

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, June 15, 2021
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021. Each Judge has discretion to determine whether to hold hearings in person or remotely. The Honorable René Lastreto II will continue to conduct all hearings in Fresno remotely until June 28, 2021. At this time, when Judge Lastreto will resume in person hearings in the Bakersfield Session is to be determined. No persons are permitted to appear in court unless authorized by order. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

The court will resume in-person courtroom proceedings in Fresno 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. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-21-2021 [[1](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-2-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED AMENDED/MODIFIED PLAN
2-26-2021 [[340](#)]

PETER FEAR/ATTY. FOR DBT.
PLAN WITHDRAWN. RESPONSIVE PLEADING.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor-in-possession Stephen William Sloan withdrew the Third Amended Plan of Reorganization on June 1, 2021. Doc. #383. Accordingly, this matter will be dropped from calendar.

4. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**
[FW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
5-18-2021 [\[176\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Peter L. Fear of Fear Waddell, P.C. ("Movant"), counsel for debtor-in-possession Benton Enterprises, LLC ("DIP"), requests final compensation of \$32,036.00 and costs of \$4,480.42, for a total of \$36,516.42 for services rendered from December 1, 2020 through April 20, 2021. Doc. #176. The court previously approved interim compensation of \$34,748.00 and costs of \$879.69 on February 11, 2021. Doc. #150. William B. Pittman, DIP's President, filed a declaration stating that he reviewed the fee application and has no objection to its approval. Doc. #180.

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 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 Systems, 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 case was filed on May 5, 2020. Doc. #1. On May 29, 2020, DIP filed a motion to employ Movant as general bankruptcy counsel. Doc. #23. This motion was granted on June 8, 2020 effective for services rendered on or after May 5, 2020. Doc. #27. The order said that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331 and no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th

Cir. 1988). Funds received pre-petition were deemed to be an advance payment of fees and Movant was instructed to maintain such fees in a trust account at an authorized depository. Monthly applications for interim compensation under § 331 would be entertained provided the fees and costs exceeded \$5,000.00.

Movant's *Disclosure of Compensation*, Form B2030, indicates that Movant was paid \$60,000.00 prior to filing the case. Doc. #110. Of this amount, \$28,963.50 (including \$1,717.00 filing fee) was drawn down prior to filing to cover pre-petition fees and costs. *Ibid.* A retainer of \$31,036.50 remained to be used as a retainer. *Ibid.* This amount was used to fund the interim fee application. Doc. #147.

On January 26, 2021, DIP stipulated to resolve Fresno-Madera Land Bank Association, FLCA ("FLCA") and Production Credit Association ("PCA") objections to any use of its cash collateral, including rents and proceeds, to pay any portion of Movant's fees until FLCA and PCA agree in writing to such use. Doc. #135. The parties agreed that Movant's pre-petition retainer of \$31,036.50 could be used to fund the interim fee application. The same day, the parties stipulated to relief from the stay and forbearance. Doc. #137. The parties again stipulated to plan modification on March 23, 2021, which included language reincorporated into the order confirming plan. Doc. #164

Since then, DIP confirmed a chapter 11 plan of liquidation on April 5, 2021. Doc. #172. Section 9.02 provides that the effective date of the plan is the fifteenth day following entry of the order of confirmation, unless the fifteenth day is not a business day, then the next business day after fifteen days shall be the effective date. Doc. #141. Accordingly, April 20, 2021 is the effective date of the plan.

Section 2.04 of the plan governs professional fees incurred through the effective date of the plan and provides that fee applications must be filed within 30 days of the effective date, and if granted, must be paid in full in cash. This motion was filed on May 18, 2021 and is timely. Movant's fees may be paid through the chapter 11 plan in accordance with Section 2.04.

Movant indicates that his firm spent a total of 88.90 billable hours totaling \$32,036.00 as follows:

Timekeeper	Rate	Hours	Fees
Peter L. Fear (2020)	\$400.00	2.9	\$1,160.00
Peter L. Fear (2021)	\$410.00	61.1	\$25,051.00
Peter A. Sauer	\$245.00	18.8	\$4,606.00
Katie Waddell (2020)	\$220.00	1.6	\$352.00
Katie Waddell (2021)	\$230.00	3.1	\$713.00
Kayla Schlaak	\$110.00	1.4	\$154.00
Total:		88.9	\$32,036.00

Doc. #176, ¶ 5. Movant also incurred the following expenses:

Copying	\$3,288.52
Court fees	\$279.50
Postage	\$912.40
Total Costs:	\$4,480.42

Id., ¶ 7. These fees and expenses total **\$36,516.42**. The court approved \$34,748.00 in fees and \$879.69 in costs, for a total of \$35,627.69 on an interim basis, but Movant was only permitted to draw on the retainer of \$31,036.50. By this court's calculation, \$4,591.19 remains unpaid from the previous fee application.

As noted above, DIP's President, Mr. Pittman, filed a declaration stating that he reviewed the fee application and has no objection. Doc. #180. Although FLCA and PCA previously objected to any use of its cash collateral to pay Movant's fees, FLCA and PCA stipulated to the plan modification that authorizes payment of Movant's fees through the effective date of the plan under Section 2.04. Doc. #164.

11 U.S.C. §§ 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person or attorney" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) case administration, including correspondence and communication with DIP, and preparation and filing of monthly operating reports; (2) negotiating the sale of assets; preparation and filing a motion to approve the sale of assets free and clear of certain liens (FW-7); (3) preparation and filing of an interim fee application (FW-6), including stipulating to use of cash collateral; (4) communication with creditors regarding claim administration; (5) reviewing, analyzing, and executing a stipulation for stay relief; (6) drafting a modified disclosure statement and plan and prosecuting plan confirmation (FW-5). The court finds the services reasonable and necessary to the estate, and the requested expenses are actual and necessary. No party in interest timely filed written opposition.

This motion will be GRANTED. Movant will be awarded \$32,036.00 in fees and \$4,480.42 in costs on a final basis. Furthermore, the court will approve Movant's interim fees and expenses of \$35,627.69 on a final basis. DIP will be authorized to pay Movant \$36,516.42, along with the remaining balance of \$4,591.19 for the previous fee application, in accordance with the confirmed chapter 11 plan of liquidation.

5. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**
[FW-9](#)

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
5-18-2021 [\[183\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Debtor-in-possession Benton Enterprises, LLC ("DIP") moves for entry of final decree closing DIP's chapter 11 bankruptcy case under 11 U.S.C. § 350 and Fed. R. Bankr. P. 3022.

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 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 Systems, 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. § 350 requires the court to close the case after an estate is fully administered and the court has discharged the trustee. No trustee has been appointed in this case.

Fed. R. Bankr. P. 3022 provides that after an estate is fully administered in a chapter 11 reorganization case, *sua sponte* or on motion of a party in interest, the court shall enter a final decree closing the case.

Here, a Chapter 11 Plan of Liquidation was confirmed on April 5, 2021. Doc. #172. The order confirming plan was not appealed and became final on the effective date of the plan, which was the fifteenth day after entry of the order: April 20, 2021.

DIP's President, William B. Pitman, declares that there were no deposits required to be distributed by the plan and any property

required to be transferred under the plan has been transferred. Doc. #185. Mr. Pitman is overseeing DIP's final operations leading to its dissolution.

Payments under the plan have commenced. *Id.* On May 14, 2021, the court authorized the sale of DIP's assets to Parbjit Singh in accordance with paragraph 4.01 of the plan. Disbursements under the plan have been made by the escrow agent, which has resulted in liquidation of nearly all of DIP's assets other than a small amount for administration costs. The final fee application is set for hearing in matter #4 above, which the court intends to grant. Thus, all motions have been resolved. The plan has been substantially consummated under 11 U.S.C. § 1101(2).

Accordingly, this motion will be GRANTED. The court will enter a final decree closing this case.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [\[1784\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 8/31/21 PER ECF ORDER #2434.RESPONSIVE PLEADING.

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

DISPOSITION: Continued to August 31, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Tulare Hospitalist Group, the parties stipulated to continue this scheduling conference to August 31, 2021. Doc. #2428. The court approved the stipulation on May 6, 2021. Doc. #2434. Accordingly, this scheduling conference will be continued to August 31, 2021 at 9:30 a.m. The District shall file and serve its status report no later than five days prior to the continued hearing date.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL
PRACTICE, CLAIM NUMBER 232
1-8-2020 [\[1789\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 8/31/21 PER ECF ORDER #2435. RESPONSIVE PLEADING.

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

DISPOSITION: Continued to August 31, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Gupta-Kumar Medical Practice, the parties stipulated to continue this objection to August 31, 2021 as a scheduling conference. Doc. #2430. The court approved the stipulation on May 6, 2021. Doc. #2435. Accordingly, this objection will be continued to August 31, 2021 at 9:30 a.m. as a scheduling conference. The District shall file and serve its status report no later than five days prior to the continued hearing date.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [\[1834\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 8/31/21 PER ECF ORDER #2432. RESPONSIVE PLEADING.

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

DISPOSITION: Continued to August 31, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Inpatient Hospital Group, Inc., the parties stipulated to continue this scheduling conference to August 31, 2021. Doc. #2426. The court approved the stipulation on May 4, 2021. Doc. #2432. Accordingly, this scheduling conference will be continued to August 31, 2021 at 9:30 a.m. The District shall file and serve its status report no later than five days prior to the continued hearing date.

1:30 PM

1. [21-10416](#)-B-7 **IN RE: DERLENE COLBERT**
[LKW-4](#)

MOTION TO AVOID LIEN OF ARROW FINANCIAL SERVICES, LLC
5-14-2021 [\[47\]](#)

DERLENE COLBERT/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue the order.

Derlene Colbert ("Debtor") seeks to avoid a judicial lien in favor of Arrow Financial Services, LLC ("Creditor"), in the amount of \$2,091.29 and encumbering residential real property located at 6021 Monitor Street, Bakersfield, CA 93307 ("Property"). Doc. #47.

This motion will be DENIED WITHOUT PREJUDICE.

Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

California Code of Civil Procedure § 697.310(b) states, "[u]nless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment." The date of entry of Creditor's judgment was August 12, 2010. Doc. #49, Ex. E. The 10-year deadline has passed, and the judgment has expired. Therefore, the lien cannot be avoided. No evidence is presented that the judgment was renewed. So, Property is not currently encumbered with this abstract of judgment based on the evidence presented. This motion will be DENIED.

2. [21-10416](#)-B-7 **IN RE: DERLENE COLBERT**
[LKW-5](#)

MOTION TO AVOID LIEN OF AMERICAN GENERAL FINANCIAL SERVICES,
INC.
5-14-2021 [\[40\]](#)

DERLENE COLBERT/MV
LEONARD WELSH/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.

Derlene Colbert ("Debtor") seeks to avoid a judicial lien in favor of American General Financial Services, Inc. ("Creditor"), in the amount of \$2,834.10 and encumbering residential real property located at 6021 Monitor Street, Bakersfield, CA 93307 ("Property"). Doc. #40. The court notes that Creditor merged with and into OneMain Financial Services, Inc. in November 2018. Debtor located the President of OneMain Financial Services, Roy W. Haley, in the business records of the Pennsylvania Secretary of State, and he was served by certified mail on May 14, 2021. Docs. #43; #46.

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 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 Systems, 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 Debtor in favor of Creditor in the sum of \$2,834.10 on August 10, 2011. Doc. #42, Ex. E. The abstract of judgment was issued on January 12, 2012 and recorded in Kern County on January 24, 2012. *Id.* That lien attached to Debtor's interest in Property. Doc. #44. As of the petition date, Property had an approximate value of \$218,783.00. Doc. #1, Schedule A/B. Property is not encumbered by any unavoidable liens. *Id.*, Schedule D. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$218,783.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date	=	\$218,783.00
Debtor's homestead exemption	-	\$218,783.00
Creditor's judicial lien	-	\$2,834.10
Extent judicial lien impairs exemption	=	(\$2,834.10)

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 Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

3. [21-10416](#)-B-7 **IN RE: DERLENE COLBERT**
[LKW-6](#)

MOTION TO AVOID LIEN OF CALIFORNIA BUSINESS BUREAU, INC.
5-14-2021 [\[54\]](#)

DERLENE COLBERT/MV
LEONARD WELSH/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.

Derlene Colbert ("Debtor") seeks to avoid a judicial lien in favor of California Business Bureau, Inc. ("Creditor"), in the amount of \$15,316.67 and encumbering residential real property located at 6021 Monitor Street, Bakersfield, CA 93307 ("Property"). Doc. #54. Debtor located Creditor's Agent for Service of Process, Michael J. Sigal, in the business records of the California Secretary of State, and he was served by certified mail on May 14, 2021. Docs. ##58-59.

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 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 Systems, 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 Debtor in favor of Creditor in the sum of \$15,316.67 on November 19, 2014. Doc. #56, Ex. E. The abstract of judgment was issued on March 4, 2015 and recorded in Kern County on March 26, 2015. *Id.* That lien attached to Debtor's interest in Property. Doc. #57. As of the petition date, Property had an approximate value of \$218,783.00. Doc. #1, Schedule A/B. Property is not encumbered by any unavoidable liens. *Id.*, Schedule D. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$218,783.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date	=	\$218,783.00
Debtor's homestead exemption	-	\$218,783.00
Creditor's judicial lien	-	\$15,316.67
Extent judicial lien impairs exemption	=	(\$15,316.67)

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 Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

4. [21-10937](#)-B-7 **IN RE: ANASTASIA SOTIROPULOS**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-17-2021 [\[9\]](#)

JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks dismissal for
debtor's failure to appear and testify at the § 341(a) meeting of
creditors scheduled for May 13, 2021. Doc. #9.

Anastasia Helen Sotiropulos ("Debtor") filed opposition on June 2,
2021, but it was not timely because it was one day late. Doc. #12.
Opposition was due no later than 14 days before the hearing, which
was June 1, 2021. This matter will be called as scheduled.

Trustee's motion to dismiss will be CONDITIONALLY DENIED.

Debtor's attorney, Joel D. Winter ("Counsel"), states that he
attempted to contact Debtor, but was unable to reach her. Counsel
believed Debtor had moved to Greece, so he abandoned the case and
did not attend the hearing. Debtor contacted Counsel after the
hearing and indicated that she had not seen his earlier messages,
but that she is interested in completing her bankruptcy case. Debtor
is aware of the date and time of the continued meeting of creditors.

Debtor shall attend the meeting of creditors rescheduled for June
24, 2021, at 3:00 p.m. If Debtor fails to do so, Trustee may file a
declaration with a proposed order and the case may be dismissed
without a further hearing.

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

5. [21-11445](#)-B-7 **IN RE: GOBINDER/HARINDER AUJLA**
[PBB-1](#)

MOTION TO COMPEL ABANDONMENT
6-1-2021 [\[5\]](#)

HARINDER AUJLA/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Gobinder Singh Aujla and Harinder Aujla ("Debtors") ask this court to compel chapter 7 trustee Irma Edmonds ("Trustee") to abandon the estate's interest in Debtors' sole proprietorship business, Aujla Transportation. Doc. #5.

Opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to 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. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The assets ("Business Assets") include the following:

Asset	Value	Exemption Amount	Lien	Net Value
2018 Wabash Trailer	\$10,000.00	\$10,000.00	\$17,000.00	\$0.00
2012 Peterbilt	\$10,000.00	-	\$20,382.00	\$0.00
"Aujla Transportation"	\$0.00	-	-	\$0.00

Docs. #1, Schedules A/B, C, D; #7. The Business Assets consist of a truck and trailer for Debtor's transportation business, use of the fictitious business name "Aujla Transportation," and any good will associated with the business as the result of Debtor's labor. The aggregate value of the Business Assets is \$20,000.00. The 2018 Wabash Trailer is exempted for its full value under Cal. Civ. Proc. Code § 704.060 and encumbered by a perfected lien in the amount of \$17,000.00 in favor of PNC Equipment Finance. Debtor claimed no exemptions for the 2012 Peterbilt, but it is encumbered by a perfected lien in the amount of \$20,382.00 in favor of BMO Harris Bank. Debtor does not believe the name "Aujla Transportation" or any good will associated with it is of any value to the estate.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT the motion. The court will find that the Business Assets are of inconsequential value and benefit to the estate and were accurately scheduled and exempted or encumbered in their entirety.

The order shall include a specific list of the property abandoned.

6. [17-13869](#)-B-7 **IN RE: CHARLES JOHNSON**
[DMG-5](#)

MOTION TO AVOID LIEN OF CACH, LLC.
5-26-2021 [\[55\]](#)

CHARLES JOHNSON/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Charles Carter Johnson, Jr. ("Debtor"), seeks to avoid a judicial lien in favor of CACH, LLC ("Creditor") and encumbering residential real property located at 3517 El Hogar Court, Bakersfield, CA ("Property") in the amount of \$17,802.38. Doc. #55. The court notes that Debtor located Creditor's CEO, Bryan Faliero, and he was served by certified mail on May 26, 2021. Doc. #59.

No party in interest was required to file written opposition. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served pursuant to 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. 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.

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 Debtor in favor of Creditor in the sum of \$17,802.38 on April 28, 2017. Doc. #58, Ex. A. The abstract of judgment was issued on July 12, 2017 and recorded in Kern County on July 24, 2017. *Id.* That lien attached to Debtor's interest in Property. Doc. #57. As of the petition date, Property had an approximate value of \$206,000.00. *Id.*; Doc. #1, Schedule A/B, ¶ 1.1. The unavoidable liens totaled \$205,000.00 on that same date, consisting of a deed of trust in favor of Bank of America. *Id.*, Schedule D, ¶ 2.1. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 703.140(b)(1) in the amount of \$26,800.00. *Id.*, Schedule C. Property's encumbrances can be described as follows:

Fair Market Value of Property on petition date		\$206,000.00
Total amount of unavoidable liens	-	\$205,000.00
Remaining available equity	=	\$1,000.00
Debtor's homestead exemption	-	\$26,800.00
Creditor's judicial lien	-	\$17,802.38
Extent Debtor's exemption impaired	=	(\$43,602.38)

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 Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). In the absence of opposition, this motion will be GRANTED.

7. [17-13869](#)-B-7 **IN RE: CHARLES JOHNSON**
[DMG-7](#)

MOTION FOR RELIEF FROM ORDER
6-1-2021 [\[65\]](#)

CHARLES JOHNSON/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted under Fed. R. Civ. Proc. 60(a) (Fed.
R. Bankr. P. 9024).

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

Charles Carter Johnson, Jr. ("Debtor"), moves for relief from the court's order denying Debtor's motion to avoid lien of CACH, LLC (DMG-4) under Fed. R. Civ. P. 60(b). No party in interest was required to file written opposition.

This motion will be GRANTED under Fed. R. Civ. P. 60(a).

Debtor's previous motion to avoid lien was denied on May 26, 2021 based on failure to prosecute. Doc. #60. The tentative ruling was to grant the motion, but because counsel failed to appear at the hearing, the motion was denied. Doc. #54. On the record, the court stated that the motion was denied without prejudice, but the civil minute order and the order do not mention that the motion was denied without prejudice, only that it was "DENIED FOR LACK OF PROSECUTION." Doc. #60.

Fed. R. Civ. P. 60(a) permits a court on its own or by motion to correct a clerical mistake whenever one is found in a judgment, order, or other part of the record.

Fed. R. Civ. P. 41(b) does apply in contested matters and a dismissal of a motion by a court for failure to prosecute is an adjudication on the merits unless otherwise ordered. The court did not dismiss the first motion to avoid a lien here but did deny the motion. Movant is concerned that the order denying the earlier motion can be construed as an adjudication on the merits since the order does not specify that the denial of the motion is without prejudice.

Counsel further acknowledges the defect in the notice of hearing and failure to appear at the hearing on the first motion. Since counsel believed the motion was a final ruling with no appearance necessary, he traveled to Utah to visit his father in Utah, who is 96 years' old and under hospice care. Doc. #67. As result of the lengthy and likely exhausting trip, Counsel was ineffective in being able to review the pre-hearing dispositions and make the required court appearance.

On the record at the hearing on the first motion, the court noted the motion was denied without prejudice. The docketed order does not reflect that.

The court intends to grant Debtor's motion to avoid lien in matter #6 above. The court will GRANT this motion and issue an order under Fed. R. Civ. P 60(a) correcting the previous order adding the previous motion was denied without prejudice.