



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 18, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in 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.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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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. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

2. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-28-2023 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

3. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-6](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
8-24-2023 [[64](#)]

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue for new objection and possible voting deadline.

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

Mateo Enterprise, Inc., dba El Milagro Market ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, moves the court for confirmation of its Plan of Reorganization dated August 24, 2023, as modified by Modification of Debtor's Plan of Reorganization Dated August 24, 2023 filed on August 31, 2023, and Second Modification of Debtor's Plan of Reorganization Dated August 24, 2023 filed on October 4, 2023 (collectively, the "Plan"). Doc. ##63, 64, 85, 127. The hearing to confirm the Plan was set by order of the court filed on August 24, 2023 ("Order"). Doc. #70. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by August 29, 2023; acceptances or rejections of the Plan and objections to confirmation to be submitted by October 4, 2023; and responses to objections, tabulation of ballots, and brief to be filed by October 11, 2023.

On October 4, 2023, the same date that acceptances or rejections of the Plan objections to confirmation were due, Debtor filed the proposed second plan modification that proposes to pay the Class Eleven creditor \$275,130.75 over time instead of the Class Eleven creditor sharing pro rata in the Class Thirteen pot of \$300,000.00. Doc. #127. In addition, the proposed second modification reduces the Class Thirteen pot from \$300,000.00 to \$103,500.00. Id.

The court determines that the increase in the amount to be paid to Class Eleven as well as the significant reduction in the proposed pot available for members of Class Thirteen to share constitute material plan modifications to the treatment of the members of Classes Eleven and Thirteen as well as the members of Classes Six, Seven, Eight, Nine, Ten and Twelve, each of whom are to be treated as Class Thirteen members under the Plan. Andrew v. Coopersmith (In re Downtown Inv. Club III), 89 B.R. 59, 65 (9th Cir. BAP 1988). "A modification is material if it so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance." In re Am. Solar King, 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988).

Because the proposed second modification of the Plan was filed and served on affected creditors on the same day that objections to confirmation of the Plan were due and significantly modified the recovery for Classes Six, Seven, Eight, Nine, Ten, Twelve and Thirteen, the court determines that the members of Classes Six, Seven, Eight, Nine, Ten, Twelve and Thirteen did not receive the 28 days' notice required by Federal Rule of Bankruptcy Procedure 2002(b) of the deadline to file objections to the Plan. In addition, while the first plan modification provided that not voting on the Plan would be deemed an acceptance of the Plan, such non-voting prior to the filing of the proposed second plan modification would have meant that a Class Thirteen member or a member of Classes Six, Seven, Eight, Nine, Ten and Twelve, each of whom are to be treated as Class Thirteen members under the Plan, would have been accepting a chapter 11 plan that provided for a pro rata share of a \$300,000.00 pot, not a pro rata share of a \$103,500.00 pot. The court determines that the reduction in the amount of plan payments to Class Thirteen as set forth in the second plan modification constitutes a material plan modification to the treatment of Classes Six, Seven, Eight, Nine, Ten, Twelve and Thirteen, and each such class should have another opportunity to vote on the Plan if Debtor wants to confirm the Plan under 11 U.S.C. § 1191(a).

Because Debtor needs to provide at least 28 days' notice to Classes Six, Seven, Eight, Nine, Ten, Twelve and Thirteen of the deadline to object to the proposed second modification of the Plan and, if Debtor wants to confirm the Plan under 11 U.S.C. § 1191(a), at least 28 days' notice to for Classes Six, Seven, Eight, Nine, Ten, Twelve and Thirteen of the deadline to submit ballots accepting or rejecting the Plan as modified by the second modification, the court will continue the hearing to confirm the Plan.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2023 [\[331\]](#)

JATINDERJEET SIHOTA/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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. Though not required, on October 12, 2023, Jaskaran Singh Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Plaintiffs") filed written opposition. Doc. #340. Further opposition may be presented at the hearing, and this matter will proceed as scheduled.

The moving parties Ajitpal Singh and Jatinderjeet Kaur Sihota (together, "Debtors") seek relief from the automatic stay to pursue an appeal in the Fifth District Court of Appeal for the State of California ("Court of Appeal") arising from the confirmation by the Superior Court of California, Fresno County, of an arbitration award issued post-petition on November 28, 2022 ("State Court Judgment") under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action"). Motion, Doc. #331; Ex. A, Doc. #336. Plaintiffs, who are the plaintiffs in the State Court Action, received relief from stay in this court to permit Plaintiffs to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Order, Doc. #195.

Under Ninth Circuit authority of Parker v. Bain (In re Parker), 68 F.3d 1131 (9th Cir. 1995), Debtors must obtain relief from the automatic stay prior to filing an appeal of a judgment against Debtors that stems from litigation originally filed against Debtors.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

With respect to finding cause to grant relief from stay to permit a moving party to proceed with litigation filed in state court, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630. When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case;

(3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether the action involves third parties and the debtor functions only as a bailee or conduit for the goods of proceeds in question; (5) whether litigation in another forum would prejudice the interests of other creditors; (6) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (7) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (8) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit Debtors to proceed with an appeal of the State Court Judgment to the Court of Appeal will permit the State Court Judgment to be finally resolved. Only if the State Court Judgment is finally resolved can Plaintiffs use the State Court Judgment to resolve outstanding issues in Plaintiffs' non-dischargeability adversary proceeding through collateral estoppel. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (2007). An initial four-day arbitration as well as additional arbitration proceedings have already been held in the State Court Action, and the State Court Judgment has been issued based on those arbitration proceedings. It is in the interests of judicial economy as well as more expeditious and economical to lift the automatic stay to permit Debtors to proceed with an appeal of the State Court Judgment in the Court of Appeal in order to finally resolve Plaintiffs' claims before this court has to try anew all of the matters previously arbitrated. In addition, this court has already lifted the automatic stay as to Plaintiffs to permit the State Court Action to reach a final judgment and, under Ninth Circuit authority, Debtors need relief from stay to pursue an appeal of the State Court Judgment. Lifting the automatic stay will benefit all parties by permitting the State Court Judgment to be finally resolved so the State Court Judgment could be utilized efficiently in this court to resolve Plaintiffs' non-dischargeability adversary proceeding.

Plaintiffs oppose this court granting the motion on two grounds. First, Plaintiffs oppose the motion because Debtors already filed a notice of appeal related to the State Court Judgment on May 31, 2023 ("Notice of Appeal"), and Debtors needed to obtain relief from the automatic stay before filing the Notice of Appeal. Doc. #340. However, by the motion, Debtors have not asked this court for retroactive relief from the automatic stay to authorize the filing of the Notice of Appeal. Thus, the court is only granting prospective relief from stay to Debtors to file an appeal with respect to the State Court Judgment and is not lifting the automatic stay retroactively to permit the filing of the Notice of Appeal.

Second, Plaintiffs oppose the motion asserting that this court granting relief from stay to permit Debtors to appeal the State Court Judgment permits Debtors to exploit the bankruptcy process by further delaying a judgment of nondischargeability as to Plaintiffs based on the State Court Judgment. Plaintiffs seek to have the State Court Judgment determined to be nondischargeable by this court using collateral estoppel in the adversary proceeding pending before this court. Grogan v. Garner, 498 U.S. 279, 284-85 (clarifying that collateral estoppel principles apply in dischargeability proceedings). "Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the state in which the judgment was issued." Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001). The State Court Judgment was issued by a California court, and "[u]nder California law, a judgment is not final for the purposes of collateral estoppel until it is free from the potential of a direct attack, i.e. until no

further direct appeal can be taken." Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1105 n.3 (9th Cir. 2010) (citing Abelson v. Nat'l Union Fire Ins. Co., 28 Cal. App. 4th 776, 787 (1994)). To the extent Debtors seek to pursue an appeal of the State Court Judgment prior to Plaintiffs being able to use the State Court Judgment for collateral estoppel purposes in the nondischargeability adversary proceeding, the court will grant relief from the automatic stay to permit Debtors to pursue such an appeal.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Debtors to pursue an appeal of the State Court Judgment. No other relief is awarded.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[FDA-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2023 [\[598\]](#)

BALVINDER KAUR/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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. Though not required, on October 12, 2023, Jaskaran Singh Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Plaintiffs") filed written opposition. Doc. #607. Further opposition may be presented at the hearing, and this matter will proceed as scheduled.

The moving parties Bhajan Singh and Balvinder Kaur (together, "Debtors") seek relief from the automatic stay to pursue an appeal in the Fifth District Court of Appeal for the State of California ("Court of Appeal") arising from the confirmation by the Superior Court of California, Fresno County, of an arbitration award issued post-petition on November 28, 2022 ("State Court Judgment") under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action"). Motion, Doc. #598; Ex. A, Doc. #603. Plaintiffs, who are the plaintiffs in the State Court Action, received relief from stay in this court to permit Plaintiffs to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Order, Doc. #431.

Under Ninth Circuit authority of Parker v. Bain (In re Parker), 68 F.3d 1131 (9th Cir. 1995), Debtors must obtain relief from the automatic stay prior to filing an appeal of a judgment against Debtors that stems from litigation originally filed against Debtors.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

With respect to finding cause to grant relief from stay to permit a moving party to proceed with litigation filed in state court, the legislative history of § 362(d)(1) states that “a desire to permit an action to proceed to completion in another tribunal may provide [] cause” for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630. When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the “Curtis factors” in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether the action involves third parties and the debtor functions only as a bailee or conduit for the goods of proceeds in question; (5) whether litigation in another forum would prejudice the interests of other creditors; (6) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (7) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (8) the impact of the automatic stay and the “balance of hurt.” In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit Debtors to proceed with an appeal of the State Court Judgment to the Court of Appeal will permit the State Court Judgment to be finally resolved. Only if the State Court Judgment is finally resolved can Plaintiffs use the State Court Judgment to resolve outstanding issues in Plaintiffs’ non-dischargeability adversary proceeding through collateral estoppel. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff’d, 506 F.3d 956 (2007). An initial four-day arbitration as well as additional arbitration proceedings have already been held in the State Court Action, and the State Court Judgment has been issued based on those arbitration proceedings. It is in the interests of judicial economy as well as more expeditious and economical to lift the automatic stay to permit Debtors to proceed with an appeal of the State Court Judgment in the Court of Appeal in order to finally resolve Plaintiffs’ claims before this court has to try anew all of the matters previously arbitrated. In addition, this court has already lifted the automatic stay as to Plaintiffs to permit the State Court Action to reach a final judgment and, under Ninth Circuit authority, Debtors need relief from stay to pursue an appeal of the State Court Judgment. Lifting the automatic stay will benefit all parties by permitting the State Court Judgment to be finally resolved so the State Court Judgment could be utilized efficiently in this court to resolve Plaintiffs’ non-dischargeability adversary proceeding.

Plaintiffs oppose this court granting the motion on two grounds. First, Plaintiffs oppose the motion because Debtors already filed a notice of appeal related to the State Court Judgment on May 31, 2023 (“Notice of Appeal”), and Debtors needed to obtain relief from the automatic stay before filing the Notice of Appeal. Doc. #607. However, by the motion, Debtors have not asked this court for retroactive relief from the automatic stay to authorize the filing of the Notice of Appeal. Thus, the court is only granting prospective relief from stay to Debtors to file an appeal with respect to the State Court Judgment and is not lifting the automatic stay retroactively to permit the filing of the Notice of Appeal.

Second, Plaintiffs oppose the motion asserting that this court granting relief from stay to permit Debtors to appeal the State Court Judgment permits Debtors to exploit the bankruptcy process by further delaying a judgment of nondischargeability as to Plaintiffs based on the State Court Judgment. Plaintiffs seek to have the State Court Judgment determined to be nondischargeable by this court using collateral estoppel in the adversary proceeding pending before this court. Grogan v. Garner, 498 U.S. 279, 284-85 (clarifying that collateral estoppel principles apply in dischargeability proceedings). "Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the state in which the judgment was issued." Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001). The State Court Judgment was issued by a California court, and "[u]nder California law, a judgment is not final for the purposes of collateral estoppel until it is free from the potential of a direct attack, i.e. until no further direct appeal can be taken." Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1105 n.3 (9th Cir. 2010) (citing Abelson v. Nat'l Union Fire Ins. Co., 28 Cal. App. 4th 776, 787 (1994)). To the extent Debtors seek to pursue an appeal of the State Court Judgment prior to Plaintiffs being able to use the State Court Judgment for collateral estoppel purposes in the nondischargeability adversary proceeding, the court will grant relief from the automatic stay to permit Debtors to pursue such an appeal.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Debtors to pursue an appeal of the State Court Judgment. No other relief is awarded.

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

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

7. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[DNL-1](#)

MOTION TO DISMISS CASE AND/OR MOTION FOR REMOVAL OF DEBTOR IN POSSESSION
9-19-2023 [[118](#)]

CALVIN KIM/MV
PETER FEAR/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

As an informative matter, the certificates of service filed in connection with this motion (Doc. #135), reply (Doc. #142), and response to evidentiary objections (Doc. #150) were filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the

court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

1. [23-11804](#)-A-7 **IN RE: JEENA GONZALEZ**

PRO SE REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
9-26-2023 [[23](#)]

NO RULING.

2. [23-11804](#)-A-7 **IN RE: JEENA GONZALEZ**

PRO SE REAFFIRMATION AGREEMENT WITH TD BANK, N.A.
9-26-2023 [[25](#)]

NO RULING.

3. [23-11659](#)-A-7 **IN RE: ALMA ROBLES**

PRO SE REAFFIRMATION AGREEMENT WITH MECHANICS BANK
9-28-2023 [[18](#)]

NO RULING.

4. [23-11480](#)-A-7 **IN RE: GABRIEL PADRON**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
9-14-2023 [[18](#)]

NO RULING.

1. [23-11106](#)-A-7 **IN RE: SONIA OLIVERA**
[ICE-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
9-12-2023 [\[27\]](#)

SONIA OLIVERA/MV
IRMA EDMONDS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Citibank, N.A. ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. The certificate of service filed in connection with this motion does not show that service of the motion was made by certified mail or addressed to an officer of Creditor. See Doc. #31. Further, a review of the docket shows no attorney for Creditor has appeared for Creditor in this bankruptcy case and no officer has been designated to receive service for Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(h).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

2. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-10](#)

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP.
9-1-2023 [\[72\]](#)

MANINDER BAINS/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 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 movants have done here.

Karnvir Singh and Maninder Kaur Bains (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 PACCAR Financial Corp ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #72; Schedule C, Doc. #1; 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)).

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. #1,6. A judgment was entered against Karnvir Singh in the amount of \$596,182.57 in favor of Creditor on September 5, 2017. Ex. D, Doc. #75. The abstract of judgment was recorded pre-petition in Fresno County on December 26, 2017, as document number 2017-0165860. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$931,514.85 as of September 1, 2023. Decl. of Karnvir Singh, Doc. #74. Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Singh Decl., Doc. #74. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appear to be four senior judicial liens on the Property:

- (1) The first senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$11,919.72. Ex. D,

Doc. #94. Debtors estimate the first senior judicial lien to be \$18,620.89 as of September 1, 2023. Singh Decl., Doc. #74.

- (2) The second senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$22,104.37. Ex. D, Doc. #89. Debtors estimate the second senior judicial lien to be \$34,531.27 as of September 1, 2023. Singh Decl., Doc. #74.
- (3) The third senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$83,685.50. Ex. D, Doc. #85. Debtors estimate the third senior judicial lien to be \$130,690.62 as of September 1, 2023. Singh Decl., Doc. #74.
- (4) The fourth senior judicial lien was recorded in Fresno County on November 7, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated November 2, 2017 for \$13,970.76. Ex. D, Doc. #80. Debtors estimate the fourth senior judicial lien to be \$21,606.83 as of September 1, 2023. Singh Decl., Doc. #74.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$931,514.85
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$666,334.36
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$1,937,849.21
Value of Debtors' interest in the Property absent liens	-	\$780,000.00
Amount Creditor's lien impairs Debtors' exemption		\$1,157,849.21

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.

3. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-11](#)

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER
9-1-2023 [\[77\]](#)

MANINDER BAINS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #115. 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). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the Labor Commissioner should have filed a separate written opposition in each motion with a single Docket Control Number rather than one opposition listing four Docket Control Numbers. The court further notes that no certificate of service showing service of the late-filed Opposition on the parties set forth in the notice of hearing has been filed, although under LBR 9014-1(e)(2), that certificate of service is not yet due.

As a further procedural matter, LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. In a footnote in the filed Opposition, counsel for the Labor Commissioner designated to enforce the liens in question states that he did not receive a copy of the motions because the motions were served on different units or different agencies of the Labor Commissioner, and he only learned of the motions on October 11, 2023. Opposition at n.1, Doc. #115. While the certificate of service filed with the motion shows that the motion was served properly on the Secretary of the Labor Commissioner as required by Federal Rule of Bankruptcy Procedure 7004(b)(6), the motion was not served on the counsel for the Labor Commissioner designated to enforce the liens in question. Doc. #81. Based on the explanation provided by counsel for the Labor Commissioner designated to enforce the liens in question, the court finds that good cause exists to permit this court to consider the Labor Commissioner's late-filed Opposition.

Karnvir Singh and Maninder Kaur Bains (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 Labor Commissioner and its assignee Jaskamaljit Singh ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #77; Schedule C, Doc. #1; 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)).

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$13,970.76 in favor of Creditor on November 7, 2017. Ex. D, Doc. #80. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to debtor Karnvir Singh in Fresno County on November 7, 2017, as document number 2017-0144568. Ex. D, Doc. #80. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$21,606.83 as of September 1, 2023. Decl. of Maninder Kaur Bains, Doc. #79. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Bains Decl., Doc. #79. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appear to be three senior judicial liens on the Property:

- (1) The first senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$11,919.72. Ex. D, Doc. #94. Debtors estimate the first senior judicial lien to be \$18,620.89 as of September 1, 2023. Bains Decl., Doc. #79.
- (2) The second senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$22,104.37. Ex. D, Doc. #89. Debtors estimate the second senior judicial lien to be \$34,531.27 as of September 1, 2023. Bains Decl., Doc. #79.
- (3) The third senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$83,685.50. Ex. D, Doc. #85. Debtors estimate the third senior judicial lien to be \$130,690.62 as of September 1, 2023. Bains Decl., Doc. #79.

Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Labor Commissioner opposes the motion on the basis that Debtors have not met their burden of proof with respect to the value of the Property. Opposition, Doc. #115. The Labor Commissioner asserts that Debtors need to substantiate their belief as to the value of the Property or provide an appraisal. Id. However, the Labor Commissioner is mistaken. Debtor Maninder Kaur Bains is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). No appraisal or additional substantiation is required. Therefore, the Opposition is overruled.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$21,606.83
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$644,727.53
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$1,006,334.36
Value of Debtors' interest in the Property absent liens	-	\$780,000.00
Amount Creditor's lien impairs Debtors' exemption		\$226,334.36

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, the late-filed Opposition is overruled, and this motion will be GRANTED.

4. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-12](#)

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER
9-1-2023 [\[82\]](#)

MANINDER BAINS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #115. 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). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the Labor Commissioner should have filed a separate written opposition in each motion with a single Docket Control Number rather than one opposition listing four Docket Control Numbers. The court further notes that no certificate of service showing service of the late-filed Opposition on the parties set forth in the notice of hearing has been filed, although under LBR 9014-1(e)(2), that certificate of service is not yet due.

As a further procedural matter, LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. In a footnote in the filed Opposition, counsel for the Labor Commissioner designated to enforce the liens in question states that he did not receive a copy of the motions because the motions were served on different units or different agencies of the Labor Commissioner, and he only learned of the motions on October 11, 2023. Opposition at n.1, Doc. #115. While the certificate of service filed with the motion shows that the motion was served properly on the Secretary of the Labor Commissioner as required by Federal Rule of Bankruptcy Procedure 7004(b)(6), the motion was not served on the counsel for the Labor Commissioner designated to enforce the liens in question. Doc. #86. Based on the explanation provided by counsel for the Labor Commissioner designated to enforce the liens in question, the court finds that good cause exists to permit this court to consider the Labor Commissioner's late-filed Opposition.

Karnvir Singh and Maninder Kaur Bains (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 Labor

Commissioner and its assignee Sunil Ramotra ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #82; Schedule C, Doc. #1; 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)).

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$83,658.50 in favor of Creditor on September 8, 2017. Ex. D, Doc. #85. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0114066. Ex. D, Doc. #85. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$130,690.62 as of September 1, 2023. Decl. of Maninder Kaur Bains, Doc. #84. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appear to be two senior judicial liens on the Property:

- (1) The first senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$11,919.72. Ex. D, Doc. #94. Debtors estimate the first senior judicial lien to be \$18,620.89 as of September 1, 2023. Bains Decl., Doc. #84.
- (2) The second senior judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$22,104.37. Ex. D, Doc. #89. Debtors estimate the second senior judicial lien to be \$34,531.27 as of September 1, 2023. Bains Decl., Doc. #84.

Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Labor Commissioner opposes the motion on the basis that Debtors have not met their burden of proof with respect to the value of the Property. Opposition, Doc. #115. The Labor Commissioner asserts that Debtors need to substantiate their belief as to the value of the Property or provide an appraisal. Id. However, the Labor Commissioner is mistaken. Debtor Maninder Kaur Bains is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value

may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). No appraisal or additional substantiation is required. Therefore, the Opposition is overruled.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$130,690.62
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$514,036.91
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$984,727.53
Value of Debtors' interest in the Property absent liens	-	\$780,000.00
Amount Creditor's lien impairs Debtors' exemption		\$204,727.53

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, the late-filed Opposition is overruled, and this motion will be GRANTED.

5. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-13](#)

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER
9-1-2023 [\[87\]](#)

MANINDER BAINS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #115. 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). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the Labor Commissioner should have filed a separate written opposition in each motion with a single Docket Control Number rather than one opposition listing four Docket Control Numbers. The court further notes that no certificate of service showing service of the late-filed Opposition on the parties set forth in the notice of hearing has been filed, although under LBR 9014-1(e)(2), that certificate of service is not yet due.

As a further procedural matter, LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. In a footnote in the filed Opposition, counsel for the Labor Commissioner designated to enforce the liens in question states that he did not receive a copy of the motions because the motions were served on different units or different agencies of the Labor Commissioner, and he only learned of the motions on October 11, 2023. Opposition at n.1, Doc. #115. While the certificate of service filed with the motion shows that the motion was served properly on the Secretary of the Labor Commissioner as required by Federal Rule of Bankruptcy Procedure 7004(b)(6), the motion was not served on the counsel for the Labor Commissioner designated to enforce the liens in question. Doc. #91. Based on the explanation provided by counsel for the Labor Commissioner designated to enforce the liens in question, the court finds that good cause exists to permit this court to consider the Labor Commissioner's late-filed Opposition.

Karnvir Singh and Maninder Kaur Bains (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 Labor Commissioner and its assignee Harjinder Singh ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #87; Schedule C, Doc. #1; 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)).

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$22,104.37 in favor of Creditor on September 8, 2017. Ex. D, Doc. #89. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0114025. Ex. D, Doc. #89. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$34,531.27 as of September 1, 2023. Decl. of Maninder Kaur Bains, Doc. #90. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appears to be one senior judicial lien on the Property, a judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor

Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$11,919.72. Ex. D, Doc. #94. Debtors estimate the first senior judicial lien to be \$18,620.89 as of September 1, 2023. Decl. of Maninder Kaur Bains, Doc. #90.

Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Labor Commissioner opposes the motion on the basis that Debtors have not met their burden of proof with respect to the value of the Property. Opposition, Doc. #115. The Labor Commissioner asserts that Debtors need to substantiate their belief as to the value of the Property or provide an appraisal. Id. However, the Labor Commissioner is mistaken. Debtor Maninder Kaur Bains is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). No appraisal or additional substantiation is required. Therefore, the Opposition is overruled.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$34,531.27
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$479,505.64
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$854,036.91
Value of Debtors' interest in the Property absent liens	-	\$780,000.00
Amount Creditor's lien impairs Debtors' exemption		\$74,035.91

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, the late-filed Opposition is overruled, and this motion will be GRANTED.

6. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-14](#)

MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER
9-1-2023 [[92](#)]

MANINDER BAINS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #115. 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). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the Labor Commissioner should have filed a separate written opposition in each motion with a single Docket Control Number rather than one opposition listing four Docket Control Numbers. The court further notes that no certificate of service showing service of the late-filed Opposition on the parties set forth in the notice of hearing has been filed, although under LBR 9014-1(e)(2), that certificate of service is not yet due.

As a further procedural matter, LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filing and improperly served opposition. In a footnote in the filed Opposition, counsel for the Labor Commissioner designated to enforce the liens in question states that he did not receive a copy of the motions because the motions were served on different units or different agencies of the Labor Commissioner, and he only learned of the motions on October 11, 2023. Opposition at n.1, Doc. #115. While the certificate of service filed with the motion shows that the motion was served properly on the Secretary of the Labor Commissioner as required by Federal Rule of Bankruptcy Procedure 7004(b)(6), the motion was not served on the counsel for the Labor Commissioner designated to enforce the liens in question. Doc. #96. Based on the explanation provided by counsel for the Labor Commissioner designated to enforce the liens in question, the court finds that good cause exists to permit this court to consider the Labor Commissioner's late-filed Opposition.

Karnvir Singh and Maninder Kaur Bains (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 Labor Commissioner and its assignee Harpreet Mann ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #92; Schedule C, Doc. #1; 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)).

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$11,919.72 in favor of Creditor on September 8, 2017. Ex. D, Doc. #94. A Certificate of Lien pursuant

to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0113942. Ex. D, Doc. #94. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$18,620.89 as of September 1, 2023. Decl. of Maninder Kaur Bains, Doc. #95. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Labor Commissioner opposes the motion on the basis that Debtors have not met their burden of proof with respect to the value of the Property. Opposition, Doc. #115. The Labor Commissioner asserts that Debtors need to substantiate their belief as to the value of the Property or provide an appraisal. Id. However, the Labor Commissioner is mistaken. Debtor Maninder Kaur Bains is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). No appraisal or additional substantiation is required. Therefore, the Opposition is overruled.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$18,620.89
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$460,884.75
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$819,505.65
Value of Debtors' interest in the Property absent liens	-	\$780,000.00
Amount Creditor's lien impairs Debtors' exemption		\$39,505.64

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, the late-filed Opposition is overruled, and this motion will be GRANTED.

7. [23-11471](#)-A-7 **IN RE: HEIDI CARRILLO**
[BDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2023 [\[20\]](#)

VERONICA SHANNON/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
BRIAN WHELAN/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 by mail of this motion was sent on September 22, 2023, with a hearing date set for October 18, 2023. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was 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. The notice of hearing does not comply with LBR 9014-1(f)(2).

8. [22-11186](#)-A-7 **IN RE: NEXT STAGE ENGINEERING LLP**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
8-30-2023 [\[43\]](#)

RATZLAFF, TAMBERI & WONG/MV
RICHARD BAUM/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ratzlaff Tamberi & Wong ("Movant"), accountants for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from May 22, 2023 through August 25, 2023. Doc. #43. Movant provided accounting services valued at \$2,239.19, and requests compensation for that amount. Doc. #43. Movant does not request reimbursement for expenses. Doc. #43. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing information regarding tax matters of partnership; (2) corresponding with Trustee; (3) preparing federal and state fiduciary income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #46; Ex. A, Doc. #45. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$2,239.19. Trustee is authorized to make a payment of \$2,239.19 to Movant from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.