

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, February 10, 2021
Place: Department A - Courtroom #11
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys 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. 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. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[DRJ-7](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
1-8-2021 [[146](#)]

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.

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 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 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.

David R. Jenkins ("Movant"), counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota ("Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of \$59,638.85 and reimbursement for expenses in the amount of \$1,092.85 for services rendered March 12, 2020 through December 31, 2020. Doc. #146. Movant requests to draw on \$24,885.85 currently held in trust and that the chapter 12 trustee be authorized to pay the remaining amount. Doc. #146.

Section 330(a) 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, 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). Here, Movant demonstrates services rendered relating to: (1) reviewing and filing operating reports, status reports, and other necessary documents; (2) preparing and filing various motions, including obtaining employment authorization for general bankruptcy counsel, Debtors' accountant, and litigation counsel for an adversary proceeding; (3) preparing and filing the original plan, addressing objections thereto, and attending related hearings; (4) preparing and filing the modified plan, participating in negotiations related thereto, and attending related hearings; (5) prosecuting an objection to proof of claim; and (6) defending an adversary proceeding filed against Debtors. Doc. #150. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$59,638.85 and reimbursement for expenses in the amount of \$1,092.85 to be paid in a manner consistent with the terms of the confirmed plan. 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.

2. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
8-5-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 24, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The status conference will be continued to February 24, 2021, at 9:30 a.m., to be heard with the debtor's motion to dismiss the case.

3. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-4](#)

CONTINUED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
11-10-2020 [[76](#)]

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 24, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The confirmation hearing will be continued to February 24, 2021, at 9:30 a.m., to be heard with the debtor's motion to dismiss the case.

11:00 AM

1. [20-13510](#)-A-7 **IN RE: MIRIAM INIGUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
1-15-2021 [[17](#)]

T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1. [20-11200](#)-A-7 **IN RE: MANPREET/RAMANDEEP BRAR**
[NES-3](#)

MOTION TO AVOID LIEN OF LEAF CAPITAL FUNDING, LLC
1-7-2021 [\[51\]](#)

MANPREET BRAR/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an 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. 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 not done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the inclusion of the names and addresses of the persons who must be served with any opposition. The court urges counsel to review the local rules to ensure compliance in future matters.

Manpreet Singh Brar and Ramandeep Kaur Brar (collectively, "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 Leaf Capital Funding, LLC ("Creditor") on their residential real property commonly referred to as 5022 Villa Bella Lane, Bakersfield, CA 93311 (the "Property"). Doc. #51; Am. Schedule C, Doc. #49.

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 section 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 section 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)).

A judgment was entered against Manpreet Brar in the amount of \$24,226.51 in favor of Creditor on November 15, 2019. Ex. D, Doc. #53. The abstract of judgment was recorded in Fresno County on May 20, 2019. Ex. D, Doc. #53. The lien attached to Debtors' interest in the Property located in Kern County.

Doc. #53. The Property also is encumbered by a lien in favor of PennyMac in the amount of \$259,026.73. Am. Schedule D, Doc. #49. Debtors claim an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #49. Debtors assert a market value for the Property as of the petition date at \$400,000.00. Am Schedule A/B, Doc. #49.

Though Debtors assert a market value for the Property of \$400,000.00, in Amended Schedule A/B, Debtors deducted an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at \$368,000.00. Doc. #49. To the extent Debtors seek to deduct the cost of sale from the value of the Property for purposes of this motion, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows. In re Aslanyan, Case No. 17-24195-A-7, 2017 Bankr. LEXIS 4363 (Bankr. E.D. Cal. Dec. 20, 2017). In Aslanyan, Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." Aslanyan, 2017 Bankr. LEXIS 4363, at *4 (citing In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913, 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn. 1996); In re Abrahamzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994); In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y. 1990)). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition' There is no provision in section 522(a)(2) or in the statutory formula in section 522(f)(2)(A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Aslanyan, 2017 Bankr. LEXIS 4363, at *4.

Using the full market value of the Property, the sum of the judicial lien, all other liens on the Property, and the amount of exemption does not exceed the value of Debtors' interest in the Property:

Amount of Leaf Capital Funding, LLC's judicial lien		\$24,226.51
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$259,026.73
Amount of Debtors' claim of exemption in the Property	+	\$100,000.00
	sum	\$383,253.24
Value of Debtors' interest in the Property absent liens	-	\$400,000.00
Extent of impairment of Debtors' exemption	=	(\$16,746.76)

Application of the arithmetical formula required by § 522(f)(2)(A) shows Creditor's judicial lien does not impair Debtors' exemption in the Property.

Accordingly, this motion is DENIED.

MOTION TO SELL
1-8-2021 [\[33\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.

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) and will proceed as scheduled for higher and better offers. 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. 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.

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Isidro Ramos ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2017 Dodge Grand Caravan (the "Vehicle") to Debtor for the purchase price of \$13,700.00, subject to higher and better bids at the hearing. Doc. #33.

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. Doc. #35. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle. Doc. #35. Debtor offered to buy the Vehicle for the

purchase price of \$13,700.00, subject to overbid at the hearing. Doc. #17. Trustee states that, after deducting the \$3,325.00 exemption credit, the net amount to the estate will be \$10,375.00. Doc. #35. The court recognizes that no commission will need to be paid because the sale is to Debtor.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith. Although Debtor filed an amended Schedule C on January 25, 2021, the 30-day period to object to the exemption in the Vehicle has expired because Debtor's claimed exemption in the Vehicle was not added by the amended Schedule C. See Bernard v. Coyne (In re Bernard), 430 F.3d 1028, 1032 (9th Cir. 1994).

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

3. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
[BMJ-18](#) GENERAL PARTNERSHIP**

MOTION TO APPROVE PAYMENT OF INTERIM DISTRIBUTION
1-8-2021 [[337](#)]

DAVID SOUSA/MV
JACOB EATON/ATTY. FOR DBT.
JOHN WASTE/ATTY. FOR MV.
RESPONSIVE PLEADING

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 court will issue an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Manuel Rodrigues and Schakel Family Partnership, creditors of the estate, timely filed written limited opposition on January 27, 2021. Doc. #345. The failure of other 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). 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 motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the inclusion of the names and addresses of the persons who must be served with any opposition. The court urges counsel to review the local rules to ensure compliance in future matters.

David Sousa ("Trustee"), the Chapter 7 trustee in the bankruptcy case of South Lakes Dairy Farm ("Debtor"), moves for authority to make an interim distribution to holders of identified undisputed unsecured claims pursuant to Fed. R. of Bankr. P. ("FRBP") 3009. Doc. #337. Manuel Rodrigues and Schakel

Family Partnership (collectively, "Creditor") filed a limited objection requesting that the portion of the proposed distribution to be held back (discussed below) be placed in a segregated interest-bearing account and not comingled with the remaining estate funds pending a further order by the court. Doc. #345. After consideration of Creditor's objection and Trustee's response thereto, the court is inclined to overrule Creditor's objection and grant Trustee's motion.

FRBP 3009 states that dividends to creditors in a chapter 7 case "shall be paid as promptly as practicable." Distributions to creditors generally coincide with the filing of the trustee's final account, but the court may authorize interim distributions if to do so would be in the best interests of the estate. In re Bird, 565 B.R. 382, 400 (Bankr. S.D. Tex. 2017); see In re GPLA, Inc., No. 2:16-bk-13416-RK, 2016 Bankr. LEXIS 3085, at *4 (Bankr. C.D. Cal. Aug. 22, 2016). The court has authority to approve an interim distribution under 11 U.S.C. § 105. In re Frantz, No. 2:18-cv-0018-DCN, 2020 U.S. Dist. LEXIS 51778, at *35 (D. Idaho Mar. 25, 2020) (citing Bird, 565 B.R. at 400).

While there is no exclusive list of standards by which to measure Trustee's motion, other courts have considered the following: (1) the benefit to existing creditors to receive the distribution; (2) the expense associated with delaying the distribution; (3) the prejudice to creditors who have yet to file proofs of claim; (4) whether sufficient funds exist in the estate to support the proposed distribution; and (5) whether the trustee has performed a diligent analysis concerning the respective claims at issue. See Bird, 565 B.R. at 400 (considering expense of delaying the distribution and prejudice to unknown creditors); In re Energy Coop, 173 B.R. 363, 372 (N.D. Ill. 1994) (considering estate's ability to fund an interim distribution in light of future administrative and litigation costs in conjunction with the trustee's "diligent, extensive analysis").

The deadline to file a proof of claim in this case was April 23, 2019. Doc. #44. Trustee contends that the total amount of claims asserted in this case, excluding claims to which objections have been sustained and a singular duplicative claim, is \$8,555,196.95. Decl. of David Sousa, Doc. #339. The proposed interim distribution amount is \$1,100,000.00. Decl., Doc. #339. There is an ongoing adversary proceeding initiated by Trustee to determine the status of certain claims asserted by individuals and entities associated with Debtor that Trustee describes as the "Insider Claims." Decl., Doc. #339. Trustee calculates that the Insider Claims represent 14.7% of the total value of claims asserted. Decl., Doc. #339. Accordingly, Trustee proposes to hold back 14.7% (\$161,169.69) of the proposed distribution amount pending the resolution of the Insider Claims adversary proceeding (the "Holdback Portion"). Decl., Doc. #339. The remaining 85.3% (\$938,830.31) will be distributed to the other holders of allowed claims on a pro rata basis. Decl., Doc. #339. All of the claims are general unsecured claims of equal priority. Decl., Doc. #339.

Trustee further declares that the proposed distribution will leave enough funds in the estate to allow for the remaining administrative matters and litigation to be completed. Decl., Doc. #339. Trustee cannot predict how long it will take to resolve the Insider Claims, but believes that the estate should, and is able to, make some payment to unsecured creditors whose claims are not subject to dispute. Decl., Doc. #339. Trustee believes the proposed interim distribution to be in the best interests of creditors. Decl., Doc. #339.

The court finds that Trustee has provided a sufficiently detailed analysis showing that payment of the interim distribution is in the best interest of creditors and the estate, that sufficient funds exist in the estate to support

the proposed distribution, and that the proposed distribution will not prejudice creditors who have not filed proofs of claim.

Turning to Creditor's objection, Creditor has not established why the Holdback Portion should be placed in a segregated interest-bearing account and cannot be comingled with the remaining estate funds. However, Trustee has demonstrated that granting the relief sought by Creditor would be detrimental to the estate. Trustee states in reply to Creditor's objection that the Holdback Portion consists of a defined sum certain and there is no risk that the money will be misspent. Trustee further contends that any deposits for maintaining debtor or estate accounts must be deposited at institutions approved by the United States Trustee. Reply Decl. of David Sousa, Doc. #348. Because of low interest rates, many of the approved banks are not accepting new debtor accounts and, to the extent approved banks might accept a new account, the fees that will be charged would exceed any interest earned. Reply Decl., Doc. #348. Trustee argues that the cost to the estate of trying to find an acceptable, approved depository institution outweighs the benefit to Creditor. Reply Decl., Doc. #348.

Accordingly, the limited objection is overruled, and this motion is GRANTED. The interim distribution shall be made in accordance with FRBP 3009 and Trustee's motion. The Holdback Portion shall be maintained in accordance with Trustee's obligations to creditors and the estate.

4. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
[BMJ-19](#) **GENERAL PARTNERSHIP****

OBJECTION TO CLAIM OF ANIMAL HEALTH INTERNATIONAL, INC., CLAIM NUMBER 37-1
1-8-2021 [[342](#)]

DAVID SOUSA/MV
JACOB EATON/ATTY. FOR DBT.
JOHN WASTE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This motion was filed and served with at least 30 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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 further hearing is necessary.

As a procedural matter, LBR 3007-1(b)(2) governs the notice requirements for objections to proofs of claim when fewer than 44 days' notice of a hearing is given. LBR 3007-1(b)(2) does not require written opposition. The Notice of Hearing filed in connection with this objection states that opposition must be in writing and filed at least 14 days prior to the scheduled hearing date, which is incorrect. The court urges counsel to review the local rules to ensure compliance in future matters.

David Sousa ("Trustee"), the Chapter 7 trustee in this bankruptcy case, objects to Claim No. 37 ("Duplicate Claim") filed by Animal Health International, Inc. ("Claimant") on the grounds that the Duplicate Claim is a duplicate of an earlier-filed proof of claim, Claim No. 9 ("Earlier Claim"), filed by Claimant's attorney or authorized agent. Tr.'s Obj., Doc. #342. Trustee also seeks a *nunc pro tunc* order changing the creditor name on the Earlier Claim to Claimant. Doc. #342.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

Under recent United States Supreme Court authority, "[f]ederal courts may issue *nunc pro tunc* orders, or 'now for then' orders, to 'reflect [] the reality' of what has already occurred. 'Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court.' Put colorfully, '[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history - creating 'facts' that never occurred in fact.'" Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano, -- U.S. --, 140 S. Ct. 696, 700-701 (Feb. 24, 2020) (citations omitted).

The Duplicate Claim asserts an unsecured claim of \$283,920.06 and was filed on April 23, 2019. Claim No. 37. The Earlier Claim asserts an unsecured claim of \$283,920.06 and was filed January 23, 2019. Claim No. 9. The attachments to both the Duplicate Claim and the Earlier Claim include a "statement of account" that identify the debtor, reference the same account number, and were sent from Claimant, although the attachment to the Earlier Claim includes additional documentation that the Duplicate Claim does not. Attachs. to Claim No. 9 and Claim No. 37. The Earlier Claim was signed by Lee Mandelson as attorney for the creditor and identifies the creditor as "5805 Sepulveda Blvd, Suite 850," which the court notes is the street address of the attorney's office that filed the Earlier Claim. Claim No. 9. The Duplicate Claim was signed by Joel M. Funk, associate general counsel of Claimant, and identifies the creditor as Claimant. Claim No. 37. Based on the evidence before the court, it is clear that the Earlier Claim and the Duplicate Claim represent a single debt owed by the debtor to Claimant. The court would be inclined to disallow the Earlier Claim and allow the Duplicate Claim since the Duplicate Claim names the correct Claimant. However, the attachment to the Earlier Claim includes documentation that the Duplicate Claim does not.

Because the Duplicate Claim and the Earlier Claim name different creditors, Trustee seeks a *nunc pro tunc* order changing the creditor name on the Earlier Claim to Claimant. However, under Acevedo, disallowance of the Duplicate Claim coupled with a *nunc pro tunc* correction of name of the claimant in the Earlier Claim is inappropriate. The court understands the importance of not having the Earlier Claim and the Duplicate Claim treated as separate, allowed claims

against the estate. Based on the unique facts in this matter, the court is inclined to overrule Trustee's objection and treat the Duplicate Claim as an amendment to the Earlier Claim rather than disallowing the Duplicate Claim and changing the creditor name on the Earlier Claim to Claimant *nunc pro tunc*. The matter will be called to discuss this proposed resolution.

5. [20-13528](#)-A-7 **IN RE: JOSE/MONICA MALDONADO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-2020 [[20](#)]

FORD MOTOR CREDIT COMPANY LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Ford Focus, VIN: 1FADP3H2XJL323014 ("Vehicle"). Doc. #20.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least thirteen complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$4,970.47 including late fees in the amount of \$75.32. Doc. #22.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$13,550.00 and the debtors owe \$22,025.09. Doc. #20.

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. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least thirteen pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

6. [20-13528](#)-A-7 **IN RE: JOSE/MONICA MALDONADO**
[JHW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-2020 [\[28\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Ford Focus, VIN: 1FADP3M2XJL323018 ("Vehicle"). Doc. #28.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least thirteen complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$5,127.04 including late fees in the amount of \$58.47. Doc. #30.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$13,775.00 and the debtors owe \$22,409.79. Doc. #28.

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. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least thirteen pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [20-13528](#)-A-7 **IN RE: JOSE/MONICA MALDONADO**
[JHW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-6-2021 [[36](#)]

FORD MOTOR CREDIT COMPANY LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Ford F150 ("Vehicle"). Doc. #36.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least thirteen complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$18,585.20 including late fees of \$347.24. Doc. #39.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$33,425.00 and the debtors owe \$61,800.41. Doc. #36.

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. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least thirteen pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

8. [14-11336](#)-A-7 **IN RE: RAUL/REBECCA JARA**
[SW-7](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
1-13-2021 [[141](#)]

RAUL JARA/MV
STARR WARSON/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.

Raul Jara and Rebecca Jara (collectively, "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 their residential real property commonly referred to as 596 W. Fir, Lindsay, CA 93247 (the "Property"). Doc. #141; Am. Schedule C, Doc. #34.

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 section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 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)).

A judgment was entered against Rebecca M. Jara in the amount of \$11,500.96 in favor of Creditor on May 12, 2011. Ex. 1, Doc. #143. The balance of the lien is \$27,118.66. Doc. #141. The abstract of judgment was recorded in Tulare County on September 13, 2011. Ex. 1, Doc. #143. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #141. The Property also is encumbered by the following liens: a lien in favor of Bank of New York in the amount \$41,632.00; and a lien in favor of SRP 2014-15 in the amount of \$179,651.97. Doc. #141. Debtors claimed an exemption of \$75,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #34. Debtors assert a market value for the Property as of the petition date at \$200,000.00. Am. Schedule A/B, Doc. #25. Although Debtors assert that the Property is further encumbered by a lien in favor of Midland Funding LLC, that lien was previously avoided and shall not be considered. 11 U.S.C. § 522(f)(2)(B); Civil Minutes, Doc. #129.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$27,118.66
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$221,283.97
Amount of Debtors' claim of exemption in the Property	+	\$75,000.00
	sum	\$323,402.63
Value of Debtors' interest in the Property absent liens	-	\$200,000.00
Extent of impairment of Debtors' exemption	=	\$123,402.63

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.

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
1-12-2021 [[65](#)]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the inclusion of the names and addresses of the persons who must be served with any opposition. The court urges movant to review the local rules to ensure compliance in future matters.

James E. Salven ("Movant"), accountant for Chapter 7 trustee James Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered January 1, 2021 through January 10, 2021. Doc. #65. Movant provided accounting services valued at \$1,500.00, and requests compensation for that amount. Doc. #65. Movant requests reimbursement for expenses in the amount of \$370.10. Doc. #65.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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) reviewing the closing statement; (2) processing returns and preparing determination letters; and (3) preparing fee and employment applications. Exs. A and B, Doc. #67. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,500.00 and reimbursement for expenses in the amount of \$370.10. Trustee is authorized to make a combined payment of \$1,870.10, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

10. [20-13354](#)-A-7 **IN RE: EMMANUEL/REBECCA MENA**
[DRJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-26-2021 [\[21\]](#)

ANTONIO ESPINOZA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DAVID JENKINS/ATTY. FOR MV.
DISCHARGED 2/2/2021

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied as moot in part.

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 filed and served on at least 14 days' notice prior to the hearing date 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.

This motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on February 2, 2021. Doc. #31. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

Antonio Espinoza a/k/a Antonia Espinoza-Ibarra ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1). Doc. #21. Movant has a claim against Emmanuel Humberto Mena and Rebecca Marissa-Lopez Mena (together, "Debtors") arising out of a pre-petition car accident. Doc. #21. Movant requests relief from the automatic stay to make appropriate demands on Debtors' insurance carrier and, if necessary, commence and prosecute an action to determine liability in state court. Doc. #21.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in

determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, a Notice of Filing Report of No Distribution was filed on November 21, 2020 (Doc. #12), so permitting Movant to pursue a judgment in state court will not prejudice the interests of other creditors. The state court has expertise in automobile accident cases. Movant is seeking to recover from Debtors' insurance policy for an automobile accident, and there will be minimal interference with the bankruptcy case. Doc. #21. Granting Movant relief from the stay will completely resolve the issue of Debtors' liability to Movant. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant can begin pursuing claims against Debtors' insurer. Doc. #23. For these reasons, the court finds that cause exists to lift the stay.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to recover proceeds from Debtors' insurance company and, if necessary, file and prosecute to conclusion a state court action as necessary to determine Debtors' liability to Movant for the underlying car accident for the purpose of recovering from Debtors' insurance company. No other relief is awarded.

In the request for relief as part of the motion, Movant requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). However, Movant has provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

11. [20-13872](#)-A-7 **IN RE: JAIME/SUSANNA MARQUEZ**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2021 [\[9\]](#)

KINGS FEDERAL CREDIT UNION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Kings Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2012 Chevrolet Silverado, Model 1500 ("Vehicle"). Doc. #9.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,944.28. Doc. ##11, 13.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$10,200.00 and the debtors owe \$20,618.96. Doc. #9.

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. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

AMENDED MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK, INC.
1-12-2021 [38]

GILBERTO ORTEGA JIMENEZ/MV
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.

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.

Gilberto Ortega Jimenez and Rosalinda Mondragon Zendejas (collectively, "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 Financial Credit Network, Inc. ("Creditor") on their residential real property commonly referred to as 404 S. Valencia Street, Woodlake, CA 93286 (the "Property"). Doc. #38; Schedule C, Doc. #15.

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 section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 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)).

A judgment was entered against Rosalinda Ortega in the amount of \$6,876.56 in favor of Creditor on March 5, 2018. Ex. D, Doc. #36. The abstract of judgment was recorded in Tulare County on March 19, 2019. Ex. D, Doc. #36. The lien attached to Debtors' interest in the Property located in Tulare County. Doc. #36. The Property also is encumbered by a lien in favor of PHH Mortgage Services in the amount \$124,136.00. Doc. #35. Debtors claimed an exemption of \$13,453.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Schedule C, Doc. #15. Debtors assert a market value for the Property as of the petition date at \$137,589.00. Am. Schedule A/B, Doc. #31.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$6,876.56
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$124,136.00
Amount of Debtors' claim of exemption in the Property	+	\$13,453.00
	sum	\$144,465.56
Value of Debtors' interest in the Property absent liens	-	\$137,589.00
Extent of impairment of Debtors' exemption	=	\$6,876.56

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

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

13. [16-12063](#)-A-7 **IN RE: TIMOTHY CLARK**
[RSW-6](#)

CONTINUED MOTION TO AVOID LIEN OF BALBOA CAPITAL CORPORATION
1-21-2021 [[148](#)]

TIMOTHY CLARK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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 court will issue an order.

Balboa Capital Corporation appeared at the original hearing on this motion held on February 4, 2021 and represented to the court that a "drive by" appraisal would be conducted prior to the continued hearing on February 10, 2021. This matter was continued to permit the "drive by" appraisal and for the debtor to file additional papers. Order, Doc. #166. The debtor filed supplemental exhibits on February 5, 2021. Doc. #170. After reviewing the additional evidence, and subject to any objection Balboa Capital Corporation may raise at the February 10 hearing, the court is inclined to grant this motion.

Timothy Scott Clark ("Debtor"), the debtor in this Chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Balboa Capital Corporation ("Creditor") on Debtor's residential real property commonly referred to as 9100 Bridlewood Ln., Bakersfield, Kern County, CA 93311, (the "Property"). Doc. #148; Am. Schedule C, Doc. #59.

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 section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 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)).

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(ii). Id. at 90.

Here, Debtor's Schedule A/B states that Debtor owns the Property as a tenant in common. Am. Schedule A/B, Doc. #57. The recorded Deed of Trust and Grant Deed both state that Debtor holds an undivided 50% interest in the Property. Exs. 1 and 2, Doc. #170. The Deed of Trust also establishes that the debt owed to Caliber Home Loans is a consensual encumbrance against the entire co-owned property. Ex. 1, Doc. #170.

The value of the encumbrance against the entire Property held by Caliber Home Loans is \$249,794.00, and the Property is valued at \$343,657.00. See Am. Schedule A/B, Doc. #57; Schedule D, Doc. #24. Applying the Meyer formula requires deducting the \$249,794.00 encumbrance on the co-owned property from the total value of the property, \$343,657.00. This amount totals \$93,863.00. After dividing this value of the Property by Debtor's 50% ownership interest in the Property, it is established that Debtor's interest in the Property for purposes of § 522(f) is \$46,931.50.

A judgment was entered against Timothy Clark and Kern Special Services, Inc. in the amount of \$30,035.32 in favor of Creditor on December 2, 2015. Ex. 4, Doc. #151. The abstract of judgment was recorded in Kern County on February 5, 2016. Ex. A, Doc. #151. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #151. Two junior judicial liens also encumber the property and are subject to a lien avoidance motion (No. 3, below). See DCN RSW-7, Doc. #153. Debtor claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #104.

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." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien is supported in part by equity, is reached." Id.

Because the lien sought to be avoided in this motion is the most senior, and the court disposes of the more junior liens in order of reverse priority in matter number 14, below, the statutory formula is applied as follows:

Amount of Creditor's judicial lien		\$30,035.32
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$0
Amount of Debtor's claim of exemption in the Property	+	\$100,000.00
	sum	\$130,035.32
Value of Debtor's interest in the Property absent liens	-	\$46,931.50
Extent of impairment of Debtor's exemption	=	\$83,103.82

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

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

14. [16-12063](#)-A-7 **IN RE: TIMOTHY CLARK**
[RSW-7](#)

CONTINUED MOTION TO AVOID LIEN OF TRI COUNTIES BANK
1-21-2021 [[153](#)]

TIMOTHY CLARK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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 court will issue an order.

This matter was originally heard on February 4, 2021. Tri Counties Bank did not appear at the February 4 hearing. This matter was continued to permit the debtor to file additional papers. Order, Doc. #157. The debtor filed supplemental exhibits on February 5, 2021. Doc. #170. After reviewing the additional evidence, the court is inclined to grant this motion.

Timothy Scott Clark ("Debtor"), the debtor in this Chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial liens of Tri Counties Bank ("Creditor") on Debtor's residential real property commonly referred to as 9100 Bridlewood Ln., Bakersfield, Kern County, CA 93311, (the "Property"). Doc. #153; Am. Schedule C, Doc. #59.

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 section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 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)).

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(ii). Id. at 90.

Here, Debtor's Schedule A/B states that Debtor owns the Property as a tenant in common. Am. Schedule A/B, Doc. #57. The recorded Deed of Trust and Grant Deed both state that Debtor holds an undivided 50% interest in the Property. Exs. 1 and 2, Doc. #170. The Deed of Trust also establishes that the debt owed to Caliber Home Loans is a consensual encumbrance against the entire co-owned property. Ex. 1, Doc. #170.

The value of the encumbrance against the entire Property held by Caliber Home Loans is \$249,794.00, and the Property is valued at \$343,657.00. See Am. Schedule A/B, Doc. #57; Schedule D, Doc. #24. Applying the Meyer formula requires deducting the \$249,794.00 encumbrance on the co-owned property from the total value of the property, \$343,657.00. This amount totals \$93,863.00. After dividing this value of the Property by Debtor's 50% ownership interest in the Property, it is established that Debtor's interest in the Property for purposes of § 522(f) is \$46,931.50.

A judgment was last entered against Timothy Clark the amount of \$29,935.35 in favor of Creditor on February 16, 2016. Ex. 4, Doc. #156. The abstract of judgment was recorded in Kern County on February 25, 2016. Ex. A, Doc. #156. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #156. The Property is further encumbered by a separate judicial lien in favor of Creditor entered on February 9, 2016 for \$345,263.22 and a judicial lien in favor of Balboa Capital Corporation entered on December 2, 2015 for \$30,035.32. Ex. A, Doc. #151; Ex. 4, Doc. #156. Debtor claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #104.

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." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien is supported in part by equity, is reached." Id.

Applying the statutory formula to the most junior judicial lien first:

Amount of Creditor's judicial lien recorded on February 25, 2016		\$29,935.35
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$375,298.54
Amount of Debtor's claim of exemption in the Property	+	\$100,000.00
	sum	\$505,233.89
Value of Debtor's interest in the Property absent liens	-	\$46,931.50
Extent of impairment of Debtor's exemption	=	\$458,302.39

After disposing of the most junior lien, the court finds there is insufficient equity to support Creditor's judicial lien recorded February 25, 2016.

Continuing in reverse order of priority, a judgment was then entered against Timothy Clark the amount of \$345,263.22 in favor of Creditor on February 9, 2016. Ex. 4, Doc. #156. The abstract of judgment was recorded in Kern County on February 25, 2016. Ex. A, Doc. #156. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #156. The Property is further encumbered by a judicial lien in favor of Balboa Capital Corporation entered on December 2, 2015. Ex. A, Doc. #151. Debtor claimed an exemption of \$100,000.00

in the Property under California Code of Civil Procedure § 704.730. Am.
Schedule C, Doc. #104.

Applying the statutory formula:

Amount of Creditor's judicial lien recorded on February 9, 2016		\$345,263.22
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$30,035.32
Amount of Debtor's claim of exemption in the Property	+	\$100,000.00
	sum	\$475,298.54
Value of Debtor's interest in the Property absent liens	-	\$46,931.50
Extent of impairment of Debtor's exemption	=	\$428,367.04

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

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