



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 21, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties 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 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 who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest 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 appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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.

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. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-9-2024 [[1](#)]

GREGORY TAYLOR/ATTY. FOR DBT.

NO RULING.

2. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[FW-4](#)

MOTION FOR ORDER FIXING TIME FOR FILING PROOFS OF CLAIM
8-6-2024 [[177](#)]

LA HACIENDA MOBILE ESTATES, LLC/MV
GREGORY TAYLOR/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, Trails End United for Change filed a written non-opposition to the relief requested in the motion. Doc. #206. Unless opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties 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.

La Hacienda Mobile Estates, LLC ("Debtor") seeks an order from the court establishing a claims bar date of October 31, 2024. Doc. #177.

On May 9, 2024, Debtor filed this case under chapter 11 in the District of Delaware. Doc. #177. On June 7, 2024, the Delaware bankruptcy court transferred Debtor's bankruptcy case to the Eastern District of California. Id. The transferred case was assigned initially to the Sacramento division. Id. On July 15, 2024, Debtor's bankruptcy case was transferred to the Fresno division. Id. To date, no claims bar date has been set in this chapter 11 case.

Federal Rule of Bankruptcy Procedure 3003(c)(3) provides that the bankruptcy court shall fix the time for filing a proof of claim in a chapter 11 case. Because no claims bar date has been set previously in this bankruptcy case, Debtor requests that the court fix a claims bar date of October 31, 2024, which is approximately 70 days after the hearing on this motion.

Unless opposition is presented at the hearing, the court will grant this motion. Debtor will be authorized to serve notice of the claims bar date in substantially the same form as set forth in Exhibit A to the motion. Debtor shall provide at least 60 days' notice of the claims bar date to all parties in interest, including all parties listed on the mailing matrix in this case.

3. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[MHW-1](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
5-9-2024 [[13](#)]

LA HACIENDA MOBILE ESTATES, LLC/MV
GREGORY TAYLOR/ATTY. FOR DBT.

NO RULING.

4. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[MHW-2](#)

MOTION TO COMPEL
7-24-2024 [[160](#)]

LA HACIENDA MOBILE ESTATES, LLC/MV
GREGORY TAYLOR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[OHS-2](#)

MOTION FOR PROTECTIVE ORDER
7-17-2024 [[144](#)]

LA HACIENDA MOBILE ESTATES, LLC/MV
GREGORY TAYLOR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order filed on August 15, 2024.
Doc. #207.

6. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
NON-INDIVIDUAL
3-24-2023 [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

NO RULING.

7. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[FW-9](#)

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
6-21-2024 [\[261\]](#)

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirmed.

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

NabieKim Enterprises, Inc. ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, moves the court for confirmation of its First Amended Subchapter V Plan of Reorganization dated June 18, 2024 (the "Plan"). Doc. #261. The hearing to confirm the Plan was set by order of the court filed on June 25, 2024 ("Order"). Doc. #264. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by July 3, 2024; acceptances or rejections of the Plan, and objections to confirmation by July 31, 2024; and responses to objections, tabulation of ballots, and brief by August 14, 2024. Doc. #264. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##265, 266. No objections to confirmation of the Plan have been filed.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

Section 1191 of the Bankruptcy Code governs plan confirmation in Subchapter V. Here, § 1129(a)(8) has not been satisfied because Class 1, consisting of a secured claim, did not return a ballot accepting the Plan. Doc. #270. Thus, the Plan must be confirmed under § 1191(b).

In the Plan, Debtor requests confirmation on a non-consensual basis under § 1191(b). 11 U.S.C. § 1191(b) provides in relevant part:

[I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b)(2)(A). 11 U.S.C. § 1191(b), (c)(1). The Plan does not need to meet the requirements of § 1191(c)(2) and § 1191(c)(3). In re Trinity Family Practice & Urgent Care PLLC, Case No. 23-70068, 2024 Bankr. LEXIS 1234, at *17, n.61 (Bankr. W.D. Tex. May 24, 2024).

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case. The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181. The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). The claims are Class 1 (secured claims); Class 2 (unsecured claims); and Class 3 (equity interests).
- (2) Specifies the classes that are not impaired under the Plan (no classes listed in Plan are not impaired) as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan (Classes 1, 2, and 3) as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).
- (6) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).
- (7) Provides for the assumption or rejection of all executory contracts and unexpired leases existing as of the petition date in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith and has complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will be responsible for implementation of the Plan through Debtor's existing management, President Kaye Kim, and the Subchapter V Trustee will continue to serve until all plan payments are made, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case. No member of Class 1 returned a ballot. Class 1 claim shall accrue interest at the rate of ten percent per year after the effective date of plan ("Effective Date") and the claim shall be paid in full within sixty months of the Effective Date. Plan, § 6.01.3, Doc. #261.

Section 1129(a)(8) has not been satisfied because Class 1 did not return a ballot either accepting or rejecting the Plan. Bell Road Inv. Co. v. M Long Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that when no creditors within a class vote to accept a plan, that class is deemed to have rejected the plan). Nevertheless, Section 1129(a)(8) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under 11 U.S.C. §§ 507(a)(1), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) and 507(a)(8), to the extent there are any, in a manner consistent with 11 U.S.C. § 1129(a)(9).

Section 1129(a)(10) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Regarding § 1129(a)(11), the Plan provides that Debtor will pay the plan payment amount for 60 months into a distribution fund that will be used to pay creditors in this case. Plan, Doc. #261; Ex. B, Doc. #261. The court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Sections 1129(a)(13)-(16) are not applicable to this case.

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A). Section 1129(b)(2)(A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides:

- (1) the secured claimant retains his or her liens securing repayment of the creditor's claim, and
- (2) the secured claimant receives the present value of his or her claim on the effective date of the plan.

The court finds that the Plan is fair and equitable as to Class 1 (Small Business Administration). The Plan satisfies 11 U.S.C. § 1129(b)(2)(A) with respect to Class 1 by providing that the claim remains fully secured and will be paid in full with interest through monthly payments over 60 months after the Effective Date. Plan, § 6.01.03, Doc. #261.

Accordingly, confirmation of the Plan is proper under 11 U.S.C. § 1191(b), and the Plan will be confirmed.

8. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[UST-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION TO DISMISS CASE
6-21-2024 [\[471\]](#)

TRACY DAVIS/MV
NOEL KNIGHT/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION: Continued to September 25, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion to convert or dismiss the chapter 11 case to September 25, 2024 at 9:30 a.m. The court has already issued an order on August 13, 2024. Doc. #481.

9. [24-12295](#)-A-11 **IN RE: BURT ELECTRIC & COMMUNICATIONS, INC.**
[YW-2](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
8-13-2024 [\[22\]](#)

BURT ELECTRIC & COMMUNICATIONS, INC./MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

1. [24-11060](#)-A-7 **IN RE: PATRICIA SAESEE**

PRO SE REAFFIRMATION AGREEMENT WITH EDUCATIONAL EMPLOYEES CREDIT UNION
7-24-2024 [[21](#)]

NO RULING.

2. [24-11060](#)-A-7 **IN RE: PATRICIA SAESEE**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
7-30-2024 [[25](#)]

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter is dropped from calendar. This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement. The court will issue an order.

3. [24-11574](#)-A-7 **IN RE: ADAM/MARY ORONA**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION CREDIT UNION
7-23-2024 [[24](#)]

NO RULING.

1. [24-11400](#)-A-7 **IN RE: SCOTT CARR**
[GT-2](#)

MOTION TO VACATE
7-26-2024 [\[25\]](#)

SCOTT CARR/MV
GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was sent by mail on July 26, 2024, with a hearing date set for August 21, 2024. The motion was set for hearing on less than 28 days' notice prior to the hearing date and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Therefore, the notice of hearing does not comply with LBR 9014-1(f)(2).

2. [15-14425](#)-A-7 **IN RE: DAVID/DEBBIE GUTIERREZ**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT, MOTION FOR COMPENSATION BY THE LAW OFFICE OF DONAHOO & ASSOCIATES, P.C. FOR RICHARD DONAHOO, SPECIAL COUNSEL(S)
7-25-2024 [\[43\]](#)

JEFFREY VETTER/MV
R. BELL/ATTY. FOR DBT.
RICHARD DONAHOO/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was sent by mail on July 25, 2024, with a hearing date set for August 21, 2024. The motion was set for hearing on less than 28 days' notice prior to the hearing date and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion stated that opposition must be filed and

served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Therefore, the notice of hearing does not comply with LBR 9014-1(f)(2).

3. [23-11126](#)-A-7 **IN RE: LEONEL GERONIMO-SEPULVEDA**
[MJP-7](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
7-5-2024 [\[65\]](#)

LEONEL GERONIMO-SEPULVEDA/MV
MICHAEL PRIMUS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the exhibits filed with this motion (Doc. #67) do not comply with LBR 9004-2(b)(5), which provides that "The first page of each document filed shall contain a caption setting forth the name of the court, the title of the case or proceeding, the bankruptcy case, adversary proceeding, and/or miscellaneous proceeding number, the title of the document, and, if applicable, the Docket Control Number, and the date, time, and location of the hearing." LBR 9004-2(b)(5). Here, the exhibits were filed without a caption page. Doc. #67. In addition, the exhibits have not been properly numbered as required by LBR 9004-2(d)(3). The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Leonel Geronimo-Sepulveda ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Bank of America, N.A. ("Creditor") on the residential real property commonly referred to as 2228 Birchwood Ct., Merced, California 95341 (the "Property"). Doc. #65; Schedule D, Doc. #1; Am. Schedule C, Doc. #45.

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)).

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

Debtor filed his bankruptcy petition on May 26, 2023. Doc. #1. A judgment was entered against Debtor in the amount of \$5,030.84 in favor of Creditor on September 2, 2022. Ex. A, Doc. #67. The abstract of judgment was recorded pre-petition in Merced County on January 20, 2023, as document number 2023001302. Id. The lien attached to Debtor's interest in the Property located in Merced County. Schedule D, Doc. #1. The Property also is encumbered by a mortgage held by Lakeview Loan Servicing, LLC in the amount of \$212,456.00. Schedule D, Doc. #1. There is also a junior judicial lien that has been avoided. Doc. ##31, 38. Debtor claimed an exemption of \$500,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #45. Debtor asserts a market value for the Property as of the petition date at \$365,000.00. Schedule A/B, Doc. #1; Decl. of Michael J. Primus, Doc. #68.

Applying the statutory formula:

| | | |
|-----------------------------------------------------------------------------------|---|--------------|
| Amount of Creditor's judicial lien | | \$5,030.84 |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$212,456.00 |
| Amount of Debtor's claim of exemption in the Property | + | \$500,000.00 |
| | | \$717,486.84 |
| Value of Debtor's interest in the Property absent liens | - | \$365,000.00 |
| Amount Creditor's lien impairs Debtors' exemption | | \$352,486.84 |

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

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
6-20-2024 [\[10\]](#)

GRACIE CASTILLO/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Juan Carlos Castillo and Gracie E. Castillo (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") on the residential real property commonly referred to as 1203 Toschi Drive, Madera, California 93637 (the "Property"). Doc. #10; Am. Schedule C, Doc. #16; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the 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)).

Debtors filed their bankruptcy petition on June 4, 2024. Doc. #1. A judgment was entered against debtor Juan C. Castillo in the amount of \$3,895.41 in favor of Creditor on February 15, 2024. Ex. D, Doc. #13. The abstract of judgment was recorded pre-petition in Madera County on March 22, 2024, as document number 2024005730. Ex. D, Doc. #13. The lien attached to Debtors' interest in the Property located in Madera County. Doc. #10. The Property also is encumbered by a first deed of trust in favor of PennyMac Loan Services, LLC in the amount of \$170,283.00 and a lien in favor of Portfolio Recovery Associates in the amount

of \$3,646.00.¹ Schedule D, Doc. #1. Debtors claimed a combined exemption of \$344,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #16. Debtors assert a market value for the Property as of the petition date at \$398,700.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

| | | |
|-----------------------------------------------------------------------------------|---|--------------|
| Amount of Creditor's judicial lien | | \$3,895.41 |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$173,929.00 |
| Amount of Debtor's claim of exemption in the Property | + | \$344,000.00 |
| | | \$521,824.41 |
| Value of Debtor's interest in the Property absent liens | - | \$398,700.00 |
| Amount Creditor's lien impairs Debtor's exemption | | \$123,124.41 |

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

5. [24-11962](#)-A-7 **IN RE: OLIVER TAYLOR AND MARCELA SANTOS**

MOTION FOR RELIEF FROM AUTOMATIC STAY

8-4-2024 [\[22\]](#)

INLAND EMPIRE HOLDING, LLC/MV

LARRY ROTHMAN/ATTY. FOR MV.

DISMISSED 8/15/24

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

DISPOSITION: Denied as moot for prospective relief from stay pursuant to 11 U.S.C. § 362(d)(1) or (d)(2); denied without prejudice as to all other requests for relief pursuant to 11 U.S.C. § 362.

ORDER: The court will issue an order.

An order dismissing this case was entered on August 15, 2024. Doc. #31. Therefore, this motion will be DENIED AS MOOT to the extent the motion seeks prospective relief from stay pursuant to 11 U.S.C. § 362(d)(1) or (d)(2). To the extent that the motion seeks any other relief pursuant to 11 U.S.C. § 362, this matter is DENIED WITHOUT PREJUDICE for improper notice and failure to comply with this court's Local Rules of Practice ("LBR").

¹ While the motion states the amount of the lien for Portfolio Recovery Associates ("Lien") is in the amount of \$2,010.00, the Declaration of Juan Carlos Castillo (Doc. #12), the exhibits (Doc. #13), and Schedule D (Doc. #1) each list the amount of the Lien as \$3,656.00. Thus, the court assumes the correct amount for the Lien is \$3,656.00, as indicated on the declaration, exhibits and Schedule D, not \$2,010.00, as set forth in the motion.

The certificates of service filed with this motion and the supporting documents show that the chapter 7 trustee was only served electronically. Doc. ##22-25. However, Federal Rules of Bankruptcy Procedure ("Rules") 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004. Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004. Because the chapter 7 trustee was not served by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

As a further procedural matter, the certificates of service filed with this motion and the supporting documents do not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022. Doc. ##22-25.

As a further procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires that the notice advise potential respondents whether and when written opposition must be filed. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, no DCN was assigned to the motion.

As a further procedural matter, the motion and notice of hearing do not comply with LBR 9004-2(d), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document. Here, the motion filed by Movant includes the notice of hearing. Doc. #22. Pursuant to LBR 9014-1(d)(4), Movant should have filed the motion for relief from the automatic stay and the notice of hearing as separate documents.

As a further procedural matter, the request for judicial notice does not comply with LBR 9014-1(d)(4), which requires that exhibits to be filed as a separate document. The request for judicial notice was filed as a single 47-page document that included the movant's exhibits. Doc. #25. The exhibits filed by the movant (Doc. #25) also do not include an exhibit index and have not been properly numbered as required by LBR 9004-2(d)(2) and (d)(3).

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

6. [24-11968](#)-A-7 **IN RE: TERRY/TAMARA ERICKSON**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED
7-24-2024 [\[11\]](#)

PETER FEAR/ATTY. FOR DBT.

NO RULING.

7. [24-11081](#)-A-7 **IN RE: JESSE BARRERA**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-12-2024 [\[16\]](#)

MIDFIRST BANK/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, MidFirst Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 1935 N. Mayfair Drive, Hanford, California 93230 (the "Property"). Doc. #16.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 12 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$17,188.62. Decl. of Madison Grasp, Doc. #20.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 12 pre- and post-petition payments to Movant.

8. [24-11891](#)-A-7 **IN RE: DUNCAN CHAVEZ AND SELENA MENZIE**

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-7-2024 [\[28\]](#)

DALE E. FOWLER AS TRUSTEE OF THE D AND S FOWLER REVOCABLE
LARRY ROTHMAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice and failure to comply with this court's Local Rules of Practice ("LBR").

The certificates of service filed with this motion and supporting documents do not show that the motion and supporting documents were served on the chapter 7 trustee. Doc. ##28-33. Federal Rules of Bankruptcy Procedure ("Rules") 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004. Because the chapter 7 trustee was not served by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

As a further procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires that the notice advise potential respondents whether and when written opposition must be filed. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, no DCN was assigned to the motion.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9004-2(d), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document. Here, the motion filed by Movant includes the notice of hearing. Doc. ##28, 29. Pursuant to LBR 9014-1(d)(4), Movant should have filed the motion for relief from the automatic stay and the notice of hearing as separate documents. Also, the motion and other supporting papers filed by Movant include the certificates of service. Doc. ##28-33. Pursuant to LBR 9014-1(d)(4), Movant should have filed one certificate of service as a separate document showing all of the documents served, the names and addresses of the parties served, and the method and date of service.

As a further procedural matter, the declaration of Larry Rothman and the request for judicial notice do not comply with LBR 9014-1(d)(4), which requires that exhibits to be filed as a separate document. The declaration of Larry Rothman was filed as a single 22-page document that included the movant's exhibits and the request for judicial notice was filed as a single 43-page document that included the movant's exhibits. Doc. ##31, 33. The exhibits filed by the movant (Doc. ##31, 33) also do not include an exhibit index and have not been properly numbered as required by LBR 9004-2(d)(2) and (d)(3).

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.