ##13, 17.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$13,101.00 and the debtor owes \$22,889.52. Declaration of Aimee Nanon, Doc. #15.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least six pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

5. [22-11596](#)-A-7      **IN RE: GURINDER/JATINDER BATH**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-7-2022    [\[44\]](#)

WELLS FARGO BANK, N.A./MV  
PETER BUNTING/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
DISCHARGED 12/27/22

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted in part and denied as moot in part.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, it appears that the moving party has re-typed the mandatory Certificate of Service form (EDC Form 7-005) instead of using the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The court's local rules do not permit a party to re-type the mandatory form. In the future, counsel for the moving party should complete the court's official form instead of re-typing the form. The court's official form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the declarant states in the certificate of service that service of the motion on the debtor and junior lienholders was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #50. Rules 4001(a)(1) and 9014 require service of a motion for relief from stay be made pursuant to Rule 7004. Service on the junior lienholders does not comply with Rule 7004. However, the court does not require such service on junior lienholders. The court only requires junior lienholders to be served with a motion for relief from the automatic stay pursuant to Rule 7005, which was done. The declarant should have included service on the junior lienholders on an Attachment 6B4, not on Attachment 6A1. Alternatively, the moving party should have completed service on the junior lienholders in compliance with Rule 7004.

As a further informative matter, the Matrix of Registered Users of the Electronic Filing System used by the moving party to serve notice of the motion does not comply with LBR 7005-1(d), which requires that a Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on December 7, 2022 using a list of EFC Registered Users that was generated on November 18, 2022. Doc. #50.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on December 27, 2022. Doc. #56. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Wells Fargo Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a piece of real property located at 7303 W. Browning Ave. in Fresno, California 93723-8153 ("Property"). Doc. #44.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have been in default since September 1, 2022. Doc. #44.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtors are in chapter 7. Movant has valued the Property at \$635,800.00. Doc. #44. The amount owed to Movant is \$327,888.71. Id. However, additional junior liens on the Property eliminate any equity in the Property for the bankruptcy estate. Id. Even though the debtors have moved to avoid the junior judicial liens on the Property, see matters #6 through #11 on this calendar, the court still includes those junior liens when calculating whether the chapter 7 bankruptcy estate has any equity in the Property for purposes of this motion.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the loan has been in default since September 1, 2022, and there is no equity in the property for the bankruptcy estate.

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.  
12-1-2022    [\[19\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the Certificate of Service filed in connection with this motion (Doc. #23) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #23. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Bank of America, NA ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #19; Am. Schedule C, Doc. #10; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be



entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. A judgment was entered against Jatinder K. Bath in the amount of \$4,866.01 in favor of Creditor on March 19, 2021. Ex. D, Doc. #22. The abstract judgment was recorded pre-petition in Fresno County on April 9, 2021, as document number 2021-0058650. Ex. D, Doc. #22. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #19. Debtors estimate the judicial lien to be \$5,352.61 as of September 15, 2022. Doc. #19. Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling

\$54,308.96.<sup>1</sup> Schedule D, Doc. #1. There appear to be five senior judicial liens on the Property. Doc. #19. The first senior judicial lien was recorded in Fresno County on May 26, 2017 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #54. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #19. The second senior judicial lien was recorded in Fresno County on August 1, 2019 with respect to a judgment of \$8,153.15 entered on July 29, 2019. Ex. D, Doc. #42. Debtors estimate the judicial lien to be \$8,153.15 as of September 15, 2019. Doc. #19. The third senior judicial lien was recorded in Fresno County on November 18, 2019 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #37. Debtors estimate the judicial lien to be \$1,389,640.08 as of a proof of claim filed October 5, 2022. Doc. #19. The fourth senior judicial lien was recorded in Fresno County on November 17, 2020 with respect to a judgment of \$3,718.09 entered on August 2, 2019. Ex. D, Doc. #32. Debtors estimate the judicial lien to be \$4,498.88 as of September 15, 2022. Doc. #19. The fifth senior judicial lien was recorded in Fresno County on February 17, 2021 with respect to a judgment of \$8,153.00 entered on July 30, 2019. Ex. D, Doc. #27. Debtors estimate the judicial lien to be \$9,865.13 as of September 15, 2019. Doc. #19.

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<sup>1</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Petition, Doc. #1.



Applying the statutory formula:

Amount of Creditor's judicial lien		\$5,352.61
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$3,155,733.54
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00
		\$3,473,086.15
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$2,837,286.15

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

7. [22-11596](#)-A-7     **IN RE: GURINDER/JATINDER BATH**  
[PBB-2](#)

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA  
12-2-2022    [\[24\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on CREDITORS BUREAU USA ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor was served, and the declarant did not properly attach appropriate attachments to the Certificate of Service form. See Doc. #28.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

MOTION TO AVOID LIEN OF DISCOVER BANK  
12-6-2022    [\[29\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the Certificate of Service filed in connection with this motion (Doc. #33) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #33. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Discover Bank ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #29; Am. Schedule C, Doc. #10; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be

entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. A judgment was entered against Jatinder Bath in the amount of \$3,718.09 in favor of Creditor on August 2, 2019. Ex. D, Doc. #32. The abstract judgment was recorded pre-petition in Fresno County on November 17, 2020, as document number 2020-0164763. Ex. D, Doc. #32. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #29. Debtors estimate the judicial lien to be \$4,498.88 as of September 15, 2022. Doc. #29. Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling \$54,308.96.<sup>2</sup> Schedule D, Doc. #1. There appear to be three senior judicial liens on the Property. Doc. #29. The first senior judicial lien was recorded in Fresno County on May 26, 2017 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #54. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #29. The second senior judicial lien was recorded in Fresno County on August 1, 2019 with respect to a judgment of \$8,153.15 entered on July 29, 2019. Ex. D, Doc. #42. Debtors estimate the judicial lien to be \$8,153.15 as of September 15, 2019. Doc. #29. The third senior judicial lien was recorded in Fresno County on November 18, 2019 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #37. Debtors estimate the judicial lien to be \$1,389,640.08 as of a proof of claim filed October 5, 2022. Doc. #29. Because the motion to avoid the junior judicial lien held by Creditors Bureau USA is denied for improper service, see matter #7 on this calendar, the court will still include this lien in the amount of \$9,865.13 when calculating the amount that Creditor's judicial lien impairs Debtors' exemptions under § 522(f).

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,498.88
Total amount of all other liens on the Property (excluding avoided junior judicial liens)	+	\$3,151,261.66
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00

<sup>2</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

		\$3,467,760.54
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$2,831,960.54

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

9. [22-11596](#)-A-7 **IN RE: GURINDER/JATINDER BATH**  
[PBB-4](#)

MOTION TO AVOID LIEN OF GUARANTY SOLUTIONS RECOVERY 1, LLC  
12-6-2022 [[34](#)]

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the Certificate of Service filed in connection with this motion (Doc. #38) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #38. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant

properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Guaranty Solutions Recovery Funds 1 ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #34; Am. Schedule C, Doc. #10; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. A judgment was entered against Jatinder Bath in the amount of \$892,979.72 in favor of Creditor on December 20, 2016. Ex. D, Doc. #37. The abstract judgment was recorded pre-petition in Fresno County on November 18, 2019, as document number 2019-0138798. Ex. D, Doc. #37. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #34. Debtors estimate the judicial lien to be \$1,389,640.08 as of a proof of claim filed October 5, 2022. Doc. #34. Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling \$54,308.96.<sup>3</sup> Schedule D, Doc. #1. There appear to be two senior judicial liens on the Property. Doc. #34. The first senior judicial lien was recorded in Fresno County on May 26, 2017 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #54. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #34. The second senior judicial lien was recorded in Fresno County on August 1, 2019 with respect to a judgment of \$8,153.15 entered on July 29, 2019. Ex. D, Doc. #42. Debtors estimate the judicial lien to be \$8,153.15 as of September 15, 2019. Doc. #34. Because the motion to avoid the junior judicial lien held by Creditors Bureau USA is denied for improper service, see matter #7 on this calendar, the court will still

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<sup>3</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

include this lien in the amount of \$9,865.13 when calculating the amount that Creditor's judicial lien impairs Debtors' exemptions under § 522(f).

Applying the statutory formula:

Amount of Creditor's judicial lien		\$1,389,640.08
Total amount of all other liens on the Property (excluding avoided junior judicial liens)	+	\$1,761,594.58
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00
		\$3463,234.66
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$2,827,434.66

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

10. [22-11596](#)-A-7     **IN RE: GURINDER/JATINDER BATH**  
[PBB-5](#)

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER  
12-6-2022    [\[39\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

**FINAL RULING:**     There will be no hearing on this matter.

**DISPOSITION:**     Granted.

**ORDER:**             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the Certificate of Service filed in connection with this motion (Doc. #43) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #43. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of the State of California Labor Commissioner ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #39; Am. Schedule C, Doc. #10; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. A judgment was entered against Gurinder Singh Bath in the amount of \$8,153.15 in favor of Creditor on July 29, 2019. Ex. D, Doc. #42. The abstract judgment was recorded pre-petition in Fresno County on August 1, 2019, as document number 2019-0085153. Ex. D, Doc. #42. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #39. Debtors estimate the judicial lien to be \$8,153.15 as of September 15, 2022. Doc. #39. Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling \$54,308.96.<sup>4</sup> Schedule D, Doc. #1. There appears to be one senior judicial lien on the Property. Doc. #34. The senior judicial lien was recorded in Fresno

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<sup>4</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

County on May 26, 2017 with respect to a judgment of \$892,979.72 as of September 15, 2022 entered on December 20, 2016. Ex. D, Doc. #54. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #39. Because the motion to avoid the junior judicial lien held by Creditors Bureau USA is denied for improper service, see matter #7 on this calendar, the court will still include this lien in the amount of \$9,865.13 when calculating the amount that Creditor's judicial lien impairs Debtors' exemptions under § 522(f).

Applying the statutory formula:

Amount of Creditor's judicial lien		\$8,153.15
Total amount of all other liens on the Property (excluding avoided junior judicial liens)	+	\$1,753,441.43
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00
		\$2,073,594.58
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$1,437,794.58

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

11. [22-11596](#)-A-7 **IN RE: GURINDER/JATINDER BATH**  
[PBB-6](#)

MOTION TO AVOID LIEN OF BMO HARRIS BANK, N.A.  
12-13-2022 [\[51\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.



As an informative matter, the Certificate of Service filed in connection with this motion (Doc. #55) used an older version of the court's Official Certificate of Service Form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #55. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of BMO Harris Bank, N.A. ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #51; Am. Schedule C, Doc. #10; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. A judgment was entered against Jatinder Kaur Bath in the amount of \$892,979.72 in favor of Creditor on December 20, 2016. Ex. D, Doc. #54. The abstract judgment was recorded pre-petition in Fresno County on May 26, 2017, as document number 2017-0065651. Ex. D, Doc. #54. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #51. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #51. Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling

\$54,308.96.<sup>5</sup> Because the motion to avoid the junior judicial lien held by Creditors Bureau USA is denied for improper service, see matter #7 on this calendar, the court will still include this lien in the amount of \$9,865.13 when calculating the amount that Creditor's judicial lien impairs Debtors' exemptions under § 522(f).

Applying the statutory formula:

Amount of Creditor's judicial lien		\$1,363,579.00
Total amount of all other liens on the Property (excluding avoided junior judicial liens)	+	\$389,862.43
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00
		\$2,065,441.43
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$1,429,641.43

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

12. [18-14099](#)-A-7      **IN RE: RONALD OSBURN**

MOTION TO AVOID LIEN OF DEUTSCHE BANK NATIONAL TRUST COMPANY  
11-8-2022    [\[81\]](#)

RONALD OSBURN/MV  
RESPONSIVE PLEADING

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Denied.

ORDER:                      The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The secured creditor timely filed written opposition on December 28, 2022. Doc. #92. The matter will proceed as scheduled.

As a procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including

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<sup>5</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). While the court recognizes that the debtor is representing himself in this bankruptcy case, the debtor is still required to comply with this court's local rules. The court encourages the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

By this motion, chapter 7 debtor Ronald Lou Osburn ("Debtor") moves to avoid the lien held by Deutsche Bank National Trust Company as Trustee for IndyMac Indx Mortgage Loan Trust 2006-AR11, Mortgage Pass-Through Certificates Series 2006-AR11 ("Creditor") based on Debtor's assertion that Creditor's lien against Debtor's home is discharged and unenforceable. Declaration of Ronald Osburn, Doc. #82. Debtor is mistaken as to the law.

Debtor's voluntary chapter 7 petition indicated that Debtor's home was his principal residence. Doc. #1. On December 14, 2018, Creditor moved for relief from the automatic stay in Debtor's bankruptcy case. Doc. ##21-26. Based on the partial granting of Creditor's motion for relief from stay, Creditor held a consensual lien against Debtor's home when Debtor filed his chapter 7 bankruptcy case. Declaration of Marilyn Solivan, Doc. #24; Exhibits 1-3 in support of Motion for Relief from Automatic Stay, Doc. #25. See also Exhibits A-C in support of opposition to Motion, Doc. #93.

In the motion and supporting affidavit, Debtor infers that Creditor's lien is discharged because Creditor did not file a proof of claim in Debtor's bankruptcy case. Osburn Decl., Doc. #82. Under Federal Rule of Bankruptcy Procedure 3002(a), "a lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim". Fed. R. Bankr. P. 3002(a). Liens of secured creditors generally "ride through" bankruptcy unaffected unless affirmative action is taken to avoid the lien. 11 U.S.C. § 506(d)(2); Newman v. First Security Bank of Bozeman, 87 F.2d 973, 976 (9th Cir. 1989); In re Cortez, 191 B.R. 174, 177-179 (B.A.P. 9th Cir. 1995). Therefore, Creditor did not need to file a proof of claim in Debtor's chapter 7 bankruptcy case to preserve its lien.

The Order of Discharge issued in Debtor's chapter 7 bankruptcy case is consistent with this principle. The Order of Discharge specifically states that "a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated." Order, Doc. #39. Creditor's lien was not avoided or eliminated in Debtor's bankruptcy case. Moreover, a discharge order only extinguishes the right of a creditor to enforce a claim against debtor personally; the debtor's property remains liable for a debt secured by a valid lien. Johnson v. Home State Bank, 501 U.S. 78, 84 (1991).

Debtor further contends in the motion and supporting affidavit that Debtor can avoid Creditor's lien against Debtor's home because Creditor's lien impairs Debtor's recorded homestead exemption. However, nothing in the Bankruptcy Code permits this court to avoid a consensual lien on real property that is subject to a homestead exemption. Section 522(f) of the Bankruptcy Code, the only provision in the Bankruptcy Code that permits this court to avoid a lien in real property that impairs a debtor's exemption, is limited to certain types of judicial or statutory liens, neither of which is the type of lien that Creditor held in Debtor's home.

Moreover, the court cannot avoid a consensual lien without an adversary proceeding, which Debtor has not filed in this case. Federal Rule of Bankruptcy Procedure 7001(2) provides that an adversary proceeding is required for "a

proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d) [.]” Fed. R. Bankr. P. 7001(2). Neither Federal Rules of Bankruptcy Procedure 3012 nor 4003(d) apply in this case, so an adversary proceeding is required for Debtor to avoid Creditor’s lien, assuming any such lien exists after Creditor’s foreclosure sale was conducted over a year ago on December 28, 2021. See Exhibit D in support of opposition to motion, Doc. #93.

Accordingly, because Debtor has not set forth legal or factual grounds on which this court can grant the relief requested in the motion, the motion is DENIED.

13. [22-12068](#)-A-7      **IN RE: ARMANDO GUTIERREZ**

MOTION FOR ADEQUATE PROTECTION, MOTION TO RETURN SEIZED PERSONAL PROPERTY  
12-29-2022    [\[15\]](#)

ARMANDO GUTIERREZ/MV  
ARMANDO GUTIERREZ/ATTY. FOR MV.  
OST 1/3/2023

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continue and set for an evidentiary hearing.

ORDER:                        The minutes of the hearing will be the court’s findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 14 days’ notice prior to the hearing date pursuant to this court’s order granting the debtor’s request for an order shortening time (“OST”) filed on January 3, 2023. Doc. #26. While not required, the secured creditor filed written opposition on January 4, 2023. Doc. #30. Based on conflicting evidence as to the amount the debtor owes with respect to the vehicle that the debtor seeks to have turned over pursuant to the debtor’s motion, the court is inclined to continue the hearing on this motion and set an evidentiary hearing to resolve that issue.

As a procedural matter, the debtor used forms from the United States Bankruptcy Court for the Central District of California that do not comply with this court’s Local Rules of Practice (“LBR”). Specifically, this court requires that a notice of hearing, motion, declaration, exhibits and proof of service all be filed as separate documents. See LBR 9004-2(c)(1); 9004-2(d); 9004-2(e). In addition, the motion and supporting papers do not comply with LBR 9014-1(c). “In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.” LBR 9014-1(c)(1). “Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number.” LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Finally, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court’s website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. While the court recognizes that

the debtor is representing himself in this bankruptcy case, the debtor is still required to comply with this court's local rules. The court encourages the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

By the motion, Armando Gutierrez ("Debtor"), the chapter 7 debtor in this case, seeks an order requiring Volvo Car Financial Services LLC ("Creditor") to turn over a 2021 Volvo XC60 T5 Momentum (the "Vehicle") that both Debtor and Creditor agree Creditor repossessed pre-petition. Doc. ##15, 32.

Debtor testifies that Debtor believes that the value of the Vehicle is not less than \$31,960.00, and Debtor owes Creditor approximately \$2,050.00, leaving an equity cushion in the Vehicle of \$29,910.00. Doc. #15. Debtor asserts that this equity cushion provides adequate protection for Creditor that permits this court to authorize turnover of the Vehicle to Debtor. Doc. #15.

Creditor opposes turnover asserting that the entire amount owed to Creditor is due based on the acceleration of the retail installment sales contract due to Debtor's pre-petition payment defaults and the payoff of the Vehicle is \$42,692.71 as of December 20, 2022, not including the repossession fee that has accrued, leaving negative equity for Debtor in the Vehicle. Doc. #32; see also Declaration of Dennis Cruik in support of Creditor's motion for relief from stay ¶¶ 6 and 8, Doc. #18.

Because there is a dispute regarding the amount Debtor owes to Creditor that is material as to whether this court can find that there is adequate protection for Creditor such that turnover is warranted, the court is inclined to set an evidentiary hearing on this motion.