

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 27, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [18-11349](#)-A-13 **IN RE: ALVINA BURTNESS**
[TCS-3](#)

MOTION TO AVOID LIEN OF NEWPORT CAPITAL RECOVERY GROUP, II L.L.C.
9-16-2022 [\[47\]](#)

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

Alvina Burtness ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Newport Capital Recovery Group II, LLC ("Creditor") on the residential real property commonly referred to as 28850 Deep Forest Ct., Coarsegold, CA 93614 ("Property"). Doc. #47; Am. Schedule D, Doc. #39.

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 debtors' 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)).

Debtor filed the bankruptcy petition on April 7, 2018. Doc. #1. A judgment was entered against Alvina L. Burtness aka Alvina L. Lear in the amount of \$23,333.43 in favor of Creditor on November 12, 2009. Ex. B, Doc. #50. Based on a proof of claim filed by Creditor and Debtor's amended Schedule D, as of the petition date, Creditor was owed \$42,991.80. Claim No. 5-1; Am. Schedule D, Doc. #39. The court uses the Creditor's claim listed on Debtor's Amended Schedule D in its lien avoidance analysis.

The abstract judgment was recorded pre-petition in Madera County on December 15, 2009 as document number 2009041732. Ex. B, Doc. #50. The lien attached to Debtor's interest in the Property located in Madera County. Ex. B, Doc. #50. The Property also is encumbered by a lien in favor of Select Portfolio Servicing, Inc in the amount \$359,300.00. Am. Schedule D, Doc. #39. Debtor claimed an exemption of \$12,727.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #11. Debtor asserts a market value for the Property as of the petition date at \$372,027.00. Am. Schedule A/B, Doc. #11.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$42,991.80
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$359,300.00
Amount of Debtor's claim of exemption in the Property	+	\$12,727.00
		\$415,018.80
Value of Debtor's interest in the Property absent liens	-	\$372,027.00
Amount Creditor's lien impairs Debtor's exemption		\$42,991.80

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

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

2. [22-11349](#)-A-13 **IN RE: IAN FRITZ**
[WSL-1](#)

MOTION TO CONFIRM PLAN
9-22-2022 [[19](#)]

IAN FRITZ/MV
GREGORY SHANFELD/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 1, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1).

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with several subsections of LBR 9014-1(d)(3)(B). First, the Notice of Hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Second, the Notice of Hearing does not comply with LBR 9014-1(d)(3)(B)(ii), which requires the notice to advise potential respondents that the failure to file a timely written opposition may result in the motion being resolved without oral argument and the striking of any untimely written opposition. Finally, the Notice of Hearing does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents

that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel for the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the Chapter 13 plan. Tr.'s Opp'n, Doc. #38. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than November 10, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by November 17, 2022.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 17, 2022. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without further hearing.

3. [22-11251](#)-A-13 **IN RE: KHANTEE SEE**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-26-2022 [\[14\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.
CASE DISMISSED 10/17/2022

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on October 17, 2022. Doc. #28.
Therefore, this objection will be OVERRULED AS MOOT.

4. [22-10758](#)-A-13 **IN RE: NELLA MILAM**
[TCS-2](#)

MOTION TO CONFIRM PLAN
9-16-2022 [[42](#)]

NELLA MILAM/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

1. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The defendant should be prepared to explain at the hearing why a status conference report describing the status of all actions taken by the defendant to comply with the Supreme Court rules, including a report on what the defendant has filed with the Supreme Court and the status of response from the Supreme Court, was not filed with this court on or before October 20, 2022 as required by paragraph 2 of the Order Following Plaintiff's Adversary Proceeding Status Conference (Doc. #77), filed in this adversary proceeding on September 12, 2022.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.

NO RULING.

3. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.