



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 25, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[NCK-5](#)

MOTION TO EMPLOY NOEL KNIGHT AS ATTORNEY(S)
9-26-2023 [[527](#)]

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

The notice of hearing filed in connection with this motion (Doc. #528) does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i)-(iii). LBR 9014-1(d)(3)(B)(i) requires the notice to advise potential respondents whether written opposition is required and, if written opposition is required, the deadline for filing written opposition and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(d)(3)(B)(ii) further provides "[i]f written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." LBR 9014-1(d)(3)(B)(iii) requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing does not provide any of the information required by LBR 9014-1(d)(3)(B)(i)-(iii). In addition, the notice of hearing lists the incorrect date and time for the hearing in the body of the notice.

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service forms (Doc. ##533, 534) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached another generated list of names and addresses

served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served.

11:00 AM

1. [23-11696](#)-A-7 **IN RE: JEANETTE AMPARANO**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
10-4-2023 [[18](#)]

NO RULING.

2. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
8-12-2019 [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.
RESCHEDULED TO 10/26/23 PER ECF ORDER #240

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

DISPOSITION: Continued to October 26, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On July 21, 2023, the court issued an order continuing the pre-trial conference to October 26, 2023 at 11:00 a.m. Doc. #240.

1. [23-11742](#)-A-7 **IN RE: RAJVINDER DEOL**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-2023 [\[14\]](#)

SANTANDER CONSUMER USA INC./MV
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Santander Consumer USA Inc. dba Chrysler Capital ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 RAM 1500 (the "Vehicle"). Doc. #14.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,630.60, including late fees and vehicle recovery fees. Decl. of Ashley Young, Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The debtor voluntarily surrendered the Vehicle to Movant pre-petition on July 21, 2023. Young Decl., Doc. #16.

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

2. [23-11148](#)-A-7 **IN RE: STEFANIE SERVIN**
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
9-19-2023 [\[19\]](#)

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 in conformance with the ruling below.

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

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #22. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B1.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Stefanie M. Servin ("Debtor"), moves the court for an order authorizing the employment of Baird Auction & Appraisal ("Auctioneer") to assist in the sale of a 2019 Honda Accord (the "Property") at public auction. Tr.'s Mot., Doc. #19.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested

persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #21. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Tr.'s Mot., Doc. #19. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Baird Decl., Doc. #21. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to 11 U.S.C. § 328. Tr.'s Mot., Doc. #19.

Accordingly, this motion is GRANTED. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

3. [23-11148](#)-A-7 **IN RE: STEFANIE SERVIN**
[ICE-2](#)

MOTION TO SELL
9-19-2023 [\[23\]](#)

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 in conformance with the ruling below.

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

As a procedural matter, the certificates of service forms were not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. ##26,27. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachments with the certificates of service were a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B1.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Stefanie M. Servin ("Debtor"), moves the court for an order authorizing the sale of a 2019 Honda Accord (the "Property") at public auction on or after October 25, 2023 by Baird Auction & Appraisal ("Auctioneer") located at 1328 N. Sierra Vista, Suite B, Fresno, California 93703 and for the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #23.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Irma Edmonds, Doc. #25. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Edmonds Decl., Doc. #25. The proposed sale is made in good faith.

The court will authorize the employment of Auctioneer pursuant to 11 U.S.C. § 328. See DCN ICE-1, Calendar Matter No. 2 above. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Tr.'s Mot., Doc. #23. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Id. Trustee unambiguously requested pre-approval of payment to Auctioneer pursuant to 11 U.S.C. § 328. Doc. ##19, 23.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to pay Auctioneer for services as set forth in the motion.

4. [20-10271](#)-A-7 **IN RE: JEFFREY KERBO**
[ICE-3](#)

OBJECTION TO CLAIM OF NANCY RUSSELL KERBO, CLAIM NUMBER 2
9-8-2023 [\[32\]](#)

IRMA EDMONDS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Service of the objection to claim does not comply with LBR 3007-1(c), which provides that "[a]n objection to a proof of claim shall be served on the claimant at the address on the proof of claim and the address listed in the schedules, if different from the claimant's address noted on the proof of claim." Here, the claimant was served with the objection to claim at: "Nancy Russell Kerbo, 815 South Demaree Street **#16**, Visalia, CA 93277-1757". Doc. #35. However, the claimant listed her address in the claim as: "Nancy Russell Kerbo, 815 South Demaree Street **28**, Visalia, CA 93277". Claim 2. Because the objection to claim was not served properly on the claimant, this objection to claim is overruled without prejudice.

As a further procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #35. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Since the movant intended to effectuate service pursuant to Rule 7004, the declarant should have attached the correct item.

5. [23-11290](#)-A-7 **IN RE: RAOL RIMORIN**
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
9-19-2023 [\[17\]](#)

IRMA EDMONDS/MV
BENNY BARCO/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 in conformance with the ruling below.

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

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #20. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B1.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Roal Canlas Rimorin ("Debtor"), moves the court for an order authorizing the employment of Baird Auction & Appraisal ("Auctioneer") to assist in the sale of a 2007 Toyota Tacoma (the "Property") at public auction. Tr.'s Mot., Doc. #17.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #19. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Tr.'s Mot., Doc. #17. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Id.

Accordingly, this motion is GRANTED. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BAIRD AUCTIONS &
APPRAISALS, AUCTIONEER(S)
9-19-2023 [\[21\]](#)

IRMA EDMONDS/MV
BENNY BARCO/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 in conformance
with the ruling below.

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

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #24. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B1.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Raol Canlas Rimorin ("Debtor"), moves the court for an order authorizing the sale of a 2007 Toyota Tacoma (the "Property") on an as is basis at public auction on or after October 25, 2023 by Baird Auction & Appraisal ("Auctioneer") located at 1328 N. Sierra Vista, Suite B, Fresno, California 93703 and for the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #21.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Irma Edmonds, Doc. #23. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Edmonds Decl., Doc. #23. The proposed sale is made in good faith.

The court will authorize the employment of Auctioneer pursuant to 11 U.S.C. § 328. See DCN ICE-1, Calendar Matter No. 5 above. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Tr.'s Mot., Doc. #21. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Id. Trustee unambiguously requested pre-approval of payment to Auctioneer pursuant to 11 U.S.C. § 328. Doc. ##17, 21.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to pay Auctioneer for services as set forth in the motion.

7. [23-10691](#)-A-7 **IN RE: KAYE KIM**
[ICE-2](#)

CONTINUED RE: MOTION TO SELL
8-14-2023 [\[34\]](#)

JAMES SALVEN/MV
LEONARD WELSH/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [23-10691](#)-A-7 **IN RE: KAYE KIM**
[LKW-2](#)

CONTINUED RE: MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-23-2023 [[42](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [23-11773](#)-A-7 **IN RE: MONICA FERNANDEZ**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-25-2023 [[18](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for
November 16, 2023 at 3:00 p.m. If the debtor fails to do so, the chapter 7
trustee may file a declaration with a proposed order and the case may be
dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee
and the U.S. Trustee to object to the debtor's discharge or file motions for
abuse, other than presumed abuse, under § 707, is extended to 60 days after the
conclusion of the meeting of creditors.

10. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-11](#)

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

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #115. On October 20, 2023, the Labor Commissioner withdrew his opposition. Doc. #133. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Karnvir Singh and Maninder Kaur Bains (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Labor Commissioner and its assignee Jaskamaljit Singh ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #77; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$13,970.76 in favor of Creditor on November 7, 2017. Ex. D, Doc. #80. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to debtor Karnvir Singh in Fresno County on November 7, 2017, as document number 2017-0144568. Ex. D, Doc. #80. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$21,606.83 as of the petition date. Decl. of Maninder Kaur Bains, Doc. #79. Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Bains Decl., Doc. #79. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

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

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

Applying the statutory formula:

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

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

11. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-12](#)

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

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition").

Doc. #116. On October 20, 2023, the Labor Commissioner withdrew his opposition. Doc. #134. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Karnvir Singh and Maninder Kaur Bains (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Labor Commissioner and its assignee Sunil Ramotra ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #82; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$83,658.50 in favor of Creditor on September 8, 2017. Ex. D, Doc. #85. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0114066. Ex. D, Doc. #85. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$130,690.62 as of the petition date. Decl. of Maninder Kaur Bains, Doc. #84. Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

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

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

Applying the statutory formula:

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

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

12. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-13](#)

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

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #117. On October 20, 2023, the Labor Commissioner withdrew his opposition. Doc. #135. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re

Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Karnvir Singh and Maninder Kaur Bains (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Labor Commissioner and its assignee Harjinder Singh ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #87; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$22,104.37 in favor of Creditor on September 8, 2017. Ex. D, Doc. #89. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0114025. Ex. D, Doc. #89. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$34,531.27 as of the petition date. Decl. of Maninder Kaur Bains, Doc. #90. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appears to be one senior judicial lien on the Property, a judicial lien was recorded in Fresno County on September 8, 2017 with respect to a Labor Code § 98.2(g)(1) Certificate of Lien dated September 6, 2017 for \$11,919.72. Ex. D, Doc. #94. Debtors estimate the first senior judicial lien to be \$18,620.89 as of the petition date. Decl. of Maninder Kaur Bains, Doc. #90.

Applying the statutory formula:

//

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

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

13. [23-10841](#)-A-7 **IN RE: KARNVIR SINGH AND MANINDER BAINS**
[PBB-14](#)

CONTINUED MOTION TO AVOID LIEN OF THE LABOR COMMISSIONER
9-1-2023 [92]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the Labor Commissioner filed written opposition after the deadline ("Opposition"). Doc. #118. On October 20, 2023, the Labor Commissioner withdrew his opposition. Doc. #136. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Karnvir Singh and Maninder Kaur Bains (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Labor Commissioner and its assignee Harpreet Mann ("Creditor") on the residential real property commonly referred to as 7684 North Gilroy Avenue, Fresno, CA 93722 (the "Property"). Doc. #92; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

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

Debtors filed their bankruptcy petition on April 26, 2023. Doc. ##1,6. A judgment was entered against Debtors in the amount of \$11,919.72 in favor of Creditor on September 8, 2017. Ex. D, Doc. #94. A Certificate of Lien pursuant to Labor Code § 98.2(g)(1) was recorded pre-petition as to Debtors in Fresno County on September 8, 2017, as document number 2017-0113942. Ex. D, Doc. #94. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$18,620.89 as of the petition date. Decl. of Maninder Kaur Bains, Doc. #95. The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$460,884.75. Schedule D, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$780,000.00. Schedule A/B, Doc. #1. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

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

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.