

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, December 14, 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. [22-10416](#)-A-11     **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
3-18-2022    [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to February 15, 2023 at 9:30 a.m.

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

Based on the Chapter 11 Sub V Sixth Status Conference Statement (Doc. #316)  
filed on November 30, 2022, the chapter 11 status conference will be continued  
to February 15, 2023 at 9:30 a.m.

2. [22-10416](#)-A-11     **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
3-21-2022    [\[14\]](#)

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted on an interim basis through March 22, 2023.

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

This motion was set for hearing pursuant to an interim order authorizing use of  
cash collateral and granting adequate protection (the "Interim Order").  
Doc. #185. The motion was heard initially on March 24, 2022, again on March 30,  
2022, again on April 27, 2022, again on July 13, 2022, and again on  
September 14, 2022, and each time was granted on an interim basis. See  
Doc. ##49, 65, 95, 185, 267. A continued hearing for interim use of cash  
collateral was set for December 14, 2022. Interim Order, Doc. #267. Pursuant to  
the Interim Order, opposition to the continued use of cash collateral may be  
raised at the hearing. Id. Unless opposition is presented at the hearing, the  
court intends to enter the respondents' defaults and grant the motion on an  
interim basis. If opposition is presented at the hearing, the court will  
consider the opposition and whether further hearing is proper. The court will  
issue an order if a further hearing is necessary.

KR Citrus Inc. ("Debtor" or "DIP") moves the court for a further interim order authorizing DIP to use the cash collateral of (1) PTF, a partnership; (2) California FarmLink; (3) Small Business Administration ("SBA"); and (4) Vox Funding, LLC from December 21, 2022 through March 22, 2023 ("Subject Period"). Fifth Suppl. Decl. of James Reed in Support of Mot. for Authority to Use Cash Collateral ("Reed 5th Suppl. Decl."), Doc. #313.

DIP asserts PTF has a producer's lien on dragon fruit plants and proceeds to secure a debt of approximately \$234,000. Reed 5th Suppl. Decl. ¶ 14, Doc. #313. PTF has consented to allow the budgeted uses of cash collateral without any adequate protection payments. Id.

California FarmLink is owed about \$203,361. Reed 5th Suppl. Decl. ¶ 15, Doc. #313. California FarmLink holds a duly perfected security interest in nearly all of Debtor's personal property and farm products. Id. All payments owed to California FarmLink are current through November 2022. Id. The proposed budget proposes monthly payments to California FarmLink to keep the loan current. Ex. A, Doc. #314.

SBA holds a junior security interest to California FarmLink to secure a debt of approximately \$500,000. Reed 5th Suppl. Decl. ¶ 16, Doc. #313. No payment is due on the SBA loan until December 2022. Id. SBA does not have a security interest in farm products, but does have a security interest in accounts. Id. No payments are to be made to SBA during the Subject Period. Id.

DIP disputes the claims and liens of Vox Funding. Reed 5th Suppl. Decl. ¶ 18, Doc. #313. Vox Funding claims to own 16% of all gross revenues received by Debtor. Id. DIP contends that Vox Funding loaned money to Debtor and Debtor did not sell its accounts. Id. DIP proposes to provide a replacement lien to Vox Funding as adequate protection for use of cash collateral pending a resolution of the legal dispute over the transaction between Debtor and Vox Funding. Id.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

When, as here, the motion requests a hearing before 14 days after service of the motion, Federal Rule of Bankruptcy Procedure 4001(b)(2) permits the court to "authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

DIP moves the court for an order authorizing DIP to use cash collateral through March 22, 2023, consistent with the budget filed as Ex. A, Doc. #314. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Reed 5th Suppl. Decl., Doc. #313. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for those

creditors with valid liens to the extent cash collateral is actually used as well as adequate protection payments to California FarmLink. Ex. A, Doc. #314.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. Based on the evidence before the court, the new crops and proceeds produced and generated by Debtor through the use of cash collateral will be greater than the amount of cash collateral sought to be used. Reed 5th Suppl. Decl. ¶ 22, Doc. #313.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through March 22, 2023, consistent with the budget attached as Exhibit A to Doc. #314.

3. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-10](#)

CONTINUED OBJECTION TO CLAIM OF VOX FUNDING, LLC, CLAIM NUMBER 23  
6-9-2022 [[130](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 11, 2023 at 9:30 a.m.

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

Based on the Status Report on Objection for Claim of Vox Funding, LLC (Doc. #322) filed on December 7, 2022, the hearing on the objection to the claim of Vox Funding, LLC will be continued to January 11, 2023 at 9:30 a.m.

4. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-12](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES HELSLEY PC  
FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
11-9-2022 [[292](#)]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the

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

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##297, 298. However, the movant could have shown all service of the motion on one certificate of service form. The movant served the notice of the hearing on all creditors and parties in interest and served the notice and motion papers on debtor(s), trustee, U.S. trustee, and persons who have filed a request for special notice. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #297 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings. Also, the movant labeled the request for special notice list as Attachment 6B2 instead of labeling it Attachment 6B3 as the form requires. Doc. #297.

Wanger Jones Helsley PC ("Movant"), counsel for KR CITRUS, Inc. ("DIP"), requests allowance of interim compensation and reimbursement for expenses for services rendered from June 16, 2022 through October 15, 2022. Doc. #292. Movant provided legal services valued at \$42,779.00, and requests compensation for that amount. Doc. #292. Movant incurred expenses in the amount of \$2,096.94 and requests reimbursement for that amount. Doc. #292. DIP reviewed the application and has no objection. Decl. of James Reed, Doc. #296.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) revising and finalizing amended subchapter v plan to amend treatment of secured claims; (2) preparing and filing motion for continued use of cash collateral; (3) communicating with Vox Funding's attorney regarding dispute and to reach a settlement; (4) revising status reports; (5) preparing stipulation order on 100-acre lease assumption; and (6) prosecuting firm's second interim fee application. Exs. A & B, Doc. #295. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$42,779.00 and reimbursement for expenses in the amount of \$2,096.94, for a total combined payment of \$44,875.94. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held.

5. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
6-7-2022 [[112](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 15, 2023 at 9:30 a.m.

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

Based on the continuance of the hearing to confirm the debtor's plan of reorganization (see matter #6, below), the hearing on this motion will be continued to February 15, 2023 at 9:30 a.m. Not later than February 1, 2023, the debtor shall file and serve the supplemental pleadings required by this court's order filed on October 26, 2022 (Doc. #286). Any responses to the debtor's supplemental pleadings shall be filed and served not later than February 8, 2023.

6. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-9](#)

CONTINUED CHAPTER 11 SMALL BUSINESS PLAN  
8-17-2022 [[221](#)]

RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 15, 2023 at 9:30 a.m.

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

Based on the Chapter 11 Sub V Sixth Status Conference Statement (Doc. #316) filed on November 30, 2022, the hearing to confirm the debtor's plan of reorganization will be continued to February 15, 2023 at 9:30 a.m. On or before

February 1, 2023, the debtor shall file and serve a status report letting the court and parties in interest know whether the confirmation hearing will proceed on the merits at the February 15 hearing.

7. [22-11226](#)-A-11     **IN RE: ALVARENGA TRANSPORT, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
7-18-2022    [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

NO RULING.

8. [22-11226](#)-A-11     **IN RE: ALVARENGA TRANSPORT, LLC**  
[FW-3](#)

CHAPTER 11 SMALL BUSINESS PLAN  
10-17-2022    [\[48\]](#)

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Continue to permit the debtor to supplement the record  
with respect to 11 U.S.C. §§ 1191(c)(2) and (c)(3).

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

Alvarenga Transport LLC ("Debtor"), the Subchapter V Chapter 11 debtor and debtor in possession in this case, moves the court for confirmation of its Plan of Reorganization dated October 17, 2022 (the "Plan"). Doc. #48. The hearing to confirm the Plan was set by order of the court filed on October 19, 2022 ("Order"). Doc. #51. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by October 26, 2022; acceptances or rejections of the Plan, and objections to confirmation by November 23, 2022; and responses to objections, tabulation of ballots, and brief by December 7, 2022. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##61, 62, 78. No objections to confirmation of the Plan have been filed.

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

Section 1191 of the Bankruptcy Code governs plan confirmation in Subchapter V. In the Plan, Debtor requests confirmation on a non-consensual basis under 1191(b). Plan, § 8.03, Doc. #48. Class Two did not return ballots either

accepting or rejecting the Plan, therefore there is no acceptance of the Plan by at least one impaired non-insider class under the Plan. While Class 3 voted to accept the Plan, such vote does not count under 11 U.S.C. § 1129(a)(10) because Class 3 are statutory insiders.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. Here, one class of impaired claims, consisting of one class of general unsecured creditor claims, did not return ballots accepting the Plan. Thus, confirmation of the Plan must proceed under 11 U.S.C. § 1191(b). That section provides in relevant part:

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

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of unsecured creditors that is impaired and that has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3). 11 U.S.C. § 1191(b), (c)(2)-(3).

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

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). The claims are Class 1 (secured claims); Class 2 (general unsecured claims); and Class 3 (equity interests).
- (2) Specifies the classes that are not impaired under the Plan (Class 1) as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan (Classes 2 and 3) as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).
- (6) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).
- (7) The provisions of § 1123(a)(8) does not apply in a Subchapter V case. 11 U.S.C. § 1181.
- (8) Provides for the assumption of all executory contracts not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).



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

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

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

The Plan provides that Debtor will be responsible for implementation of the Plan and Debtor's existing member will continue as a member of Debtor, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5). In addition, Debtor's sole member, Jose Alvarenga, has negotiated a settlement with Debtor that is set for hearing at the same time as the confirmation hearing. The settlement is helpful in demonstrating that the Plan is feasible.

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

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case. No member of Class 2 returned a ballot, but Debtor estimates that distribution to Class 2 claimants will be approximately \$100,000. Because Class 2 claimants would not receive any distribution in a hypothetical Chapter 7 liquidation, the Plan provides more to unsecured creditors than those creditors would receive in a Chapter 7 case. Plan, § 6.02, Doc. #48; Plan, Ex. C, Doc. #48.

Section 1129(a)(8) has not been satisfied because Class 2 did not return any ballots either accepting or rejecting the Plan. Bell Road Inv. Co. v. M Long Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that when no creditors within a class vote to accept a plan, that class is deemed to have rejected the plan). Nevertheless, Section 1129(a)(8) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under 11 U.S.C. § 507(a)(2). The Plan does not provide for treatment of claims under 11 U.S.C. § 507(a)(3) because this is a voluntary case. Debtor does not have any claims under 11 U.S.C. §§ 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8). Doc. #77.

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

Regarding § 1129(a)(11), the court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. Payments under the Plan are to be made from funds from the settlement of a preferential transfer claim against Debtor's owner, Jose Alvarenga, which will result in Debtor receiving credit of \$4,684.96 each month for the 60 month-term of the Plan and deferral of certain rental payments for use of office space, yard space, and trucks and trailers owned by Alvarenga. Decl. of Jose Alvarenga, Doc. #75. Based on the declaration of Jose Alvarenga (Doc. #75), Debtor could

have up to \$9,108.97 in available cash flow to make the monthly payments of \$7,500.00 required by the Plan.

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

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

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A).

Because Class 2 is a class of unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the three to five years of the plan be applied to make payments under the plan. Here, the Plan and Declaration of Jose Alvarenga show that Debtor could have up to \$9,108.97 in available cash flow due to the settlement and deferral of rent payments to make the payments required by the Plan. Alvarenga Decl. ¶ 7, Doc. #75. However, the payment amounts called for in the Plan are only \$7,500 per month. Id. at ¶ 8. Debtor did not include its projected disposable income for the 60-month period of the Plan either as an exhibit to the Plan or as evidence in support of confirmation of the Plan. Consequently, based on the evidence currently before the court, it is unclear whether all projected disposable income Debtor will receive during the Plan term is being applied to make payments under the Plan as is required under 11 U.S.C. §§ 1191(c)(2). Unless all such projected disposable income is being used to make payments under the Plan, the Plan does not comply with § 1191(c)(2).

With respect to § 1191(c)(3)(A), the court anticipates that Debtor's response to whether all projected disposable income Debtor will receive during the Plan term is being applied to make payments under the Plan also can be used to determine whether there is a reasonable likelihood that Debtor will be able to make all payments under the Plan. However, at this point, § 1191(c)(3)(A) is not satisfied.

With respect to § 1191(c)(3)(B), the Plan does not provide any remedies to protect the holders of claims or interest in the event payments due under the Plan are not made. Accordingly, § 1191(c)(3)(B) is not satisfied.

The court is inclined continue this matter to permit Debtor to address the issues raised by the court with respect to compliance with 11 U.S.C. §§ 1191(c)(2) and 1191(c)(3).

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
JOSE ALVARENGA  
11-16-2022    [\[67\]](#)

ALVARENGA TRANSPORT, LLC/MV  
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION:                Granted.

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

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

Alvarenga Transport LLC ("Debtor" or "DIP"), the chapter 11 debtor and debtor in possession, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a settlement and release between DIP and DIP's sole member, Jose Alvarenga. Doc. #67.

In Debtor's Statement of Financial Affairs, Debtor disclosed certain transfers made by and between Mr. Alvarenga and Debtor during the two years prior to the filing of Debtor's case. Doc. #67. During the two years prior to the filing of the bankruptcy case, Mr. Alvarenga transferred substantially more value to Debtor than he received from the Debtor. Id. However, most of this excess value was transferred during 2021, which was a very difficult financial year for Debtor. Id. In late 2021 into 2022, Debtor was able to pay back some of the value Mr. Alvarenga transferred to Debtor between 2020 and 2021 by paying Mr. Alvarenga \$281,097.70. Id. Mr. Alvarenga acknowledges that an argument could be made that this amount must be recovered from Mr. Alvarenga pursuant to 11 U.S.C. § 547 as an allegedly preferential transfer. Decl. of Jose Alvarenga, Doc. #69.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount

interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that DIP has considered the standards of A & C Properties and Woodson. Doc. #67. The proposed settlement allows for Mr. Alvarenga to provide credit to DIP for post-petition equipment rentals and real property rental equal to \$281,087.70, which shall be taken by crediting the amount of \$4,684.96 per month for a total period of 60 months to DIP. If DIP is unable to make any of the payments required under its confirmed plan in the bankruptcy case, Mr. Alvarenga agrees to defer payment of the amount otherwise due and owing on both the post-petition equipment rentals and real property rentals until such time as DIP is able to pay the same, while still making all payments required under DIP's subchapter v plan. Doc. #67. In exchange for the foregoing, DIP agrees to release Mr. Alvarenga from any and all claims related to any potential preferential transfer. Doc. #67. The settlement is fair, reasonable, and obtains an economically advantageous result. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between DIP and Jose Alvarenga is approved. DIP is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

10. [22-11541](#)-A-11      **IN RE: STRATEGIC INNOVATIONS LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
9-1-2022    [\[1\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to December 21, 2022 at 9:30 a.m.

ORDER:              The court will issue an order.

The chapter 11 status conference will be continued to December 21, 2022 at 9:30 a.m. to be held in connection with the hearing on the debtor's motion for an extension of time to file a chapter 11 plan.

1. [21-12014-A-7](#) IN RE: YADWINDER SINGH  
[JRL-1](#)

TRUSTEE'S FINAL REPORT  
10-26-2022 [[54](#)]

JERRY LOWE/ATTY. FOR DBT.  
ANTHONY JOHNSTON/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Objection will be sustained.

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

Notice of the final report of James E. Salven ("Trustee"), the chapter 7 trustee for the bankruptcy estate of Yadwinder Singh ("Debtor"), was issued by the court on October 26, 2022, and served on October 28, 2022. Doc. ##57-58. Debtor filed a timely objection on November 3, 2022. Doc. #60. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition within 21 days of the date of the notice may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the notice of hearing filed in connection with this objection states that any opposition should be served with the court, not filed, and does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition.

As an informative matter, the amended certificate of service form filed in connection with this objection effectuated Rule 5 Service, but counsel for the objecting party incorrectly filled out Section 7 of the form. The declarant checked § 6A(1): First Class Mail Service under Rule 7004 Service when the declarant should have checked the box for § 6B(2)(c): Other Parties in Interest § 5.

Debtor filed his chapter 7 bankruptcy case on August 18, 2021. Debtor objects to Trustee retaining all of a tax refund for the tax year 2021, in the amount of \$2,637.00, on the ground that the tax refund should be proportionately allocated between the bankruptcy estate and Debtor. Debtor does not cite to any case law in the opposition, but proration allocation of tax refunds between the bankruptcy estate and the debtor is consistent with In re Orndoff, 100 B.R. 516 (Bankr. E.D. Cal. 1989). Debtor contends that the tax refund should be prorated between Debtor and the bankruptcy estate based on the amount of the year before and after the bankruptcy petition was filed on August 18, 2021, the 229th day of 2021. Debtor asserts that only 63% of the tax refund (229/365) belongs to the bankruptcy estate, and 27%, or \$711.99, belongs to Debtor.

Because it appears that the tax refund for the 2021 tax year should have been allocated proportionately between the bankruptcy estate and Debtor rather than

being attributed entirely to the bankruptcy estate, the court is inclined to sustain Debtor's objection to Trustee's final report.

2. [22-11019](#)-A-7      **IN RE: CATHRYN SMITH**  
[FW-5](#)

MOTION/APPLICATION TO SELL, MOTION/APPLICATION TO PAY  
11-10-2022    [\[92\]](#)

JAMES SALVEN/MV  
PETER BUNTING/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                Granted.

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

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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

As an informative matter, the initial certificates of service filed in connection with this motion (Doc. ##96, 97) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Cathryn Lynn Smith ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 34187 Natoma Road, Auberry, CA 93602 (the "Property") to Jane Grace ("Buyer") for the purchase price of \$9,000.00, subject to higher and better bids at the hearing. Doc. #92. Trustee states that a preliminary title report shows that the property is not subject to any deed of trust. Decl. of James Salven, Doc. #94. However, the title report lists property taxes owed from 2019-2022, with an approximate balance owed on these taxes of \$3,742.13. Id. These taxes will be paid in full through escrow. Id. Trustee also seeks authorization to pay any HOA move out fee if one is required by the HOA. Id. Trustee does not believe there will be any such fee because the real property does not have a residence on it. Id. Trustee further seeks authorization to pay a commission for the sale to Berkshire Hathaway HomeServices California Realty ("Broker"). Id.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

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. Salven Decl., Doc. #94. Buyer tendered an offer of \$9,000.00, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Motion, Doc. #92. The sale is "as is, where is" with no warranties or representations of any nature. Salven Decl., Doc. #94. Buyer has made an initial deposit of \$2,000.00. Motion, Doc. #92. Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of \$4,537.87. Salven Decl., Doc. #94. Property taxes are owed for 2019-2022 with an approximate balance owed on these taxes of \$3,742.13, and there are no other liens or encumbrances. Id. Trustee expects to pay a \$540.00 commission to Broker and \$180.00 in costs of sale. Id.

Trustee requests that the court approve the following overbid procedures:

- (1) Deposit with counsel for Trustee certified monies in the amount of \$2,000.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing;
- (2) Provide proof in the form of a letter of credit, or some other written prequalification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount;
- (3) Provide proof that any successful over bidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property;
- (4) Any successful overbid shall have the \$2,000.00 deposit applied to the successful overbid;
- (5) In the event a successful over bidder fails to close the sale within 15 days of the delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property, the \$2,000.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer;
- (6) Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder;

- (7) All overbids shall be in the minimum amount of \$100.00 cash such that the first of any overbid shall be in the minimum amount of \$9,100.00; and
- (8) The sale of the Property is in "as-is" condition with no warranty or representation, express, implied, or otherwise by the bankruptcy estate, Debtor or her representatives.

Trustee also requests that the 14-day stay of Federal Bankruptcy Procedure 6004(h) is waived.

The Property will be sold at a price greater than the aggregate value of all liens on the Property and it appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). The motion does not specifically request, nor will the court authorize, the sale free and clear of any liens or interests. The court also will waive the 14-day stay of Federal Bankruptcy Procedure 6004(h).

#### Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #67.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale, with the commission to be split equally with Buyer's broker. Salven Decl., Doc. #94. Trustee estimates that Broker's commission for the sale of the Property will equal \$540.00. Id. The court finds the compensation sought is reasonable, actual, and necessary.

#### Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Trustee is authorized to pay Broker for services as set forth in the motion.



3. [22-10735](#)-A-7     **IN RE: DOUGLAS/SAMANTHA RICE**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-7-2022    [\[28\]](#)

WELLS FARGO BANK, N.A./MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DISCHARGED 08/08/2022, MOTION WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 29, 2022. Doc. #34.

4. [20-11367](#)-A-7     **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**  
[JMV-1](#)

CONTINUED NOTICE OF INTENT TO ABANDON INTEREST IN ESTATE PROPERTY  
6-1-2022    [\[408\]](#)

LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

5. [22-10891](#)-A-7     **IN RE: WILSON/SUSAN CURTIS**  
[PBB-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
10-31-2022    [\[37\]](#)

SUSAN CURTIS/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

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

As an informative matter, the certificate of service filed in connection with this motion (Doc. #53) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 06/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Wilson Paul Curtis and Susan Carole Leger Curtis (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 Discover Bank ("Creditor") on the residential real property commonly referred to as 392 West Grand Avenue, Porterville, California 93257 (the "Property"). Doc. #37; Schedule C, Doc. #1; Am. Schedule D, Doc. #13.

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 May 26, 2022. Doc. #1. A renewed judgment was entered against Wilson P. Curtis in the amount of \$17,316.38 in favor of Creditor on October 11, 2018. Ex. D, Doc. #40. The original abstract judgment was recorded pre-petition in Tulare County on March 20, 2009, as document number 2009-0016543. Ex. D, Doc. #40. The abstract for the original judicial lien lapsed before a new abstract judgment was recorded pre-petition in Tulare County on June 11, 2019, as document number 2019-0030545. Id. The judicial lien associated with the renewed judgment attached to Debtors' interest in the Property located in Tulare County. Doc. #37. Debtors assert a market value for the Property as of the petition date at \$325,200.00. Schedule A/B, Doc. #13.

The Property also is encumbered by a first deed of trust in favor of Specialized Loan Servicing in the amount \$168,823.68. Am. Schedule D, Doc. #13. There appears to be three senior judicial liens on the Property. Doc. #37. The first senior judicial lien was recorded in Tulare County on April 20, 2012 with respect to a judgment of \$9,463.78. Ex. D, Doc. #52. The second senior judicial

lien was recorded in Tulare County on October 23, 2013 with respect to a judgment of \$44,416.22 entered on June 18, 2008. Ex. D, Doc. #48. The judgment was renewed timely and Debtors estimate the judicial lien to be \$118,578.65 as of the petition date. Ex. C, Doc. #48. The third senior judicial lien was recorded in Tulare County on February 7, 2014 with respect to a judgment of \$2,218.52 entered on January 16, 2014. Ex. D, Doc. #44. Debtors estimate the judicial lien to be \$5,153.75 as of the petition date. Ex. C, Doc. #44.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$17,316.38
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$302,019.86
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$619,336.24
Value of Debtor's interest in the Property absent liens	-	\$325,200.00
Amount Creditor's lien impairs Debtor's exemption		\$294,136.24

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.

6. [22-10891](#)-A-7 **IN RE: WILSON/SUSAN CURTIS**  
[PBB-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
10-31-2022 [\[41\]](#)

SUSAN CURTIS/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the certificate of service filed in connection with this motion (Doc. #54) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 06/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Wilson Paul Curtis and Susan Carole Leger Curtis ("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 Capital One Bank (USA), NA ("Creditor") on the residential real property commonly referred to as 392 West Grand Avenue, Porterville, California 93257 (the "Property"). Doc. #41; Schedule C, Doc. #1; Am. Schedule D, Doc. #13.

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 May 26, 2022. Doc. #1. A judgment was entered against Wilson P. Curtis in the amount of \$2,218.52 in favor of Creditor on January 16, 2014. Ex. D, Doc. #44. The abstract judgment was recorded pre-petition in Tulare County on February 7, 2014, as document number 2014-0007035. Ex. D, Doc. #44. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #41. Debtors estimate the judicial lien in favor of Creditor to be \$5,153.75 as of the petition date. Ex. C, Doc. #44. Debtors asserts a market value for the Property as of the petition date at \$325,200.00. Schedule A/B, Doc. #13.

The Property also is encumbered by a first deed of trust in favor of Specialized Loan Servicing in the amount of \$168,823.68. Am. Schedule D, Doc. #13. There appears to be two senior judicial liens on the Property. Doc. #41. The first senior judicial lien was recorded in Tulare County on April 20, 2012 with respect to a judgment of \$9,463.78. Ex. D, Doc. #52. The second senior judicial lien was recorded in Tulare County on October 23, 2013 with respect to a judgment of \$44,416.22 entered on June 18, 2008. Ex. D, Doc. #48. The judgment was renewed timely and Debtors estimate the judicial lien to be \$118,578.65 as of the petition date. Ex. C, Doc. #48.

Applying the statutory formula:

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Amount of Creditor's judicial lien		\$5,153.75
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$296,866.11
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$602,019.86
Value of Debtor's interest in the Property absent liens	-	\$325,200.00
Amount Creditor's lien impairs Debtor's exemption		\$276,819.86

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.

7. [22-10891](#)-A-7 **IN RE: WILSON/SUSAN CURTIS**  
[PBB-3](#)

MOTION TO AVOID LIEN OF CREDITORS SPECIALTY SERVICE, INC.  
10-31-2022 [\[45\]](#)

SUSAN CURTIS/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the certificates of service filed in connection with this motion (Doc. ##55, 58) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 06/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Wilson Paul Curtis and Susan Carole Leger Curtis ("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 Creditors

Specialty Service, Inc. successor in interest to Tulare County Federal Credit Union ("Creditor") on the residential real property commonly referred to as 392 West Grand Avenue, Porterville, California 93257 (the "Property"). Doc. #45; Schedule C, Doc. #1; Am. Schedule D, Doc. #13.

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 May 26, 2022. Doc. #1. A judgment was entered against Wilson Paul Curtis in the amount of \$44,416.22, in favor of Creditor on June 18, 2008. Ex. D, Doc. #48. The abstract judgment was recorded pre-petition in Tulare County on October 23, 2013, as document number 2013-0069457. Ex. D, Doc. #48. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #45. The judgment was renewed timely and Debtors estimate the judicial lien to be \$118,578.65 as of the petition date. Ex. C, Doc. #48. Debtors asserts a market value for the Property as of the petition date at \$325,200.00. Schedule A/B, Doc. #13.

The Property also is encumbered by a deed of trust in favor of Specialized Loan Servicing in the amount of \$168,823.68. Am. Schedule D, Doc. #13. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #13. There appears to be one senior judicial lien on the Property. Doc. #47. The senior judicial lien was recorded in Tulare County on April 20, 2012 with respect to a judgment of \$9,463.78. Ex. D, Doc. #52.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$118,578.65
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$178,287.46
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$596,866.11
Value of Debtor's interest in the Property absent liens	-	\$325,200.00
Amount Creditor's lien impairs Debtor's exemption		\$271,666.11

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.

8. [22-10891](#)-A-7     **IN RE: WILSON/SUSAN CURTIS**  
[PBB-4](#)

MOTION TO AVOID LIEN OF PERSOLVE, LLC  
10-31-2022    [\[49\]](#)

SUSAN CURTIS/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

As an informative matter, the certificate of service filed in connection with this motion (Doc. #56) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 06/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Wilson Paul Curtis and Susan Carole Leger Curtis ("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 Persolve, LLC ("Creditor") on the residential real property commonly referred to as 392 West Grand Avenue, Porterville, California 93257 (the "Property"). Doc. #49; Schedule C, Doc. #1; Am. Schedule D, Doc. #13.

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 May 26, 2022. Doc. #1. A judgment was entered against Wilson P. Curtis in the amount of \$9,463.78, in favor of Creditor on December 2, 2011. Ex. D, Doc. #52. The abstract judgment was recorded pre-petition in Tulare County on April 20, 2012, as document number 2012-0024291. Ex. D, Doc. #52. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #49. The Property also is encumbered by a first deed of trust in favor of Specialized Loan Servicing in the amount of \$168,823.68. Am. Schedule D, Doc. #13. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #13. Debtors asserts a market value for the Property as of the petition date at \$325,200.00. Schedule A/B, Doc. #13. There appear to be no senior judicial liens on the Property. Doc. #49.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$9,463.78
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$168,823.68
Amount of Debtor's claim of exemption in the Property	+	\$300,000.00
		\$478,287.46
Value of Debtor's interest in the Property absent liens	-	\$325,200.00
Amount Creditor's lien impairs Debtor's exemption		\$153,087.46

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.