

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

March 13, 2025 at 10:30 a.m.

1. [24-90693](#)-E-7
[SSH-1](#)

WILLIAM/SARA AMERSON
Simran Hundal

**MOTION TO AVOID LIEN OF BEACON
SALES ACQUISITION, INC.**
1-29-25 [16]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 29, 2025. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Beacon Sales Acquisition, Inc. ("Creditor") against property of the debtor, William Howard Amerson and Sara Nicole Amerson ("Debtor") commonly known as 732 Ron Ct., Ceres, CA 95307 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$74,974.02. Exhibit D, Dckt. 20. However, the abstract of judgment has not been filed with these pleadings. The court is unable to determine if, when, where, and for how much the lien was recorded without the abstract of judgment. At the hearing, **XXXXXXX**

March 13, 2025 at 10:30 a.m.

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Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$379,102 as of the petition date. Am. Schedule A at 4, Docket 10. The unavoidable consensual liens that total \$287,491 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 22, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$460,000 on Amended Schedule C. Am. Schedule C at 10, Docket 10.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).~~

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by William Howard Amerson and Sara Nicole Amerson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The court set the hearing for March 13, 2025. Order, Docket 52.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

~~The Motion to Vacate is granted, and the order converting the case to Chapter 7 (Dekt. 38) is vacated. The case shall proceed in bankruptcy under Chapter 13.~~

Karla Lynn Greer-Tlascalá ("Debtor") filed the instant case on October 31, 2023. Docket 1. A plan was confirmed on January 8, 2024. Order, Docket 17.

On January 24, 2025, the Chapter 13 Trustee, Lilian Tsang ("Trustee"), filed a Motion to Dismiss or Convert the Case due to plan payment delinquency. Docket 33. On February 25, 2025, a hearing on the Motion to Dismiss or Convert was held, and the Motion was granted with the case being converted to one under Chapter 7. Docket 37. The ruling was final because Debtor did not file any opposition.

On March 10, 2025, Debtor filed this instant Motion to Reconsider under Fed. R. Civ. P. 59(e). That Rule states:

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

However, the court would not be altering or amending its Order converting the case, but would actually be vacating the Order. Therefore, the Motion should be properly brought and considered under Rule 60(b) in the context of a Motion to Vacate.

Debtor pleads the following facts in support of the court vacating its Order:

1. Debtor cured the entire delinquency on February 26, 2025, one day after the hearing on the Motion to Dismiss or Convert was held, and one day before the Order converting was entered. Mot. 5:1-1.
2. Debtor's plan proposes to pay 100% of all allowed filed claims; therefore staying in the Chapter 13 is beneficial to the creditors. *Id.* at 5:3-4.

Debtor offers no justification in failing to comply with the requirement of Local Bankruptcy Rule 9014-1(f)(1) and Debtor's failure to file a written opposition.

At the hearing, **XXXXXXX**

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to

prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

However, Debtor has presented evidence that the entire delinquency has been cured, and as the Plan pays 100% of allowed claims, remaining in Chapter 13 is beneficial to creditors. At the hearing, **XXXXXXX**

~~Therefore, in light of the foregoing, the Motion is granted, and the order converting the case at Docket 38 is vacated. The case shall proceed in bankruptcy under Chapter 13.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Vacate filed by Karla Lynn Greer-Tlascala (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and the order converting the case at Docket 38 is vacated. The case shall proceed in bankruptcy under Chapter 13.~~

The United States Trustee, Tracy Davis (“U.S. Trustee”), seeks dismissal of the case on the basis that:

1. The debtor in possession, R. Millennium Transport, Inc. (“Debtor in Possession”), is delinquent on its payments to its creditors since they first came due in 2021. As Debtor in Possession failed to make payments in accordance with the confirmed Plan, cause exists to dismiss the case. Mot. 2:1-2, Docket 272.

U.S. Trustee submitted the Declaration of Cecilia Jimenez to authenticate the facts alleged in the Motion. Decl., Docket 275.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

And under 11 U.S.C. § 1112(b)(1)(4)(N) the court may grant conversion or dismissal if there is a “material default by the debtor with respect to a confirmed plan.” Although the term “material default” is not defined in the Bankruptcy Code, the Ninth Circuit has held that a failure “to make required plan payments can be a material default . . . even if the debtor has made payments for an extended period before the default or taken other significant steps to perform the plan.” *In re Baroni*, 36 F. 4th 958, 967 (9th Cir. 2022). That does not mean however, that “every missed payment is a material default.” *Id.* The court in *Baroni* explained that the missed payment must be “significant” or “essential.” *Id.* Indeed, a missed payment can be “so minimal in context that it cannot fairly be characterized as a *material* default.” *Id.* Thus, courts look at factors relevant to whether a missed payment is a material default. *Id.* Such factors include “the number of missed payments, the number of aggrieved creditors, and how long the default occurred.” *Id.*

Collier’s Treatise states on the subject:

Although the Code does not define the term material, the failure to make payments when due under the plan can constitute a material default.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[5][n].

DISCUSSION

Material Default

According to U.S. Trustee, Debtor in Possession did not make any payments to its creditors as required by the confirmed plan since they first came due in 2021.

Debtor in Possession has not made any payments for the past 4 years, which is a significant default. And the default, according to U.S. Trustee, has been continuous and ongoing since the plan was confirmed. No party in interest has opposed the Motion. Taking the *Baroni* factors into consideration, the court finds that cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b).

Confirmed Amended Subchapter V Plan

The court has confirmed the Debtor/Debtor in Possession's Amended Subchapter V Plan. Order with Amended Plan attached; Dckt. 133. The Amended Chapter 13 Plan states that the Debtor, as Plan Administrator, will have monthly disposable income well in excess of the \$24,200 month Plan payment. Amended Plan, p. 3:-14; Dckt. 133.

Class 11 of the Amended Subchapter V Plan provides for payment of non-insider general unsecured claims as follows:

Class 11 - Non-priority unsecured claims held by non-insiders. Impaired. Class 11 is impaired but will be paid in full, with interest at 5% per annum from the petition date, with payments of \$2,320 per month, commencing February 1, 2021, and continuing for 60 months or until paid, whichever comes first.

Id.; p. 6:22-25.

As stated above, the general unsecured claims will be paid in full, with 5% interest, with the first payment commencing on February 1, 2021.

The grounds stated in the Motion include that the Reorganized Debtor has failed to make such payments to creditors with general unsecured claims. Motion, p. 1:3-2:2; Dckt. 272. The Memorandum of Points and Authorities in support of the Motion directs the court to the transcript for 2004 Examination of Surjit Malhi, president and one of the Responsible Representatives of the Debtor/Debtor in Possession, in which Surjit Malhi has not paid two creditors with general unsecured claims: Gina Windorski, who filed Proof of Claim 2-1 in the amount of \$68,187.09, and Jacob Price, who filed Proof of Claim 3-1 in the amount of \$21,889.12. Memorandum, ¶¶ 7, 13-14. Dckt. 274.

In the Memorandum Movant makes reference to the Debtor/Debtor in Possession having filed objections to these two claims, and the court overruling those objections to claims. *Id.*; ¶¶ 7, 8.

November 18, 2024 2004 Exam of Debtor/Debtor in Possession Responsible Representative Surjit Malhi

On November 18, 2024, the U.S. Trustee conducted a post-confirmation 2004 Examination of Surjit Malhi, the president and a Responsible Representative of the Debtor/Debtor in Possession. Going to the 2004 Examination Transcript, Surjit Malhi, the president and Responsible Representative of the

Debtor/Debtor in Possession testified to knowing of these claims, knowing that the court ordered them to be paid, and then knowingly and intentionally not paying them, including the following testimony:

Q. Did you pay any amount to Gina Windorski?

A. No, I did not pay, because they steal the money. They get approved in the court. I don't know why I have to pay them. I paid them. Whatever the work done, I paid them.

They steal the money from the company and they get -- we went to the court, and then I win the case. Why? What's going on? Is it USA or India? What's going on, man?

Q. Sir, that's -- you need to raise that with your counsel and the bankruptcy court.

My understanding is that the bankruptcy court ruled that you had to pay that amount of money.

A. No. She has to pay me because she steal they steal the check and then, you know, and then cash the check.

Q. So, sir, did you know that the Court ordered you to pay Ms. Windorski's claim?

A. Yeah. I didn't pay her.

Q. But did you know that the bankruptcy court had ordered you?

A. Yeah. I know I talked to my lawyer. He told me. But, man, I mean, I don't know what's going on.

p. 14:25-15:22; Exhibit 1, Dckt. 276 (page number references are to the transcript page numbers).

Q. Next, did you pay Jacob Price?

A. No.

Q. And why not?

A. Because they both steal the money and then I win the case in the court. They got proved guilty.

Id.; p. 16:3-7.

The above testimony in the 2004 Examination is very clear that Surjit Malhi, the president and a Responsible Representative of the Debtor/Debtor in Possession, with fiduciary duties running to the

Bankruptcy Estate and Plan Estate, clearly knew that the general unsecured claims were allowed by the court and ordered to be paid.

Though having actual, personal knowledge of the court's order and confirmed plan, Surjit Malhi says that he knowingly defied the court's order and confirmed Amended Plan because he did not want to pay them - regardless of what Federal Law required.

Objection to Claim Proceedings

The Debtor/Debtor in Possession filed an Objection to the Claim of Gina Windorski on January 26, 2022. Dckt. 151. In a detailed Civil Minutes for the March 24, 2022 hearing on the Objection to Claim, the court provides twelve pages of detailed analysis of the law and facts, concluding that the Debtor/Debtor in Possession's objection was without merit.

In overruling the Objection, the court's order expressly authorized the Debtor/Debtor in Possession to offset a smaller monetary obligation owed by Ms. Windorski against the larger Claim in Bankruptcy owed by the Debtor to Ms. Windorski, stating:

IT IS ORDERED that the Objection to Proof of Claim Number 2-1 of Gina Windorski, Creditor, is overruled. The Bankruptcy Trustee may offset against the Claim the obligation owed by Creditor pursuant to the small claims judgment in Stanislaus Superior Court, Turlock Division, Case No. SC-20-000548, *R. Millennium Transport, Inc. v. Gina Windorski, Jacob Price*.

Order; Dckt. 170.

With respect to the Objection to the Claim of Jacob Price, Dckt. 154, the a parallel twelve page Civil Minutes concluding that the Objection was without merit. Civ. Minutes; Dckt. 166. (As can be seen from the order language above, the state court judgment obtained by the Debtor was in one small claims action against both Gina Windorski and Jacob Price.)

The court's order overruling the Objection to the Jacob Price Claim included the same express language allowing the Debtor/Debtor in Possession to offset the smaller state court judgment obligation against Mr. Price against the much larger Claim of Mr. Price in the Bankruptcy Case.

Failure to Comply With Prior Order of the Court.

As the failure of the Debtor/Debtor in Possession, and Surjit Malhi and Rajwant K. Malhi as the Responsible Representatives of the Debtor/Debtor in Possession, all of whom owe fiduciary duties to the Bankruptcy Estate and Plan Estate, developed, the court issued an Order requiring Surjit Malhi and Rajwant K. Malhi, and each of them to appear in person at all further hearings, status conferences, and other proceedings in this Bankruptcy Case - No Telephonic Appearances Permitted. June 28, 2024 and August 15, 2024 Orders; Dckts. 246, 261.

As stated in the Court's June 28, 2024 Order (Dckt. 246), and then the August 15, 2024 Orders (Dckts. 261, 262) when the Responsible Representative failed to appear at the August 8, 2024 continued Status Conference, the Debtor/Debtor in Possession and its Responsible Representatives were not only failing to pay the above two unsecured claims, but were making payments outside of the terms of the

confirmed Amended Subchapter V Plan to chosen creditors with secured claims. The Debtor/Debtor in Possession and the two Responsible Representative were diverting Plan payments around the Subchapter V Trustee and choosing what creditors they wanted to pay directly. *Id.*

The Responsible Representative were knowingly and intentionally violating the terms of the Debtor/Debtor in Possession's confirmed Amended Subchapter V Plan and flaunting Federal Law.

Factors Warranting Conversion to Chapter 7

The U.S. Trustee does not provide a recommendation as to whether this case should be converted or dismissed. The U.S. Trustee makes reference to the two claims not being paid, knowingly in violation of the confirmed Plan, this court's two order, and Federal Law.

In reviewing this file, the court concludes that conversion to Chapter 7 is not only proper, but necessary due to the violations of the confirmed Amended Subchapter V Plan and flaunting of Federal law by the Debtor/Debtor in Possession and its two Responsible Representatives.

The business in this Bankruptcy Case is clearly generating substantial revenues and it a business for the Chapter 7 Trustee to administer - whether by maintaining its operation or shutting the business down and selling off its assets to satisfy all claims in full, including interest.

For example, under the confirmed Amended Subchapter V Plan the Debtor/Debtor in Possession had sufficient operating proceeds to be paying a monthly plan payment in excess of the \$24,200. The Debtor/Debtor in Possession and its Responsible Representative have been operating a vibrant and highly profitable business.

When this Subchapter V case was filed, Debtor's Amended Schedule A/B listed assets in excess of \$1,798,773. Dckt. 61. These assets include:

- A. Oak Valley Community Bank Checking 3968: \$93,533.00;
- B. Advances to drivers to cover expenses: \$15,000.00;
- C. Accounts receivable: \$271,230.00;
- D. Office equipment, including all computer equipment and communication systems equipment and software Peoplenet fleet tracking equipment: \$27,475.00;
- E. 4 x 2013 refrigerator vans, 3 x 2018 Great Dane refrigerator vans, and 2016 Freightliner truck: \$260,000.00;
- F. 3 x 2012 Utility vans: \$96,000.00;
- G. 4 x 2016 Great Dane refrigerator vans: \$160,000.00;
- H. 2 x 2016 Western Star trucks and 2 2018 Great Dane refrigerated vans: \$210,000.00;

- I. 5 x 2013 and 2014 refrigerator vans: \$150,000.00;
- J. 2 x 2016 Dodge Ram pickups (2500 worth \$42,000 and 1500 worth \$34,000): \$76,000.00;
- K. 2 x 2016 Western Star trucks: \$130,000.00;
- L. 3 Freightliner Cascadia trucks: \$219,535.00;
- M. 3 x 2018 Great Dane trailers: \$90,000.00;
- N. Claims and counterclaims against Gina Windorski and Jacob Price: value not scheduled; and
- O. Claims against West Coast Business Capital LLC and Expansion Capital Group for preferential transfers under 11 U.S.C. § 547: value not scheduled.

Dckt. 61. The Debtor/Debtor in Possession has now been operating profitably for four years, paying off all of its debt, except the two former employee creditors that the Debtor/Debtor in Possession and its Responsible representative have knowingly and intentionally not paid, notwithstanding the terms of the Amended Subchapter V Plan, the orders of this Court, and Federal Law, including the Bankruptcy Code. It is likely that a Chapter 7 Trustee would have substantially more assets to administer to pay the claims of the two intentionally unpaid former employee Claimants.

**CONTINUATION OF HEARING AND
ORDER FOR RESPONSIBLE REPRESENTATIVES,
AND EACH OF THEM, TO APPEAR IN PERSON
AT THE CONTINUED HEARING**

Based on the intentional and willful conduct of the Debtor/Debtor in Possession and its two Responsible Representatives, and there being no opposition to this Motion, the court could readily and easily convert this Bankruptcy Case to one under Chapter 7. If so converted, the Chapter 7 Trustee would proceed with the liquidation of the Debtor's assets to pay creditors' claims. The Chapter 7 Trustee could choose to sell the business it self, pay the remaining claims, and then pay Bankruptcy Estate income taxes on such sales proceeds, with the remaining surplus amounts (after being greatly reduced by the State and Federal income taxes, and the Chapter 7 Trustee's fees, which are based on a percentage amount of the monies disbursed to creditors, secured and unsecured, and for administrative expenses of the Bankruptcy Estate) the Debtor and its Responsible Representative (who are the Debtor's only shareholders).

Or the Chapter 7 Trustee may choose to shut down the business and then liquidate select assets of the business, pay creditor claims, pay the State and Federal Taxes, pay the Chapter 7 Trustee fees and other administrative expenses, and then turnover to the Debtor the remaining assets (for which there is no longer an operating business).

It appears that the Responsible Representatives are refusing to comply with the terms of the confirmed Amended Subchapter V Plan, the orders of this Court, and Federal Law, including the Bankruptcy

Code, based on their belief in what the “moral law” should be. The Debtor/Debtor in Possession, the Responsible Representative, creditors, and judges are bound by the laws as written and decisions of the Supreme Court and Appellate Courts. None of them get to make up their own “moral laws” and unilaterally impose them on other parties.

Here, the Debtor obtained a small claims judgments against the two former employee Claimants. The Small Claims Judgment against Gina Windorski and Jacob Price is for \$3,550.00, which was entered on September 18, 2020. Exhibit C, Notice of Entry of Judgment, Dckt. 153; Exhibit D, Notice of Entry of Judgment, Dckt. 156 (the same Small Claims Judgment being filed as an exhibit to each of the two objections to claims).

The Amended Subchapter V Plan provides for the payment of 5% interest, commencing February 1, 2021, on the general unsecured claims, which include the claims of Gina Windorski (Proof of Claim 2-1) for \$68,187.09, and Jacob Price (Proof of Claim 3-1) for \$21,889.12. Confirmed Amended Subchapter V Plan, ¶ 11; Attachment to Order Confirming Plan, Dckt. 133. If the \$3,550.00 judgment entered against Gina Windorski and Jacob Price is divided equally between them, that would be the sum of \$1,775.00 that each of them owed to the Debtor.^{FN.1.}

FN. 1. Reviewing the respective Attachments to Proof of Claim 2-1 and Proof of Claim 3-1, the State Department of Labor Notice of Claim which states the amount claimed by each of the Claimants, does not take into account the Small Claims Judgment offset.

Providing the \$1,775.00 owed by each of the former employee Claimants as an immediate offset against their respective claims against the Debtor and then computing the 5% per annum interest on the remaining balance of each claim, would produce the following results:

	Gina Windorski Claim	Jacob Price Claim
	\$68,187.00	\$21,889.12
Offset for 50% each of Debtor’s Small Claims Court Judgment of \$3,550.00	(\$1,775.00)	(\$1,775.00)
Net Claim Amount to be paid with 5% interest commencing February 1, 2021.	\$66,412.00	\$20,114.12
Simple Interest February 1, 2021 through January 31, 2022	\$3,310.60	\$1,005.70
Simple Interest February 1, 2022 through January 31, 2023	\$3,310.60	\$1,005.70
Simple Interest February 1, 2023 through January 31, 2024	\$3,310.60	\$1,005.70

Simple Interest February 1, 2024 through January 31, 2025	\$3,310.60	\$1,005.70
Simple Interest February 1, 2025 through March 31, 2025 (2 months at \$275.84 and \$83.81, respectively, on the two Claims).	\$551.68	\$167.62
	=====	=====
Projected April 3, 2025 Hearing Date Amount of Each Claim to be Paid.	\$80,206.08	\$24,304.54

The court does not make the above computation as a finding of fact or conclusion of law, but provides it to assist the Debtor/Debtor in Possession, its Responsible Representatives, and counsel for the Debtor/Debtor in Possession in computing the amount, identifying any reasons for a different amount, and to demonstrate the cost to the Debtor/Debtor in Possession and its Responsible Representative if refusing to perform the confirmed Amended Subchapter V Plan and complying with the orders of the court and Federal Law.

While the court believes that the two Responsible Representatives are convinced that their “moral laws” should control over the confirmed Amended Subchapter V Plan, orders of this court, and Federal Law, including the Bankruptcy Code, they do not. This appears to have cost the Debtor/Debtor in Possession, and ultimately its shareholders (the two Responsible Representative) \$17,984.50 by not having yet made the payments on the two Bankruptcy Claims (POC 2-1 and POC 3-1).

The Responsible Representative failing to perform the confirmed Amended Subchapter V Plan and complying with the orders of this court and Federal Law, including the Bankruptcy Code, and having this court convert the case to one under Chapter 7 will cost them substantially more, including possibly having the Debtor/Debtor in Possession’s business sold to a third-party or shut down and liquidated.

The court does not want to have such a result occur and affords (and requires) the two Responsible Representatives a final opportunity to appear in court, present in open court the cashiers’ checks, or other certified funds drawn on a federally insured bank or savings and loan with physical branches in California, to pay the respective claims of Gina Windorski and Jacob Price in full, to deliver the cashier’s checks or certified funds to the Subchapter V Trustee if he is in court or deliver them to the counsel for the Debtor/Debtor in Possession (who will be ordered to immediately deliver them to the Subchapter V Trustee), and demonstrate to the court that they are able to finish performing the confirmed Amended Subchapter V Plan, including the payment of all remaining claims and administrative expenses, including the Subchapter V Trustee’s allowed fees and expenses.

Therefore, in addition to continuing this hearing, the court also will order Rajwant K. Malhi and Surjit Malhi, and each of them, as the Responsible Representatives of the Debtor/Debtor in Possession, to appear in person at the continued hearing on 10:30 a.m. on April 3, 2025 – **NO TELEPHONIC APPEARANCES PERMITTED.**

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on April 3, 2025.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion To Dismiss or Convert filed by United States Trustee, Tracy Davis (“U.S. Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is conditionally granted, and the case will be converted to one under Chapter 7 after the continued hearing on 10:30 a.m. on April 3, 2025.

The court will consider at the continued hearing whether the Debtor/Debtor in Possession and the Responsible Representative have corrected their violations of the confirmed Amended Subchapter V Plan, the Order of this Court Overruling the Objections to Claims, and the United States Bankruptcy Code. The first factor to be considered by the court is whether the Debtor/Debtor in Possession and Responsible Representatives Surjit Malhi and Rajwant K. Malhi have produced at the hearing cashier’s checks or other certified funds, issued by a federally insured bank or savings and loan with physical branches in Modesto, California to pay the claims of Gina Windorski, Proof of Claim 2-1, and Jacob Price, Proof of Claim 3-1, in full, including interest, after offsetting the obligations owed by each of them as provided in the Court’s Orders, Dckts. 171, 172, Overruling the Debtor/Debtor in Possession’s Objections to those Claims.

The court will then consider whether the Debtor/Debtor in Possession and the two Responsible Representative can demonstrate an ability to continue to perform the confirmed Amended Subchapter V Plan, fully fund it for payment of the Subchapter V Trustee for all of his fees and expenses allowed by the court, and comply with Federal Law, including the Bankruptcy Code.

FINAL RULINGS

4. [25-90019-E-7](#)
[SLH-1](#)

VERONICA PINEDA
Seth Hanson

MOTION TO AVOID LIEN OF ONEMAIN
FINANCIAL GROUP, LLC
2-12-25 [\[11\]](#)

Final Ruling: No appearance at the March 13, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on February 12, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of OneMain Financial Group, LLC, as servicer for ('ASP') Wilmington Trust, N.A. as Issuer Loan Trustee for OneMain Financial Issuance Trust 202-1 ("Creditor") against property of the debtor, Veronica Betty Pineda ("Debtor") commonly known as 1200 S. Carpenter Road, Space 67, Modesto, Ca 95351 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,896. Exhibit B, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on June 25, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$80,000, with Debtor owning a 50% interest in the Property as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$30,178 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$25,950.00 on Schedule C. Schedule C at 17, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Veronica Betty Pineda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Veronica Betty Pineda, California Superior Court for Stanislaus County Case No. cv-23-004157, recorded on June 25, 2024, Document No. 2024-0028992, with the Stanislaus County Recorder, against the real property commonly known as 1200 S. Carpenter Road, Space 67, Modesto, Ca 95351, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.