

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, June 14, 2022
Place: Department B - Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-1](#)

FURTHER PRELIMINARY HEARING RE: MOTION TO USE CASH
COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
6-1-2022 [[6](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

The court is in receipt of Flavio Almeida Martins' ("Debtor")
supplemental declaration and Revised Budget. Docs. ##41-42, *Ex. A*.
Debtor appears to have complied with the interim order. Doc. #28.

This matter will be called and proceed as scheduled.

2. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-2](#)

FURTHER PRELIMINARY HEARING RE: MOTION FOR ORDER PROHIBITING
PG&E FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE
AND/OR MOTION FOR ORDER DETERMINING ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY SERVICES
6-1-2022 [[10](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

3. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-3](#)

FURTHER PRELIMINARY HEARING RE: MOTION TO PAY
6-1-2022 [[13](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

4. [22-10061](#)-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**

CONFIRMATION HEARING RE: CHAPTER 11 SUBCHAPTER V SMALL
BUSINESS PLAN
4-18-2022 [[50](#)]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Chapter 11 subchapter V debtor-in-possession California Roofs and Solar, Inc. ("Debtor") moves for an order confirming the *Plan of Reorganization for Small Business Debtors Under Chapter 11* dated April 18, 2022 ("Plan"). Doc. #67.

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

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Debtor filed the Plan on April 18, 2022. Doc. #50. The Plan uses Official Form 425A, which does not contain a location to input a DCN.¹ Thus, omitting the DCN for the Plan is satisfactory. Thereafter, Debtor lodged, and the court issued, the *Order Setting Confirmation Hearing and Related Deadlines*, EDC 6-202 (Rev. 10/21) on April 25, 2022 ("Deadline Order"). Doc. #58. Local Form EDC 6-202 (Rev. 10/21) includes a space in the caption for a DCN.² The Deadline Order, however, omits both that space and a DCN. Thus, it appears that the Deadline Order was submitted on an altered Form EDC 6-202 to remove the DCN space.

Pursuant to the Deadline Order, Debtor filed a notice of hearing, motion to confirm Plan, exhibits, proofs of service, ballot tabulations, plan treatment stipulations, and summaries of tabulations. Docs. ##59-60; ##67-69; ##75-83. None of these documents were filed with a DCN.

Since DCNs MJB-1 and MJB-2 have been used, the Deadline Order lodged with the court should have used DCN MJB-3, or another unused DCN. All subsequent pleadings related to Plan confirmation, except the Plan itself, should bear the same DCN.

Second, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. This disclosure was entirely omitted from the notice of hearing. Doc. #59.

Third, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Here, the notice says that objections to confirmation "shall be filed and served on the Plan Proponent, Plan Proponent's counsel, Subchapter V Trustee, U.S. Trustee, and Committee of Creditors . . ." *Id.* The addresses of these parties were not included in the notice as required by LBR 9014-1(d)(3)(B)(i). Counsel is advised to review the local rules and ensure compliance in subsequent matters.³

Accordingly, for the above reasons, Plan confirmation will be DENIED WITHOUT PREJUDICE. Since this denial is for procedural reasons only, further ballot solicitations are unnecessary if there are no modifications to the Plan.

¹ Form 425A (eff. Feb. 19, 2020), <https://www.uscourts.gov/forms/small-business-forms/plan-reorganization-small-business-under-chapter-11> (visited June 10, 2022).

² EDC 6-202 (Rev. Oct. 2021), <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.006-202.pdf?dt=14213744> (visited June 10, 2022).

³ LBR (eff. May 2, 2022) <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRules2022.pdf> (visited June 10, 2022).

5. [22-10061](#)-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
1-17-2022 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 21, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Due to the denial of plan confirmation in matter #4 above, this status conference will be CONTINUED to July 21, 2022 at 9:30 a.m. If the plan confirmation is re-noticed for hearing before the continued status conference hearing date, the continued status conference may be further continued to the plan confirmation hearing date.

11:00 AM

1. [22-10463](#)-B-7 IN RE: XCHITL HERNANDEZ

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL
CREDIT UNION
5-16-2022 [[17](#)]

NO RULING.

1:30 PM

1. [22-10209](#)-B-7 **IN RE: NOREEN GUZMAN**
[JES-1](#)

MOTION TO SELL
5-13-2022 [[29](#)]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2012 Toyota Rav 4 ("Vehicle") to Noreen Jone Guzman ("Debtor") for \$7,000.00, subject to higher and better bids at the hearing. Doc. #29.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

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. 2002(a)(2). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. 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.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200

B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

The Vehicle has approximately 105,000 miles and is listed in the schedules with a value of \$3,000.00. Doc. #13, *Sched. A/B*. The Vehicle does not appear to be encumbered by any liens or security interests, but this sale is subject to liens and encumbrances, known and unknown. *Id.*, *Sched. D*; Doc. #29. Debtor claimed a \$3,000.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. Doc. #13, *Sched. C*.

Trustee declares that Debtor offered to purchase Vehicle for \$7,000.00, which he accepted subject to court approval and higher and better bids. Doc. #31. Trustee has not agreed to pay a commission to any party in connection with the sale and it is subject to any liens and encumbrances, known or unknown. *Id.* The sale price was determined by estimating Vehicle's fair market value: \$7,000. *Id.* After application of Debtor's \$3,000 exemption credit, \$4,000 in net proceeds will remain for the estate. *Id.*

Trustee believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the Vehicle. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale.

Accordingly, this motion will be GRANTED. The hearing will proceed for higher and better bids only. Trustee is authorized to sell Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances,

known or unknown, and no warranties or representations are included with the sale; the Vehicle is being sold "as-is, where-is."

2. [22-10617](#)-B-7 **IN RE: NICOLE SKELTON**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CASE WITHOUT ENTRY
OF DISCHARGE AND/OR MOTION TO DISMISS CASE
5-13-2022 [[15](#)]

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order approving a stipulation to dismiss this chapter 7 case without entry of discharge and dismissing this case. Doc. #15.

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

Nicole Skelton ("Debtor") filed chapter 7 bankruptcy on April 11, 2022. Doc. #1. Debtor filed a motion to voluntarily dismiss the case, but the motion was denied without prejudice for procedural reasons. Doc. #23.

The § 341(a) meeting of creditors was held on May 16, 2022 and Debtor did not appear, so the meeting was continued to July 18, 2022. Doc. #20. The chapter 7 trustee filed a motion to dismiss for failure to appear, and if opposed, would be heard on June 28, 2022. *Id.*; Doc. #21.

UST is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. § 707(b)(1), (b)(2) (presumed abuse) and/or (b)(3) (bad faith and/or totality of circumstances abuse). The deadline to file a motion to dismiss under § 707(b)(3) is July 15, 2022). Fed. R. Bankr. P. 1017(e)(1). However, Debtor, through Debtor's attorney Layne Hayden, stipulated to voluntarily dismissal without entry of discharge on May 13, 2022. Doc. #17.

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

Here, UST is prepared to file a motion to dismiss under § 707(b)(1)-(b)(3), but Debtor has opted to voluntarily dismiss instead. Doc. #17. No creditors timely filed written opposition, and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

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

3. [21-12342](#)-B-7 **IN RE: JEFF/TERESA MERRILL**
[SLL-2](#)

MOTION TO AVOID LIEN OF IOU CENTRAL INC.
5-12-2022 [[32](#)]

TERESA MERRILL/MV
STEPHEN LABIAK/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.

Jeff Merrill and Teresa Merrill ("Debtors") seeks to avoid a judicial lien in favor of IOU Central, Inc. ("IOU") in the amount of \$104,728.66 and encumbering residential real property located at 5801 W. Perez, Visalia, CA 93291 ("Property").⁴ Doc. #32.

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 joint debtor Jeff Merrill and D & E Motorsports, Inc., Debtors' corporation, in favor of IOU in the amount of \$104,728.66 on November 16, 2017. Doc. #34, *Ex. C*. The abstract of judgment was issued on December 15, 2017 and recorded in Tulare County on February 6, 2018. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #35.

As of the petition date, Property had an approximate value of \$508,000.00. Doc. #17, *Am. Sched. A/B*. Debtors claimed a homestead exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. Doc. #19, *Am. Sched. C*.

Property is encumbered by two unavoidable liens: (i) a first deed of trust in favor of PHH Mortgage Service in the amount of \$266,196.00; and (ii) a tax lien in favor of Tulare County in the amount of

\$11,004.54 for 2018 and 2020 taxes. Docs. #1, *Sched. D*; see also Docs. #33; #34, *Ex. B*. In addition to IOU's lien, Property is also encumbered by: (a) a judgment lien in favor of Capital One Bank (USA), N.A. ("Capital One") in the amount of \$4,812.14, recorded August 12, 2019, and prematurely avoided on April 8, 2022; (b) a judgment lien in favor of American Express Bank, FSB ("American Express") in the amount of \$14,689.95, recorded April 23, 2021, and will be avoided in matter #4 below (SLL-3); and (c) a judgment lien in favor of Merchant Cash and Capital LLC ("MCC") in the amount of \$29,554.70, recorded June 24, 2021, and will be avoided in matter #5 below (SLL-4). Property's security interests are illustrated in order of priority below:

Creditor	Amount	Recorded	Status
1. PHH	\$266,196.00	?	Unavoidable
2. IOU	\$104,728.66	02/06/18	This motion (SLL-2)
3. Capital One	\$4,812.14	08/12/19	Avoided 04/09/22 (SLL-1)
4. Taxes	\$11,004.54	?	Unavoidable
5. American Express	\$14,689.95	04/23/21	Avoided in matter #4 (SLL-3)
6. MCC	\$29,554.70	06/24/21	Avoided in matter #5 (SLL-4)

Docs. #34, #40, #45, *Exs. A, C*; Doc. #29, *Ex. C*.

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

After the junior Capital One, American Express, and MCC liens have all been avoided, the IOU lien will become the most junior judgment lien, and therefore may be avoided under § 522(f)(2) here.

Strict application of the § 522(f)(2) formula is as follows:

IOU's judicial lien	\$104,728.66
Total amount of unavoidable liens	+ \$277,200.54
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$681,929.20
Debtors' claimed value of interest absent liens	- \$508,000.00
Extent IOU's lien impairs Debtors' exemption	= \$173,929.20

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$508,000.00
Total amount of unavoidable liens	-	\$277,200.54
Remaining equity	=	\$230,799.46
Homestead exemption	-	\$300,000.00
IOU judgment lien	-	\$104,728.66
Extent exemption impaired by IOU's lien	=	(\$173,929.20)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁴ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Robert Gloer, President and CEO, at 600 Townpark Lane, Suite 100, Kennesaw, GA 30144 by certified mail on May 12, 2022. Doc. #36

4. [21-12342](#)-B-7 **IN RE: JEFF/TERESA MERRILL**
[SLL-3](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
5-12-2022 [[37](#)]

TERESA MERRILL/MV
STEPHEN LABIAK/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.

Jeff Merrill and Teresa Merrill ("Debtors") seeks to avoid a judicial lien in favor of American Express Bank, FSB ("American Express") in the amount of \$14,689.95 and encumbering residential real property located at 5801 W. Perez, Visalia, CA 93291 ("Property").⁵ Doc. #37.

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 joint debtor Jeff Merrill in favor of American Express in the amount of \$14,689.95 on February 26, 2020. Doc. #40, Ex. C. The abstract of judgment was issued on April 2, 2021 and recorded in Tulare County on April 23, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #39.

As of the petition date, Property had an approximate value of \$508,000.00. Doc. #17, Am. Sched. A/B. Debtors claimed a homestead exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. Doc. #19, Am. Sched. C.

Property is encumbered by two unavoidable liens: (i) a first deed of trust in favor of PHH Mortgage Service in the amount of \$266,196.00; and (ii) a tax lien in favor of Tulare County in the amount of \$11,004.54 for 2018 and 2020 taxes. Doc. #1, Sched. D; see also Docs. #39; #40, Ex. B. In addition to American Express' lien, Property is also encumbered by: (a) a senior judgment lien in favor of IOU Central, Inc. ("IOU") in the amount of \$104,728.66, recorded February 6, 2018, and will be avoided in matter #3 above (SLL-2); (b) a senior judgment lien in favor of Capital One Bank (USA), N.A. ("Capital One") in the amount of \$4,812.14, recorded August 12, 2019, and prematurely avoided on April 8, 2022; and (c) a junior judgment lien in favor of Merchant Cash and Capital LLC ("MCC") in the amount of \$29,554.70, recorded June 24, 2021, and will be avoided in matter #5 below (SLL-

4). Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. PHH	\$266,196.00	?	Unavoidable
2. IOU	\$104,728.66	02/06/18	Avoidable; matter #2 (SLL-2)
3. Capital One	\$4,812.14	08/12/19	Avoided 04/09/22 (SLL-1)
4. Taxes	\$11,004.54	?	Unavoidable
5. American Express	\$14,689.95	04/23/21	This motion (SLL-3)
6. MCC	\$29,554.70	06/24/21	Avoided in matter #5 (SLL-4)

Docs. #34, #40, #45, Exs. A, C; Doc. #29, Ex. C.

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

On April 8, 2022, the court avoided the Capital One lien. Doc. #31. Since the Capital One lien was recorded on August 12, 2019, it has seniority to this lien and should not have been avoided before the American Express and MCC liens. Doc. #29, Ex. C. Based on the record at that time, the Capital One lien appeared to be the only non-consensual judgment lien encumbering Property. Docs. #29; #26, Ex. A. The current *Schedule D* still indicates the same. See Doc. #1, *Sched. D*. Debtor included an updated *Schedule D* as an exhibit that reflects liens not previously disclosed, but it has not been properly filed and docketed as an amended schedule. Debtor is directed to properly file *Amended Schedule D* and docket it as a schedule. Avoiding the Capital One lien out-of-order was not permitted. Although it is *de minimis* in this instance because no equity is available for attachment of any judicial liens, there would be cause for vacatur under different circumstances.

After the junior MCC lien has been avoided, the American Express lien will become the most junior judgment lien, and therefore may be avoided under § 522(f)(2) here.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$14,689.95
Total amount of unavoidable liens ⁶	+ \$386,741.34
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$701,431.29
Debtors' claimed value of interest absent liens	- \$508,000.00
Extent Creditor's lien impairs Debtors' exemption	= \$193,431.29

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's security interests are illustrated with the following order of priority:

Fair market value of Property	\$508,000.00
Total amount of unavoidable liens	- \$277,200.54
Remaining equity	= \$230,799.46
Homestead exemption	- \$300,000.00
IOU judgment lien	- \$104,728.66
Extent exemption impaired by IOU's lien	= (\$173,929.20)
Capital One judgment lien	- \$4,812.14
Extent exemption impaired by above two liens	= (\$178,741.34)
American Express judgment lien	- \$14,689.95
Extent exemption impaired by above three liens	= (\$193,431.29)

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

Debtors' have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁵ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving Jonathan Polk, President and CEO, at 4315 South 2700 West, Salt Lake City, Utah 84184, by certified mail on May 12, 2022. Doc. #41.

⁶ The unavoidable liens here consist of: (i) PHH's \$266,196.00 deed of trust, (ii) IOU's \$104,728.66 judgment lien, (iii) the \$4,812.14 Capital One lien, and (iv) the \$11,004.54 tax lien. Though already avoided, Capital One's lien is unavoidable until this lien has been avoided.

5. [21-12342](#)-B-7 **IN RE: JEFF/TERESA MERRILL**
[SLL-4](#)

MOTION TO AVOID LIEN OF MERCHANT CASH AND CAPITAL LLC
5-12-2022 [[42](#)]

TERESA MERRILL/MV
STEPHEN LABIAK/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.

Jeff Merrill and Teresa Merrill ("Debtors") seeks to avoid a judicial lien in favor of Merchant Cash and Capital, LLC ("MCC") in the amount of \$29,554.70 and encumbering residential real property located at 5801 W. Perez, Visalia, CA 93291 ("Property").⁷ Doc. #42.

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 joint debtor Jeff Merrill in favor of American Express in the amount of \$29,554.70 on June 6, 2018. Doc. #45, *Ex. C*. The abstract of judgment was issued on or about November 10, 2018 and recorded in Tulare County on June 24, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #44.

As of the petition date, Property had an approximate value of \$508,000.00. Doc. #17, *Am. Sched. A/B*. Debtors claimed a homestead exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. Doc. #19, *Am. Sched. C*.

Property is encumbered by two unavoidable liens: (i) a first deed of trust in favor of PHH Mortgage Service in the amount of \$266,196.00; and (ii) a tax lien in favor of Tulare County in the amount of \$11,004.54 for 2018 and 2020 taxes. Doc. #1, *Sched. D*; see also Docs. #44; #45, *Ex. B*. In addition to MCC's lien, Property is also encumbered by: (a) a senior judgment lien in favor of IOU Central, Inc. ("IOU") in the amount of \$104,728.66, recorded February 6, 2018, and will be avoided in matter #3 above (SLL-2); (b) a senior judgment lien in favor of Capital One Bank (USA), N.A. ("Capital One") in the amount of \$4,812.14, recorded August 12, 2019, and prematurely avoided on April 8, 2022; and (c) a senior judgment lien in favor of American Express Bank ("American Express") in the amount of \$14,689.95, recorded April 23, 2021, and will be avoided in matter #4 above (SLL-3). Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. PHH	\$266,196.00	?	Unavoidable
2. IOU	\$104,728.66	02/06/18	Avoidable; matter #2 (SLL-2)
3. Capital One	\$4,812.14	08/12/19	Avoided 04/09/22 (SLL-1)
4. Taxes	\$11,004.54	?	Unavoidable
5. American Express	\$14,689.95	04/23/21	Avoidable; matter #3 (SLL-3)
6. MCC	\$29,554.70	06/24/21	This motion (SLL-4)

Docs. #34, #40, #45, *Exs. A, C*; Doc. #29, *Ex. C*.

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

On April 8, 2022, the court avoided the Capital One lien. Doc. #31. Since the Capital One lien was recorded on August 12, 2019, it has seniority to this lien and should not have been avoided before the American Express and MCC liens. Doc. #29, *Ex. C*. Based on the record at that time, the Capital One lien appeared to be the only non-consensual judgment lien encumbering Property. Docs. #29; #26, *Ex. A*.

The current *Schedule D* still indicates the same. See Doc. #1, *Sched. D*. Debtor included an updated *Schedule D* as an exhibit that reflects liens not previously disclosed, but it has not been properly filed and docketed as an amended schedule. Doc. #45, *Ex. A*. Debtor is directed to properly file *Amended Schedule D* and docket it as a schedule. Avoiding the Capital One lien out-of-order was not permitted. Although it is *de minimis* in this instance because no equity is available for attachment of any judicial liens, there would be cause for vacatur under different circumstances.

Since this appears to be the most junior judgment lien, it may be avoided under § 522(f)(2) here.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$29,554.70
Total amount of unavoidable liens ⁸	+ \$401,431.29
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$730,985.99
Debtors' claimed value of interest absent liens	- \$508,000.00
Extent Creditor's lien impairs Debtors' exemption	= \$222,985.99

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$508,000.00
Total amount of unavoidable liens	- \$277,200.54
Remaining equity	= \$230,799.46
Homestead exemption	- \$300,000.00
IOU judgment lien	- \$104,728.66
Extent exemption impaired by Creditor's lien	= (\$173,929.20)
Capital One judgment lien	- \$4,812.14
Extent exemption impaired by above two liens	= (\$178,741.34)
American Express judgment lien	- \$14,689.95
Extent exemption impaired by above three liens	= (\$193,431.29)
MCC judgment lien	- \$29,554.70
Extent exemption impaired by all four liens	= (\$222,985.99)

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

Debtors' have established the four elements necessary to avoid a lien under § 522(f) (1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁷ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving John Donovan, CEO, at 460 Park Ave. S, New York, NY 10016, by certified mail on May 12, 2022. Doc. #46.

⁸ The unavoidable liens here consist of: (i) PHH's \$266,196.00 deed of trust, (ii) IOU's \$104,728.66 judgment lien, (iii) the \$4,812.14 Capital One lien, (iv) the \$11,004.54 tax lien, and (v) the \$14,689.95 American Express lien. Though already avoided, Capital One's lien is unavoidable until the American Express and MCC liens have been avoided.

6. [21-10762](#)-B-7 **IN RE: STEVEN/SANDRA SLUMBERGER**
[DMG-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DESIREE LUTZ
5-17-2022 [[67](#)]

JAMES SALVEN/MV
PETER FEAR/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in accordance with the ruling below with the stipulation attached as an exhibit. A copy of the stipulation shall be separately filed and docketed as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and non-debtor third party Desiree Lutz ("Lutz") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #67.

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 Rule 2002(a) (3). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not

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

Steven Norman Slumberger and Sandra Sims Slumberger (collectively "Debtors") filed chapter 7 bankruptcy on March 30, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on April 22, 2021. Doc. #3.

Lutz is joint debtor Steven Slumberger's sister. Doc. #69. Prior to filing bankruptcy, Joint Debtor and Lutz executed a *Purchase and Sale Agreement* effective February 17, 2021 ("PASA"). *Id.* Under the PASA, Joint Debtor sold the following assets to Lutz:

- (a) a 50% interest in Slumberger Rentals, a general partnership ("Partnership") valued at \$216,140;
- (b) a 50% interest in Slumberger Lumber, Inc., a corporation ("Corporation") valued at \$25,000; and
- (c) a 15% interest in real property located at 14679 W. Whitebridge Ave., Kerman, CA 93630 ("Property"), a commercial shopping and office center valued at \$124,155.

Id.; Doc. #70, *Ex. B.* In consideration, Lutz paid:

- (i) 50% interest in Partnership: \$216,410 (50% of the appraised value, minus 7% in cost of sale, minus \$340,000 in debt owed by Debtor to "the Defendant."⁹ Lutz claims that the debt was owed to the partnership.
- (ii) a 15% interest in Property: approximately \$124,155 (15% of the appraised value, minus 7% in cost of sale); and
- (iii) Stock of Corporation: \$25,000 (50% of best estimate of value of Corporation).

Id.; Doc. #69. The total sale price of the assets transferred under the PASA was \$365,295. *Id.* Lutz made a \$200,000 down payment, which is currently on deposit in Trustee's bank account. *Id.* Lutz executed a promissory note for \$165,295 difference, which will be paid monthly over a ten-year period. No collateral was secured prior to the bankruptcy case and interest on the promissory note accrues at 1.45% per year. *Id.*

Pursuant to 11 U.S.C. § 547(b), Trustee undertook extensive investigation into Debtor's financial affairs, interests, and transactional histories, including (1) reviewing Debtor's petition,

schedules, and statements; (2) reviewing the PASA; (3) reviewing the Partnership agreement effective January 1, 2020; (4) reviewing a prior Buy Sell Agreement dated January 1, 2020; (5) reviewing Debtors' individual, Partnership, and Corporation tax returns for tax years 2016 through 2020; (6) examining Debtors under oath at the meeting of creditors on August 5, 2021 under § 541; (7) reviewing payment history of Partnership liability; (8) conducting numerous phone calls and emails among Debtors' counsel, Lutz's counsel, and Trustee's counsel to request information, discuss the basis for liability, and defenses asserted, as well as informal mediation at Debtors' attorney's office; (9) consulting with Trustee's counsel and CPA colloques; and (10) legal research. *Id.*

As a result of this investigation, Trustee raised two issues: whether offsetting the purchase price through a debt owed by Debtor constituted a preference, and whether, as to the assets, they could be avoided under § 548 given the short time that the transfer occurred before bankruptcy, and the adequacy of consideration. Trustee also contested the adequacy of financial records prior to execution of the PASA.

In response, Lutz has maintained that the transfers were made for adequate consideration. Lutz denies liability to the Trustee's avoidance powers. *Id.*

In an effort to avoid litigation, the parties agreed to compromise their potential dispute. Trustee will accept the additional sum of \$250,000 in addition to the \$200,000 deposit that was paid at the filing of the case, together with monthly payments made under the Note for the months of March 2021 through April 2022. *Id.* Payments beyond April 2022 will be forgiven. The total amount of the settlement is \$250,000, which does not include the sums previously paid to Trustee from the partnership distribution and sale and payments previously made under the note, which is approximately \$299,328.34 to date. *Id.* In exchange, the parties will execute a mutual general release including a waiver of claims under Cal. Code Civ. Proc. § 1542. *Id.*

Trustee now seeks approval of this settlement. Doc. #67.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: In conducting due diligence, Trustee noted that the Buy Sell agreement was drafted by highly qualified transactional counsel with the assistance of highly qualified counsel. Doc. #69. The transaction occurred within the theater of a pending bankruptcy, so the parties to the transaction understood that Trustee's avoidance powers would be present. However, pre-agreement record-keeping, including valuations, depreciation of assets in tax returns, and documented financial dealings over several years give Trustee a stronger claim in potential litigation. *Id.*

Trustee believes that Lutz acquired valuable assets. Though Trustee acknowledges that Lutz's financial records and appraisals could support the contention of adequate consideration, such records and appraisals pre-date the current economic climate notwithstanding Lutz's insider status with respect to the Debtors. *Id.*

Neither parties' success in litigation is assured and the outcome of litigation is unclear. This factor weighs towards approving the settlement.

2. Difficulties in collection: If Trustee prevails at trial, it is likely that the transfers would be set aside, and Trustee would be able to liquidate the assets. *Id.* However, if Trustee is awarded a money judgment, collection would be more difficult. This factor weighs against approving the settlement.

3. Complexity of litigation: Litigation would require employment of appraisers and/or accountants, and possibly forensic accountants, to opine on the value of the assets and the manner in which they were accounted. Trustee estimates that the estate would likely be required to incur substantial attorney and expert fees to obtain a judgment with the possibility of defeat at trial. *Id.* In that event, the estate would be depleted significantly. This factor heavily weighs in favor of approving the settlement.

4. Interest of the creditors: Trustee believes that the creditors have the benefit of this settlement because the estate will have significant funds both from this compromise and other matters. *Id.* The case can administratively close soon if this compromise is approved and further litigation will delay payout. This settlement will avoid the risk and expense associated with trial while providing a guaranteed recovery for the bankruptcy estate.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-

FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* This motion will be GRANTED, and the settlement agreement will be approved.

Trustee shall separately file a copy of the settlement agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

⁹ It is unclear to whom "the Defendant" refers here. Doc. #69.

7. [18-13468](#)-B-7 **IN RE: MANUEL/LUPITA MENDOZA**
[RWR-3](#)

MOTION FOR COMPENSATION FOR RUSSELL W REYNOLDS, TRUSTEES
ATTORNEY(S)
5-16-2022 [[60](#)]

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.

Russell W. Reynolds of Coleman & Horowitz, LLP ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation in the sum of \$9,423.75. Doc. #60. This amount consists of \$8,642.50 in fees as reasonable compensation and \$781.25 in reimbursement for actual, necessary expenses from February 19, 2020 through June 15, 2022. *Id.*

Trustee has reviewed the application and supporting documents, believes the fees and expenses represent a reasonable compensation for necessary services that benefited the estate, and consents to the proposed payment. Doc. #64.

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

Manuel Alvarado Mendoza and Lupita Castro Mendoza ("Debtors") filed chapter 7 bankruptcy on August 24, 2018. Doc. #1. Trudi Manfredo was appointed as trustee and filed a *Report of No Distribution* on October 10, 2018. Doc. #2. Debtors received an order of discharge on December 10, 2018. Doc. #14. The case was closed December 14, 2018. Doc. #16.

The case was reopened on July 19, 2019 and Trustee was appointed as successor trustee July 31, 2019. Docs. #30; #19. Thereafter, Applicant's employment as general counsel for the bankruptcy estate was approved on March 9, 2020, effective for services rendered on or after February 19, 2020. Doc. #36. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Requests for interim compensation under § 331 were permitted more than once every 120 days for good cause shown. *Id.* Applicant's services were performed within the authorized time period.

This is Applicant's first and final fee application. The source of funds for payment of the fees will be from the funds currently held by the bankruptcy estate. Doc. #60. Applicant's firm provided 25.1 billable hours of legal services at the following rates, totaling **\$8,642.50** in fees:

Professional	Rate	Hours	Total
Russell W. Reynolds	\$350	23.20	\$8,120.00
Kelsey A. Seib	\$275	1.90	\$522.50
Total Hours & Fees		25.10	\$8,642.50

Id.; Docs. #62; #63, *Ex. B.* Applicant also incurred **\$781.25** in expenses:

Adversary complaint filing fee	\$350.00
Photocopy charges	+ \$239.40
Postage charges	+ \$169.35
CourtCall	+ \$22.50
Total Costs	= \$781.25

Doc. #60. These combined fees and expenses total **\$9,423.75**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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 included, without limitation: (1) preparing and filing the employment application (RWR-1); (2) prosecuting an adversary proceeding to sell co-owned property and seeking entry of default judgment (Adv. Proc. No. 20-01032); (3) preparing and prevailing on a motion to sell real property and pay brokers' commissions (RWR-2); and (4) preparing and filing this fee application (RWR-3). Doc. #63, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #64.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$8,642.50 in reasonable fees and \$781.25 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant \$9,423.75 on the terms outlined above for services rendered and costs incurred from February 19, 2020 through June 15, 2022.

8. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[FW-7](#)

MOTION TO APPROVE STIPULATION WITH BANKRUPTCY ESTATE OF
ATLAS WORLD FOOD & AG, INC.
5-17-2022 [\[140\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the bankruptcy estate of Blain Farming Co., Inc. ("Debtor") and the bankruptcy estate of Atlas World Food & Ag., Inc. ("Atlas;" collectively, the "Estates")¹⁰ pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #140.

Ben King, the Managing Principal of Pacific Gold Agriculture, LLC ("Creditor"), filed a responsive declaration on June 3, 2022 to request modifications and corrections of fact, but it was not timely filed by the May 31, 2022 responsive deadline, which warrants the striking of this declaration. Doc. #146.

Additionally, Creditor's declaration combines multiple pleadings, including exhibits, into one document in violation of Local Rule of Practice ("LBR") 9004-2(c)(1), and (d)(1). The exhibits also do not have an exhibit index. LBR 9004-2(d)(2). Lastly, no proof or certificate of service was filed in violation of LBR 9014-1(e)(1), (e)(2), and (f)(1)(B).

Trustee replied. Doc. #148.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest except Creditor 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). Therefore, the defaults of the above-mentioned parties in interest except Creditor are entered. 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).

Atlas filed chapter 7 bankruptcy on June 2, 2021, which is currently pending before the Honorable Jennifer E. Niemann. See Atlas Bankr. Doc. #1. Irma C. Edmonds is the chapter 7 trustee of the Atlas Bankruptcy ("Trustee Edmonds"). Atlas Bankr. Doc. #2.

Debtor filed chapter 7 bankruptcy on October 22, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341(a) meeting of creditors on November 18, 2021. Doc. #4.

Both Trustees analyzed issues relating to ownership of real properties located at 1240 E. Caldwell Avenue, Visalia, CA ("Caldwell Property") and 1047 E. Arlen Ave., Visalia, CA ("Arlen Property;" collectively the "Properties"). Doc. #143. Trustee and Trustee Edmonds uncovered a history of transfers of the Properties between the Estates prior to bankruptcy. With respect to Caldwell Property, Trustee discovered a complicated series of transfers over the last 20 years:

- i. Debtor was the only entity on title in 2001 after Caldwell Property was transferred to Debtor on or about December 8, 2001.
- ii. On or about March 29, 2002, Debtor transferred Caldwell property to Blain Farms, LLC.
- iii. Subsequently, Caldwell Property was transferred to Blain Farms, Inc., and Blain Farms, LLC merged into Blain Farms, Inc.
- iv. On or about May 29, 2018, Caldwell Property was transferred to Debtor with language stating, "Blain Farming Co., Inc., a California corporation who acquired title as Blain Farms, Inc., a California corporation grants to Blain Farming Co., Inc., a California Corporation . . ." Trustee indicates that the deed appears to have been signed by an individual who was an officer of, and could bind, both Debtor and Blain Farms, Inc. On this basis, Trustee believes this was an effective grant of title to the Debtor prior to bankruptcy.
- v. Trustee Edmonds believes that this final transfer could have been avoided for the benefit of Atlas as the successor to Blain Farms, Inc.
- vi. Caldwell Property was sold with bankruptcy court approval, with the net proceeds after payment of closing costs and the first mortgage being held in trust pending further order of the court.

Id. With respect to Arlen Property,¹¹ Trustee discovered a complicated series of transfers between related entities since 2004:

- i. Blain Partners, LP acquired title in 2004.
- ii. Blain Partners, LP transferred title to Blain Farms, Inc. in 2010.
- iii. On or about December 28, 2018, Arlen Property was transferred to Brody and Sheridyn Blain with language stating, "Blain Farms, a California Corporation who acquired title as Blain Farms, Inc., a

California Corporation hereby grant(s) to Brody and Sheridyn Blain . . ." Trustee indicates that the deed appears to have been signed by an individual who was an officer of, and could bind, both Debtor and Blain Farms, Inc.

- iv. Trustee believes that there is cause to avoid the transfer of Arlen Property to Brody and Sheridyn Blain as a fraudulent transfer by Debtor. In contrast, Trustee Edmonds believes that any property recovered from this avoidance should be for the benefit of Atlas as successor to Blain Farms, Inc.

Id. Since the cost of litigation would be significant and would directly reduce the amounts available to distribute to creditors of either of the Estates, the Trustees stipulated to divide the proceeds of the Properties between the Estates. *Id.*

Under the terms of the stipulation,

- a. The Trustees agree that the net proceeds of any sale of the Properties shall be equally divided between the Estates.
- b. The Trustees agree that the net proceeds recovered for the benefit of either Estate in a successful action or agreement to avoid fraudulent transfers of the Properties, as well as avoidance of any fraudulent lien(s) otherwise encumbering the properties, shall be equally divided between the Estates.
- c. The proceeds encumbered in this stipulation shall not include any carveouts negotiated by either trustee from secured debt that is unrelated to the avoidance of a fraudulent transfer. Any such carveout(s) shall remain in the Estate of the trustee that negotiated the carveout.
- d. The net proceeds of any sale or lien avoidance covered in this stipulation shall be calculated as the gross proceeds received by the estate minus the administrative expenses incurred in selling the property or to avoid the transfer.

Doc. #142, *Ex. A.* Trustee now seeks approval of this settlement.
Doc. #140.

As noted above, Creditor Ben King filed a declaration to request modifications and corrections, but it was not timely filed by the May 31, 2022 responsive deadline. Doc. #146. Creditor filed Proof of Claim No. 2-1 on November 5, 2021 in the amount of \$9.3 million.

Creditor declares that he has analyzed certain facts relating to the ownership of and title to the Properties based on several years of business dealings with Debtor and Atlas. *Id.* Prior to the merger of Atlas Walnuts, LLC, Blain Farms, Inc., and Pacific Pecan, Inc., into Atlas in October 2011, the Properties were the sole property of Blain Farms, Inc. Creditor submits analysis of the merger between the above entities, which he claims indicate Atlas holds legal title to the Properties. *Id.*

Trustee responded to Creditor's declaration. Doc. #148. Trustee says that Creditor's declaration demonstrates the complexity of the pre-filing history related to the claims between Debtor and Atlas. *Id.* As result of this complexity, the Estates have decided to forego litigation and settle the disputed ownership interests by dividing any proceeds between the parties. Untangling this complex history would require significant administrative expenses that would eat into funds that could otherwise be distributed to allowed unsecured claims. *Id.* The court is inclined to agree.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: If the issues were litigated, Trustee believes he would likely succeed in demonstrating that the Properties, and any proceeds therefrom, are and were property of Debtor's bankruptcy estate. Doc. #143. However, Trustee acknowledges that the chain of title leaves the potential for significant doubt as to which of the Estates the Properties should be included in and litigating the issues would reduce the amounts available to pay creditors of either Estate. *Id.* Neither parties' success in litigation is assured and the outcome of litigation is unclear. Further litigation will diminish the estate with increased administrative expenses. This factor weighs in favor of approving the settlement.

2. Difficulties in collection: Collection will not be difficult by the prevailing party if litigation continued because the stipulation relates to collection of net proceeds, which would be available to the prevailing party in litigation, or both parties under the settlement. *Id.* This factor is either inapplicable or weighs against approving the settlement.

3. Complexity of litigation: As supported by Creditor's declaration, litigation between the Estates would be factually and legally complex and would require a significant amount of administrative expenses for both Estates. The settlement will remove the necessity of those expenses, which heavily supports approving the settlement.

4. Interest of the creditors: Trustee believes that creditors for both Estates should support the settlement because it maximizes recovery

for creditors of both Estates. If litigation proceeds, both Estates will be greatly diminished. By settling, both Estates will receive liquidity to distribute to unsecured claims.

The same is true for Creditor, who is a creditor for both Estates. Creditor filed has filed proofs of claim in both bankruptcies and stands to be paid by both Estates. Pursuing further litigation will reduce the proceeds of both Estates with administrative expenses that can be avoided if the settlement is approved. This factor weighs in favor of approval.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* This matter will be called as scheduled based on Creditor's opposition. The court is inclined to GRANT the motion and approve the settlement agreement.

Trustee shall separately file a copy of the settlement agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

¹⁰ See Bankr. Case. No. 21-11448 ("Atlas Bankr.").

¹¹ The court notes that Trustee's declaration says "Caldwell Avenue property" and then immediately begins discussing "Arlen Avenue property." Doc. #143. This appears to be a typographical error.

9. [22-10078](#)-B-7 **IN RE: ANGELA/IBETHE AGUILAR**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
5-3-2022 [\[20\]](#)

TRACY DAVIS/MV
D. GARDNER/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as a scheduling
conference.

DISPOSITION: Continued to a date determined at the hearing.

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"),
moves for an order dismissing this case under 11 U.S.C. § 707(b)(1)
and (b)(3)(B) (*i.e.*, totality of the circumstances abuse). Docs. #20;
#23.

Angela Priscilla Aguilar and Ibethe Aguilar ("Debtors") timely
responded with points and authorities, disputed facts, *pro forma*
schedules, and sealed evidence. Docs. ##30-31; ##33-34; #36

UST replied. Doc. #37.

This matter will be called and proceed as scheduling conference. This
matter is deemed to be a contested matter. Pursuant to Federal Rule of
Bankruptcy Procedure 9014(c), the federal rules of discovery apply to
contested matters. The parties shall be prepared for the court to set
an early evidentiary hearing.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the
creditors, the chapter 7 trustee, or any other party in interest
except Debtors to file written opposition at least 14 days prior to
the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver
of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53
(9th Cir. 1995). Therefore, the defaults of the above-mentioned
parties in interest except Debtors are entered. 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.

Based on the record, the legal issues appear to include:

1. Whether the "totality of the circumstances" of Debtors' financial situation demonstrates abuse under 11 U.S.C. § 707(b)(3)(B).
2. If so, whether to dismiss the case or, with Debtors' consent, convert to chapter 11 or 13 if the court finds granting relief would be an abuse under § 707(b)(1).

The factual issues are:

1. Whether Debtors have a likelihood of sufficient future income to fund a chapter 11 or 13 plan which would pay a substantial portion to unsecured claims.
2. Whether Debtors' petition was filed as a consequence of illness, disability, unemployment, or some other calamity.
3. Whether the schedules suggest Debtors obtained cash advancements and consumer goods on credit exceeding their ability to repay them.
4. Whether Debtors' proposed family budget is excessive or extravagant.
5. Whether Debtors' statements of income and expenses are misrepresentative of Debtors' financial condition.
6. Whether Debtors engaged in "eve-of-bankruptcy" purchases.

See, Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139-4 (9th Cir. 2004), *superseded in part by statute*, Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), Pub. L. 109-8, 119 Stat. 23 (2005), *as recognized in In re Buoy*, No. 16-33780, 2017 Bankr. LEXIS 2077, *8 (Bankr. N.D. Ohio July 26, 2017) ("Although pre-BAPCPA case law applying these concepts is still helpful in determining abuse under § 707(b)(3), Congress lowered the standard for dismissal in changing the test from 'substantial abuse' to 'abuse.'").

10. [22-10580](#)-B-7 **IN RE: OLGA CELIO**
[TCS-1](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.
5-14-2022 [[15](#)]

OLGA CELIO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of The Best Service Co., Inc. ("Creditor") in the amount of \$13,356.74 and encumbering residential real property located at 2105 Dogwood Court ("Property").¹² Doc. #15.

This motion will be DENIED WITHOUT PREJUDICE for failure to make a *prima facie* showing of entitlement to the relief sought and failure to comply with the Federal Rules of Evidence ("FRE") 1002.

First, Debtor has not established that Creditor has a valid lien recorded against Debtor's Property because competent evidence of the recording of the abstract of judgment has not been filed.

First, 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 lien was entered against Debtor in favor of Creditor in the amount of \$13,356.74 on April 14, 2021. Doc. #17, *Ex. A*. The abstract of judgment was issued on May 18, 2021. *Id.* However, there is no evidence that it was recorded or attached to Property. *Id.* Debtor declares that it was recorded June 8, 2021, which would make it the senior lien. However, FRE 1002 requires an original writing to be filed to prove its contents, so Debtor's declaration is insufficient. This alone warrants denial.

Second, even if Debtor's declaration was sufficient to prove that Creditor's lien was recorded June 8, 2021, there is sufficient equity for Creditor's judicial lien to attach.

As of the petition date, Property had an approximate value of \$509,500.00. Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$222,203.00. *Id.*, *Sched. C*.

Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. *Id.*, *Sched. D*. Property is also encumbered by a junior judgment lien in favor of Portfolio Recovery Associates, LLC ("PRA") in the amount of \$6,457.97. Docs. #22; #23, *Ex. A*.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	?	Unavoidable
2. Creditor	\$13,356.74	06/08/21	This motion (TCS-1)
3. PRA	\$6,457.97	06/29/21	Avoidable; matter #12 (TCS-2)

Docs. #17; #18, #23, Ex. A.

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

PRA's lien has to be avoided first. In matter #11 below, the court intends to deny Debtor's motion because there is sufficient equity for the lien to attach in full. Application of the § 522(f)(2) formula with respect to the PRA lien is as follows:

Amount of PRA's judicial lien	\$6,457.97
Total amount of unavoidable liens ¹³	+ \$280,838.74
Debtor's claimed exemption in Property	+ \$222,203.00
<i>Sum</i>	= \$509,499.71
Debtor's claimed value of interest absent liens	- \$509,500.00
Shortfall before Debtor's exemption is impaired	= (\$0.29)

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$509,500.00
Chase Bank deed of trust	- \$267,482.00
Homestead exemption	- \$222,203.00
Remaining equity for judicial liens	= \$19,815.00
Creditor's judgment lien	- \$13,356.74
Remaining equity for PRA's lien	= \$6,458.26
PRA's judicial lien	- \$6,457.97
Remaining equity for any other liens	= \$0.29

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$0.29 in remaining equity for liens to attach before Debtor's exemption will be impaired. Accordingly, Debtor has not established the four elements necessary to avoid a lien under

§ 522(f)(1) because Debtor's exemption is not impaired. This motion will be DENIED WITHOUT PREJUDICE.

¹² Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Roger Milstein or current CEO at 6700 S. Centinela Ave., Third Floor, Culver City, CA 90230-6304 by regular U.S. mail on May 14, 2022. Doc. #19.

¹³ The unavoidable liens include the \$267,482.00 Chase Bank deed of trust and Creditor's \$13,356.74 judgment lien because it is unavoidable until all junior liens have been avoided.

11. [22-10580](#)-B-7 **IN RE: OLGA CELIO**
[TCS-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC.
5-14-2022 [\[20\]](#)

OLGA CELIO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the amount of \$6,457.97 and encumbering residential real property located at 2105 Dogwood Court ("Property").¹⁴ Doc. #20.

No party in interest timely filed written opposition, but there appears to be sufficient equity to support Creditor's lien. This motion will be DENIED WITHOUT PREJUDICE for failure to make a *prima facie* showing of entitlement to the relief sought.

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 lien was entered against Debtor in favor of Creditor in the amount of \$6,457.97 on June 7, 2021. Doc. #23, *Ex. A*. The abstract of judgment was issued on June 15, 2021 and recorded in

Merced County on June 29, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #22.

As of the petition date, Property had an approximate value of \$509,500.00. Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$222,203.00. *Id.*, *Sched. C*.

Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. *Id.*, *Sched. D*. Property is also encumbered by a senior judgment lien in favor of Best Service Co., Inc. ("BSC") in the amount of \$13,356.74, which Debtor declares was recorded June 8, 2021 and is the subject of matter #11 above.¹⁵ Doc. #17; #18, *Ex. A*.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	?	Unavoidable
2. BSC	\$13,356.74	06/08/21	Avoidable; matter #11 (TCS-1)
3. Creditor	\$6,457.97	06/29/21	This matter (TCS-2)

Docs. #17; #18, #23, *Ex. A*.

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

Competent evidence of the recording of BSC's lien has not been filed. However, Debtor declares that it was recorded on June 8, 2021, which would make it senior to Creditor's lien. Even though this appears to be the most junior judgment lien, there appears to be sufficient equity such that Debtor's exemption is not impaired under § 522(f)(2). Strict application of the § 522(f) is as follows:

Amount of Creditor's judicial lien	\$6,457.97
Total amount of unavoidable liens ¹⁶	+ \$280,838.74
Debtor's claimed exemption in Property	+ \$222,203.00
<i>Sum</i>	= \$509,499.71
Debtor's claimed value of interest absent liens	- \$509,500.00
Shortfall before Debtor's exemption is impaired	= (\$0.29)

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided

that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	=	\$509,500.00
Chase Bank deed of trust	-	\$267,482.00
Homestead exemption	-	\$222,203.00
Remaining equity for judicial liens	=	\$19,815.00
BSC judgment lien	-	\$13,356.74
Remaining equity for Creditor's lien	=	\$6,458.26
Creditor's judicial lien	-	\$6,457.97
Remaining equity for any other liens	=	\$0.29

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$0.29 in remaining equity for liens to attach before Debtor's exemption will be impaired. Accordingly, Debtor has not established the four elements necessary to avoid a lien under § 522(f)(1) because Debtor's exemption is not impaired. This motion will be DENIED WITHOUT PREJUDICE.

¹⁴ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Kevin P. Stevenson or current CEO at 120 Corporate Boulevard, Norfolk, VA 23502, by regular U.S. mail on May 14, 2022. Doc. #24.

¹⁵ Debtor's declaration claims that this is the date the judgment was recorded, but the copy of the abstract filed as an exhibit does not have a recording date. Doc. #17; *cf.* Doc. #18, *Ex. A.* Fed. R. Evid. 1002 requires the original writing to be filed to prove its contents, so Debtor's testimony is insufficient.

¹⁶ The unavoidable liens include the \$267,482.00 Chase Bank deed of trust and the \$13,356.74 BSC judgment lien. The BSC judgment lien is unavoidable until all junior liens have been avoided.

12. [22-10195](#)-B-7 **IN RE: TIMOTHY/MARY LONG**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
5-13-2022 [18]

JAMES SALVEN/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 1999 Ford Ranger ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #18. The auction will be held on or after July 5, 2022 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.*

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)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Timothy Long and Mary Ann Long filed chapter 7 bankruptcy on February 12, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors held March 17, 2022. Doc. #5; docket generally.

In the course of administering the estate, Trustee investigated Debtors' assets. Among those assets is Vehicle, which is listed in the schedules with approximately 185,000 miles and valued at \$2,347.00. Doc. #1, *Sched. A/B*. Vehicle does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Debtor claimed a \$19.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*.

Employment and Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for anticipated storage and preparation for sale fees. Doc. #18. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Doc. #21. Funds from the sale, minus Auctioneer's fees and expenses if this motion is granted, will be remitted to the bankruptcy estate within 30 days of the sale. *Id.*

Trustee and Jeffrey Baird, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #20. Trustee and Mr. Baird declare that Auctioneer, with respect to Debtor, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtor, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. Doc. #21. Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. *Id.* Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the property until sold, and (3) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for preparation and storage fees as prayed.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard

Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Vehicle under § 363(b). Doc. #18. As noted above, Vehicle has a scheduled value of \$2,347 with no secured creditors and a \$19 exemption. Docs. #1, *Sched. A/B, C, D*. If sold at that price, Auctioneer's 15% commission would be \$352.05. After payment of up to \$500 for preparation and storage fees and Debtors' \$19 exemption, the net to the estate would be approximately \$1,475.95.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #21. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Vehicle appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell the Vehicle at public auction on or after July 5, 2022, and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for preparation and storage fees.

13. [22-10195](#)-B-7 **IN RE: TIMOTHY/MARY LONG**
[JES-2](#)

MOTION TO SELL
5-13-2022 [\[24\]](#)

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2012 Nissan Versa SV ("Vehicle") to Timothy Long and Mary Ann Long ("Debtors") for \$4,506.00, subject to higher and better bids at the hearing. Doc. #24.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

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. 2002(a)(2). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. 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.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound

business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtors.

The Vehicle has approximately 120,000 miles and is listed in the schedules with a value of \$3,306.00. Doc. #1, *Sched. A/B*. The Vehicle does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Debtors claimed a \$3,306.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*.

Trustee declares that Debtor offered to purchase Vehicle for \$4,506.00, which he accepted subject to court approval and higher and better bids. Doc. #26. Trustee has not agreed to pay a commission to any party in connection with the sale and it is subject to any liens and encumbrances, known or unknown. *Id.* The sale price was determined by estimating Vehicle's fair market value: \$4,506. *Id.* After application of Debtor's \$3,306 exemption credit, \$1,200 in net proceeds will remain for the estate. *Id.*

Trustee believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the Vehicle. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale.

Accordingly, this motion will be GRANTED. The hearing will proceed for higher and better bids only. Trustee is authorized to sell Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, and no warranties or representations are included with the sale; the Vehicle is being sold "as-is, where-is."