

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday June 15, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[DRJ-8](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
5-17-2022 [[217](#)]

LEONARD WELSH/ATTY. FOR DBT.
DAVID JENKINS/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.

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

David R. Jenkins ("Movant"), counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of final compensation in the amount of \$18,618.00 and reimbursement for expenses in the amount of \$1,235.09 for services rendered from January 1, 2021 through December 31, 2021. Doc. #217. Movant requests total compensation of \$19,853.09 to be paid. Doc. #217. Debtors' confirmed chapter 12 plan estimated attorney fees upon confirmation of the plan to be approximately \$60,000.00. Plan, Doc. #113. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$59,638.85 and reimbursement for expenses totaling \$1,092.85. Doc. #155. Debtors reviewed Movant's final fee application and have no objections. Doc. #220.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and filing various oppositions to motions for court abstention and motions for relief from stay; (2) preparing to defend an adversary proceeding filed against

Debtors; (3) preparing and filing the fee application; and (4) general case administration. Exs. A-D, Doc. #219. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of \$18,618.00 and reimbursement for expenses in the amount of \$1,235.09 to be paid in a manner consistent with the terms of the confirmed plan.

2. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-12](#)

MOTION FOR COMPENSATION FOR DAVID R JENKINS, DEBTORS ATTORNEY(S)
5-17-2022 [\[454\]](#)

LEONARD WELSH/ATTY. FOR DBT.
DAVID JENKINS/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.

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

David R. Jenkins ("Movant"), attorney for Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of final compensation in the amount of \$37,866.00 and reimbursement for expenses in the amount of \$1,252.31 for services rendered from January 1, 2021 through December 31, 2021. Doc. #454. Movant requests total compensation of \$39,118.31 to be paid. Doc. #454. Debtors' confirmed chapter 12 plan estimated attorney fees upon confirmation of the plan to be approximately \$70,000.00. Plan, Doc. #297. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$113,201.38 and reimbursement for expenses totaling \$1,435.38. Doc. #409. Debtors reviewed Movant's final fee application have no objections. Doc. #456.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and filing various oppositions to motions for court abstention and motions for relief from stay; (2) preparing to defend an adversary proceeding filed against Debtors; (3) conferring with the chapter 12 trustee regarding various plan terms; (4) reviewing plan budget and compliance with Debtors; (5) preparing and filing the fee application; and (6) general case administration. Exs. A-D, Doc. #458. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$37,866.00 and reimbursement for expenses in the amount of \$1,252.31 to be paid in a manner consistent with the terms of the confirmed plan

1. [22-10212](#)-A-7 **IN RE: DAVID/HADASSAH FLEISCHER**
[GT-2](#)

MOTION TO AVOID LIEN OF C.F. MADERA, LLC
5-16-2022 [\[27\]](#)

DAVID FLEISCHER/MV
GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

David Abraham Fleischer and Hadassah Estrellado Fleischer (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of CF Madera LLC ("Creditor") on their residential real property commonly referred to as 17172 Granite Court, Friant, CA 93626 (the "Property"). Doc. #27; Am. Schedules C and D, Doc. #14.

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

Debtors filed their bankruptcy petition on February 16, 2022. A judgment was entered against Hadassah Estrellado Fleischer aka Arlene E. Fleischer aka Arlene E. Thompson aka Arlene E. Barrera in the amount of \$38,717.26 in favor of Creditor on May 20, 2014. Ex. D, Doc. #30. The abstract of judgment was recorded pre-petition in Fresno County on June 18, 2014 as document number 2014-0068353. Ex. D, Doc. #30. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #30. The Property also is encumbered by a deed of trust in favor of LoanCare, LLC in the amount \$219,931.00.

Schedule D, Doc. #1. Debtors claimed an exemption of \$150,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #14. Debtors assert a market value for the Property as of the petition date at \$354,700.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$38,717.26
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$219,931.00
Amount of Debtors' claim of exemption in the Property	+	\$150,000.00
		\$408,648.26
Value of Debtors' interest in the Property absent liens	-	\$354,700.00
Amount Creditor's lien impairs Debtors' exemption		\$53,948.26

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

2. [16-11630](#)-A-7 **IN RE: MIGUEL/ALICE ESCOBEDO**
[JRL-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
5-13-2022 [\[40\]](#)

MIGUEL ESCOBEDO/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Miguel Rodriguez Escobedo and Alice Diana Escobedo (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial

lien of Portfolio Recovery Associates LLC ("Creditor") on their residential real property commonly referred to as 2207 Los Altos Avenue, Clovis, CA 93611 (the "Property"). Doc. #40; Am. Schedule C, Doc. #38.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on May 6, 2016. A judgment was entered against Alice D. Escobedo in the amount of \$4,713.65 in favor of Creditor on February 13, 2013. Ex. A, Doc. #43. The abstract of judgment was recorded pre-petition in Fresno County on March 8, 2013 as document number 2013-0036087. Ex. A, Doc. #43. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #42. The Property also is encumbered by a lien in favor of Nationstar Mortgage in the amount \$258,679. Schedule D, Doc. #1. A senior judicial lien of \$4,128.69 recorded in Fresno County on May 18, 2012 also encumbers the Property. Ex. A, Doc. #47. Debtors claimed an exemption of \$26,800 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #38. Debtors assert a market value for the Property as of the petition date at \$200,000. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,713.65
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$262,807.69
Amount of Debtors' claim of exemption in the Property	+	\$26,800.00
		\$294,321.34
Value of Debtors' interest in the Property absent liens	-	\$200,000.00
Amount Creditor's lien impairs Debtors' exemption		\$94,321.34

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) NA
5-13-2022 [\[45\]](#)

MIGUEL ESCOBEDO/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Miguel Rodriguez Escobedo and Alice Diana Escobedo (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA) ("Creditor") on their residential real property commonly referred to as 2207 Los Altos Avenue, Clovis, CA 93611 (the "Property"). Doc. #45; Am. Schedule C, Doc. #38.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on May 6, 2016. A judgment was entered against Alice D. Escobedo in the amount of \$4,128.69 in favor of Creditor on April 23, 2012. Ex. A, Doc. #47. The abstract of judgment was recorded pre-petition in Fresno County on May 18, 2012 as document number 2012-0069953. Ex. A, Doc. #47. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #42. The Property also is encumbered by a lien in favor of Nationstar Mortgage in the amount \$258,679. Schedule D, Doc. #1. The junior judicial lien of \$4,713.65 recorded in Fresno County on March 8, 2013 is avoided pursuant to the final ruling at matter no. 2, above. Debtors claimed an exemption of \$26,800 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #38. Debtors assert a market value for the Property as of the petition date at \$200,000. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,128.69
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$258,679.00
Amount of Debtors' claim of exemption in the Property	+	\$26,800.00
		\$289,607.69
Value of Debtors' interest in the Property absent liens	-	\$200,000.00
Amount Creditor's lien impairs Debtors' exemption		\$89,607.69

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

4. [18-11949](#)-A-7 **IN RE: MOGUL ENERGY PARTNERS I, LLC**
[LNH-5](#)

MOTION FOR ORDER AUTHORIZING INTERCONNECTION AGREEMENT SALE
AND ASSIGNMENT
5-25-2022 [[210](#)]

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better offers.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion subject to higher and better offers. If opposition is presented at the hearing, the court will consider the

opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Mogul Energy Partners I LLC ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the Interconnection Agreement for an Existing Small Generating Facility Interconnection to the Distribution System Under Rule 21 (the "Interconnection Agreement") to Magnelan Management LLC ("Buyer") for the purchase price of \$80,000, subject to higher and better offers. Doc. #210.

The Interconnection Agreement was entered into between Debtor and Southern California Edison Company ("SCE") and governs the terms for eventual connection of the wind farm formerly owned by Debtor's estate to the SCE electric distribution system. Doc. #210; Decl. of Trustee, Doc. #213. In 2019, Trustee sold Debtor's wind farm to Buyer. Tr. Decl., Doc. #213; Order, Doc. #174. According to Trustee, the Interconnection Agreement is not an executory contract. Doc. #210. The Interconnection Agreement allows for assignment by either party. Tr. Decl., Doc. #213. Trustee has been in communication with SCE, and SCE does not object to the assignment. Id. The sale of the Interconnection Agreement will bring \$80,000 into the estate. Id.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that the sale on the proposed terms, subject to better and higher offers at the hearing, is reasonable and will bring \$80,000 into the estate. Tr. Decl., Doc. #213. There will be no payments for commissions to brokers or agents. SCE does not object to the sale. Id. Further, Buyer owns the real property to which the Interconnection Agreement relates. Id. The sale to Buyer will close on or before July 15, 2022. Doc. #210. The Interconnection Agreement will be sold subject to higher and better offers at the hearing.

It appears that the sale of the estate's interest in the Interconnection Agreement is in the best interests of the estate, the Interconnection Agreement will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith. SCE does not oppose the sale.

Accordingly, this motion will be GRANTED. The proposed sale of the Interconnection Agreement is approved, and Trustee is authorized to execute such documents as are reasonable and necessary to document and effectuate the transaction.

Trustee also requests that the 14-day stay of Fed. R. Bankr. P. 6004(h) be waived because the proposed sale to Buyer is to close on or before July 15, 2022. The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived because time is of the essence in purchasing the Interconnection Agreement and permitting the sale of the Interconnection Agreement will benefit creditors and the estate.

5. [22-10073](#)-A-7 **IN RE: JESSICA ALCALA AND MARCELO MARTINEZ GUTIERREZ**
[BDB-2](#)

MOTION TO AVOID LIEN OF CAVALRY INVESTMENTS, LLC
5-2-2022 [\[24\]](#)

JESSICA ALCALA/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jessica C. Alcala and Marcelo Martinez Gutierrez (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Cavalry Investments LLC ("Creditor") on their residential real property commonly referred to as 1880 Wagonwheel Ct, Tulare, CA 93274 (the "Property"). Doc. #24; Schedules C and D, Doc. #1.

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

Debtors filed their bankruptcy petition on January 19, 2022. A judgment was entered against Jessica C. Alcala in the amount of \$27,916.86 in favor of Creditor on May 22, 2007, and renewed on April 27, 2017. Ex. A, Doc. #27. The

abstract of judgment was recorded pre-petition in Tulare County on November 19, 2021 as document number 2021-0085565. Ex. A, Doc. #27. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #27. The Property also is encumbered by a first deed of trust held by PennyMac Loan Services LLC in the amount \$182,906.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$170,350.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$290,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$27,916.86
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$182,906.00
Amount of Debtors' claim of exemption in the Property	+	\$170,350.00
		\$381,172.86
Value of Debtors' interest in the Property absent liens	-	\$290,000.00
Amount Creditor's lien impairs Debtors' exemption		\$91,172.86

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.