



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Tuesday, October 24, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (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.
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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.

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

9:30 AM

1. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION

APPOINTMENT OF HEALTH CARE OMBUDSMAN, BLANCA CASTRO RE:
STATUS OF FIRST REPORT
7-20-2023 [\[105\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER_V
VOLUNTARY PETITION
6-22-2023 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[LKW-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
9-15-2023 [\[13\]](#)

RITU SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-19](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF PERKINS COIE
LLP FOR KATHLEEN ALLARE, CREDITOR COMM. ATY(S)
9-26-2023 [\[970\]](#)

RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to a date to be
determined.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Perkins Coie LLP ("Applicant"), co-counsel to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its motion for interim compensation under 11 U.S.C. § 330 in the sum of \$185,737.25 in attorney's fees (of which \$126,989.00 has already been paid) and \$117.60 in expense reimbursement (all of which has already been paid). Doc. #970.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #970. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this

Application, the court will continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as committee counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #970. This is Applicant's First Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. Doc. #759. The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from April 17, 2023, through July 31, 2023. *Id.* The Application seeks approval of \$158,737.25 in attorney's fees and \$117.60 in expenses over that span. Doc. #970. Of that, Applicant has already been paid \$126,98.80 (or 80% of the attorney's fees billed), as well as \$117.60 in reimbursement for expenses. *Id.* The remaining 20% in billable fees and expenses is \$31,747.45, for which Applicant needs court approval prior to payment. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) asset analysis and recovery (Fees: \$40,053.00; Hours 51.0), (2) asset disposition (Fees: \$37,678.00; Hours 54.8), (c) business operations (Fees: \$145.00; Hours: 0.2), (d) case administration (Fees: \$20,736.70; Hours: 53.7), (e) claims administration and objections (Fees \$435.00; Hours 0.6), (f) creditor communications and inquiries (Fees \$860.00; Hours: 1.0), (g) employment applications (Fees, \$28,744.00; Hours: 53.8), (h) employment/fee objections (Fees: \$271.50; Hours: 0.3), (i) executory contracts and unexpired leases (Fees: \$12,483.25; Hours 16.25); (j) financing (Fees: \$9,497.50; Hours 13.1), (k) meetings of creditors (Fees: \$7,815.00; Hours:

13.7), and (l) work on the plan and disclosure statement (Fees: \$72.50; Hours: 0.10). Doc. #970.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of \$158,737.25 and expenses in the amount of \$117.60 will be approved. It would be further ordered that Applicant is allowed to collect the uncollected 20% of fees and expenses in the amount of \$31,747.45.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-20](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SILLS CUMMINS &
GROSS P.C. FOR ANDREW H SHERMAN, CREDITOR COMM. ATY(S)
9-26-2023 [\[980\]](#)

RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to a date to be
determined.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Sills Cummins & Gross P.C. ("Applicant"), co-counsel to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its motion for interim compensation under 11 U.S.C. § 330 in the sum of \$248,332.50 in attorney's fees (of which \$??? has already been paid) and \$417.26 in expense reimbursement (all of which has already been paid). Doc. #980.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #970. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this Application, the court will continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as committee co-counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #982. This is Applicant's First Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. Doc. #759. The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from April 14, 2023, through July 31, 2023. *Id.* The Application seeks approval of \$248,332.50 in attorney's fees and \$417.26 in expenses over that span. Doc. #982. Of that, Applicant has already been paid \$198,732.26 (or 80% of the attorney's fees billed), as well as \$417.26 in reimbursement for expenses. *Id.* The remaining 20% in billable fees and expenses is \$49,549.24, for which Applicant needs court approval prior to payment. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (a) asset analysis and recovery (Fees: \$43,278.00; Hours 59.0), (b) asset disposition (Fees: \$53,278.00; Hours 59.0), (c) business operations

(Fees: \$12,062.50; Hours: 14.3), (d) case administration (Fees: \$86,550.00; Hours: 104.2), (e) claims administration and objections (Fees \$17,625.00; Hours 20.4), (f) creditor communications and inquiries (Fees \$21,865.00; Hours: 29.0), (g) employment applications (Fees, \$362.50; Hours: 0.5), (h) financing (Fees: \$70,267.50; Hours: 103.7), (i) litigation (other than avoidance action litigation) (Fees: \$4,163.00; Hours 5.4); (j) plan and disclosure statement (Fees: \$442.50; Hours 0.5), (k) relief from stay proceedings (Fees: \$1,895; Hours: 2.2), and (l) litigation consulting (Fees: \$4,998.00; Hours: 6.8). Doc. #980.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of \$138,332.00 and expenses in the amount of \$417.26 will be approved. It would be further ordered that Applicant is allowed to collect the uncollected 20% of fees and expenses in the amount of \$49,549.24.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-21](#)

MOTION FOR COMPENSATION FOR FTI CONSULTING, INC., FINANCIAL
ADVISOR(S)
9-26-2023 [[975](#)]

FTI CONSULTING, INC./MV
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to a date to be
determined.

ORDER: The Moving Party shall submit a proposed order
after hearing.

FTI Consulting, Inc. ("Applicant"), financial adviser to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its motion for interim compensation under 11 U.S.C. § 330 in the sum of \$167,580.00 in fees for professional services (of which \$134,064.00 has already been paid). Doc. 975. No expense reimbursement is sought in this Application. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely

respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #970. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this Application, the court will continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as financial advisor to the committee was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on June 21, 2023, effective on the petition date. Doc. #595. This is Applicant's First Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. *Id.* The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from April 25, 2023, through July 31, 2023. *Id.* The Application seeks approval of \$167,580.00 in professional fees and \$0.00 in expenses over that span. Doc. #978. Of that, Applicant has already been paid \$134,064.00 (or 80% of the professional fees billed). No expenses have been billed by or reimbursed to this Applicant as of this filing. *Id.* The remaining 20% in billable fees is \$33,516.00, for which Applicant needs court approval prior to payment. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (a) current operating results and events (Fees: \$23,341.00; Hours 25.2), (2) cash and liquidity analysis (Fees: \$366,720.00; Hours 79.8), (c) financing matters (DIP, Exit, Other) (Fees: \$4,692.50; Hours: 5.8), (d) trade vendor issues (Fees: \$492.50; Hours: 0.5), (e) real estate issues (Fees: \$11,377.00; Hours 10.4), (f) asset sales (Fees: \$24,586.00; Hours: 23.2), (g) analysis of business plans (Fees: \$949.00; Hours: 1.3), (h) analysis of other miscellaneous motions (Fees: \$7,072.50; Hours: 10.1), (i) analysis of claims/liabilities subject to compromise (Fees: \$602.50; Hours 4.5); (j) case management (Fees: \$8,095.50; Hours: 13.8), (k) general meetings with debtor and debtors' professional (Fees: \$10,877.50; Hours: 14.8), (l) general meetings with the Committee and Committee counsel (Fees: \$12,380.00; Hours: 13.50), (m) meetings with other parties (Fees: \$3,765.00; Hours 3.5), (n) firm retention (Fees: \$6,827.00; Hours: 12.5), (o) preparation of fee application (Fees: \$42,70.50; Hours: 8.3), (p) communications (Fees: \$3,336.00; Hours: 4.2), and (q) insurance review (Fees: \$8,214.50; Hours: 8.1). Doc. #975.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of \$134,064.00 and expenses in the amount of \$0.00 will be approved. It would be further ordered that Applicant is allowed to collect the uncollected 20% of fees and expenses in the amount of \$33,516.00.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[204](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[218](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

9. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [[230](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
3-13-2023 [[18](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-26-2023 [[301](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-2-2023 [\[334\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-63](#)

CONTINUED MOTION TO SELL AND/OR MOTION TO PAY
9-5-2023 [\[899\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better bids.

ORDER: Moving party to prepare order.

Debtor-in-possession Madera Community Hospital ("MCH") seeks court orders approving the sale of 35.58 acres planted to almonds to S & K Management for \$569,280.00 subject to higher and better bids, authorizing the execution of documents and payment of MCH's share of the closing costs, and authorizing payment of net proceeds to Saint Agnes Medical Center (SAMC).

This motion is set under an Order Shortening Time entered September 1, 2023. Doc. # 897 It appears MCH complied with the order's requirements. But objections may be made up to one day before commencement of the hearing. This tentative ruling may not consider those objections. Thus, this ruling may be changed.

The property to be sold is located on Ave. 12 in Madera County ("Property"). S & K Management ("Buyer") is also the current lessee of the property. MCH essentially "owns the dirt." Buyer has installed irrigation and planted the almond trees. The lease will expire in about 10 years. It is a crop share lease with MCH receiving 20% of crop share proceeds as defined under the lease attached as an exhibit to the motion.

11 U.S.C. § 363(b)(1) allows the trustee (or debtor-in-possession) to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018), citing 240 North Brand Partners v. Colony GFP Partners, Ltd.

P'Ship (In re 240 N. Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); In re Wilde Horse Enters., Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Sys., 367 B.R. 670, 674 (Bankr. D. Colo. 2007); In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Karen Paolinelli, MCH's CEO, states that Property is not needed. Doc. # 903. Property is encumbered by a first deed of trust securing an obligation owed SAMC which will be partially paid by distribution from escrow. Id. MCH's Board of Trustees approved the sale in June 2023 and escrow was to close on or before September 30, 2023. Id. But, MCH, the committee, and SAMC requested a continuance of the motion to sell to this date.

The price -\$16,000 per acre - is supported by two declarations: one from 20-year almond farmer and MCH Trustee Jay Mahil (Doc. # 901) and real estate agent Adam Basila with 17 years of experience selling over \$600 million worth of farm properties (Doc. # 904). Both opine the existence of the crop share lease with approximately ten (10) years of remaining term impacts the price. Id.

The sale is subject higher and better bids, if any, at the hearing. MCH has suggested over bids of at least \$2,500.

Based on the record before the court, the sale appears to be for an adequate price, at arms-length, and a valid exercise of MCH's business judgment. The potential for overbids supports the sale. The sale is also without a real estate commission which is another estate benefit.

Subject to any opposition presented under the Order Shortening Time, the motion will be GRANTED.

11:00 AM

1. [23-11485](#)-B-7 **IN RE: ANTONIO/ALEXANDRIA HERNANDEZ**

REAFFIRMATION AGREEMENT WITH ALLY BANK
9-22-2023 [[26](#)]

JERRY LOWE/ATTY. FOR DBT.

NO RULING.

2. [23-11485](#)-B-7 **IN RE: ANTONIO/ALEXANDRIA HERNANDEZ**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
9-25-2023 [[27](#)]

JERRY LOWE/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [23-10507](#)-B-7 **IN RE: JEER ALFAREH**
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
9-22-2023 [\[22\]](#)

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed
 order after hearing.

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to (a) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328 to sell the estate's interest in a 2021 Tesla Model 3 ("Vehicle") at public auction under § 363(b)(1); and (b) compensate Auctioneer under §§ 327(a) and 328. Doc. #22. The details pertaining to the time and place of the auction are the subject of a separate Motion to Sell. See Doc. #26.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a *prima facie* case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED.

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d) (5) (B) (iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" In re Circle K Corp., 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a **20% commission** on the gross proceeds from the sale; and (ii) estimated expenses not to exceed \$500.00 for storage and sale. Doc. #22.

Jeffrey Baird, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Doc. #22. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #28 (*Trustee's Declaration accompanying Motion to Sell Property*). Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2)

generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 20% commission, and up to \$500.00 for expenses as prayed.

Conclusion

There has been no opposition to this motion. Accordingly, the defaults of all interested parties will be entered, this motion will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above and in the related *Motion to Sell*. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 20% of gross proceeds from the sale and payment of up to \$500.00 for expenses.

2. [23-10507](#)-B-7 **IN RE: JEBR ALFAREH** [ICE-2](#)

MOTION TO SELL
9-22-2023 [\[26\]](#)

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to sell the estate's interest in a 2021 Tesla Model 3 ("Vehicle") at public auction under § 363(b)(1). Doc. #26. The details pertaining to the retention and compensation of the Auctioneer are the subject of a separate motion to employ. See Doc. #22.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not

materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED.

Employment and Compensation

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #28. Accordingly, this court has approved the retention of Baird Auction and Appraisal ("Auctioneer") in a separate order. See *Item #2, supra*.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is listed in the schedules as having 21,213 miles and is valued at \$34,146.00. *Am. Sched. A/B*, Doc. #1. Vehicle is encumbered by a note held by Creditor BMO Harris Bank upon which \$13,436.00 is outstanding. *Am. Sched. D, Id.* Debtor claims a \$6,607.00 exemption in Vehicle pursuant to Cal. Civ. Code § 704.010. *Sched. C, Id.* It is unclear whether Debtor will be paid on account of her exemption.

If Trustee sells Vehicle at public auction at the scheduled sale price under § 363(b) and Debtor's exemption is considered valid, then the proposed sale would be illustrated as follows:

Sale Price	\$34,146.00
Auctioneer fees (20%)	- \$6,429.20
Estimated Expenses	- \$500.00
Debtor's Exemption	- \$\$6,607.00
Estimated Net Proceeds	\$20,610.00

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #28. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

There has been no opposition to this motion. Accordingly, the defaults of all interested parties will be entered, this motion will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 20% of gross proceeds from the sale and payment of up to \$500.00 for expenses.

3. [14-10045](#)-B-7 **IN RE: MARIO NUNEZ** [TMO-3](#)

MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, LLC
9-13-2023 [\[49\]](#)

MARIO NUNEZ/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Mario Nunez ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of BH Financial Services, LLC ("Creditor") in the sum of \$10,684.10 and encumbering

residential real property located at 355 Silva Drive, Atwater, California, Merced County ("Property"). Doc. #52. Debtor filed this case on January 7, 2014, and received a discharge on May 27, 2014. Doc. ## 1, 24. An order reopening the case so that Debtor could file a motion to avoid this lien was entered on August 16, 2023. Doc. #29. Debtor's first attempt to avoid the lien was dismissed without prejudice for procedural reasons. See Doc. ##32, 48. Debtor filed the instant *Motion to Avoid Judicial Lien* on September 13, 2023. Doc. #52.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$10,684.10 on August 2, 2013. *Ex. A*, Doc. #51. The abstract of judgment was issued on September 8, 2013, and was recorded in Merced County on that same day. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #15. Debtor estimates that the current amount owed on account of this lien is \$10,324.10. Doc. #52.

As of the petition date, The value of Debtor's claimed interest in the Property was \$169,651.00. *Sched. A/B*, Doc. #1. Initially, Debtor did not claim an exemption on the Property, but ON August 16, 2023, Debtor amended Schedule C to claim an exemption in the amount of \$10,689.10 in the Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.140. *iAmd. Sched. C*, Doc. #38.

At the time of filing, Property was encumbered by a first deed of trust in favor of Bayview Financial Loan ("Bayview") in the amount of \$214,400.00. *Sched. D, Doc. #1*. Property was also encumbered by second deed of trust in favor of HSBC Mortgage Services ("HSBC") in the amount of \$111,900.00. *Id.* As Debtor's Declaration notes, this exceeds the value of the home as it was as of the petition date. Doc.#53.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Bayview	\$214,400.00		Unavoidable
2. HSBC	\$111,900.00		Unavoidable
3. Creditor	\$10,684.10	8/8/2013	Avoidable

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

Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		\$10,683.10
Total amount of unavoidable liens	+	\$326,300.00
Debtor's claimed exemption in Property	+	10,689.10
<i>Sum</i>	=	\$347,672.20
Debtor's claimed value of interest absent liens	-	\$169,653.00
Extent lien impairs exemption	=	\$178,019.20

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

Fair market value of Property	\$169,653.00
Total amount of unavoidable liens	- \$326,300.00
Homestead exemption	- \$10,689.10
Remaining equity for judicial liens	= (\$167,336.10)
Creditor's judicial lien	- \$10,683.10
Extent Debtor's exemption impaired	= (\$178,019.20)

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

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

4. [20-12551](#)-B-7 **IN RE: MIGUEL/ADRIANA ARTEAGA**
[PWG-2](#)

MOTION TO AVOID LIEN OF ALLY FINANCIAL, INC.
9-26-2023 [\[23\]](#)

ADRIANA ARTEAGA/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

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

DISPOSITION: Granted.

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

Miguel Zuniga Arteaga and Adrianna Suarez Arteaga ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Ally Financial Services, LLC ("Creditor") in the sum of \$42,894.99 and encumbering residential real property located at 2142 Campus Drive, Delano, CA 93215 ("Property"). Doc. #23, #27. Debtor filed this case on January 31, 2020, and received a discharge on November 30, 2020. Doc. ## 1, 17. An order reopening the case so that Debtor could file a motion to avoid this lien was entered on September 26, 2023. Doc. #22.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$42,894.850 on October 26, 2018. *Ex. A*, Doc. #. The abstract of judgment was issued on November 27, 2028, and was recorded in Kern County on December 13, 2018. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #25. Debtor estimates that the current amount owed on account of this lien is \$46,894.99. Doc. #27.

As of the petition date, The value of Debtors' claimed interest in the Property was \$220,613.24. *Sched. A/B*, Doc. #1. Debtors claimed an exemption in the amount of \$220,61324 in the Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, Doc. #1.

At the time of filing, Property was encumbered by a first deed of trust in favor of Ocwen Loan Servicing("Ocwen") in the amount of \$174,801.00. *Sched. D*, Doc. #1. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Ocwen	\$174,801.00		Unavoidable
2. Creditor	\$42,894.99	12/13/2018	Avoidable

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the

debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		\$42,894.99
Total amount of unavoidable liens	+	\$174,801.00
Debtor's claimed exemption in Property	+	220,613.24
<i>Sum</i>	=	\$438,309.23
Debtor's claimed value of interest absent liens	-	\$220,613.24
Extent lien impairs exemption	=	\$217,695.99

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

Fair market value of Property		\$220,613.00
Total amount of unavoidable liens	-	\$174,801.00
Homestead exemption	-	\$220,613.24
Remaining equity for judicial liens	=	(\$174,801.24)
Creditor's judicial lien	-	\$42,894.99
Extent Debtor's exemption impaired	=	(\$217,696.23)

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

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

5. [22-10670](#)-B-7 **IN RE: DUSTIN DE SANTIAGO**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
9-22-2023 [\[35\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

FINAL ULING: 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.

Gabriel Waddell ("Waddell"), on behalf of Fear Waddell,
P.C. ("Applicant"), attorney for Chapter 7 Trustee James Salven
("Trustee"), requests final compensation under 11 U.S.C. § 330 in
the sum of \$5,172.45. Doc. #35. This amount consists of \$5,116.50 in
fees and \$55.95 in expenses from April 29, 2022, through September
29, 2023. *Id.* This is Applicant's first and final application for
compensation. *Id.*

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR
9014-1(f)(1)(B), the failure of any party in interest (including but
not limited to creditors, the debtor, the U.S. Trustee, or any other
properly-served party in interest) to file written opposition at
least 14 days prior to the hearing may be deemed a waiver of any
such opposition to the granting of the motion. *Cf. Ghazali v. Moran*,
46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a
motion, the defaults of all parties in interest who failed to timely
respond will be entered, and, in the absence of any opposition, the
movant's factual allegations will be taken as true (except those
relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*,
826 F.2d 915, 917 (9th Cir. 1987). Because the court will not
materially alter the relief requested by the moving party, an actual
hearing is unnecessary when an unopposed movant has made a *prima*
facie case for the requested relief. *See Boone v. Burk (In re*
Eliapo), 468 F.3d 592 (9th Cir. 2006).

No party filed a response to the Application, and so the defaults of
all other parties in interest are entered.

Dustin Christopher De Santiago ("Debtor") filed the underlying
voluntary Chapter 7 petition on April 19, 2020. Doc. #1. The order
authorizing Applicant's employment as general counsel for Trustee
was entered on May 10, 2022. Doc. #35. Trustee avers that during
Applicant's employment in this matter, he performed legal services
necessary to assist the Trustee in administration of this case by
performing services in connection with: (1) asset disposition and
(2) fee/employment applications. Doc. #39. The Application is
accompanied by Exhibits consisting of (A) a narrative summary, (B) a

detailed statement of fees and expenses, and (C) a detailed report of fees, categorized by task. *Id.*

The motion is accompanied by a declaration the Trustee stating that he reviewed this Application and that he believes the requested payment of fees and expenses is reasonable and necessary for the administration of the estate and that he had no objection to the fee request. Doc. #38. The motion is also accompanied by a declaration from Waddell which, *inter alia*, acknowledge that the bankruptcy estate is administratively insolvent and that, while the motion requests approval of the full amount of fees and expenses requested, Applicant agrees to take payment of fees prorated with other administrative expenses. Doc. #37.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The court finds the services and expenses as outlined above reasonable, actual, and necessary, and the court will GRANT the application. Payment by the Trustee subject to Trustee's discretion. Applicant to receive payment limited to a prorated amount with other allowed administrative expenses.

6. [21-12873](#)-B-7 **IN RE: CESAR PENA BARRAZA AND OLGA PENA**
LOPEZ
[ADJ-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO
JOHNSTON AND CHARTRAND FOR ANTHONY D. JOHNSTON, TRUSTEES
ATTORNEY(S)
9-11-2023 [\[38\]](#)

SCOTT LYONS/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

FINAL ULLING: 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.

Anthony D. Johnston ("Johnston"), attorney for Chapter 7 Trustee Irma Edmonds ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$4,713.86. Doc. #38. This amount consists of \$7,537.50 in fees and \$176.36 in expenses from December 20, 2022, through September 11, 2023. *Id.* This is Applicant's first and final application for compensation. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party filed a response to the Application, and so the defaults of all other parties in interest are entered.

Cesar Omar Pena Barraza and Olga Dolores Pena Lopez ("Debtors") filed the underlying voluntary Chapter 7 petition on December 30, 2021. Doc. #1. The order authorizing Applicant's employment as general counsel for Trustee was entered on January 11, 2023. Doc. #25. Trustee avers that during Applicant's employment in this matter, he performed legal services necessary to assist the Trustee in administration of this case by performing services in connection with: (1) prosecution and settlement of an adversary proceeding over an alleged fraudulent transfer by the Debtors, (2) preparation of Trustee's Application to employ the Applicant, and (3) preparation of this fee application. *Id.*

The motion is accompanied by exhibits which include (A) a list of chronological time entries, (B) a list of project billing time entries, and (C) a list of the costs advanced. Doc. #40. The motion is also accompanied by (1) a declaration by Johnston describing the work he performed in connection with this case (Doc. #41) and (2) a declaration from the Trustee stating that the estate currently has funds on hand in the approximate amount of \$9,260.57 with which to pay the requested fees and expenses and that Applicant's services were necessary and reasonable. Doc. #42.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The court finds the services and expenses as outlined above reasonable, actual, and necessary, and the court will GRANT the application.

7. [22-10974](#)-B-7 **IN RE: FRANCISCO SAMANIEGO**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
9-22-2023 [\[97\]](#)

T. O'TOOLE/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

FINAL ULLING: 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.

Gabriel Waddell ("Waddell"), on behalf of Fear Waddell,
P.C. ("Applicant"), attorney for Chapter 7 Trustee Peter Fear
("Trustee"), requests final compensation under 11 U.S.C. § 330 in
the sum of \$11,170.50. Doc. #97. This amount consists of \$11,170.50
in fees and \$907.92 in expenses from October 31, 2022 through
September 19, 2023. *Id.* This is Applicant's first and final
application for compensation. *Id.*

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR
9014-1(f)(1)(B), the failure of any party in interest (including but
not limited to creditors, the debtor, the U.S. Trustee, or any other
properly-served party in interest) to file written opposition at
least 14 days prior to the hearing may be deemed a waiver of any
such opposition to the granting of the motion. *Cf. Ghazali v. Moran*,
46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a
motion, the defaults of all parties in interest who failed to timely
respond will be entered, and, in the absence of any opposition, the
movant's factual allegations will be taken as true (except those
relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*,
826 F.2d 915, 917 (9th Cir. 1987). Because the court will not
materially alter the relief requested by the moving party, an actual
hearing is unnecessary when an unopposed movant has made a *prima*
facie case for the requested relief. *See Boone v. Burk (In re*
Eliapo), 468 F.3d 592 (9th Cir. 2006).

No party filed a response to the Application, and so the defaults of
all other parties in interest are entered.

Francisco Samaniego "Debtor") filed a voluntary Chapter 13 petition
on June 10, 2022, and later converted his case to one under Chapter
7 on August 31, 2022. Doc. #1, 32. The order authorizing
Applicant's employment as general counsel for Trustee was entered on
November 7, 2022. Doc. #66. In his Declaration, Applicant avers that
during his employment in this matter, he performed legal services
necessary to assist the Trustee in administration of this case by
performing services in connection with: (a) asset disposition,
regarding the sale of certain real property, (b) preparation of both

the Trustee's motion to employ applicant and the instant final fee application. Doc. 101.

The motion is accompanied by a declaration the Trustee stating that he reviewed this Application and that he believes the requested payment of fees and expenses is reasonable and necessary for the administration of the estate and that he had no objection to the fee request. Doc. #99.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The court finds the services and expenses as outlined above reasonable, actual, and necessary, and the court will GRANT the application.

8. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-1](#)

CONTINUED RE: MOTION TO AVOID LIEN OF DONALD HORN AND JUDITH
LINDA
5-20-2023 [\[13\]](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted

ORDER: The prevailing party shall prepare the order.

Debtor Lisa Anderson ("Debtor") asks the court to set aside the fixing of a judgment lien on Debtor's property in favor of Donald Horn and Judith Linda (collectively "Creditors"). Doc. #13. The property at issue is Debtor's residence at 33352 Cascadel Heights Drive in North Fork, California 93643 ("Property"). *Id.* Debtor filed this bankruptcy case on April 27, 2023. Doc. #1.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Horn & Linda to file written opposition at least 14 days prior to the hearing as required by LBR 9014-(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Horn & Linda are entered. Upon default, factual allegations

will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Only the Creditors filed a response, Doc. #31, and so the defaults of any other parties in interest are entered.

In their response, the Creditors requested that the court take judicial notice of records relating to the Creek and Fork Fires from the California Department of Forestry and Fire Protection ("Cal Fire"), documents recorded with the Madera County Clerk-Recorder, and Proof of Claim No. 92045 ("Claim 92045") from Bankruptcy Case No. 19-30088 (N.D. Cal. Bankr.) for PG&E Corporation and Pacific Gas and Electric Company (the "PG&E Bankruptcy"). Doc. #34. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

Here, the entry of the judgment and the recording of the abstract are undisputed facts. The following facts are also undisputed: (1) the Property is subject to a deed of trust recorded May 16, 2007; (2) on May 4, 2021, Debtor executed a quit claim deed transferring Property to Norma Cerpa as a gift; and (3) on June 18, 2021 (a little over a month later), Cerpa executed a quit claim deed back to the Debtor. Six days after that, Debtor recorded a homestead declaration under Cal. Civ. Proc. Code ("CCP") 704.910 et. seq. No money changed hands between Debtor and Cerpa during those conveyances, and Debtor resided on the property continuously.

Debtor claims the value of Property is \$400,000.00 on the petition date. Doc. #15. Creditors initially disputed that valuation, but at a continued hearing on August 29, 2023, counsel for Creditors said that no further evidence will be presented by Creditors on the issue of value.

Creditors also attack the validity of the claimed homestead, presenting five arguments, each of which will be addressed in turn. Doc. #31.

First, they argue that Property was undervalued by Debtor because Property was not heavily damaged by the Mission Fire that struck the area. Debtor disputed that characterization with a supplemental declaration. Doc. #37. Since Creditors do not intend to offer any further evidence on the issue of value, the court finds Debtor's evidence more persuasive and agrees the value as of the petition date was \$400,000.00.

Second, Creditors claim, based upon a proof of claim filed in the PG&E bankruptcy, that Debtor allegedly leased Property to a third party for a period commencing in 2018. Doc. #31. Debtor denies that assertion and claims that the proof of claim in the PG&E bankruptcy

was fraudulent. Doc. #40. At the continued hearing on this motion on August 29, 2023, Creditors' counsel stated that they would submit no further evidence as to continuous occupancy of Property by the Debtor. Accordingly, the court finds persuasive the evidence that, for purposes of this motion, Debtor has continuously resided at Property. The supplemental declaration makes clear that the Debtor has owned Property since her divorce and has continuously resided there through the date of the petition and the date of the declaration.

Third, Creditors contend that notwithstanding the short time the Debtor was out of title following the transfer of Property to Cerpa, that break in title nullifies the declared homestead. The court disagrees.

Exemption questions in California bankruptcies require application of California law. *In Re Nolan*, 618 B.R. 860, 863 (Bankr. Ct. C.D. Cal. 2020) citing *In Re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015). California courts liberally construe the law and the facts to promote the beneficial purposes of the homestead legislation to benefit the Debtor. *Tarlesson v. Broadway Foreclosure Invs. II, LLC*, 184 Cal. App. 4th 931, 936 (2010); *Phillips v. Gilman (In Re Gilman)*, 887 F. 3d 956, 964 (9th Cir. 2018). That said, under California law, in the absence of evidence of a veteran's or residence exemption from property taxes, the burden of proof to establish the homestead rests with the debtor. CCP § 704.780(a)(1).

The Debtor has met the burden of proof here. It is undisputed that the Debtor did transfer legal ownership to Cerpa in 2021. Cerpa then conveyed the Property back to Debtor approximately five weeks later. Debtor apparently admitted at the meeting of creditors that she transferred Property out of the mistaken belief it would be helpful to protect Property from creditors. Though not all the evidence has been presented on the issue, even if the court assumes the transfer was fraudulent, it does not inevitably result in the loss of the homestead exemption. *Tarlesson*, 184 Cal. App. 4th at 937 (holding continuous residency still establishes the homestead despite a temporary conveyance). Under California law, physical occupancy of the homestead plus an intent to reside there is necessary to establish a homestead exemption. *Gilman*, 887 F. 3d at 965. Creditors' counsel has stated no further evidence on the issue of continuous residency will be presented. Therefore, the Debtor has met her burden of proof on the issue of continuous residency and the intent to reside to maintain the homestead exemption.

Fourth, Creditors argue that under § 522(p) the Debtor lost her homestead exemption because the transfer to and from Cerpa in 2021 occurred less than 1,215 days before the filing of the petition. Doc. #31. That is a misapplication of the statute. Section 522(p) does not eliminate the homestead exemption but rather sets a cap on the maximum that can be claimed. That cap at the time of the filing of this case is \$189,050.00. This provision imposes a limitation on the homestead exemption regardless of applicable state law exemptions. *Caldwell v. Nelson (In Re Caldwell)*, 545 B.R. 605, 609, (9th Cir. B.A.P., 2016; *In Re Oliver*, 649 B.R. 206, 211 (Bankr. Ct.

E.D. Cal. 2023). The Ninth Circuit has also interpreted the language "interest that was acquired" in § 522(p) means the acquisition of ownership in real property. *Greene v. Savage (In Re Green)*, 583 F. 3d 614, 622 n.7, 625 (9th Cir., 2009).

But as will be seen below, it is not necessary for the court to decide that issue. Even if the Debtor is subject to § 522(p) and her exemption is limited to \$189,050.00, there is insufficient equity in Property on the petition date for any judgment lien to attach if the cap was applicable.

Fifth, Creditors argue that since their judgement lien was recorded after Debtor reacquired the legal interest in Property from Cerpa in 2021, the judgment lien jumps ahead of or "primes" the deed of trust encumbering Property. Doc. #31. The court again disagrees. The deed of trust remained of record even after the transfer from Debtor to Cerpa. *Cornelison v. Kornbluth*, 15 Cal. 3d. 590, 596 (1975). Though Cerpa may not have assumed the obligation secured by the deed of trust, Cerpa's interest, however briefly as she had it was subject to the lien. *Cornelison*, 15 Cal. 3d. at 599. The deed of trust remained the prior encumbrance on Property when Cerpa transferred Property back to the Debtor.

Having disposed of the arguments against the validity of the claimed homestead exemption, the court now turns to the analysis under § 522(f) to avoid the fixing of the judgment lien.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)). The first, second, and fourth elements are met, and so the court must determine whether the exemption is impaired by the lien.

Here, a judgment was entered against Debtor in favor of Creditors in the amount of \$41,650.00 on September 7, 2021. *Ex. A*, Doc. #16. The abstract of judgment was issued on October 1, 2021, and was recorded in Madera County on that same day. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #15. Debtor estimates that the current amount owing as of the petition date was \$48,462.34. Doc. #13

As of the petition date, Debtor claims that Property had an approximate value of \$400,000.00. *Id.*; *Am. Sched. A/B*, Doc. #23. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C, Id.* However, for the reasons discussed above, the court will use \$189,050.00 as the value of Debtor's claimed exemption.

Property is encumbered by a first deed of trust in favor of Select Portfolio Servicing ("SLS") in the approximate sum of \$296,855.00 as of the petition date. *Sched. D, Doc. #1*. Property is also encumbered by two judgment liens. The senior-most lien appears to be the lien in favor of Creditors that was recorded on October 1, 2021. Second, there is a judgment lien in favor of Chris & Stephen Thorns (collectively, the "Thorns") in the amount of \$32,454.00, which was recorded on January 5, 2022, and is the subject of matter #9 below. *Sched. D, id.; Ex. A, Doc. #21; FW-2*. Lastly, there may be a \$15,879.91 lien in favor of Rick & Kristin Hamilton (collectively, the "Hamiltons"). *Sched. D, Doc. #1*. The debt owed to the Hamiltons was incurred on or about February 14, 2023, according to the schedules, but the court is aware of no evidence that the Hamiltons' ever recorded a lien.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SLS	\$296,855.00	05/16/07	Unavoidable
2. Creditors	\$48,462.34	10/01/21	Avoidable; matter #8 (FW-1)
3. The Thorns	\$37,762.23	01/05/22	Avoidable; matter #9 (FW-2)
4. The Hamiltons	\$15,879.91	Unknown	Unclear if secured

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). In this instance, however, such analysis is unnecessary because there is no remaining equity after the SLS deed of trust and the Debtor's \$189,050.00 exemption cap are subtracted from the \$400,000.00 value of the Property.

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

If the Hamiltons' claim is unsecured and the Thorns' lien is avoided in matter #9 below, the Horn & Linda lien would be the most junior lien subject to avoidance and there would not be any equity to support their judicial lien. Strict application of the § 522(f)(2) formula with respect to Horn's & Linda's lien would be illustrated as follows:

Amount of judgment lien		\$49,462.32
Total amount of unavoidable liens	+	\$296,855.00
Debtor's claimed exemption in Property	+	189,050.00
<i>Sum</i>	=	\$535,567.32
Debtor's claimed value of interest absent liens	-	\$400,000.00
Extent lien impairs exemption	=	\$135,367.32

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

Fair market value of Property		\$400,000.00
Total amount of unavoidable liens	-	\$296,855.00
Homestead exemption	-	\$189,050.00
Remaining equity for judicial liens	=	(\$85,905.00)
Creditor's judicial lien	-	\$49,462.32
Extent Debtor's exemption impaired	=	(\$135,367.32)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be insufficient equity to support any judicial liens if Debtor's valuations are correct.

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

9. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

CONTINUED RE: MOTION TO AVOID LIEN OF CHRIS THORNS AND
STEPHEN THORNS
5-20-2023 [\[18\]](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted

ORDER: The prevailing party shall prepare the order.

Debtor Lisa Anderson ("Debtor") asks the court to set aside the fixing of a judgment lien in favor of Chris and Stephen Thorns (collectively "Creditors"). Doc. #18. The property at issue is Debtor's residence at 33352 Cascadel Heights Drive in North Fork, California 93643 ("Property"). *Id.* Debtor filed this bankruptcy case on April 27, 2023. Doc. #1.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Horn & Linda to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Horn & Linda are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Only the Creditors filed a response, Doc. #26, and so the defaults of any other parties in interest to the instant motion are entered.

In their response, the Creditors requested that the court take judicial notice of records relating to the Creek and Fork Fires from the California Department of Forestry and Fire Protection ("Cal Fire"), documents recorded with the Madera County Clerk-Recorder, and Proof of Claim No. 92045 ("Claim 92045") from Bankruptcy Case No. 19-30088 (N.D. Cal. Bankr.) for PG&E Corporation and Pacific Gas and Electric Company (the "PG&E Bankruptcy"). Doc. #29. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

Here, the entry of the judgment on September 7, 2021, and the recording of the abstract on January 5, 2022, are undisputed facts. Doc. #21. The following facts are also undisputed: (1) the Property is subject to a deed of trust recorded May 16, 2007; (2) on May 4, 2021, Debtor executed a quit claim deed transferring Property to Norma Cerpa ("Cerpa") as a gift; and (3) on June 18, 2021 (a little over a month later), Cerpa executed a quit claim deed back to the Debtor. Six days after that, Debtor recorded a homestead declaration under Cal. Civ. Proc. Code ("CCP") 704.910 et. seq. No money changed hands between Debtor and Cerpa during those conveyances, and Debtor resided on the property continuously.

Debtor claims the value of Property is \$400,000.00 on the petition date. Doc. #20. Creditors initially disputed that valuation but at a continued hearing on August 29, 2023, counsel for Creditors said that no further evidence will be presented by Creditors on the issue of value.

Creditors also attack the validity of the claimed homestead, presenting five arguments, each of which will be addressed in turn.

First, they argue that Property was undervalued by Debtor because Property was not heavily damaged by the Mission Fire that struck the area. Debtor disputed that characterization with a supplemental declaration. Doc. #37. Since Creditors do not intend to offer any further evidence on the issue of value, the court finds Debtor's evidence more persuasive and agrees the value as of the petition date was \$400,000.00.

Second, Creditors claim that based upon a proof of claim filed in the PG&E bankruptcy, Debtor allegedly leased Property for a period commencing in 2018. At the continued hearing on this motion on August 29, 2023, Creditors' counsel stated that they would submit no further evidence as to continuous occupancy of Property by the Debtor. Accordingly, the court finds persuasive the evidence that, for purposes of this motion, Debtor has continuously resided at Property. The supplemental declaration makes clear that the Debtor has owned Property since her divorce and has continuously resided there through the date of the petition and the date of the declaration.

Third, Creditors contend that notwithstanding the short time the Debtor was out of title after the transfer of Property to Cerpa, that break in title nullifies the declared homestead. The court disagrees.

Exemption questions in California bankruptcies require application of California law. *In Re Nolan*, 618 B.R. 860, 863 (Bankr. Ct. C.D. Cal. 2020) citing *In Re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015). California courts liberally construe the law and the facts to promote the beneficial purposes of the homestead legislation to benefit the Debtor. *Tarlesson v. Broadway Foreclosure Invs. II, LLC*, 184 Cal. App. 4th 931, 936 (2010); *Phillips v. Gilman (In Re Gilman)*, 887 F. 3d 956, 964 (9th Cir. 2018). That said, under California law, in the absence of evidence of a veteran's or residence exemption from property taxes, the

burden of proof to establish the homestead rests with the debtor. CCP § 704.780(a)(1).

The Debtor has met the burden of proof here. It is undisputed that the Debtor did transfer legal ownership to Cerpa for a little over a month in 2021. Cerpa transferred Property back to Debtor. Debtor apparently admitted at the meeting of creditors that she transferred Property out of the mistaken belief it would be helpful to protect Property from creditors. Though not all the evidence has been presented on the issue, even if the court assumes the transfer was fraudulent, it does not inevitably result in the loss of the homestead exemption. *Tarlesson*, 184 Cal. App. 4th at 937 (holding continuous residency still establishes the homestead despite a temporary conveyance). Under California law, physical occupancy of the homestead plus an intent to reside there is necessary to establish a homestead exemption. *Gilman*, 887 F. 3d at 965. Creditors' counsel has stated no further evidence on the issue of continuous residency will be presented. Therefore, the Debtor has met her burden of proof on the issue of continuous residency and the intent to reside to maintain the homestead exemption.

Fourth, Creditors argue that under § 522(p) the Debtor lost her homestead exemption because the transfer to and from Cerpa in 2021 occurred less than 1,215 days before the filing of the petition. That is a misapplication of the statute. Section 522(p) does not eliminate the homestead exemption but rather sets a cap on the maximum that can be claimed. That cap at the time of the filing of this case is \$189,050.00. This provision imposes a limitation on the homestead exemption regardless of applicable state law exemptions. *Caldwell v. Nelson (In Re Caldwell)*, 545 B.R. 605, 609, (9th Cir. B.A.P., 2016; *In Re Oliver*, 649 B.R. 206, 211 (Bankr. Ct. E.D. Cal. 2023). The Ninth Circuit has also interpreted the language "interest that was acquired" in § 522(p) means the acquisition of ownership in real property. *Greene v. Savage (In Re Green)*, 583 F. 3d 614, 622 n.7, 625 (9th Cir., 2009).

But as will be seen below, it is not necessary for the court to decide that issue. Even if the Debtor is subject to § 522(p) and her exemption is limited to \$189,050.00, there is insufficient equity in Property on the petition date for any judgment lien to attach if the cap was applicable.

Fifth, Creditors argue that since their judgement lien was recorded after Debtor reacquired the legal interest in Property from Cerpa in 2021, the judgment lien jumps ahead of or "primes" the deed of trust encumbering Property. The court again disagrees. The deed of trust remained of record even after the transfer from Debtor to Cerpa. *Cornelison v. Kornbluth*, 15 Cal. 3d. 590, 596 (1975). Though Cerpa may not have assumed the obligation secured by the deed of trust, Cerpa's interest, as briefly as she had it, was subject to the lien. *Cornelison*, 15 Cal. 3d. at 599. The deed of trust remained the prior encumbrance on Property when Cerpa transferred Property back to the Debtor.

Having disposed of the arguments against the validity of the claimed homestead exemption, the court now turns to the analysis under § 522(f) to avoid the fixing of the judgment lien.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)). The first, second, and fourth elements are met, and so the court must determine whether the exemption is impaired by the lien.

Here, a judgment was entered against Debtor in favor of Creditors in the amount of \$32,454.00 on September 7, 2021. *Ex. A*, Doc. #16. The abstract of judgment was issued on January 5, 2021, and was recorded in Madera County on that same day. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #15. Debtor estimates that the current amount owing as of the petition date was \$37,726.33. Doc. #18,

As of the petition date, Debtor claims that Property had an approximate value of \$400,000.00. *Id.*; *Am. Sched. A/B*, Doc. #23. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *Id.* However, for the reasons discussed above, the court will use \$189,050.00 as the value of Debtor's claimed exemption.

Property is encumbered by a first deed of trust in favor of Select Portfolio Servicing ("SLS") in the approximate sum of \$296,855.00 as of the petition date. *Sched. D*, Doc. #1. Property is also encumbered by two judgment liens. The senior-most lien appears to be the lien in favor of Donald Horn and Judith Linda in the amount of \$48,426.34 that was recorded on October 1, 2021, and is the subject of matter #8 above. *Sched. D*, *id.*; *Ex. A*, Doc. #13; FW-1. Second, there is a judgment lien in favor of the Creditors in the amount of \$37,762.23, which was recorded on January 5, 2022, and which is the subject of the instant motion. Doc. #18, FW-2. Lastly, there may be a \$15,879.91 lien in favor of Rick & Kristin Hamilton (collectively, the "Hamiltons"). *Sched. D*, Doc. #1. The debt owed to the Hamiltons was incurred on or about February 14, 2023, to the schedules, but the court is aware of no evidence that the Hamiltons ever recorded a lien.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SLS	\$296,855.00	05/16/07	Unavoidable
2. Horn/Linda	\$48,462.34	10/01/21	Avoidable; matter #8 (FW-1)
3. Creditors	\$37,762.23	01/05/22	Avoidable; matter #9 (FW-2)
4. The Hamiltons	\$15,879.91	Unknown	Unclear if secured

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). In this instance, however, such analysis is unnecessary because there is no remaining equity after the SLS deed of trust and the Debtor's \$189,050.00 exemption cap are subtracted from the \$400,000.00 value of the Property.

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

If the Hamiltons' claim is unsecured and the lien held by Horn and Linda is avoided in matter #8 above, the Creditor's lien would be the only junior lien subject to avoidance and there would not be any equity to support their judicial lien. Strict application of the § 522(f)(2) formula with respect to Horn's & Linda's lien would be illustrated as follows:

Amount of judgment lien		\$49,462.32
Total amount of unavoidable liens	+	\$296,955.00
Debtor's claimed exemption in Property	+	\$37,762.23
<i>Sum</i>	=	\$523,667.23
Debtor's claimed value of interest absent liens	-	\$400,000.00
Extent lien impairs exemption	=	\$123,667.23

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

Fair market value of Property		\$400,000.00
Total amount of unavoidable liens	-	\$296,955.00
Homestead exemption	-	\$189,050.00
Remaining equity for judicial liens	=	(\$85,905.00)
Creditor's judicial lien	-	\$37,762.23
Extent Debtor's exemption impaired	=	(\$123.667.23)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be insufficient equity to support any judicial liens if Debtor's valuations are correct.

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

10. [23-10487](#)-B-7 **IN RE: CHERYLANNE FARLEY**
[CJK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM CO-DEBTOR STAY
7-17-2023 [\[41\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

Disposition: Continued until Thursday, November 30, at 1:30 pm.

Order: The court will prepare the order.

On July 17, 2023, Lakeview Loan Servicing, LLC ("Lakeview") filed this motion seeking relief from the automatic stay under 11 U.S.C. § 362(d)(1) and termination of the co-debtor stay of § 1301 with respect to 605 Winchester Street, Bakersfield, California 93309 ("Property"). Doc. #41. Lakeview also requested waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Cherylanne Lee Farley ("Debtor") did not file any response to the motion, nor did any party in interest timely filed written opposition.

However, during the pendency of the motion, Debtor converted this case from one under Chapter 13 to one under Chapter 7, and at no point was the Chapter 7 Trustee served with notice of the instant motion. For that reason, the court elected to continue this matter to October 24, 2023, at 1:30 p.m. and gave Lakeview until at least 14 days prior to that date to serve Jeffrey Vetter, the Chapter 7 Trustee ("Vetter") with proper notice of this motion and to file a

Certificate of service with the court evincing same. Doc. #Doc. #75. Lakeview timely served the Trustee on October 10, 2023. Doc. #84.

On that same day, Vetter submitted a Declaration in Opposition to the instant motion. Doc. #82. The gravamen of the Trustee's objection is that after interviewing the Debtor and conferring with both Debtor's counsel and a realtor Vetter has used in the past in the sale of real property in Chapter 7 liquidation cases, Vetter has concluded that it would be beneficial to both the Debtor and the estate to sell the Property rather than allow Movant to claim it through foreclosure. Doc. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of any party in interest (including but not limited to the creditors, the debtor, the U.S. Trustee, or any other party in interest) to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver as to that party 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 who did not respond are entered.

However, the record reflects that the Chapter 7 Trustee, upon being properly served, did respond in opposition to the motion with a Declaration in which he, *inter alia*, stated an intention to file motions soon to sell the Property and to hire an attorney and other professionals to facilitate same. Doc. #82. Furthermore, the Debtor has filed a Reply brief wherein she stated that she would soon file an Amended Schedule C and withdraw her exemption on the Property to facilitate Trustee's sale of it. Doc. #85.

Accordingly, it is hereby ORDERED that this matter is continued to Thursday, November 30, at 1:30 pm to afford both the Trustee and Debtor sufficient time to file the motions and other documents alluded to in the previous paragraph.

11. [23-11888](#)-B-7 **IN RE: MARIA RODRIGUEZ DE SANCHEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-29-2023 [\[6\]](#)

MARIA RODRIGUEZ DE SANCHEZ/MV

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-10-2023 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

CONTINUED OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT
OF NO DISTRIBUTION
8-25-2023 [[73](#)]

GABRIEL WADDELL/ATTY. FOR DBT.
LEAH ZABEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

ORDER: The court will issue the order.

Creditors Rick and Kris Hamilton ("Hamilton"), Chris and Stephen Thorns ("Thorns"), and Donald Horn and Judith Linda ("Horn and Linda") (collectively "Creditors") object to the Trustee's final report because, Creditors claim, Debtor is not entitled to exempt property debtor claims as a homestead.

The court notes that Creditors used Docket Control Number FW-2 for this objection. FW-2 is the docket control number for one of Debtor's motions to set aside a judgment lien. It cannot be used for this unrelated objection. While that is grounds to overrule the objection, the court will allow the hearing to proceed and overrule the Objection for the reasons set forth below.

This dispute arose when Debtor filed motions to avoid judgment liens held by the Thorns and by Horn and Linda pursuant to §522 (f). See Doc. #13, 18. The affected creditors opposed the separate motions. The Hamiltons evidently do not have a perfected judgment lien but have a claim against Debtor's estate.

The Creditors' basis for this objection arises from the fact that Debtor conveyed her property to a third party for a period of approximately six weeks before reclaiming title to it. Creditors characterize this as a fraudulent transfer which either destroyed her right to a homestead exemption completely or else capped her Homestead exemption at \$189,050. Debtor replied to these arguments. The court held a continued hearing on the lien avoidance motions on August 29, 2023. At that hearing, the court continued the hearing again to October 24, 2023, because the parties had requested a

continuance of the hearing and because there were certain issues the court wanted to clarify for the record.

The court notes that neither creditors nor any other party timely objected to the exemptions claimed by Debtor in this case.

Nonetheless, under Rule 4003 (d) a creditor may object to a request to set aside a judgment lien under §522 (f) by challenging the validity of the exemption asserted to be impaired by the lien.

In this case, the court finds that the challenge to the validity of Debtor's Homestead exemption is without merit. This court has already granted Debtor's two motions to avoid the liens of the Thorns and of Horn and Linda. See Items ##8, 9, above. In the course of deciding those two matters in Debtor's favor, the court held that (a) Debtor was entitled to a Homestead exemption and (b) even if the \$189,050 exemption cap is applicable, the Debtor still has no equity to pay these creditors. Accordingly, the instant Objection is overruled.

Nevertheless, the court will allow the hearing to proceed and may reconsider this Objection should arguments pertaining to Items ##8 and 9 lead the court to reconsider its tentative rulings on those matter.