UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, January 25, 2022
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions)

Due to rising COVID-19 cases, all appearances shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-2-2020 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-12

CONFIRMATION HEARING RE: CHAPTER 11 PLAN
8-31-2021 [405]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

Debtor-in-possession Stephen William Sloan ("Debtor") seeks confirmation of the Fourth Amended Plan of Reorganization dated August 31, 2021, as modified December 21, 2021 ("Plan"). Docs. #405; #470, *Ex. E*. Debtor made two minor modifications to the Plan and requests a finding that the changes do not adversely affect treatment of any claim under Fed. R. Bankr. P. 3019(a). Doc. #472. Further, Debtor nominates Terence J. Long, CPA, as Plan Administrator. Doc. #474.

The court approved the Disclosure Statement on October 26, 2021 and set the Plan for confirmation hearing on January 25, 2022. Doc. #447. Acceptances or rejections of the Plan were due by December 7, 2021 and objections to confirmation, tabulation of ballots, and briefs in support of confirmation were due on December 21, 2021. *Id.* No party in interest timely filed written opposition. Debtor timely filed a brief, tabulation of ballots, and other supporting documents. Docs. ##467-68.

Notice and service of the Plan, Disclosure Statement, Order Confirming Disclosure Statement, and other supporting documents were properly transmitted and served. Docs. #453; #471; #473. This confirmation hearing will be called and proceed as scheduled. The court may approve the Plan if Debtor provides certain clarifications at the hearing as outlined below.

Plan Confirmation

11 U.S.C. § 1129 governs chapter 11 plan confirmation. Debtor has the burden proving that the requirements of § 1129(a) and (b) beyond a preponderance of the evidence. *In re PG&E Corp.*, 617 B.R. 671, 674 (Bankr. N.D. Cal. 2020).

§ 1129(a)(1)
With respect to § 1129(a)(1), the Plan complies with applicable provisions of Chapter 11 and meets the applicable provisions of 11 U.S.C. §§ 1122 and 1123. The Plan:

(a) Provides for division of creditors and interest holders into classes of claims or interests with substantially similar claims or interests and provides equal treatment within each given class as required by § 1122(a). Doc. #405, Art. III.

(b) Designates classes, as required by § 1123(a)(1), of claims other than claims of a kind specified in §§ 507(a)(2), (a)(3), or (a)(8), which are Classes 1.1 (formerly secured, now unsecured), 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 (fully secured), 2.1 (domestic support obligations), 3 (general unsecured), and 4 (equity interests).

(c) Specifies that all classes are impaired except Classes 1.3, 1.4, 1.5, 1.6, 2.1, and 4, consistent with § 1123(a)(2).

(d) Specifies treatment of any class of claims or interests which is impaired under the Plan as required by § 1123(a)(3).

(e) Provides for the same treatment for each claim or interest according to class as required by § 1123(a)(4).

(f) Provides adequate means for implementing and executing the Plan, including by adding section 4.06 to retain a plan administrator to ensure that the Plan is completed, as required by § 1123(a)(5).

(g) Does not contemplate the issuance of securities, so § 1123(a)(6) is not applicable.

(h) Contains no provisions inconsistent with the interests of creditors, equity security holders, and public policy with respect to Debtor's successors under the Plan as required by § 1123(a)(7).

(i) Provides for payment to creditors in full of all claims, or such amount as can be paid by liquidating all of the salable assets or other future income of Debtor as required by § 1123(a)(8).

§ 1129(a)(2)

As required by § 1129(a)(2), Debtor, as proponent of the Plan, has provided adequate disclosure to make an informed decision regarding the Plan to all creditors and interest holders, and complied with all applicable provisions of Chapter 11. Docs. #440; #447.

§ 1129(a)(3)

The Plan been proposed in good faith and not by any means forbidden by law in accordance with § 1129(a)(3). Good faith requires that a plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code, as well as a fundamental fairness in dealing with one's creditors. *In re Jorgensen*, 66 B.R. 104, 109 (B.A.P. 9th Cir. 1986), *accord.*, *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074 ("A plan is proposed in good faith where it achieves a result consistent with the objects and purposes of the Code."); *Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989); *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984) ("[F]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code."). Debtor contends that he has acted in good faith, which is evidenced by timely responding to and complying with all deadlines, promptly responding to inquiries from the United States Trustee, and working with Sandton Credit Solutions Master Fund IV, LLP ("Sandton") to stipulate to additional provisions to obviate litigation. There has been no objection to Debtor's good faith.

§ 1129(a)(4)

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 pre-confirmation services are subject to approval of the court.

§ 1129(a)(5)

Debtor will be the successor to the Debtor-in-Possession under the Plan. Doc. #405, Art. VI, § 4.01; Art. VIII, § 8.01. Debtor contends that his continuance as successor to the Debtor-in-Possession is consistent with the interests of creditors, equity security holders, and public policy in accordance with § 1129(a)(5). However, to satisfy Sandton's concerns, Debtor stipulated to add § 4.06 of the Plan to identify a person to serve as Plan Administrator in the event that Debtor fails to timely perform the terms of the Plan.

§ 1129(a)(6)

Section 1129(a)(6) is not applicable here. No changes in regulatory rates are provided for in the Plan, so no governmental agency needs to approve any rate changes.

§ 1129(a)(7)

With respect 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 would receive or retain if Debtor were liquidated under chapter 7. The Plan provides that Classes 1.1 (Sandton), 1.2 (Donald Peracchi), 1.7 (Oak Valley Community Bank), and 3 (general unsecured) are impaired. Doc. #405. Classes 1.2 and 3 affirmatively voted to accept the Plan.[1] Doc. #468. Class 1.1 and Debtor stipulated to certain modifications in the Plan in exchange for Class 1.1's vote in favor of the Plan. Doc. #470, *Ex. D*. Thus, § 1129(a)(7)(A)(i) is satisfied with respect to Classes 1.1, 1.2, and 3.

The Plan liquidates sufficient assets of Debtor to pay Class 1.2 and 1.7 in full, or else provides stay relief to pursue state law remedies against the properties securing their claims. Meanwhile, Debtor's liquidation analysis was set forth in the Disclosure Statement. Doc. #440, Art. IX. It demonstrates that the net amount to unsecured creditors would be $10,689,519.51 if this were a case under chapter 7, but there would also be an estimated administrative expense of $807,900.00 in chapter 7 trustee fees and $300,000.00 in professional fees. *Id.; see also* Doc. #469. In contrast, if approved, the $1,107,000.00 in chapter 7 administrative expenses will instead be used to pay general unsecured creditors. *Id.*

Since Classes 1.2 and 1.7 will be allowed to pursue state law remedies if not paid in full, they are retaining at least as much as they would receive in a chapter 7 liquidation. Class 1.1 and 3 will be paid in full or as much as possible from the proceeds, but because chapter 7 administrative expenses will not be incurred, they will receive as much as in a chapter 7. The Plan therefore satisfies the requirements of § 1129(a)(7)(A)(ii).

§ 1129(a)(8)

Three impaired classes (1.1, 1.2, and 3) accepted the plan.[2] Docs. #468; #470, *Ex. D*, at 6, ¶ 2. The remaining impaired class, Class 1.7, did not cast a vote. Debtor acknowledges that he cannot confirm the plan under § 1129(a) because subsection (8) is not met and contends that the Plan is confirmable under § 1129(b).

§ 1129(a)(9)

Based on the last *Monthly Operating Report* for the period ending December 31, 2021, there are over $136,000 in unpaid post-petition taxes owed. Doc. #477. Debtor must clarify the governmental unit(s) owed and how the sum will be paid. Absent consent to a different treatment, § 1129(a)(9)(A) requires payment in full on the effective date.

The Plan provides for professional fee claims to be paid in full as soon as practicable after such claims are approved by the court and otherwise complies with § 1129(a)(9)(A). Doc. #405, ¶ 2.04. 11 U.S.C. § 507(a)(3) is inapplicable because this is a voluntary case. Section 507(a)(1) claims for domestic support obligations are provided for in the Plan in Class 2.1 and are unimpaired. There are no claims under § 507(a)(4), (5), (6), or (7).

Claims filed pursuant to § 507(a)(8) are provided for in Section 2.02 of the Plan. The Plan complies with § 1129(a)(9)(C) because governmental unit holders of such claims will receive payment in full within 60 months in accordance with § 1129(a)(9)(C)(ii).

§ 1129(a)(10)
Section 1129(a)(10) is satisfied because at least one impaired class has voted to accept the Plan, including Class 1.1 (Sandton), Class 1.2 (Donald Peracchi), and Class 3 (general unsecured). None of these parties are insiders.

§ 1129(a)(11)
Debtor contends that the Plan has a reasonable probability of success and is not a visionary scheme because it has the support of all impaired creditors except Class 1.7 (who did not submit a ballot), it contemplates the liquidation of assets in a multi-phase approach to liquidate enough assets to pay Classes 1.1 and 3 claims in full, or until after all assets have been disposed. The Plan liquidates the following assets: (1) Sierra Skies Aviation, LLC; (2) a Bentley automobile; (3) real estate owned by Merced Falls Ranch; (4) Debtor's interest in Maverick Pistachios, LLC; (5) it commits five years' worth of net income from Sloan Cattle Company, LLC, and contemplates liquidating the only asset of C.V. Parla Troppo—an office building; (6) certain trust properties; and (7) assets owned by Emerald California Investments, LLC. The income from these liquidations will fund the Plan. The Plan appears to be feasible as required by § 1129(a)(11)

§ 1129(a)(12)
Section 1129(a)(12) is satisfied because all mandatory fees have been paid and no governmental unit has claimed any default in the payment of fees required under 28 U.S.C. § 1930.

§ 1129(a)(13)
Section 1129(a)(13) is not applicable because Debtor is an individual and not responsible for paying any retiree benefits.

§ 1129(a)(14)
Domestic support obligations are provided for in Class 2.1 of the Plan in the amount of $8,000.00 per month. Debtor is current on this obligation as required by § 1129(a)(14). Doc. #469.

§ 1129(a)(15)
Unsecured claims in Classes 1.1 and 3 have accepted the Plan as required by § 1129(a)(15).

§ 1129(a)(16)
Debtor anticipates that any asset sale or refinance made under the Plan will occur in accordance with California law, so § 1129(a)(16) is satisfied.

§ 1129(c)
This is the only Plan in this case under consideration at this time.

§ 1129(d)
No governmental entity has requested that the Plan not be confirmed because Debtor's principal purpose was to avoid taxes or application of Section 5 of the Securities Act of 1933.

§ 1123(a)(6)
This case does not involve nonvoting equity securities, so § 1123(a)(6) is inapplicable here.

§ 1141(d)
Since Debtor is an individual, an order of discharge will not be entered until Debtor completes all Plan payments, files a motion to enter the discharge, and provides evidence that all payments have been made as required by § 1141(d).

Cramdown under § 1129(b)

Since Debtor cannot satisfy § 1129(a)(8), the elements of § 1129(a) are not met. Debtor requests a cramdown under § 1129(b), which is appropriate if the proponent makes a request, the Plan does not discriminate unfairly, and it is fair and equitable to each impaired class that has not accepted the Plan. Debtor made the request for cramdown. Docs. #440, Art. V, § 5.03; #406, Art. V, § 5.03.

The Plan does not unfairly discriminate against the rejecting classes because it classifies substantially similar claims and none of the rejecting classes are treated unfairly.

All impaired classes voted to accept the Plan except Class 1.7, but Class 1.7 did not submit a ballot. The class did not object to confirmation.

Class 1.7 is a secured creditor that will retain its judgment lien and be paid in full with interest within a year of the effective date, so the Plan is fair and equitable to Class 1.7, and the requirements of § 1129(b) are met.

Minor Modifications

Debtor included a notice of two minor modifications and requests a finding that the proposed changes do not "adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification" pursuant to Fed. R. Bankr. 3019(a). Doc. #472. Those two changes involve separate stipulations with Merced County and Sandton.

First, Merced County is treated in Class 1.6 of the Plan and is unimpaired. Since Merced County is unimpaired, it does not wish to be bound to the automatic stay. *Id.* As result, Debtor agreed to include

the following sentence in paragraph 3.06.2: "Upon the Effective Date, the County is granted relief from the automatic stay pursuant to 11 U.S.C. § 362 for the purpose of exercising any and all of its state law remedies, including, without limitation, proceeding to a tax sale for the properties under applicable state law." Doc. #470, *Ex. C*.

Second, Sandton requested that a Plan Administrator be appointed as a "back-stop" in the event that Debtor does not timely liquidate assets as required in paragraph 4.01 of the Plan. Doc. #472. Debtor agreed to this provision because he is confident that he will timely comply with Plan obligations. In summary, Debtor will nominate a Plan Administrator who will be appointed in the order confirming the Plan. The Plan Administrator will have limited duties unless Debtor is unable to timely liquidate assets as provided in the Plan. If Debtor fails to satisfy one liquidation deadline specified in subparagraphs 4.01.1 through 4.01.9, the Plan Administrator will take over and complete that liquidation. Doc. #470, *Ex. D*. If Debtor is unable to meet two liquidation deadlines, the Plan Administrator will perform all of the liquidation tasks listed in paragraph 4.01.

There are questions about the Plan Administrator's powers. In the event of default, who will decide if the Merced Falls Ranch, LLC property will be sold by the estate or the debtor? Is the Plan Administrator empowered to transfer non-debtor assets (*e.g.*, CVPT and ECI assets) to the estate? If not, how will that occur? Are the Sloan Cattle payments to be made directly to the Administrator? Can the Administrator determine whether there should be claim objections or abandon assets?

Conclusion

The Plan appears to satisfy most of the requirements of § 1129, but clarifications are needed as to (1) treatment of claims under § 1129(a)(9)(A) and (2) the Plan Administrator's powers. This confirmation hearing will be called and proceed as scheduled.

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[1] The *Summary of Ballots* states that there were five ballots for Class 3 General Unsecured Creditors, totaling $125,500.92, and all five voted to accept the plan, but concludes, "[t]his class can therefore be deemed to have rejected the Plan." Doc. #468. Class 3 appears to have accepted the Plan.
[2] Sandton did not submit a ballot but instead stipulated that it would accept the Plan if the plan administrator provision was added. Doc. 470, *Ex. D*.

3. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-18

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPTALIST GROUP, CLAIM NUMBER 231
1-8-2020 [1784]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 5/10/22 PER ECF ORDER #2482

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

DISPOSITION: Continued to May 10, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Tulare Hospitalist Group, the parties stipulated to continue the hearing on this objection to May 10, 2022. Doc. #2475. On January 4, 2022, the court approved the stipulation and continued the hearing to May 10, 2022 at 9:30 a.m. and held as a scheduling conference. Doc. #2482. The District's counsel shall file and serve a status report not later than seven days before the hearing. *Id.*

4. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-19

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [1789]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 5/10/22 PER ECF ORDER #2483

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

DISPOSITION: Continued to May 10, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Gupta-Kumar Medical Practice, the parties stipulated to continue the hearing on this objection to May 10, 2022. Doc. #2478. On January 4, 2022, the court approved the stipulation and continued the hearing to May 10, 2022 at 9:30 a.m. and held as a scheduling conference. Doc. #2483. The District's counsel shall file and serve a status report not later than seven days before the hearing. *Id.*

5. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-25

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [1834]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 5/10/22 PER ECF ORDER #2484

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

DISPOSITION: Continued to May 10, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between Tulare Local Healthcare District ("District") and Inpatient Hospital Group, Inc., the parties stipulated to continue the hearing on this objection to May 10, 2022. Doc. #2481. On January 4, 2022, the court approved the stipulation and continued the hearing to May 10, 2022 at 9:30 a.m. and held as a scheduling conference. Doc. #2484. The District's counsel shall file and serve a status report not later than seven days before the hearing. *Id.*

1:30 PM

1. 21-12007-B-7 **IN RE: ARNULFO SANCHEZ AND VERONICA LEMUS SANCHEZ**
DRJ-1

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
12-21-2021 [16]

VERONICA LEMUS SANCHEZ/MV
DAVID JENKINS/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.

Arnulfo Sanchez and Veronica Lemus Sanchez ("Debtors") seek to avoid a judicial lien in favor of Bank of America, N.A. ("Creditor") in the sum of $5,617.41 and encumbering residential real property located at 685 Chinaberry Ct., Los Banos, CA 93635 ("Property").[3] Doc. #16.

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

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property

listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Veronica Lemus-Sanchez in favor of Creditor in the sum of $5,617.41 on March 18, 2021. Doc. #19, *Ex. A*. The abstract of judgment was issued on April 19, 2021 and recorded in Merced County on May 4, 2021. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #18.

As of the petition date, Property had an approximate value of $483,500.00. *Id.*; Doc. #1, *Sched. A/B*. The only unavoidable lien encumbering Property is a deed of trust in favor of Wells Fargo Home Mortgage in the amount of $234,443.00. *Id.*, *Sched. D*. Debtors claimed a "homestead" exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $320,000.00. *Id.*, *Sched. C*.

The § 522(f)(2) formula is strictly applied as follows:

Amount of Creditor's judicial lien	$5,617.41
Total amount of all other unavoidable liens	+ $234,443.00
Debtors' "homestead" exemption in Property	+ $320,000.00
Sum	= $560,060.41
Value of Debtors' interest absent liens	- $483,500.00
Amount Creditor's lien impairs Debtors' exemption	= $76,560.41

All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Accordingly, Property's encumbrances can be re-illustrated as follows:

Fair Market Value of Property	$483,500.00
Total amount of unavoidable liens	- $234,443.00
Remaining unencumbered equity	= $249,057.00
Debtors' "homestead" exemption	- $320,000.00
Remaining equity for judicial liens	= ($70,943.00)
Creditor's judicial lien	- $5,617.41
Extent exemption impaired	= ($76,560.41)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). Therefore, this motion will be GRANTED.

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[3] Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Brian Moynihan, Creditor's CEO & Chairman, by certified mail at Creditor's mailing address on December 21, 2021. Doc. #20.

2. 21-12031-B-7 **IN RE: JUAN FAJARDO**
SL-2

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-17-2021 [41]

SCOTT LYONS/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.

Juan Fajardo ("Debtor") seeks to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #41.

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

11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

However, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706(a), but also must be eligible to be a

debtor under chapter 13. The Supreme Court stated, "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. Debtor falls within the limits for total debts according to the schedules. Docs. #1, *Sched. D, E/F*; #25, *Summary of Assets and Liabilities.* The question is whether Debtor has regular income. Debtor indicates in the schedules an approximate income of $2,675.17 per month from Debtor's occupation as a plumber, with $2,667.36 in expenses, leaving $7.81 in monthly net income. Doc. #1, *Sched. I/J.* Despite this, Debtor wants to convert because the chapter 7 trustee has taken an interest in selling non-exempt property, including those needed to work. Doc. #43. The trustee offered to let Debtor buy the property back, but Debtor only has 90 days, which is not enough time to raise sufficient funds. So, Debtor seeks conversion and is confident of the ability to maintain plan payments for an extended period of time. *Id.* Meanwhile, the motion indicates that Debtor will file *Amended Schedules I* and *J* with a chapter 13 plan after the case is converted. Doc. #41. schedules, there is potential for regular income from the plumbing employment. There is no opposition to the motion or evidence of bad faith. But there are currently feasibility issues.

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c). Accordingly, this motion will be GRANTED.

3. 21-12239-B-7 **IN RE: JOSE GONZALEZ OCHOA**
TAA-2

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC.
12-16-2021 [19]

JOSE GONZALEZ OCHOA/MV
KEVIN TANG/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose Gonzalez Ochoa ("Debtor") seeks to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of

$23,219.00 and encumbering residential real property located at 1008 Aegean Ave., Bakersfield, CA 93307 ("Property").[4] Doc. #19.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

First, the *Notice of Hearing* has the wrong address for the court website. Doc. #20. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice sends respondents to www.caceb.uscourts.gov, which is an invalid URL. Doc. #20. Respondents will not be able to learn information about the case or locate the court's pre-hearing dispositions at this web address.

Second, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice here states that any party wishing to oppose "musty [*sic*] file a written response with the Court and serve upon Movant, the Chapter 7 Trustee, The. U.S. Trustee, and all parties listed on the Proof of Service," but does list the names and addresses to whom opposition must be served. *Id.* The names and addresses of the Debtor and the Chapter 7 Trustee, as representative of the estate, should have been included in the notice.

Third, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibit document was properly filed separately, but it omitted an exhibit index and consecutively numbered pages throughout the entire document, including any separator, cover, or divider sheets. Doc. #22.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

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[4] Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Corporation Service Company which will do Business in California as CSC-Lawyers Incorporating Service, Creditor's registered agent for service of process, at Creditor's registered agent address on December 26, 2021. Doc. #23.

4. 18-13468-B-7 **IN RE: MANUEL/LUPITA MENDOZA**
RWR-2

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR CMT PROPERTIES, BROKER(S)
12-23-2021 [47]

JAMES SALVEN/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

NO RULING.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (a) sell the estate's interest in real property located at 12625 West G Street, Biola, California 93603 ("Property") to TJ Khehra ("Proposed Buyer") for $166,000.00, subject to higher and better bids at the hearing; and (b) pay the real estate brokers a 6% commission on the sale based on the final sale price. Doc. #47. Trustee also seeks waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

This motion affects the real estate brokers as well. Under Federal Rule of Civil Procedure ("Civil Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested here as to the real estate brokers provided that the sale goes forward. Though compensation is separate from the sale, it is economical to handle this motion in this manner since there were no objections to this motion.

No party in interest timely filed written opposition, but judgment creditor Farmers Lumber & Supply, Inc. ("Farmers Lumber") was neither notified of the bankruptcy nor served this motion. This matter will be called and proceed as scheduled.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2) and (6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest except Farmers Lumber to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Farmers Lumber are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Background

Manuel Alvarado Mendoza, Lupita Castro Mendoza ("Debtors") filed chapter 7 bankruptcy on August 24, 2018. Doc. #1. Trudi Manfredo was

appointed interim trustee and became permanent trustee at the first § 341 meeting of creditors on October 1, 2018. Doc. #2. Debtors received an order of discharge on December 10, 2018 and the case was closed on December 14, 2018. Docs. #14; #16. The case was reopened on July 19, 2019 to administer unscheduled property. Doc. #19. Trustee was appointed as successor trustee on July 25, 2019. Doc. #28.

Joint debtor Manuel Mendoza inherited a 25% interest in Property. Doc. #25, *Am. Sched. A/B*. The remaining 75% is owned by his three siblings, Ramond Mendoza, Rosalinda Salazar, and Catherine Jaurique. Docs. #50; #51, *Ex. B*. Debtors listed Property in the schedules with a total value of $158,240.00, so joint debtor's 25% fractional interest is worth $39,560.00. Doc. #25, *Am. Sched. A/B*. Trustee entered into a sale proceeds sharing agreement with Debtors that makes a $10,000.00 "carve out" for administrative expenses and then shares the sale proceeds equally up and until Debtors' exemption has been satisfied. Doc. #50.

Encumbrances

Property does not appear to be encumbered by any consensual liens. Doc. #1, *Sched. D*. According to the *Preliminary Title Report*, there are two non-consensual judgment liens encumbering Property, both of which name joint debtor Manuel Mendoza as defendant. Doc. #51, *Ex. B*, at 4-5, ¶¶ 5-6.

The first is a judgment lien in favor of Farmers Lumber in the amount of $86,557.57 that was entered on March 8, 2010. Under Cal. Code Civ. Proc. ("C.C.P.") § 697.310(b), a judgment lien continues in effect until 10 years from the date of entry of judgment. Pursuant to C.C.P. § 683.020, a 10-year-old judgment may not be enforced, all enforcement proceedings shall cease, and any lien created by an enforcement procedure is extinguished. Though Debtors reopened the case on July 19, 2019, "[r]eopening does not bring property back into the estate nor does it cause the automatic stay to be revived." *In re Lopez*, 283 B.R. 22, 32 (B.A.P. 9th Cir. 2002). So, under C.C.P. §§ 697.310 and 683.020, Farmers Lumber's judgment has expired because more than 10 years have passed since it was entered, notwithstanding the automatic stay, and it does not appear to have been renewed.[5]

The court notes that Farmers Lumber has not filed a proof of claim, but it is also not listed on the *Master Address List* and was not served with this motion. Docs. #3; #52. Further, though the lien is now expired, it had not expired at the time the petition was filed and should have been listed in either *Schedules D* or *E/F*. It was not. The court will inquire at the hearing the reasons why Farmers Lumber was not served or notified.

The second judgment lien was entered on December 28, 2017 in favor of Discover Bank c/o Zwicker & Associates ("Discover Bank") in the sum of $32,857.80. *Id.* Trustee declares that this creditor amended its claim to accept $4,000.00 as full satisfaction of the lien. Doc. #50; *see*

also Claim No. 3-2 (amended Nov. 30, 2021). Discover Bank was served, though not in accordance with Rule 7004(h). Doc. #52. That being said, Discover Bank amended its claim, reducing it to $4,000.00, so Discover Bank's interests are not adversely affected. Rule 7004(h) service is therefore not necessary.

Additionally, property taxes for fiscal year 2021-22 in the amount of $550.00 are open. Doc. #51, *Ex. B*. Trustee proposes to pay these taxes through escrow. Doc. #50. There are also public utility easements and an easement provided in a deed from Balfour-Guthrie Investment Capital to A.V. Lisenby for a canal. *Id.*

Adversary proceeding

Trustee commenced an adversary proceeding against the co-owners on June 2, 2020, seeking authority to sell the co-owners' interest in Property. *See* Adv. Proc. No. 20-01032 ("A.P."). None of the co-owners contested the matter and on October 7, 2020, the court entered a judgment by default authorizing the estate to sell Property, including the interests of the co-owners. A.P. Doc. #59.

Broker commissions

Pursuant to that judgment, Trustee sought to employ CMT Properties ("Broker") as the estate's real estate broker pursuant to 11 U.S.C. § 327 on November 30, 2020. Doc. #38. The court authorized Broker's employment on December 8, 2020 with all compensation subject to court approval. Doc. #41.

In connection with this sale, Trustee also seeks authorization under § 330 to pay a 6% commission on the final sale price as reasonable compensation for actual, necessary services of Broker. This commission will be split equally between the buyer's and seller's brokers. If Property is sold at the proposed sale price, the 6% commission would be $9,960.00, which is $4,980.00 to each broker. The court will allow the commission to be paid as prayed if the sale is confirmed. The court finds the compensation reasonable.

Proposed sale

Broker received an offer from Proposed Buyer to purchase Property for $166,000.00 and Trustee accepted the offer pending court approval. Doc. #50. Proposed Buyer deposited $3,000 into escrow with Fidelity Title Company. Trustee now seeks authorization to sell Property to Proposed Buyer subject to higher and better bids at the hearing. Doc. #47.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting

from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee estimates the sale proceeds to be distributed as follows:

Sale price	$166,000.00
Estimated property taxes	- $550.00
Estimated broker commission (6%)	- $9,960.00
Estimated costs of sale	- $1,000.00
Sale proceeds after closing costs	**= $154,490.00**
25% interest to each co-owner (÷ *4)*	= $38,622.50
Discover Bank judgment lien	- $4,000.00
Administrative carve out	- $10,000.00
Divided between estate and Debtors (÷ *2)*	= $24,622.50
Net to the estate	**= $12,311.25**

If there are no overbids, approximately $12,311.25 will remain in net proceeds for the estate, not including the $10,000.00 administrative expense carve out.

Insiders

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyer. There is no indication that Proposed Buyer is an insider with respect to Debtors or the estate. Proposed Buyer is not listed in the schedules or the *Master Address List* and does not appear to be a creditor, co-debtor, or other party in interest in this case, other than Proposed Buyer's involvement in this sale. Docs. #1; #3; #25.

Co-owners rights

Pursuant to § 363(h), Trustee proposes to sell both Debtor's interest in Property and the interests of the co-owners. Section 363(h) allows

the trustee to sell both the estate's interest and the interest of any co-owner in property in which the debtor had an undivided interest as a tenant in common, joint tenant, or tenant by entirety only if: (1) partition in kind between the estate and co-owners is impracticable; (2) the sale of the estate's undivided interest would realize significantly less than the sale of property free of the interests of the co-owners; (3) the benefit to the estate free of the interests of co-owners outweighs the detriment, if any, to the co-owners; and (4) the property is not used in the production, transmission, or distribution for sale of electric energy or natural or synthetic gas for heat, light, or power. Lastly, subsection (i) requires sales pursuant to § 363(h) to allow any co-owner to purchase the property at the price the sale is to be consummated. Subjection (j) requires the trustee to distribute the sale proceeds, less costs and expenses, not including compensation, according to the interests of the parties. These elements were satisfied by the judgment entered in the adversary proceeding against the co-owners. Accordingly, the co-owners have the right to purchase Property at the final bid price.

Bidding procedure

If the sale goes forward, any party wishing to overbid must appear at the hearing and present to Trustee $5,000.00 in certified funds at or before the hearing. This amount consists of an initial deposit of $3,000.00 and the first $2,000.00 overbid, with bidding to proceed in $2,000 dollar increments. Prospective overbidders must be prepared to enter into a purchase and sale agreement at least as favorable to the estate as the agreement between Trustee and Proposed Buyer, and be able to close escrow within 15 days after the order approving the sale has been sided. Any winning bidder, including Proposed Buyer, who fails to perform will forfeit its deposit as reasonable liquidated damages for failing to perform. Non-winning bidders' deposits will be returned at the hearing.

All prospective overbidders must be aware that 11 U.S.C. § 363(h) permits a co-owner to purchase property at the price at which the sale is to be consummated and acknowledge that no warranties and limited disclosures are included with the sale of Property; it is being sold "as is, where is."

Waiver of 14-day stay

If the sale is conducted, Trustee asks for waiver of the 14-day stay under Rule 6004(h). The only basis offered is that the 14-day stay "would serve no purpose in this case[.]" The request will be DENIED because Trustee presents no factual basis to waive the stay provided by law. *Palladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because "time was of the essence" due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause existed to waive 14-day stay because there had been one previous

failed sale attempt and the new buyer required closing before the 14-day stay would expire).

Conclusion

The sale of Property appears to be in the best interests of the estate and creditors because it will resolve the judgment liens, liquidate Debtors' 25% interest, and provide liquidity to the estate. The sale subject to higher and better bids will maximize estate recovery and yield the best possible price. The sale appears to be supported by a valid business judgment, proposed in good faith, and for a fair and reasonable price. Trustee's business judgment appears to be reasonable and will be given deference.

However, as noted above, Farmers Lumber was not served this motion or notified of the bankruptcy. No relief under § 363(f)(4) to sell Property free and clear of the lien due to a bona fide dispute was requested. If the sale were to proceed, Farmers Lumber's judgment lien would attach to the sale proceeds until the judgment lien is resolved. The motion does not request, nor will the court authorize, the sale free and clear of any liens and interests, other than already outlined in the judgment against the non-debtor co-owners. *See* A.P. Doc. #59. Valid encumbrances including those mentioned here will be satisfied or resolved through escrow.

This matter will be called as scheduled to inquire about the parties' positions and how they wish to proceed.

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[5] The Farmers Lumber judgment was entered on March 8, 2010. Doc. #51, *Ex. B*, at 4, ¶ 5. The judgment tolled for 3,091 days until Debtors filed bankruptcy on August 24, 2018. The bankruptcy triggered the automatic stay and paused tolling of the judgment's expiration until 30 days after the case is closed or dismissed. 11 U.S.C. §§ 108(c), 362(c)(1), (c)(2). The case closed on December 14, 2018, so tolling resumed on January 13, 2019 (142 days after the bankruptcy). The remaining 561 of the 3,652 total days to expiration (including two extra days for leap years in 2004 and 2008) lapsed on July 27, 2020. S*ee also Spirtos v. Morena (In re Spirtos)*, 221 F.3d 1079, 1080 (9th Cir. 2000).

5. 19-13569-B-7 **IN RE: JOHN ESPINOZA**
JRL-6

SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF JON P. MAROOT, CLAIM NUMBER 6
10-13-2021 [154]

JOHN ESPINOZA/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Resolved by stipulation.

ORDER: The court will issue an order.

On January 13, 2022, the parties stipulated to entry of an order allowing Jon P. Maroot's Claim No. 6, filed on June 15, 2021, as a timely allowed claim in the reduced amount of $5,000.00. Doc. #170. Chapter 7 trustee Peter L. Fear has no objection. *Id.* The court approved the stipulation on January 18, 2022. Doc. #172. Accordingly, the court will order that the scheduling conference is concluded.

6. 21-11674-B-7 **IN RE: JULIO ARELLANO**
FWP-4

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
1-7-2022 [38]

DIVERSIFIED FINANCIAL SERVICES, LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
NICHOLAS KOHLMEYER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. After hearing, the Moving Party shall submit a proposed order with the stipulation attached as an exhibit and file a copy of the original stipulation separately and docket it as a stipulation.

Diversified Financial Services, LLC ("Movant") seeks approval under Fed. R. Bankr. P. ("Rule") 4001(d) of a joint stipulation for relief from the automatic stay entered into with chapter 7 trustee Peter L. Fear ("Trustee") and Julio Arellano ("Debtor"). Doc. #38.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled.[6] Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Prior to filing bankruptcy on June 30, 2021, Debtor executed two separate contracts to finance the purchase of a 2016 Model H05000 Harlo Forklift ("Forklift") and a 2019 Model TTE 92 McCarron MF Trailer ("Trailer"; collectively "Property")) with Kings River Tractor ("Kings River"). Doc. #38. Both contracts were assigned to Movant.

Debtor subsequently filed bankruptcy. Doc. #1. Property is listed in the schedules with a combined value of $40,000.00. Doc. #15, *Am. Sched. A/B*, ¶ 4.1. Meanwhile, the amount owed to Movant for Property is a combined $51,210.35. Doc. #14, *Am. Sched. D*. If Movant is unable to recover Property or enter into a reaffirmation agreement, it may object to the Debtor's discharge or file a complaint to determine the dischargeability of the debt owed to it. Movant previously obtained two 90-day extensions of time to initiate proceedings under 11 U.S.C. §§ 523, 727, so the current deadline is April 6, 2022. Docs. #30; #37.

Since there is no equity in the Property for the estate and the Property is not necessary for an effective reorganization, Debtor, Trustee, and Movant stipulated to stay relief to permit Movant to proceed with all of its rights and remedies. Doc. #40, *Ex. A*. Movant now seeks approval of that stipulation under Rule 4001(d). Doc. #38.

Under 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1)(2) and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing. Docs. ##41-42.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the stipulation approved. Any proposed order shall attach the stipulation as an exhibit. Since the stipulation is docketed as an exhibit, a copy of the original stipulation shall be filed separately and docketed as a stipulation.

[6] Since the stipulation relates to relief from the automatic stay, 21 days' notice is not necessary. Rules 2002(a)(3), 4001(d).

7. 20-12276-B-7 **IN RE: FRANCISCO PEREZ AND ROSA ORNELAS**
THA-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP FOR THOMAS H. ARMSTRONG, TRUSTEES ATTORNEY(S)
12-17-2021 [57]

BENNY BARCO/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.

Thomas H. Armstrong of Coleman & Horowitt, LLP ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of $13,463.61. Doc. #57. This amount consists of $12,893.50 in fees as reasonable compensation and $570.11 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from July 20, 2021 through December 15, 2021. *Id.* Trustee has reviewed the application and supporting documents and consents to the proposed payment. Doc. #61.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Francisco Ornelas Perez and Rosa Maria Ornelas ("Debtors") filed chapter 7 bankruptcy on July 6, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on August 6, 2020. Doc. #2. Trustee moved to employ Applicant on July 27, 2021 under 11 U.S.C. § 327. Doc. #20. The court approved employment on August 4, 2021, presumptively effective June 27, 2021 under LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a). Doc. #23. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Applicant's firm provided 31.85 billable hours of legal services at the following rates, totaling **$12,893.50** in fees:

Professional	**Rate**	**Claimed Hours**	**Billed Hours**	**Claimed Fees**	**Claimed Hours x Rate**	**Corrected Fees**
Robert K. Ashley	$300	1.50	1.50	$450.00	$450.00	$450.00
Thomas H. Armstrong	$410	**28.35**	**26.85**	**$11,458.50**	$11,623.50	**$11,008.50**
Thomas H. Armstrong[7]	$410	3.50	3.50	$1,435.00	$1,435.00	$1,435.00
Sum Hours & Fees		33.35	**31.85**	$13,343.50	$13,508.50	**$12,893.50**

Docs. #57; #60, *Ex. A*. The court notes a minor discrepancy between the motion and supporting time records. The motion claims that Thomas H. Armstrong performed 28.35 billable hours resulting in $11,11,458.50 in fees, excluding the time spent preparing this application. Doc. #57, ¶ 7. First, 28.35 hours at $410/hour would total $11,623.50, not $11,458.50. Second, 28.35 hours includes Robert K. Ashley's 1.5 hours. Doc. #60, *Ex. A*. According to the evidence, Mr. Armstrong provided 26.85 hours of services (totaling $11,008.50) prior to preparation of the application. *Id.* This inconsistency is *de minimis* because the $12,893.50 requested for fees in this application is the corrected sum, notwithstanding the erroneous fee summary.

Applicant also incurred **$570.11** for the following expenses:

Photocopies (2,098 @ $0.15 each)	$314.70
Postage	+ $232.91
CourtCall	+ $22.50
Total Costs	= **$570.11**

Id. These combined fees and expenses total **$13,463.61.**

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) conflict review, preparing, and filing the employment application (THA-1); (2) settling a violation of the automatic stay with Chicago Title Company and a creditor, providing $12,500.00 in gross proceeds to the bankruptcy estate (THA-2); (3) selling real property to the debtors and obtaining court approval (THA-3). Doc. #59. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #61.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded on a final basis $12,893.50 in reasonable fees and $570.11 in actual, necessary expenses pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant $13,463.61 for services rendered to and costs incurred for the benefit of the estate from July 20, 2021 through December 15, 2021.

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[7] This entry is for time spent preparing this application with supporting declarations, notice, and exhibits, as well as time for preparation, review, and revisions. Docs. #57; #59.

8. 17-11379-B-7 **IN RE: STEPHEN/KATIE GONZALEZ**
FW-3

MOTION TO EMPLOY DANA LIZIK AS SPECIAL COUNSEL
12-23-2021 [49]

PETER FEAR/MV
PETER SAUER/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.

Chapter 7 trustee Peter L. Fear ("Trustee") asks the court to approve the estate's retention of The Johnson Law Group ("Special Counsel") as special counsel for matters relating to a defective products liability claim. Doc. #49. Trustee seeks to employ Special Counsel under 11 U.S.C. § 327(e) to enable (i) Trustee to conclude administration of the estate; (ii) the court to close the case. Trustee proposes to compensate special counsel on a 40% contingency fee basis under 11 U.S.C. § 328(a). Special Counsel will also assist Trustee in continuing the litigation or resolving liens, completing a settlement, and obtaining bankruptcy court approval of any settlement offered.

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

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

Stephen Anthony Robert Gonzalez and Katie Kylene Gonzalez ("Debtors") filed chapter 7 bankruptcy on April 13, 2017. Doc. #1. Trudi Manfredo was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on May 22, 2017. Doc. #2. Debtors received an order of discharge on July 31, 2017 and the case was closed by final decree on August 4, 2017. Docs. #18; #20.

Prior to filing bankruptcy, joint debtor Katie Gonzalez suffered a physical injury resulting from a defective medical device. Doc. #52. On or about October 24, 2018, after discharge was entered and the case was closed, Debtors retained Special Counsel to pursue a liability claim against the manufacturer of the allegedly defective product ("Liability Claim"). The retainer agreement with Special Counsel provides for a contingency fee of 40% of the gross recovery of proceeds, if any, made from the prosecution of the Liability Claim, plus fees and costs. *Id.*

Special Counsel joined the Liability Claim with numerous other claims presently pending before the Judicial Council Coordination Proceeding ("JCCP"). *Id.* A settlement fund was established to resolve the JCCP. The manufacturer made an offer to settle the Liability Claim, but the precise amount is unknown because it is subject to criteria used to evaluate each claimant's damages. *Id.* This criteria includes a "comprehensive and proprietary system which, pursuant to the terms of the settlement cannot be disclosed." *Id.*, ¶ 7. The net amount of the settlement remains unknown, subject to JCCP fees and costs, but the gross dollar value for Debtor's injury is approximately $41,500.00. *Id.* Debtors provisionally accepted the offer, but it is still going through the lien resolution process to determine fees and expenses to deduct from the gross proceeds.

Following disclosure of the settlement, the United States Trustee moved to reopen the case on June 14, 2021. Docs. #22; #24. Trustee was appointed as successor trustee on June 17, 2021. Doc. #26. Since the injury occurred pre-petition, Trustee contends that the Liability Claim is a pre-petition asset and seeks to recover any proceeds for the estate. Doc. #51. However, since the process for finalizing liens and securing compliance with settlement terms is not complete, Trustee seeks authorization to employ Special Counsel on a 40% contingency fee basis under 11 U.S.C. §§ 327(e) and 328(a), subject to approval of any settlement approval under Fed. R. Bankr. P. 9019. Doc. #49. Trustee intends to seek court approval of any settlement, and then Special Counsel will assist in determining the liens to be paid from the proceeds. *Id.*

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

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

Attorney Dana Lizik declares that Special Counsel does not have any other connection with the Debtors, creditors, or any party in interest, their attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee. Doc. #52, ¶ 14. Further, Special Counsel acknowledges that it is not entitled to the contingency fee until further bankruptcy court approval is obtained. *Id.* Since the fee is contingent, if the settlement is not completed for any reason, Special Counsel will not be entitled to any fees.

No party in interest timely filed written opposition. The court finds that Special Counsel does not hold or represent an adverse interest to the estate and is disinterested.

This motion will be GRANTED, and the employment application will be APPROVED. Pursuant to LBR 2014-1(a), Special Counsel's employment is approved effective November 23, 2021 and its compensation will be fixed at 40% of the gross settlement proceeds, plus fees and costs, subject to approval of the settlement under Fed. R. Bankr. P. 9019 and a request for compensation under § 330.

9. 21-12598-B-7 **IN RE: YINGCHUN LOU**
KR-3

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-5-2022 [40]

THE GOLDEN 1 CREDIT UNION/MV
SAM WU/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2020 Ford F250 ("Vehicle"). Doc. #40. Movant also requests waiver of the 14-day stay under Fed. R. Bankr. P. 4001(a)(3).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Yingchun Lou ("Debtor") executed a contract to finance the purchase of Vehicle on January 21, 2020. Doc. #45, *Ex. 1*. The contract provided that Debtor would repay the loan in 84 monthly payments of $1,323.53 beginning March 6, 2020. Doc. #43. Debtor defaulted on the loan on or about July 14, 2021. *Id.* Debtor is still in possession of Vehicle and received the benefit of the automatic stay upon filing bankruptcy on November 9, 2021. Doc. #1. Movant now seeks relief from the automatic stay to exercise its rights and remedies under the contract.

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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds "cause" exists to lift the stay under § 362(d)(1) because Debtor has failed to make at least four payments. Movant has produced evidence that Debtor is delinquent at least $5,294.12, plus fees and costs of $688.00. *Id.*; Doc. #42.

The court also finds that Debtor does not have any equity in Vehicle and Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. However, Movant's only evidence as to the value of Vehicle is the declaration of Ryal Woods, which cites to a printout from Kelley Blue Book ("KBB"). Docs. #43; #45, *Ex. 4*. This is specious. Movant has not established itself as an expert and cannot rely on KBB as a reliable method of determining the vehicle's value. *See* Fed. R. Evid. 702; *see also In re DaRosa*, 442 B.R. 173, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [Debtor] used Kelley trade-in listings as the starting point of his analysis, his opinions will not be taken as convincing evidence of replacement value.").

Debtor lists Vehicle in the schedules with a value of $70,000.00. Doc. #1, *Sched. A/B*, ¶ 3.1. In the absence of contrary, admissible evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The total amount owed to Movant is $78,335.07, so Debtor does not have an equity interest in Vehicle, and relief under § 362(d)(2) is also appropriate.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay under Rule 4001(a)(3) will be ordered waived because Vehicle is a depreciating asset. No other relief is awarded.