



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

Hearing Date: Wednesday August 7, 2024

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

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [24-11521](#)-B-13 **IN RE: MANUEL HERRERA AND SUSAN VILLA-HERRERA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
7-23-2024 [\[19\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to September 4, 2024, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Manuel Herrera and Susan Villa-Herrera (collectively "Debtors") on June 2, 2014, on the following basis:

1. Co-Debtor Susan Villa-Herrera failed to appear at the 341 meeting of creditors conducted on July 16, 2024. The continued meeting is scheduled for August 6, 2024. Trustee will supplement this Objection upon discovery of further issues regarding confirmation if necessary.

Doc. #19.

This objection will be CONTINUED to September 4, 2024, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

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

2. [24-11650](#)-B-13 **IN RE: BEDROS BALIAN**
[BRK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-24-2024 [\[23\]](#)

JERRY LEWANDOWSKI/MV
BRIAR KEELER/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

Jerry Lewandowski ("Movant") seeks to modify the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed to trial in a state court unlawful detainer lawsuit against Bedros Balian ("Debtor") currently pending in Kern County Superior Court, Case No. BCL-23-017502. Doc. #23 *et seq.*

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

LBR 4001-1(a) states that "[w]ith all motions for relief from stay, the movant shall file and serve as a separate document completed Form EDC 3-468, Relief from Stay Summary Sheet." LBR 4001-1(a). Movant failed to file and serve a Form EDC 3-468 as required by the Local Rules.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters, and all other proceedings in this district that are filed by attorneys, trustees, or other Registered Electronic Filing System Users to document their service of any such pleadings and/or documents by filing a certificate of service and using the *Official Certificate of Service Form*, EDC 007-005. That form can be found on the court's website at <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited July 31, 2024). Movant did not employ the Official Form.

Furthermore, Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion will affect the debtor's and the estate's interest in property, so the debtor and the chapter 13 trustee must be served in accordance with Rule 7004. Rule 7004 is specifically precluded from electronic service by Rule 9036. This service requirement is not subject to waiver under Fed. R. Civ. P. 4(d). See Rule 7004(a)(1). Thus, the movant must serve the debtor and the chapter 13 Trustee in conformance with Rule 7004.

Here, no certificate of service was filed at all. Instead, Movant filed a "Certificate of Approval" which indicates service by first-class mail to Debtor and Debtor's non-filing cotenant, but it does not include a matrix stating the parties served, so there is no evidence the trustee was properly served. Doc. #27.

LBR 9004-2(c)(1) requires that motions, exhibits, and other specified pleadings are to be filed as separate documents. Here, the motion and the hearing notice were combined into a single document. Doc. #23.

LBR 9004-2(c)(1) requires all motions, notices, and other specified pleadings to be filed as separate documents. LBR 9004-2(e)(1), (e)(2). Here, the notice of hearing and motion for relief were filed as one document. Doc. #23.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

3. [24-10967](#)-B-13 **IN RE: DOREEN MADDOX**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-22-2024 [\[44\]](#)

GEORGE BURKE/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees have been paid in full. Accordingly, the order to show cause will be VACATED.

4. [24-11093](#)-B-13 **IN RE: LUIS RODRIGUEZ**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
6-17-2024 [\[14\]](#)

ANH NGUYEN/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on July 3, 2024. Doc. #17.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objected to confirmation of the *[Second] Amended Chapter 13 Plan* filed by Luis Rodriguez ("Debtor") on April 30, 2024, on the following basis:

1. The plan is not feasible. [11 U.S.C. § 1322(d)]. The plan provides for a monthly payment of \$2,419.00, but Trustee calculates that the plan payment will need to be at least \$2,545.71 per month to complete within 60 months.
2. The plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors under the plan. [11 U.S.C. § 1325(b)(1)(B)]. Debtor's plan proposes an 8% dividend to general unsecured creditors but based on Debtor's Chapter 13 Statement of Current Monthly Income, Debtor's available disposable income requires a 12.54% plan. This will further increase the required monthly payment to \$2,753.20.

Doc. #14.

The court continued this objection to August 7, 2024. Doc. #17. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

5. [23-12798](#)-B-13 **IN RE: JOEL/ANA PARRA**
[LGT-4](#)

MOTION TO DISMISS CASE
7-10-2024 [\[46\]](#)

LILIAN TSANG/MV
HECTOR VEGA/ATTY. FOR DBT.

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On August 6, 2024, Debtors filed a *Notice of Conversion* to Chapter 7. Doc. #50. Accordingly, the Chapter 13 Trustee's *Motion to Dismiss* will be DENIED AS MOOT.

10:00 AM

1. [21-10574](#)-B-7 **IN RE: MARK/JEANNETTE ESPARZA**

MOTION TO AVOID LIEN OF COLLMGMTRESO
7-19-2024 [\[31\]](#)

JEANNETTE ESPARZA/MV
WILLIAM EDWARDS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or denied as moot.

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

Mark and Jeannette Esparza ("Movants") move *pro se* for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Collmgmtreso aka Royal Palms Apartments and assigned to Collectibles Management Resources ("CMR") in the sum of \$6,975.00 and encumbering residential real property located at 3201 Redlands Dr., Bakersfield, CA 93306 ("Property"). Doc. #31.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #35.

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.

As a threshold matter, the court notes several procedural issues which might result in this motion being denied without prejudice but for the fact that the Movants are *pro se* litigants and are thus held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted). However, "pro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

First, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a

tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice filed by Movants did not contain the required language directing respondents to the pre-hearing dispositions on the court's website, or that parties appearing telephonically are required to view the pre-hearing dispositions prior to appearing at the hearing. Doc. #34.

Second, Movants filed the moving papers without including a Docket Control Number ("DCN"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Third, LBR 9004-2(d) requires (1) exhibits to be filed as a separate exhibit document, (2) an exhibit index stating the page number at which each exhibit is found within the exhibit document, and (3) use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibits are attached to the motion, do not contain an exhibit index, and are not consecutively numbered. Doc. #31.

Fourth, for motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing. This motion was filed and served on July 19, 2024, and set for hearing on August 7, 2024. Doc. #31 *et seq.* July 19, 2024, is less than 28 days before August 7, 2024. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). However, the Notice is silent as to whether written opposition is required prior to the hearing date or whether no such written opposition is required and opposition may be presented at the hearing. Doc. #34.

Nevertheless, the court is inclined to overlook this plethora of procedural deficiencies and afford Movants some leeway on account of their *pro se* status.

Movants filed this Chapter 7 case on March 9, 2021, and they received a discharge on August 2, 2021. Docs. #1, #23. The case was closed on August 6, 2021. Doc. #25. On July 12, 2024, Movants

applied *pro se* to reopen this case for the limited purpose of filing a motion to avoid the lien at issue in this matter, and the court granted the motion to reopen on July 15, 2024. Docs. ##28-29.

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 Movants in favor of CMR in the amount of \$2,935.66 on June 29, 2009. Doc. #31 (Exhibit A). The abstract of judgment was issued on September 4, 2009, and was recorded in Kern County on September 18, 2009. *Id.* That lien attached to Movant's interest in Property. *Id.* Debtor estimates that the current amount owed on account of this lien is \$6,975.00, with interest and costs added. *Id.*

At this point, the court would note that the judgment was entered June 29, 2009, and therefore, under California law, would have expired on June 29, 2019, unless renewed. See C.C.P. §§ 683.020, 697.310. There is an exception for support judgments not applicable in this case. Cal. Fam. Code § 291. There is no indication that the judgment in question was renewed. On the other hand, there is no affirmative statement from Movants stating that it was not renewed. Movants will have opportunity to address that issue at the hearing. If the judgment was not renewed, then it is expired, and this motion will be DENIED as moot. However, in the absence of clarity either way, the court will address the motion substantively.

As of the petition date, Property had an approximate value of \$215,000.00. Doc. #1 (Sched. A/B). The Movants' Schedule C did not list the Property as exempt nor list an exemption value for it. Doc. #1 (Sched. C). In the instant motion, Movants assert that they are entitled to an exemption in the Property of to \$600,000.00 pursuant to C.C.P. § 704.730. Doc. #31. While the failure to amend the Schedules to take this purported exemption into account is problematic, it appears that Movants would be entitled to avoidance even if the exemption were \$0.00 because the Property is underwater on the two mortgages.

Per Movants' Schedule D, Property is encumbered by a first deed of trust in favor of Loancare LLC in the amount of \$188,211.00 and a second deed of trust in favor of Loanpal LLC in the amount of \$49,524.00. Doc. #1 (Sched. D).

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. LoanCare	\$188,211.00	9/2018	Unavoidable
2. LoanPal	\$49,524.99	3/2019	Unavoidable
3. CMR	\$6,975.00	09/18/2009	Avoidable

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

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

This lien is the only junior lien subject to avoidance and there is no equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows (with a presumed exemption of \$0.00):

Amount of judgment lien	\$6,975.00
Total amount of unavoidable liens	+ \$237,735.00
Debtor's claimed exemption in Property	+ 0.00
<i>Sum</i>	= \$244,710.00
Debtor's claimed value of interest absent liens	- \$215,000.00
Extent lien impairs exemption	= \$29,710.00

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

Fair market value of Property	\$215,000.00
Total amount of unavoidable liens	- \$237,735.00
Homestead exemption	- 0.00
Remaining equity for judicial liens	= (\$22,735.00)
Creditor's judicial lien	- \$6,975.00
Extent Debtor's exemption impaired	= (\$29,710.00)

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

Movants have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, unless the court finds the motion to be moot and denies it on that basis, this motion will be GRANTED. If so, the proposed order shall state that CMR's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

10:30 AM

1. [24-11751](#)-B-11 **IN RE: VALDOR LLC**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-8-2024 [\[17\]](#)

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

DISPOSITION: Dropped and taken off calendar.

NO ORDER REQUIRED.

An order dismissing the case was entered on July 31, 2014. Doc. #47. Accordingly, this Order to Show Cause will be taken off calendar as moot. No appearance is necessary.

11:30 AM

1. [24-11406](#)-B-7 **IN RE: VERTICE GIBBS**

PRO SE REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT
UNION
7-11-2024 [\[21\]](#)

NO RULING.

2. [24-11359](#)-B-7 **IN RE: THOMAS WILEY**

REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
6-26-2024 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is
necessary.

On June 26, 2024, a Reaffirmation Agreement between Thomas Wiley
("Debtor") and Carmax Auto Finance for a 2017 Mercedes-Benz C300 was
filed with the court. Doc. #13. Apparently by inadvertence, Debtor
also filed a second, identical copy of the Reaffirmation Agreement
which was entered as Doc. #14. As the first Reaffirmation Agreement
was approved without a hearing, the court DENIES the second as moot.