

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 24, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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.

9:30 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-21-2021 [[1](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

2. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-14](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR NAVDIP S.
BADHESHA
1-21-2022 [[208](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The Disclosure Statement is Approved as
containing adequate information.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Proponent shall
prepare the order.

Debtor-in-possession Navdip S. Badhesha ("Debtor") asks for approval
of the Disclosure Statement for Debtor's chapter 11 plan of
reorganization.

No party in interest timely filed written opposition. This matter will
be called as scheduled.

11 U.S.C. § 1125(b) requires a court approved disclosure statement as
requiring "adequate information" before solicitation of the proposed
plan may begin. A "hypothetical investor" representative of the
typical holders of claims needs to be able to make an "informed
judgment" about the plan based on the disclosure statement for it to
contain "adequate information." § 1125(a)(1). The extent of
information required by the court must be tempered by consideration of
case complexity, the benefit to creditors of the additional
information, and the cost of providing the information. *Id.* The
ability of the "investor" to obtain information from sources other
than the disclosure statement as similar claim or interest holders

"generally have" is also relevant. § 1125(a)(2)(C). A disclosure statement may be approved without a valuation or appraisal of the debtor's assets.

Here, the Disclosure Statement appears to contain adequate information for a hypothetical investor to make an informed judgment about the plan. Doc. #208. No objections or opposition were filed contesting the adequacy of the information contained in the Disclosure Statement. The court is inclined to approve the Disclosure Statement.

This matter will be called as scheduled to set upcoming scheduling dates and deadlines.

3. [22-10061](#)-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
1-31-2022 [[11](#)]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Docs. ##11-13.

Second, the *Notice of Hearing* (Doc. #12) contains the wrong notice language. LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Here, the motion was filed and served on January 31, 2022, and set for hearing on February 24, 2022. Docs. ##11-13. January 31, 2022 is twenty-four (24) days before February 24, 2022. The *Notice of Hearing* states that written opposition was required, must be filed 14 days

before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the motion. Doc. #12. This is incorrect. Motions noticed on less than 28 days' notice are deemed brought pursuant to LBR 9014-1(f)(2). This rule does not require written opposition to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice stated that they were required to file written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Therefore, the notice is materially deficient.

Third, the *Notice of Hearing* did not contain the language required under LBR 9014-1(d). LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and that (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Fourth, the motion contained attached declarations and exhibits. Doc. #11. LBR 9004-2(c)(1) requires that motions, declarations, exhibits, and other specified pleadings are to be filed as separate documents. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the motion contained an attached *Declaration of Michael Jay Berger*, *Declaration of Carlos Colima*, and exhibits. Doc. #11. The exhibits did not contain an index and were not consecutively numbered, including any separator, cover, or divider sheets, throughout the entire exhibit document.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

1:30 PM

1. [21-10316](#)-B-7 **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**
[BLF-4](#)

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES
ATTORNEY(S)
1-20-2022 [[63](#)]

HAGOP BEDOYAN/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.

Loris L. Bakken of the Bakken Law Firm ("Applicant"), general counsel for chapter 7 trustee Irma C. Edmonds ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$9,863.51. Doc. #63. This amount consists of \$9,625.00 in fees as reasonable compensation for services rendered and \$238.51 in reimbursement of actual, necessary expenses incurred between February 23, 2021 through February 24, 2022. *Id.*

Trustee has reviewed the application and supporting documents, consents to the proposed payment, and indicates that the bankruptcy estate is currently holding funds in the amount of \$30,263.58. Doc. #65.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)96). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a

plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Cable Links Construction Group, Inc. ("Debtor") filed chapter 7 bankruptcy on February 9, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on April 12, 2021. Doc. #2. Trustee moved to employ Applicant on March 2, 2021 under 11 U.S.C. § 327. Doc. #8. The court approved employment on March 10, 2021, effective March 2, 2021.¹ Doc. #12. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.*

This is Applicant's first and final fee application. Applicant's firm provided 42.00 hours at a rate of \$350.00 per hour, totaling \$14,700.00 fees. However, Applicant only billed for 27.50 hours and requests **\$9,625.00**. Doc. #67, *Ex. B*. Applicant also incurred **\$238.51** in expenses as follows:

Photocopying	\$74.10
Postage	+ \$164.41
Total Costs	= \$238.51

Id. These combined fees and expenses total **\$9,863.51**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) preparing fee agreement and securing employment (BLF-1); (2) negotiating a stipulation regarding distribution of net proceeds of an equipment sale subject to liens; (3) investigating pre-petition transfers of property of the estate and reviewing a Revenue Purchase Agreement in which Debtor allegedly owed certain debts; (4) stipulating to stay relief with Mobile Modular Portable Storage (BLF-2); (5) preparing and prosecuting a motion to abandon real property (BLF-3); and (6) preparing and filing this fee application (BLF-4). The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application, consents to payment of the requested fees and expenses, and the bankruptcy estate is holding funds in the amount of \$30,263.58. Doc. #65.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded on a final basis \$9,625.00 in reasonable fees and \$238.51 in actual, necessary expenses pursuant to § 330. Trustee will be authorized, in

her discretion, to pay Applicant \$9,863.51 for services rendered and costs incurred from February 23, 2021 through February 24, 2022.

¹ Applicant's employment is presumptively effective January 31, 2021 pursuant to LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a). Further, according to the exhibits, Applicant's services did not begin until March 1, 2021, one day before the effective date in the order but within the presumptive timeframe.

2. [21-12239](#)-B-7 **IN RE: JOSE GONZALEZ OCHOA**
[TAA-3](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
1-24-2022 [\[26\]](#)

JOSE GONZALEZ OCHOA/MV
KEVIN TANG/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.

Jose Gonzalez Ochoa ("Debtor") seeks to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$23,218.95 and encumbering residential real property located at 1008 Aegean Ave., Bakersfield, CA 93307 ("Property").² Doc. #26.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the creditors, the chapter 7 trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$23,218.95 on September 11, 2020. Doc. #27, *Ex. 9*. The abstract of judgment was issued on November 9, 2020 and recorded in Kern County on November 18, 2020. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #28.

Property was listed in the petition with a value of \$319,900.00. Doc. #1, *Sched. A/B*. However, Debtor obtained an appraisal from Ace Appraisal on October 4, 2021 valuing Property at \$305,000.00 as of September 28, 2021, which is one week after the petition was filed. Doc. #29, *Ex. 2*. Property has two unavoidable liens: (i) a first deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") with an approximate balance of \$73,450.18 as of September 2021; and (ii) a tax lien in favor of the Internal Revenue Service ("IRS") in the amount of \$23,250.54. *Id.*, *Exs. 3-5, 8*. Property also has a senior priority lien in favor of Wells Fargo Bank, N.A. ("WFB"), which was recorded twice and will be avoided in matter #3 below (TAA-4). *Id.*, *Exs. 6-7*.

Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*.

Property's security interests, in order of priority, are illustrated below:

Judgment Creditor	Amount	Entered	Recorded	Status
1. WFHM	\$73,450.18	N/A	06/21/2013	Unavoidable
2. WFB	\$10,641.72	04/24/2018	04/17/2019	Avoidable (TAA-4)
3. <i>Duplicate</i>	\$10,641.72	04/24/2018	07/10/2019	Avoidable (TAA-4)
4. IRS	\$23,250.54	N/A	07/15/2019	Unavoidable
5. Creditor	\$23,219.00	09/11/2020	11/09/2020	This motion (TAA-3)

When a debtor seeks to avoid multiple liens under § 522(f)(1), 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), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Creditor's judgment lien is the most junior lien, so it may be avoided here. Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$23,219.00
Total amount of unavoidable liens ³	+ \$117,984.16
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$441,203.16
Value of Debtors' interest absent liens	- \$305,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$136,203.16

Meyer, 373 B.R. at 91. The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$305,000.00
Total amount of unavoidable liens	- \$117,984.16
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$112,984.16)
Creditor's judicial lien	- \$23,219.00
Extent Debtor's exemption impaired	= (\$136,203.16)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED.

² Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Corporation Service Company which will do Business in California as CSC-Lawyers Incorporating Service, Creditor's registered agent for service of process, at the registered agent address on January 24, 2022. Doc. #30.

³ This amount includes the WFHM deed of trust, the IRS tax lien, and both the original and duplicate WFB liens. While inherently avoidable, the WFB liens cannot be avoided until after this junior lien has been avoided.

3. [21-12239](#)-B-7 **IN RE: JOSE GONZALEZ OCHOA**
[TAA-4](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
1-24-2022 [\[31\]](#)

JOSE GONZALEZ OCHOA/MV
KEVIN TANG/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.

Jose Gonzalez Ochoa ("Debtor") seeks to avoid a judicial lien in favor of Wells Fargo Bank, N.A. ("Creditor") in the sum of \$10,641.72 and encumbering residential real property located at 1008 Aegean Ave., Bakersfield, CA 93307 ("Property").⁴

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the creditors, the chapter 7 trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$10,641.72 on November 17, 2017. Doc. #34, Ex. 6. The abstract of judgment was issued on May 2, 2018 and recorded in Kern County on April 17, 2019. *Id.* A duplicate copy of the abstract was recorded a second time on July 10, 2019. *Id.*, Ex. 7. The liens attached to Debtor's interest in Property. *Id.*; Doc. #33.

Property was listed in the petition with a value of \$319,900.00. Doc. #1, Sched. A/B. However, Debtor obtained an appraisal from Ace Appraisal on October 4, 2021 valuing Property at \$305,000.00 as of September 28, 2021, which is one week after the petition was filed. Doc. #34, Ex. 2. Property has two unavoidable liens: (i) a first deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") with an approximate balance of \$73,450.18 as of September 2021; and (ii) a tax lien in favor of the Internal Revenue Service ("IRS") in the amount of \$23,250.54. *Id.*, Exs. 3-5, 8. Property also has a junior priority lien in favor of Portfolio Recovery Associates, LLC ("PRA"), which will be avoided in matter #2 above (TAA-3). *Id.*, Ex. 9.

Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, Sched. C.

Property's security interests, in order of priority, are illustrated below:

Judgment Creditor	Amount	Entered	Recorded	Status
1. WFHM	\$73,450.18	N/A	06/21/2013	Unavoidable
2. Creator	\$10,641.72	04/24/2018	04/17/2019	This motion (TAA-4)
3. Duplicate	\$10,641.72	04/24/2018	07/10/2019	This motion (TAA-4)
4. IRS	\$23,250.54	N/A	07/15/2019	Unavoidable
5. PRA	\$23,219.00	09/11/2020	11/09/2020	Avoided (TAA-3)

When a debtor seeks to avoid multiple liens under § 522(f)(1), 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), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Since the court intends to avoid the PRA judgment lien in matter #2 above, Creditor's judgment liens will become the most junior. Both of Creditor's liens are avoidable under § 522, but the duplicate would also not be enforceable as a recording error. Strict application of the § 522(f)(2) formula with respect to the duplicate lien is as follows:

Amount of Creditor's judicial lien	\$10,641.72
Total amount of unavoidable liens	+ \$107,342.44
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$417,984.16
Value of Debtors' interest absent liens	- \$305,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$112,984.16

Meyer, 373 B.R. at 91. And with respect to the original judgment lien:

Amount of Creditor's judicial lien	\$10,641.72
Total amount of unavoidable liens	+ \$96,700.72
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$407,342.44
Value of Debtors' interest absent liens	- \$305,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$102,342.44

Id. The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$305,000.00
Total amount of unavoidable liens	- \$96,700.72
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$91,700.72)
Creditor's duplicate judicial lien	- \$10,641.72
Extent Debtor's exemption impaired	= (\$102,342.44)
Creditor's original judicial lien	- \$10,641.72
Extent Debtor's exemption impaired	= (\$112,984.16)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED.

⁴ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving Charles W. Scharf, Creditor's CEO & President, by certified mail at Creditor's mailing address on January 24, 2022. Doc. #35.

4. [21-12542](#)-B-7 **IN RE: JOSE CATALAN AND CARA DE LISLE**
[UST-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B)
1-20-2022 [\[16\]](#)

TRACY DAVIS/MV
R. BELL/ATTY. FOR DBT.
JORGE GAITAN/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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST") moves for an order approving a stipulation to dismiss this chapter 7 case without entry of discharge. Doc. #16. Alternatively, UST asks to extend the time for filing a motion to file a motion to dismiss or convert pursuant to 11 U.S.C. § 707(b)(3).

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the creditors, the chapter 7 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jose Luis Catalan and Cara Breana De Lisle ("Debtors") filed chapter 7 bankruptcy on October 31, 2021. Doc. #1. The § 341(a) meeting of creditors was held on December 2, 2021, continued to January 7, 2022, and continued again to January 21, 2022. The deadline to object to discharge under § 727 or to file a motion to dismiss under § 707(a) and (b)(3) for abuse is February 1, 2022. UST is prepared to file a motion to dismiss case for abuse pursuant to § 707(b)(1), (2), and (3)

(bad faith and/or totality of the circumstances abuse). However, Debtors, through their bankruptcy counsel Scott Bell, stipulated to voluntarily dismissal without entry of discharge on January 11, 2022. Doc. #18.

A chapter 7 case may be dismissed only after notice and a hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. §§ 707(b)(1), (2), and (3).

Here, UST is prepared to file a motion to dismiss under 11 U.S.C. § 707(b)(1), (2), and (3), but Debtors have opted to voluntarily dismiss instead. Doc. #18. No creditors timely filed written opposition, and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

Accordingly, this motion will be granted. The stipulation to dismiss Debtors' bankruptcy case without entry of discharge will be approved and the case will be dismissed. The proposed order shall include an attached copy of the stipulation as an exhibit.

5. [21-12753](#)-B-7 **IN RE: FRANCIS MAGALONG MITCHELL**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2022 [\[15\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
VINCENT GORSKI/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Porsche 718 Cayman ("Vehicle").

The motion was filed on less than 28 days' notice (LBR 9014-1(f)(2)), but the language in the notice (Doc. #16) and amended notice (Doc. #22) requires written response within 14 days of the hearing in

compliance with LBR 9014-1(f)(1). Therefore, the motion will be DENIED WITHOUT PREJUDICE.

6. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[CDC-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR
MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2022 [\[79\]](#)

CITIZENS BUSINESS BANK/MV
RILEY WALTER/ATTY. FOR DBT.
CHRISTOPHER CROWELL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

Citizens Business Bank ("Movant") moves the court for an order confirming that the automatic stay in this bankruptcy does not stay the continuation of the action pending before the Tulare County Superior Court entitled *Citizens Business Bank v. Blain Farming Co., Inc., et al.*, Case No. VCU288580 ("State Court Action") with respect to Defendants Brody Blain and Barrett Blain ("Guarantors"). Doc. #79. Alternatively, if the stay is in place, Movant seeks relief from the automatic stay to litigate the State Court Action to final judgment with respect to the Guarantors and to enforce any judgment in favor of the Movant against Guarantors and their property.

No party in interest timely filed written opposition. Accordingly, this motion will be DENIED.

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 the creditors, the debtor, the chapter 7 trustee, 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Movant asks the court to take judicial notice of certain documents filed in the State Court Action. Doc. #82. The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid.

201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Gmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

On May 10, 2018, Movant financed a loan to Blain Farming Co., Inc. ("Debtor") in the principal amount of \$1,400,000.00, evidenced by a promissory note made payable to Movant. Docs. #84-85, *Ex. 1*. Debtor and Movant also entered into a *Commercial Security Agreement* that same day, whereby Debtor granted to Movant a security interest in Debtor's present and future inventory, accounts, and equipment. *Id.*, *Ex. 2*. Also that same day, Brody Blain and Barrett Blain each separately executed a *Commercial Guaranty* that guaranteed full and timely payment of all of Debtor's present and future indebtedness. *Id.*, *Exs. 3-4*. Sometime thereafter, Debtor and Guarantors allegedly defaulted under the terms of the agreement.

On September 9, 2021, Movant commenced the State Court Action against Debtor and the Guarantors. Doc. #83, *Ex. 1*. The State Court Action arises from Movant's loan to Debtor, repayment of which the Guarantors guaranteed. The Complaint seeks a monetary judgment against Debtor for breach of the promissory note and against Guarantors for breach of their written guarantees for not less than the principal sum of \$176,477.01 plus accrued unpaid interest, late charges, attorney fees and costs, and other fees. Debtor and Guarantors filed an *Answer* on October 12, 2021 consisting of a general denial and two affirmative defenses. *Id.*, *Ex. 2*.

Debtor filed bankruptcy on October 22, 2021 and filed a *Notice of Stay of Proceedings* in the State Court Action. *Id.*, *Ex. 3*. Thereafter, the Guarantors filed a *Case Management Statement* and provided responses to Movant's written discovery requests. *Id.*, *Ex. 4*. However, at the January 10, 2022 case management conference, the State Court stated that it deemed the automatic stay as applicable to all defendants absent a contrary ruling from the bankruptcy court. Doc. #86, ¶ 2. The case management conference was continued to July 18, 2022 and no trial date was set. *Id.*

Movant believes that the automatic stay does not extend to actions against parties other than the debtor, such as Guarantors, and seeks an order confirming the same. Doc. #79, citing 11 U.S.C. § 362(a)(1); *U.S. v. Dos Cabezas Corp.*, 995 F.2d 1486, 1491 n.3 (9th Cir. 1993). Since Guarantors are separate and distinct from Debtors and there is no possibility that a judgment against Guarantors will in effect be a judgment against Debtor, Movant requests a comfort order under 11 U.S.C. § 362(j) confirming that the absence of the automatic stay with respect to Guarantors. That subsection permits entry of orders confirming the automatic stay has been *terminated* under subsection (c). Subsection (c) is inapplicable here. Subsection (j) does not permit entry of a declaratory judgment that the stay *never* arose.

The Guarantors are not and have not been protected by the automatic stay. Since the stay never arose protecting the guarantors from state court litigation, this motion is unnecessary and DENIED AS MOOT. The court's order will reference these findings for Movant's and the Superior Court's use.

7. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2022 [[71](#)]

FORD MOTOR CREDIT COMPANY
LLC/MV
RILEY WALTER/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
CONT'D TO APRIL 21, 2022 PER DOC. 100

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

DISPOSITION: Continued to April 21, 2022, at 1:30 p.m.

NO ORDER REQUIRED.

This matter was continued to April 21, 2022 at 1:30 p.m. by court order filed on February 10, 2022. Doc. #100.

8. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-4](#)

CONTINUED MOTION TO SELL
12-17-2021 [[74](#)]

JEFFREY VETTER/MV
AHREN TILLER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This sale is contingent upon approval of a settlement agreement between the estate and Royalty Lending, Inc., which was recently denied on February 8, 2022. Doc. ##111-12. The court is inclined to

DENY WITHOUT PREJUDICE because the approval of the underlying settlement agreement upon which this sale is based was DENIED WITHOUT PREJUDICE.

9. [21-10495](#)-B-7 **IN RE: ROSARIO ALDACO**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
1-21-2022 [\[49\]](#)

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.

Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$7,472.26. Doc. #49. This amount consists of \$7,260.00 in fees as reasonable compensation and \$212.26 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from July 26, 2021 through January 19, 2022. *Id.* Trustee has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #53.

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 the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Rosario Rodriguez Aldaco ("Debtor") filed chapter 7 bankruptcy on February 26, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on April 1, 2021. Doc. #4. Trustee moved to

employ Applicant on August 5, 2021 under 11 U.S.C. § 327. Doc. #24. The court approved employment on August 13, 2021, effective July 15, 2021. Doc. #29. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.*

This is Applicant's first and final fee application. Applicant's firm provided 21.30 billable hours of legal services at the following rates, totaling **\$7,260.00** in fees:

Peter L. Fear (2021)	\$410	8.50	\$3,485.00
Gabriel J. Waddell (2021)	\$330	6.50	\$2,145.00
Gabriel J. Waddell (2022)	\$345	1.30	\$448.50
Peter A. Sauer (2021)	\$245	0.30	\$73.50
Katie Waddell (2021)	\$230	2.90	\$667.00
Katie Waddell (2022)	\$245	1.80	\$441.00
Total Hours & Fees		21.30	\$7,260.00

Doc. #51, Exs. B-C. Applicant also incurred **\$212.26** for the following expenses:

Postage	\$76.81
Copying	+ \$135.45
Total Costs	= \$212.26

Id., Ex. B. These combined fees and expenses total **\$7,472.26**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) securing employment as counsel for the bankruptcy estate (FW-1); (2) securing employment of the estate's real estate broker (FW-2); (3) analyzing issues arising from the sale of debtor's real property; (4) preparing and prosecuting a motion to sell real property and compensate the estate's broker (FW-3); and (5) preparing and filing this fee application (FW-4). Doc. #51, Ex. A. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #53.

No party in interest timely filed written opposition to this motion. Accordingly, the motion will be GRANTED. Applicant will be awarded on a final basis \$7,260.00 in reasonable fees and \$212.26 in actual, necessary expenses pursuant to § 330. Trustee will be authorized, in

her discretion, to pay Applicant \$7,472.26 for services rendered and costs incurred for the benefit of the estate from July 26, 2021 through January 19, 2022.