



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 2, 2023
Department A – Courtroom #11
Fresno, California**

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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. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[TCS-5](#)

MOTION TO VACATE DISMISSAL OF CASE
2-3-2023 [[137](#)]

JAMIE MAXFIELD/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
CASE DISMISSED 01/19/2023

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

DISPOSITION: Denied for improper service.

ORDER: The court will issue an order.

The certificate of service filed on February 21, 2023 indicates that the motion and related pleadings were served on February 3, 2023. Doc. #140. However, the creditor matrix attached to the certificate of service as Attachment 6B2-1 was printed on February 20, 2023 at 19:50:27 Pacific Standard Time. Thus, the certificate of service does not comply with Local Rule of Practice 7005-1(d) and is not proper evidence of the parties that were served on February 3, 2023.

2. [23-10010](#)-A-13 **IN RE: PARMINDER SINGH AND RANJIT KAUR**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
2-15-2023 [[27](#)]

THE BANK OF NEW YORK MELLON/MV
JERRY LOWE/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As an informative matter, the certificate of service filed in connection with this objection to confirmation (Doc. #30) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was

filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

The debtors filed their chapter 13 plan ("Plan") on January 5, 2023. Doc. #15. The Bank of New York Mellon f/k/a The Bank of New York as Indenture trustee for CWHEQ Revolving Home Equity Loan Trust, Series 2006-I ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the remaining \$1,691.28 default on Creditor's claim; (2) the Plan fails to provide equal monthly payments in curing the default on Creditor's claim; and (3) the monthly Plan payments of \$1,000.00 will be insufficient to fund the Plan once the arrears on Creditor's claim are provided for fully. Doc. #27.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on February 17, 2023. Claim 2.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #15. The Plan fails to account for Creditor's claim. Claim 2; Doc. #15.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

3. [23-10010](#)-A-13 **IN RE: PARMINDER SINGH AND RANJIT KAUR**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-1-2023 [\[22\]](#)

MICHAEL MEYER/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed an amended Schedule C on February 7, 2023, amending the claimed exemptions that were the subject of the chapter 13 trustee's objection. Doc. #25.

4. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[MJB-3](#)

STATUS CONFERENCE RE: OBJECTION TO CLAIM OF DENISE BALESTIER, CLAIM NUMBER 5
10-25-2022 [[74](#)]

THEDFORD JONES/MV
MICHAEL BERGER/ATTY. FOR MV.
DISMISSED 1/27/23

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

An order dismissing the bankruptcy case was entered on January 27, 2023.
Doc. #125. Therefore, the status conference regarding the Objection to Claim of
Denise Balestier will be DROPPED AS MOOT.

5. [21-12721](#)-A-13 **IN RE: MARTIN GRANADOS GARCIA AND MARISOL RAMIREZ MEDINA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
1-17-2023 [[24](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 17, 2023. Doc. #34.

6. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLIERS**
[SL-3](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
1-19-2023 [[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.

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 a procedural matter, the movant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004, although it appears that service was actually made pursuant to Rule 7005. The certificate of service filed with the motion (Doc. #52) included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the movant should have attached a list of the persons served, including their names/capacity to receive service, and address.

Scott Lyons ("Movant"), counsel for Robert Glenn Zamora II and Nicole Marcelina Selliers (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$11,837.00 and reimbursement for expenses in the amount of \$686.60 for services rendered from June 30, 2022 through January 17, 2023. Doc. #49. Debtors' confirmed plan provides, in addition to \$2,000.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##29, 46. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #49.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' first modified plan; (2) communicating with Debtors and the chapter 13 trustee; (3) reviewing claims objections and proof of claims; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #51. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$11,837.00 and reimbursement for expenses in the amount of \$686.60 to be paid in a manner consistent with the terms of the confirmed plan.

7. [22-12130](#)-A-13 **IN RE: CECILIA QUINONEZ**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOWD POINT MORTGAGE TRUST 2019-2,
U.S. BANK NATIONAL ASSOCIATION
2-7-2023 [\[15\]](#)

TOWD POINT MORTGAGE TRUST 2019-2, U.S. BANK NATIONAL
PETER BUNTING/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [23-10233](#)-A-13 **IN RE: CRYSTAL MENDEZ**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-16-2023 [\[13\]](#)

EDUCATIONAL EMPLOYEES CREDIT UNION/MV
DON POOL/ATTY. FOR MV.

NO RULING.

9. [22-10438](#)-A-13 **IN RE: DEBBI CHACON**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-24-2023 [\[29\]](#)

PETER FEAR/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.

Fear Waddell, P.C. ("Movant"), counsel for Debbi Correen Chacon ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$13,502.00 and reimbursement for expenses in the amount of \$112.55 for services rendered from October 12, 2021 through December 31, 2022. Doc. #29. Debtor's confirmed plan provides, in addition to \$4,000.00 paid prior to filing the case, for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #3, 22. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #31.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's plan; (2) analyzing tax claims and other tax issues; (3) preparing and attending 341 meeting of creditors; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #31. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$13,502.00 and reimbursement for expenses in the amount of \$112.55 to be paid in a manner consistent with the terms of the confirmed plan.

10. [19-13841](#)-A-13 **IN RE: LOTTIE STEWART**
[JDR-4](#)

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS ATTORNEY(S)
2-1-2023 [\[70\]](#)

JEFFREY ROWE/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.

Jeffrey D. Rowe ("Movant"), counsel for Lottie Stewart ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$13,485.00 and reimbursement for expenses in the amount of \$378.85 for services rendered from July 24, 2019 through January 31, 2023. Doc. #70. Debtor's confirmed plan provides, in addition to \$1,500.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##59, 66. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. F, Doc. #70.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) drafting objections to proof of claims; (3) communicating with the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. B, C & D, Doc. #70. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$13,485.00 and reimbursement for expenses in the amount of \$378.85 to be paid in a manner consistent with the terms of the confirmed plan.

11. [22-12041](#)-A-13 **IN RE: CHRISTOPHER GOMEZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
1-17-2023 [\[15\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on January 19, 2023. Doc. #19. This matter was continued at the prior hearing to permit the debtor to appear at the continued § 341 meeting of creditors.

As an informative matter, the certificate of service filed in connection with this motion (Doc. #18) was filed as a fillable version of the court's Official

Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for the debtor's failure to appear at the § 341 meeting of creditors. Doc. #15. Per docket entry, the § 341 meeting of creditors was held on February 21, 2023 and the debtor appeared at the meeting and the meeting was concluded as to debtor.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). It appears that the debtor's appearance at the continued § 341 meeting of creditors held on February 21, 2023, and the conclusion of that meeting on February 21, 2023, satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

12. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-31-2023 [\[76\]](#)

GABRIEL WADDELL/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.

Fear Waddell, P.C. ("Movant"), substitute counsel for Edgardo Flores Lacsina and Toni Lynn Lacsina (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$2,734.50 and reimbursement for expenses in the amount of \$165.65 for services rendered from December 17, 2021 through December 31, 2022. Doc. #76. Debtors' confirmed plan provides, in addition to \$2,000.00 paid to Debtors' former attorney prior to filing the case, for \$10,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##50, 69. One prior fee application has been approved authorizing interim compensation for Debtors' former attorney in the amount of \$4,000.00. Doc. #43. No prior fee application has been filed by Debtors' substitute attorney. Debtors consent to the amount requested in Movant's application. Ex. E, Doc. #78.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' first modified plan; (2) claim administration and claim objections; (3) drafting opposition to motion to dismiss; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #78. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$2,734.50 and reimbursement for expenses in the amount of \$165.65 to be paid in a manner consistent with the terms of the confirmed plan.

13. [22-12152](#)-A-13 **IN RE: KENNETH MYERS**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AURORA FINANCIAL GROUP, INC.
2-10-2023 [\[19\]](#)

AURORA FINANCIAL GROUP, INC./MV
DAVID JOHNSTON/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors filed their chapter 13 plan ("Plan") on January 8, 2023. Doc. #10. Aurora Financial Group, Inc. by RoundPoint Mortgage Servicing Corporation as servicer ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not provide for the curing of the pre-petition arrearage amount of \$3,623.28 as of January 1, 2023 on Creditor's claim. Doc. #19.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on February 9, 2023. Claim 8.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #10. The Plan fails to account for Creditor's claim. Claim 8; Doc. #10.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

14. [22-12053](#)-A-13 **IN RE: NICHOLAS/MISTY CARRILLO**
[PBB-2](#)

MOTION TO CONFIRM PLAN
1-19-2023 [\[31\]](#)

MISTY CARRILLO/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-14-2023 [\[21\]](#)

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

16. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-16-2023 [\[24\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

17. [22-12071](#)-A-13 **IN RE: ROBERT GARIBAY**
[TCS-1](#)

MOTION TO CONFIRM PLAN
1-26-2023 [\[22\]](#)

ROBERT GARIBAY/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 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 7004 Service and checked Section 6A(1). Doc. #28. However, service was effectuated by Rule 5 and Rules 7005, 9036 Service. In Section 6, the declarant should have checked Section 6B, not Section 6A.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. [21-12374](#)-A-13 **IN RE: VICTOR ROJAS**
[JDR-1](#)

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS ATTORNEY(S)
1-24-2023 [\[18\]](#)

JEFFREY ROWE/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.

As an informative matter, the certificates of service filed in connection with this motion (EDC Form 7-005, Rev 09/2022) are completed on an older version of the court's Official Certificate of Service form 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. Doc. ##22, 23. 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, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Trustee, and U.S. Trustee, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #22 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.

Jeffrey D. Rowe ("Movant"), counsel for Victor Rojas ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$2,837.00 and reimbursement for expenses in the amount of \$314.71 for services rendered from February 1, 2021 through January 23, 2023. Doc. #18. Debtor's confirmed plan provides, in addition to \$1,625.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 12. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. F, Doc. #18.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's plan; (2) claim administration and claim objections; (3) communicating with the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. B, C, & D, Doc. #18. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$2,837.00 and reimbursement for expenses in the amount of \$314.71 to be paid in a manner consistent with the terms of the confirmed plan.

19. [22-11484](#)-A-13 **IN RE: HELEN COLLINS**
[PBB-2](#)

MOTION TO AND APPOINTMENT OF REPRESENTATIVE AS TO DEBTOR
2-9-2023 [\[28\]](#)

STEPHANIE SHELTON/MV
PETER BUNTING/ATTY. FOR DBT.

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 filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Whether or not opposition is presented at the hearing, the court intends to deny the motion.

Stephanie Shelton ("Movant"), daughter of the deceased debtor Helen Ann Collins ("Debtor") in this chapter 13 case, requests the court name Movant as the successor to the deceased Debtor and permit continued administration of this

chapter 13 case. Doc. #28. The request for continued administration of this bankruptcy case is not supported by the necessary evidence. Doc ##28, 30.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. "The term 'further administration' implies that the case would be carried to its normal conclusion with payments to the creditors as provided in the confirmed plan, rather than conversion of the case to Chapter 7." In re Spiser, 232 B.R. 669, 673 (Bankr. N.D. Tex. 1999).

Debtor died of natural causes on December 13, 2022. Decl. of Stephanie Shelton, Doc. #30. Movant requests the court appoint Movant as the sole representative for Debtor in this bankruptcy case. Shelton Decl., Doc. #30. According to the docket in this case, Debtor's plan was confirmed on October 14, 2022 and provides for a plan term of 36 months and monthly plan payments of \$275.00. Doc. ##3, 19. According to Debtor's schedules, Debtor's income was based on social security and pension or retirement income, which likely does not continue after Debtor's death. Doc. #1. Neither the motion nor the declaration filed with the motion provide any explanation or evidence to support a showing that further administration of this chapter 13 case is possible and is in the best interest of the parties.

Therefore, the court is inclined to deny the motion absent a showing that further administration is possible and Movant has the ability to make the remaining plan payments.

20. [22-10185](#)-A-13 **IN RE: TIMOTHY CORNELL**
[SL-3](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
2-2-2023 [\[38\]](#)

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 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 a procedural matter, the movant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004, although it appears that service was actually made pursuant to Rule 7005. The certificate of service filed with the motion (Doc. #41) included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the movant should have attached a list of the persons served, including their names/capacity to receive service, and address.

Scott Lyons ("Movant"), counsel for Timothy Carter Cornell ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$3,055.50 and reimbursement for expenses in the amount of \$266.40 for services rendered from June 30, 2022 through January 26, 2023. Doc. #38. Debtor's confirmed plan provides, in addition to \$1,963.00 paid prior to filing the case, for \$12,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##32, 37. One prior fee application has been approved authorizing interim compensation in the amount of \$8,287.00 and reimbursement of expenses in the amount of \$532.68. Doc. #24. Debtor consents to the amount requested in Movant's application. Doc. #38.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) preparing and filing amended schedules; (3) preparing the fee application; and (4) general case administration. Exs. A & B Doc. #40. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$3,055.50 and reimbursement for expenses in the amount of \$266.40 to be paid in a manner consistent with the terms of the confirmed plan.

21. [22-12190](#)-A-13 **IN RE: ARTHUR/LUCILLE MCGOWAN**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF BRAVEHEART ACQUISITION, LLC
1-24-2023 [\[14\]](#)

LUCILLE MCGOWAN/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 movant has done here.

Arthur Lee McGowan and Lucille Marie McGowan (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' sofa, love seat, bed, nightstand, dresser, mirror, chest, rug, sectional and mattress (collectively, the "Property"), which is the collateral of Braveheart Acquisition, LLC dba Merchants Preferred Lease-Purchases Services ("Creditor"). Doc. #14; Decl. of Lucille McGowan, Doc. #16.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors asserts the Property was purchased more than one year before the filing of this case and that the loan is a purchase money security interest. McGowan Decl., Doc. #16. Debtors asserts a replacement value of the Property of \$900.00 and asks the court for an order valuing the Property at \$900.00. Schedule A/B, Doc. #1; McGowan Dec., Doc. #16. Debtors are competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$900.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

MOTION TO AVOID LIEN OF LOBEL FINANCIAL CORP.
1-25-2023 [\[19\]](#)

LUCILLE MCGOWAN/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 movants 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 Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Rule 7004, which was done. The declarant should have marked boxes under Section 6A instead. The declarant attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Arthur Lee McGowan and Lucille Marie McGowan (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Lobel Financial Corp. ("Creditor") on the residential real property commonly referred to as 4352 West Brown Avenue, Fresno, California 93722 (the "Property"). Doc. #19; Schedule C, Doc. #1; 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 December 23, 2022. Doc. #1. A judgment was entered against Arthur McGowan in the amount of \$11,189.64 in favor of Creditor on December 2, 2019. Ex. D, Doc. #22. The abstract judgment was recorded pre-petition in Fresno County on October 4, 2021, as document number 2021-0161595. 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 \$12,432.93 as of October 4, 2021. Doc. #19. Debtors claim an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$253,000.00. Schedule A/B, Doc. #1.

The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing Inc in the amount \$124,009.54.¹ Schedule D, Doc. #1. There appear to be two senior judicial liens on the Property. Doc. #19. The first senior judicial lien was recorded in Fresno County on December 5, 2019 with respect to a judgment of \$7,624.24 entered on December 2, 2019. Ex. D, Doc. #32. Debtors estimate the judicial lien to be \$10,458.49 as of December 15, 2019. Doc. #19. The second senior judicial lien was recorded in Fresno County on May 24, 2021 with respect to a judgment of \$31,538.87 entered on July 3, 2009. Ex. D, Doc. #27. A renewal of the lien was entered on April 13, 2018. Ex. D, Doc. #27. Debtors estimate the judicial lien to be \$35,043.19 as of May 24, 2021. Doc. #19.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$12,432.93
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$169,511.22
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$481,944.15
Value of Debtor's interest in the Property absent liens	-	\$253,000.00
Amount Creditor's lien impairs Debtor's exemption		\$228,944.15

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.

¹ There is a discrepancy between the motion and Schedule D as to the amount of the first deed of trust in favor of Select Portfolio Servicing Inc. The motion lists the amount as \$124,000.54 and Schedule D lists the amount as \$124,009.54. The court will use the scheduled amount listed in Debtors' petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

MOTION TO AVOID LIEN OF THE GOLDEN 1 CREDIT UNION
1-25-2023 [\[24\]](#)

LUCILLE MCGOWAN/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 movants 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. #28. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Rule 7004, which was done. The declarant should have marked boxes under Section 6A instead. The declarant attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Arthur Lee McGowan and Lucille Marie McGowan (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Golden 1 Credit Union ("Creditor") on the residential real property commonly referred to as 4352 West Brown Avenue, Fresno, California 93722 (the "Property"). Doc. #24; Schedule C, Doc. #1; 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 December 23, 2022. Doc. #1. A judgment was entered against Arthur McGowan in the amount of \$31,538.87 in favor of Creditor on June 03, 2009. Ex. D, Doc. #27. The abstract judgment was recorded pre-petition in Fresno County on May 24, 2021, as document number 2021-0085680. Ex. D, Doc. #27. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #24. A renewal of the judgment was entered on April 13, 2018. Ex. D, Doc. #27. Debtors estimate the judicial lien to be \$35,043.19 as of May 24, 2021. Doc. #24. Debtors claim an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$253,000.00. Schedule A/B, Doc. #1.

The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing Inc in the amount \$124,009.54.² Schedule D, Doc. #1. There appears to be one senior judicial lien on the Property. Doc. #24. The senior judicial lien was recorded in Fresno County on December 5, 2019 with respect to a judgment of \$7,624.24 entered on December 2, 2019. Ex. D, Doc. #32. Debtors estimate the judicial lien to be \$10,458.49 as of December 15, 2019. Doc. #24.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$35,043.19
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$134,468.03
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$469,511.22
Value of Debtor's interest in the Property absent liens	-	\$253,000.00
Amount Creditor's lien impairs Debtor's exemption		\$216,511.22

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.

² There is a discrepancy between the motion and Schedule D as to the amount of the first deed of trust in favor of Select Portfolio Servicing Inc. The motion lists the amount as \$124,000.54 and Schedule D lists the amount as \$124,009.54. The court will use the scheduled amount listed in Debtors' petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER AND/OR MOTION TO AVOID
LIEN OF STATE OF CALIFORNIA
1-25-2023 [\[29\]](#)

LUCILLE MCGOWAN/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 movants 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 Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Rule 7004, which was done. The declarant should have marked boxes under Section 6A instead. The declarant attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Arthur Lee McGowan and Lucille Marie McGowan (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of State of California, Labor Commissioner ("Creditor") on the residential real property commonly referred to as 4352 West Brown Avenue, Fresno, California 93722 (the "Property"). Doc. #29; Schedule C, Doc. #1; 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 December 23, 2022. Doc. #1. A judgment was entered against Lucille McGowan in the amount of \$7,624.24 in favor of Creditor on December 2, 2019. Ex. D, Doc. #32. The abstract judgment was recorded pre-petition in Fresno County on December 5, 2019, as document number 2019-0146928. 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 \$10,458.49 as of December 15, 2019. Doc. #29. Debtors claim an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$253,000.00. Schedule A/B, Doc. #1.

The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing Inc in the amount \$124,009.54.³ Schedule D, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$10,458.49
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$124,009.54
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$434,468.03
Value of Debtor's interest in the Property absent liens	-	\$253,000.00
Amount Creditor's lien impairs Debtor's exemption		\$181,468.03

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.

³ There is a discrepancy between the motion and Schedule D as to the amount of the first deed of trust in favor of Select Portfolio Servicing Inc. The motion lists the amount at \$124,000.54 and Schedule D lists the amount as \$124,009.54. The court will use the schedule amount listed in Debtors' petition Schedule D instead of the value used in the motion. Schedule D, Doc. #1.

1. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[22-1026](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2022 [[1](#)]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.