



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B - 510 19th Street
Bakersfield, California**

Hearing Date: Wednesday, May 8, 2024

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all matters before the Honorable René Lastreto II shall be simultaneously: (1) via **ZoomGov Video**, (2) via **ZoomGov Telephone**, and (3) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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.

Post-Publication Changes: 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 any possible updates.

9:00 AM

1. [24-10402](#)-B-13 **IN RE: ERON LYKINS**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 5, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Eron Lykins ("Debtor") on February 22, 2024, on the following basis:

1. The Trustee has not yet concluded the Meeting of Creditors as Debtor has failed to timely provide his 2023 tax returns as required by 11 U.S.C. §1325(a)(1).
2. Debtor has not filed his 2022 income taxes as required by 11 U.S.C. §1329(a)(9).

Doc. #13.

This objection will be CONTINUED to June 5, 2024, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

Debtor is reminded that no plan can be confirmed unless the appropriate tax returns are filed as required by § 1325(a)(9).

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

2. [24-10403](#)-B-13 **IN RE: VICKI/ANGELA VALENTYN**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR U.S. BANK
NATIONAL ASSOCIATION
3-12-2024 [[16](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
WILLIAM EDWARDS/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

U.S. Bank National Association ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Viki Elaine Valentyn and Angela Kay Valentyn ("Debtors") on February 22, 2024. On April 23, 2024, Debtors filed an Amended/Modified Plan which appears to resolve Creditor's objections. Accordingly, this Objection is OVERRULED as moot.

3. [24-10403](#)-B-13 **IN RE: VICKI/ANGELA VALENTYN**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[20](#)]

WILLIAM EDWARDS/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Viki Elaine Valentyn and Angela Kay Valentyn ("Debtors") on February 22, 2024. On April 23, 2024, Debtors filed an Amended/Modified Plan. Accordingly, this Objection is OVERRULED as moot.

4. [24-10373](#)-B-13 **IN RE: MARIA RAMIREZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[18\]](#)

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 5, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Maria Ramirez ("Debtor") on March 5, 2024, on the following basis:

1. The Debtor has not provided her 2023 tax returns by the deadline. The 341 meeting was therefore continued to April 16, 2024.
2. The Plan provides for a monthly payment of \$1,930.00 which is inadequate to complete all plan payments within 5 years. Trustee calculates that the plan payment must be increased to at least \$2,153.00 per month.
3. Debtor has not yet filed her 2023 tax returns.

Doc. #18. On April 19, 2024, the Trustee supplemented her Objection on the following additional grounds:

1. Debtors failed to disclose a business on their Schedules, and Trustee has requested additional documents pertaining to it. The second continued 341 Meeting is set for May 7, 2024.

Doc. #21.

This objection will be CONTINUED to June 5, 2024, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation and its supplement are withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation and supplement, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

Debtor is reminded that no plan can be confirmed unless the appropriate tax returns are filed as required by § 1325(a)(9).

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this

objection will be sustained on the grounds stated in the objection without further hearing.

5. [24-10179](#)-B-13 **IN RE: MARIANA LUCERO**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
3-25-2024 [\[21\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn

No order is required.

On March 28, 2024, Chapter 13 trustee Lilian G. Tsang ("Trustee") withdrew her objection to confirmation in this matter. Accordingly, this Objection is WITHDRAWN.

6. [23-12481](#)-B-13 **IN RE: CAROL DEYON**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E SCHWARTZ, DEBTORS
ATTORNEY(S)
3-27-2024 [\[25\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Applicant"), attorney for Carol Deyon ("Debtor"), requests interim compensation in the sum of **\$6,695.00** under 11 U.S.C. § 330 and § 331. Doc. #25. This amount consists of **\$6,265.00** in fees and \$430.00 in expenses from June 1, 2023, through March 27, 2024. *Id.* Debtor executed a statement of consent dated March 26, 2024 indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated November 3, 2023, confirmed December 22, 2023, indicates that Applicant was paid \$2,187.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 to be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #2, 13. However, the Disclosure of Compensation form which accompanied the petition says Applicant agreed to accept \$12,838.00, that he had received a prepetition retainer of \$2,190.00 plus \$310.00 for the filing fee (for a total of \$2,500.00 paid prepetition), and that \$10,648.00 was still owed through the plan. Doc. #1 (Form 2030).

This is consistent with the Disclosure of Compensation which accompanied the petition. This is Applicant's first fee application. Doc. #25.

Applicant's firm provided 19.8 billable hours at the following rates, totaling **\$6,265.00** in fees:

Professional	Rate	Billed	Total
Neil Schwartz	\$350.00	16.00	\$5,600.00
"J.L." Paralegal	\$175.00	3.80	\$665.00
Total Hours & Fees		19.8	\$6,265.00

Docs. #25,27. Applicant also incurred **\$430.00** in expenses:

Postage	\$30.00
Filing Fees	\$313.00
Credit Report/Counseling/Other	\$87.00
Total Expenses	\$430.00

Id. These combined fees and expenses total **\$6,695.00**.

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

amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a) (3) (A) through (E). § 330(a) (3).

Applicant's services here included, without limitation: prepetition consultation and fact gathering; preparation of the petition, schedules, and Form 22C; original plan, hearings, objections; 341 preparation and attendance; fee applications; and case administration. Docs. ##25, 27. The court finds these= services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #25.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$6,265.00** in fees as reasonable compensation for services rendered and **\$430.00** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 330 and § 331. The total award is **\$6,695.00**. After application of the \$2,500.00 retainer, the chapter 13 trustee will be authorized to pay Applicant **\$4,195.00** through the confirmed plan for services and expenses from June 1, 2023, through March 27, 2024.

7. [24-10089](#)-B-13 **IN RE: STEVEN HOFFMANN**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 4/10/24

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

DISPOSITION: Overruled as moot.

No order is required.

On April 10, 2024, the court granted Debtor's motion for voluntary dismissal. Doc. #22. Accordingly, this Objection is OVERRULED AS MOOT.

8. [23-12798](#)-B-13 **IN RE: JOEL/ANA PARRA**
[LGT-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [\[38\]](#)

HECTOR VEGA/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 5, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Joel and Ana Parra ("Debtors") on December 15, 2023, on the following basis:

1. Debtors have failed to provide their bank statements from their Wells Fargo account which was listed in Schedule A/B. They have also provided bank statements for a Logix bank account not disclosed in the Schedules. Debtor Joel Parra is self-employed and provided a list of tools used in his work, but which were not disclosed on Schedule A/B. [11 U.S.C. § 1326(a)(1)]

Doc. #38.

This objection will be CONTINUED to June 5, 2024, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

10:00 AM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-27-2024 [[1204](#)]

LEONARD WELSH/ATTY. FOR DBT.
\$199.00 FILING FEE PAID 3/29/24

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$199.00 filing fee was paid on March 29, 2024.
Accordingly, this order to show cause will be VACATED.

2. [23-12809](#)-B-7 **IN RE: CLYDE/HEATHER DUNN**
[RSW-1](#)

MOTION TO AVOID LIEN OF AMERICAN CONTRACTORS INDEMNITY
COMPANY
3-27-2024 [[18](#)]

HEATHER DUNN/MV
ROBERT WILLIAMS/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.

Clyde ("Clyde") and Heather Dunn (collectively "Debtors") move for an order
avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of
American Contractors Indemnity Company ("ACIC") in the sum of \$20,647.22
and encumbering residential real property located at 15722 Carpazzo Drive,
Bakersfield, California ("Property"). Doc. #18.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's
registered agent for service of process via first class mail on June 15,
2023. Doc. #23.

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

This motion was set for hearing on 28 days' notice as required by Local
Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the
chapter 7 trustee, the U.S. Trustee, or any other party in interest to file

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Clyde and in favor of ACIC in the amount of \$20,647.22 on October 20, 2023. Doc. #22 (*Exhib. 4*). The abstract of judgment was issued on November 2, 2023, and was recorded in Kern County on November 2, 2023. *Id.* That lien attached to Debtor's interest in Property. Docs. ##21,22. Debtor estimates that the current amount owed on account of this lien is \$20,547.22. *Id.*

As of the petition date, Property had an approximate value of \$527,600.00. Doc. #1 (*Sched. A/B*). Debtors claimed a \$339,203.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (*Sched. C*).

Property is encumbered by a first deed of trust in favor of Shellpoint Mortgage Servicing ("Shellpoint") in the amount of \$345,133.00. Doc. #1 (*Sched. D*).

Property is also encumbered by two judgment liens: (1) the ACIC lien, and (2) a judgment lien in favor TBF Financial ("TBF") in the amount of \$74,178.69, which was recorded in Kern County on April 20, 2021, and is the subject of matter #3 below. The TBF lien is senior lien to the ACIC lien.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Shellpoint	\$345,133.00	N/A	N/A
2. TBF	\$74,178.69	4/20/21	Avoidable; Item #3 (RSW-2)
3. ACIC	\$20,657.22	10/20/23	Avoidable. This matter (RSW-1)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse

order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$20,657.22
Total amount of unavoidable liens	+ \$345,133.00
Debtor's claimed exemption in Property	+ 320,203.00
<i>Sum</i>	= \$685,993.22
Debtor's claimed value of interest absent liens	- \$527,600.00
Extent lien impairs exemption	= \$158,393.22

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$527,600.00
Total amount of unavoidable liens	- \$345,133.00
Homestead exemption	- 320,203.00
Remaining equity for judicial liens	= (\$137,736.00)
Creditor's judicial lien	- \$20,657.22
Extent Debtor's exemption impaired	= (\$158,393.22)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that ACIC's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

3. [23-12809](#)-B-7 **IN RE: CLYDE/HEATHER DUNN**
[RSW-2](#)

MOTION TO AVOID LIEN OF TBF FINANCIAL I, LLC
4-10-2024 [\[25\]](#)

HEATHER DUNN/MV
ROBERT WILLIAMS/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.

Clyde ("Clyde") and Heather Dunn (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of TBF Financial I, LLC ("TBF") in the sum of \$74,178.69 and encumbering residential real property located at 15722 Carpazzo Drive, Bakersfield, California ("Property"). Doc. #25.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #29.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Clyde and in favor of TBF in the amount of \$74,178.68 on October 20, 2023. Doc. #22 (*Exhib. 4*). The abstract of judgment was issued on November 2, 2023, and was recorded in Kern County on April 20, 2021. *Id.* That lien attached to Debtor's interest in Property. Docs. ##27-28. Debtor estimates that the current amount owed on account of this lien is \$74,178.69. Doc. #25.

As of the petition date, Property had an approximate value of \$527,600.00. Doc. #1 (*Sched. A/B*). Debtors claimed a \$339,203.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (*Sched. C*).

Property is encumbered by a first deed of trust in favor of Shellpoint Mortgage Servicing ("Shellpoint") in the amount of \$345,133.00. Doc. #1 (*Sched. D*).

Property is also encumbered by two judgment liens: (1) the TBF lien, and (2) a judgment lien in favor of American Contractors Indemnity Company ("ACIC") in the sum of \$20,647.22, which was recorded in Kern County on November 2, 2023, and is the subject of matter #2 above. The TBF lien is senior lien to the ACIC lien.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Shellpoint	\$345,133.00	N/A	N/A
2. TBF	\$74,178.69	4/20/21	Avoidable; This matter (RSW-2)
3. ACIC	\$20,657.22	10/20/23	Avoidable. Matter #2, above. (RSW-1)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

The court granted the Debtor's *Motion to Avoid* the ACIC lien in Item #2, above, and so that lien can be excluded from the calculation.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3)

[the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

After avoidance of the ACIC lien, this lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$74,178.69
Total amount of unavoidable liens	+ \$345,133.00
Debtor's claimed exemption in Property	+ 320,203.00
<i>Sum</i>	= \$739,514.69
Debtor's claimed value of interest absent liens	- \$527,600.00
Extent lien impairs exemption	= \$211,914.69

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$527,600.00
Total amount of unavoidable liens	- \$345,133.00
Homestead exemption	- 320,203.00
Remaining equity for judicial liens	= (\$137,736.00)
Creditor's judicial lien	- \$74,178.69
Extent Debtor's exemption impaired	= (\$211,914.69)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that TBF's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

CONTINUED MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE
AMOUNT OF \$ 53,898.59
3-4-2024 [\[159\]](#)

BRETT PRICE/ATTY. FOR DBT.
CLOSED 02/27/1995

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Dilks & Knopik, LLC ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of \$53,898.59 from the unclaimed dividends paid into the court in the underlying Chapter 7 proceeding ("the Proceeding"). Doc. #181. The Proceeding was previously set for hearing on April 3, 2024, but continued to May 8, 2024, at Movant's request. Doc. #165.

The Proceeding was commenced on October 31, 1984, and much of the Proceeding's history is a mystery to the court, as it was filed prior to the introduction of electronic case filing, and all court documents filed in the case prior to January 4, 1993, exist only in hard-copy format and are not readily available to the court. See *Docket entry dated January 4, 1993*. Furthermore, it appears that docket entries prior to November 6, 2000, are not recoverable through the Pacer. See *Docket, generally*. However, the docket itself does have an entry dated November 14, 1994, that references a "Turn-over of Unclaimed Funds" associated with Proof of Claim #37 for Advanced Energy Resources, Inc. ("AERI") in the amount of \$53,898.59. See *Docket Entry #148 on November 14, 1994*.

On March 4, 2024, Movant filed the instant motion, which was accompanied by what purports to be a chain of transfer between AERI (the entity originally entitled to the unclaimed funds) and Movant. Doc. #159. The attached documents purport to show that AERI began its corporate existence as Advanced Petroleum Technology, Inc., a Delaware corporation incorporated in 1981 as a subsidiary of URS Corporation. *Id. (Exhib. A)*. Advanced Petroleum Technology, Inc. later changed its name to Advanced Production Service, Inc., and later still to AERI. *Id. (Exhib. C, D)*. Under that name, AERI became a creditor in the Proceeding and entitled to the unclaimed funds at issue. *Id.*

The moving papers aver that AERI has been inactive for over 35 years but that, for the entirety of its existence under a succession of names, AERI was always a subsidiary of URS Corporation. *Id.* URS Corporation later merged with and became a subsidiary to AeCOM Technology Corporation ("AeCOM"), a Delaware corporation. *Id. at (Exhib. F)*. It is AeCOM which assigned all rights to the unclaimed funds to Movant pursuant to an Assignment Agreement whereby Movant as Assignee would take steps to recover

the unclaimed funds, \$35,932.39 of which would be remitted to AeCOM as Assignor, with Movant retaining the rest of the unclaimed funds. *Id.* The Assignment Agreement was executed on behalf of AeCOM by Blake Widdison, a Senior Vice President for AeCOM, which is also identified interchangeably in the moving papers and online both under the name AeCOM Technology Corporation and simply as AeCOM. *Id.*

The court is satisfied that Movant has demonstrated that entitlement to the unclaimed funds properly passed to AeCOM as parent corporation of URS and thence to Movants. A review of the California Secretary of State's website reflects that AeCOM is a corporation in good standing in this state.

The motion was filed on March 4, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on March 11, 2024. Docs. ##160-61.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

5. [24-10248](#)-B-7 **IN RE: EDGARDO RUIZ-HERNANDEZ**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
3-28-2024 [\[13\]](#)

JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on March 22, 2024. Doc. #13.

Edgardo E. Ruiz-Hernandez ("Debtor") timely opposed. Doc. #15. Debtor's attorney appeared at the March 22, 2024, meeting of creditors. Debtor attempted to appear but encountered technical difficulties and was unable to timely troubleshoot the issue. Debtor states that he will be alongside

his attorney at the meeting of creditors to avoid any further technical difficulties.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for May 17, 2024, at 11:00 a.m. See, Doc. #13. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

6. [23-10487](#)-B-7 **IN RE: CHERYLANNE FARLEY**
[CJK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM CO-DEBTOR STAY
7-17-2023 [\[41\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Withdrawn

No order is required.

On May 7, 2024, the Movant withdrew the motion, stating that the loan has been paid in full. Doc. #125. Accordingly, this matter is WITHDRAWN.

11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION ET AL
V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Continued to June 5, 2024, at 9:00 a.m.

ORDER: The court will enter the order.

Pursuant to the Stipulation of all parties, this matter is to be continued for 30 days. Accordingly, this matter is CONTINUED to June 5, 2024, at 9:00 a.m.

2. [22-10029](#)-B-7 **IN RE: PAUL/LINNETTE RZUCIDLO**
[24-1003](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-4-2024 [[1](#)]

RZUCIDLO, JR. ET AL V. NAVIENT
DISMISSED 4/1/2024

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

DISPOSITION: Status Conference closed. Dropped from
calendar.

No order is required.

On April 1, 2024, the court entered an order dismissing this adversary proceeding. Doc. #11. Accordingly, this Status Conference is closed and shall be dropped from the calendar.

3. [23-12573](#)-B-7 **IN RE: JULIE BLACK**
[24-1001](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
2-9-2024 [[1](#)]

BLACK V. NAVIENT SOLUTIONS LLC
NEIL SCHWARTZ/ATTY. FOR PL.
DISMISSED 3/11/24; CLOSED 3/29/24

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

DISPOSITION: Status Conference closed. Dropped from
 calendar.

No order is required.

On March 11, 2024, the Debtor-Plaintiff in this adversary filed a Notice of Dismissal, and the adversary was closed on March 29, 2024. Doc. #7. Accordingly, this Status Conference is closed and shall be dropped from the calendar.