

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 2, 2020
Place: Department A - Courtroom #11
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. 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.

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. 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.

9:00 AM

1. [20-11021](#)-A-13 **IN RE: RUDOLPH/KEISHA BERRY**
[TCS-1](#)

MOTION TO CONFIRM PLAN
5-27-2020 [[28](#)]

RUDOLPH BERRY/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.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 amount 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 motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

2. [15-13238](#)-A-13 **IN RE: TODD/MINDY MACIEL**
[FW-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-2-2020 [[100](#)]

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.

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 amount 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.

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,738.00 and reimbursement of expenses in the amount of \$134.59, totaling \$5,872.59. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

This motion is GRANTED. The applicant is awarded \$5,738.00 in fees and \$134.59 in costs to be paid in a manner consistent with the terms of the confirmed plan.

3. [20-10739](#)-A-13 **IN RE: DONNA REYNA**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
4-17-2020 [[29](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
JAMES CANALEZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Creditor Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF11, Mortgage Pass-Through Certificates, Series 2006-FF11 ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that the debtor owes to Creditor, the plan fails to provide how the debtor will be able to make all payments under the plan after accounting for all arrears owed on Creditor's claim, and the plan is therefore not feasible. Doc. #29.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #3. Creditor's proof of claim, filed on April 9, 2020, states pre-petition arrearage of \$29,974.13. This claim is classified in Class 1 to be paid in full by the Chapter 13 trustee. Doc. #3. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly. Id.

The debtor's plan understates the amount of arrears. The plan states arrears of \$24,500.00. Doc. #3. Section 3.02 provides that the proof of claim, and not the plan itself, determines the amount that will be repaid, and section 3.07(b)(2) requires that the payment be adjusted accordingly for a Class 1 claim.

Therefore, this objection is SUSTAINED.

4. [20-10555](#)-A-13 **IN RE: NANCY JERKOVICH**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BEAR STEARNS
4-30-2020 [\[27\]](#)

BEAR STEARNS/MV
STEVEN ALPERT/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Creditor Bear Stearns Asset Backed Securities I Trust 2005-AC9, Asset-Backed Certificates, Series 2005-AC9, U.S. Bank National Association, as Trustee ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that the debtor owes to Creditor, the plan fails to provide how the debtor will be able to make all payments under the plan after accounting for all arrears owed on Creditor's claim, and the plan is therefore not feasible. Doc. #27.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's amended proof of claim, filed on May 21, 2020, states pre-petition arrearage of \$144,042.91. This claim is classified in Class 1 to be paid in full by the Chapter 13 trustee. Doc. #2. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly. Id.

The debtor's plan understates the amount of arrears. The plan states arrears of \$100,000.00. Doc. #2. Section 3.02 provides that the proof of claim, and not the plan itself, determines the amount that will be repaid, and section 3.07(b)(2) requires that the payment be adjusted accordingly for a Class 1 claim.

Therefore, this objection is SUSTAINED.

5. [20-10575](#)-A-13 **IN RE: JUDY BURDEN**
[MHM-1](#)

MOTION TO DISMISS CASE
6-1-2020 [[40](#)]

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 16, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee moves to dismiss this case for failure to make all payments due under the plan. The debtor filed a response to the trustee's motion on June 10, 2020, opposing dismissal of the case. The debtor has filed amended Schedules I and J, and a modified plan that is set for hearing on July 16, 2020 at 9:00 a.m. Accordingly, the trustee's motion will be continued to track with the debtor's motion to confirm the modified plan.

6. [20-11576](#)-A-13 **IN RE: DANIEL MADRIAGA**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, NATIONAL
ASSOCIATION
5-18-2020 [[16](#)]

U.S. BANK, NATIONAL
ASSOCIATION/MV
PHILLIP GILLET/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Creditor U.S. Bank, National Association, as Trustee for Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2006-Amc1 ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that the debtor owes to Creditor and that the plan is therefore not feasible. Doc. #16.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #9. Creditor's proof of claim, filed May 13, 2020, states a claimed arrearage of \$16,340.83. This claim is classified in Class 1 to be paid in full by the Chapter 13 trustee. Doc. #9. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly. Id.

The debtor's plan understates the amount of arrears. The plan states arrears of \$11,512.50. Doc. #9. Section 3.02 provides that the proof of claim, and not the plan itself, determines the amount that will be repaid, and section 3.07(b)(2) requires that the payment be adjusted accordingly for a Class 1 claim.

Therefore, this objection is SUSTAINED.

7. [17-10578](#)-A-13 **IN RE: OSCAR/NATALIE VILLAGOMEZ-LEMUS**
[TCS-5](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), NA
6-1-2020 [[106](#)]

OSCAR VILLAGOMEZ-LEMUS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied Without Prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after 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 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 be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount 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 not done here.

Debtors Oscar Juventino Villagomez-Lemus and Natalie Maria Villagomez-Lemus (collectively, the "Debtors") move to avoid the judicial lien of Capital One Bank (USA), N.A. ("Capital One") recorded against the Debtors' residence and allegedly impairs their homestead exemption, which the Debtors claim they discovered while in the process of selling their home. Doc. ##106, 108. A judgment was entered against the Debtors in favor of Capital One in the sum of \$3,561.43 on December 14, 2016. Doc. #109, Ex. C. The abstract of judgment was recorded with Tulare County on February 15, 2017. Id. That lien attached to the Debtors' interest in a residential real property commonly known as 785 Bay Oak Place, Porterville, California 93257-7851 (the "Property"). Doc. #109, Ex. A. A more senior judgment lien for \$6,869.62 in favor of Sterling Jewelers Inc., dba Kay Jewelers ("Sterling Jewelers") exists from the earlier recording of another abstract of judgment on December 12, 2016 in Tulare County. Doc. ##111, 115.

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 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). 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), aff'd, 24 F.3d 247 (9th Cir. 1994)).

The Debtors are in the process of selling the Property and have filed amended schedules to reflect the current value of the Property as the sale price of \$265,000.00. Doc. ##108, 111. According to amended Schedule D, the Property is encumbered by an unavoidable first deed of trust in the amount of \$158,636.00 in favor of Pennymac Loan. Doc. #111. The Debtors also amended Schedule C to claim an exemption in the Property in the sum of \$95,932.95 under California Code of Civil Procedure § 704.730. Doc. ##108, 111. The Debtors claim to have no non-exempt equity in the Property. Doc. #108.

According to the arithmetical formula set forth in § 522(f)(2)(A), Capital One's lien does not appear to impair the Debtors' claimed homestead exemption.

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| Amount of Capital One's judicial lien | | \$3,561.43 |
| Total amount of all other liens on the Property (Pennymac + Sterling Jewelers) | + | \$165,505.62 |
| Amount of the Debtors' exemption | + | \$95,932.95 |
| Value of the Debtors' interest in the Property in the absence of liens | - | \$265,000.00 |
| | | |
| Extent of impairment of the Debtors' exemption in the Property | = | \$0.00 |

The amount owed on Capital One's judicial lien is exactly equal to the Debtors' unencumbered equity in the Property, so Capital One's lien does not impair the Debtors' exemption at all and is not avoidable under § 522(f)(1).

This motion is DENIED WITHOUT PREJUDICE.

8. [17-10578](#)-A-13 **IN RE: OSCAR/NATALIE VILLAGOMEZ-LEMUS**
[TCS-6](#)

MOTION TO AVOID LIEN OF STERLING JEWELERS, INC.
6-3-2020 [[112](#)]

OSCAR VILLAGOMEZ-LEMUS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied Without Prejudice.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Sterling Jewelers Inc. through its assignee Sandino Funding LLC filed a timely opposition on June 18, 2020 (Doc. #119), and the Debtors filed a reply six (6) days prior to hearing on June 26, 2020 (Doc. #122), in spite of LBR 9014-1(f)(1)(C). The Debtors did not file a separate statement identifying any disputed material factual issue. Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Debtors Oscar Juventino Villagomez-Lemus and Natalie Maria Villagomez-Lemus (collectively, the "Debtors") move to avoid the judicial lien of Sterling Jewelers Inc., dba Kay Jewelers ("Sterling Jewelers"). Doc. #112. Sterling Jewelers through its assignee Sadino Funding LLC opposes the motion. Doc. #119.

The Debtors obtained secured financing with Sterling Jewelers for the purchase of jewelry on November 23, 2014. After default, Sterling Jewelers sued and obtained a judgment in the amount of \$6,869.62 against the Debtors, entered on October 4, 2016. Doc. #115, Ex. C. The abstract of judgment was recorded with Tulare County on December 12, 2016. Id. That lien attached to the Debtors' interest in a residential real property commonly known as 785 Bay Oak Place, Porterville, California 93257-7851 (the "Property"). Doc. #115, Ex. A. A junior judgment lien for \$3,561.43 in favor of Capital One Bank (USA), N.A. ("Capital One") exists from the subsequent recording of another abstract of judgment on February 15, 2017 in Tulare County. Doc. #109, Ex. C. The Debtors amended Schedule D to list Sterling Jewelers with a secured claim of \$6,869.62 in the Property. Doc. ##111, 115. However, a payoff letter dated May 27, 2020 calculated the payoff amount of Sterling Jewelers' judgment lien as \$5,007.38 through June 30, 2020. Doc. #115, Ex. F.

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 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). 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), aff'd, 24 F.3d 247 (9th Cir. 1994)).

The Debtors are in the process of selling the Property and have filed amended schedules to reflect the current value of the Property as the sale price of \$265,000.00. Doc. #111, 114. According to amended Schedule D, the Property is encumbered by an unavoidable first deed of trust in the amount of \$158,636.00 in favor of Pennymac Loan. Doc. #111. The Debtors also amended Schedule C to claim an exemption in the Property in the sum of \$95,932.95 under California Code of Civil Procedure § 704.730. Doc. ##111, 15. The Debtors claim to have no non-exempt equity in the Property. Doc. #114.

According to the arithmetical formula set forth in § 522(f)(2)(A), Sterling Jewelers' lien does not appear to impair the Debtors' claimed homestead exemption.

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| Amount of Capital One's judicial lien | | \$3,561.43 |
| Total amount of all other liens on the Property (Pennymac + Sterling Jewelers) | + | \$165,505.62 |
| Amount of the Debtors' exemption | + | \$95,932.95 |
| Value of the Debtors' interest in the Property in the absence of liens | - | \$265,000.00 |
| | | |
| Extent of impairment of the Debtors' exemption in the Property | = | \$0.00 |

Avoidance must be directed at Capital One's junior judgment lien first. Even assuming the Debtors' higher, scheduled amount of Sterling Jewelers' secured claim for \$6,869.62, neither Capital One's nor Sterling Jewelers' liens appear to impair the Debtors' homestead exemption of \$95,932.95. On the contrary, the amounts owed on Capital One's and Sterling Jewelers' liens appear to be equal to, or potentially less than the Debtors' unencumbered equity in the Property. Based on the evidence presented by the Debtors, Sterling Jewelers' lien does not appear to impair the Debtors' exemption at all, so it would not be avoidable under § 522(f)(1), and the court cannot grant the Debtors' motion. Because the Debtors failed to make a *prima facie* case for the requested relief under § 522(f)(1), the court does not reach Sterling Jewelers' arguments in opposition to the Debtors' motion to avoid its judicial lien.

This motion is DENIED WITHOUT PREJUDICE.

9. [19-12289](#)-A-13 **IN RE: SHARON AQUINO**
[MAZ-1](#)

MOTION TO AVOID LIEN OF VELOCITY INVESTMENTS, LLC
6-2-2020 [[23](#)]

SHARON AQUINO/MV
MARK ZIMMERMAN/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 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 abovementioned 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 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 motion is GRANTED.

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 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). 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), aff'd, 24 F.3d 247 (9th Cir. 1994)).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). A judgment was entered against the debtor in favor of Velocity Investments, LLC in the sum of \$28,594.97 on August 29, 2017. Doc. #25. The abstract of judgment was recorded with Tulare County on August 16, 2018. Id. That lien attached to the debtor's interest in a residential real property commonly known as 3847 North Chinowth Street, Visalia, California 93291 (the "Property"). Id. The Property had a scheduled value of \$281,000.00 as of the petition date. Id. The unavoidable liens encumbering the Property totaled \$265,809.29 on that same date, consisting of a first deed of trust in the amount of \$208,841.29 in favor of Loancare and a second deed of trust in the amount of \$56,968.00 in favor of Bank of America. Id. The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of \$75,000.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. [20-10498](#)-A-13 **IN RE: MARCELINO/NATALIE HERNANDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-1-2020 [[37](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
DISMISSED 06/01/2020

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #35.

9:15 AM

1. [02-12046](#)-A-13 **IN RE: TERRY BURGESS**
[19-1084](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-16-2019 [[1](#)]

BURGESS V. OCWEN LOAN
SERVICING, LLC ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING

2. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[19-1090](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT STATUS
CONFERENCE
10-16-2019 [[66](#)]

QARNI ET AL V. VAHORA ET AL
NICHOLAS ANIOTZBEHERE/ATTY. FOR PL.
DISMISSED 6/4/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the adversary proceeding
has already been entered. Doc. #148.

3. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[19-1104](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-8-2020 [[29](#)]

VAHORA, M.D., PH.D. V. QARNI
PAUL GAUS/ATTY. FOR PL.
DISMISSED 6/4/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the adversary proceeding
has already been entered. Doc. #53.