

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, February 24, 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. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
1-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to March 10, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The status conference will be continued to March 10, 2021, at 9:30 a.m., to be heard with the hearing on the approval of the second amended disclosure statement. Doc. #495.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-17](#)

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT
12-4-2020 [[382](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 10, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The hearing on the amended chapter 11 disclosure statement will be continued to March 10, 2021, at 9:30 a.m., to be heard with the hearing on the approval of the second amended disclosure statement. Doc. #495.

3. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-9-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

4. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-15](#)

AMENDED CHAPTER 11 DISCLOSURE STATEMENT
2-3-2021 [[273](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-11](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
1-20-2021 [[383](#)]

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 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"), attorney for Bhajan Singh and Balvinder Kaur (together, "Debtors"), the chapter 12 debtors in this case, requests an allowance of interim compensation and reimbursement for expenses for services rendered February 18, 2020 through December 31, 2020. Doc. #383. Movant provided legal services valued at \$113,201.38, and requests compensation for that amount. Doc. #383. Movant requests reimbursement for expenses in the amount of \$1,435.38. Doc. #383.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable" compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel, Movant may submit applications for compensation pursuant to 11 U.S.C. § 330. Order, Doc. #57. In determining the amount of reasonable compensation to be awarded to the debtor's counsel, 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) prosecuting and negotiating motions to confirm a chapter 12 plan; (2) filing and arguing objections to the proofs of claim filed by the Toronto Group and others; (3) preparing to defend against a motion to convert to chapter 11 or dismiss that was ultimately withdrawn; (4) defending an adversary proceeding against the Toronto Group; (5) preparing and filing applications to employ; (6) entering into settlement and mutual release with claimants; (7) preparing a modified plan; and (8) preparing and distributing documents, attending hearings, and filing reports as ordered by the court. Doc. #387. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$113,201.38 and reimbursement for expenses in the amount of \$1,435.38. 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 is allowed to draw on any retainer held with the remainder to be paid in a manner consistent with the terms of the confirmed plan.

6. [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.

NO RULING.

7. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-4](#)

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

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-7](#)

MOTION TO DISMISS CASE
2-3-2021 [\[114\]](#)

MARIA LUNA MANZO/MV
JUSTIN HARRIS/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 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.

Maria Luna Manzo ("Debtor"), the debtor in this Chapter 11, Subchapter V, case, moves to voluntarily dismiss this case for cause pursuant to 11 U.S.C. § 1112(b). Doc. #114.

Pursuant to 11 U.S.C. § 1112(b)(1), "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." Section 1112(b)(2) permits dismissal unless "there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time." 11 U.S.C. § 1112(b)(2).

Debtor filed this voluntary petition for relief under Chapter 11, Subchapter V, on August 5, 2020. Doc. #1. Debtor contends she has several challenges that appear to be insurmountable with respect to Debtor's ability to confirm a plan within a reasonable period of time. Doc. #116, Manzo Decl. ¶¶ 3, 6. Specifically, Debtor lacks adequate support for the projections under her current plan and there is a new deed of trust on Debtor's farm property that effectively eliminates any equity Debtor had in her farm property. Id. at ¶¶ 3, 6. Debtor also is significantly behind in filing her federal tax returns, preventing the Internal Revenue Service from being able to evaluate, much less support, a plan of reorganization. Id. at ¶ 4. Finally, Debtor has an ongoing battle with Shogy Ahmed that is likely to be protracted and Debtor prefers to continue her disputes with Mr. Ahmed in state court. Id. at ¶ 5.

Debtor primarily has secured creditors and owes taxes. Id. at ¶ 5. Debtor believes her issues with these creditors are best addressed outside of Chapter 11. Id. at ¶ 5. Debtor does not believe conversion of her bankruptcy case to Chapter 7 would be in the best interests of creditors because unsecured creditors would not receive any distribution in Chapter 7 according to Debtor's liquidation analysis filed with her proposed plan. Id. at ¶ 6. Debtor believes

the best chance for her creditors to be paid is outside of bankruptcy where Debtor will continue to work for a labor contractor and to farm blueberries.
Id.

A review of the docket shows the January 2021 Monthly Operating Report ("MOR") has not yet been filed. The last MOR was filed on February 3, 2021 for the month of December 2020. Doc. #113. The court is inclined to condition dismissal on Debtor being current in the filing of her MORs at the time of dismissal.

Pending any opposition at hearing, the court finds cause exists to dismiss this case under 11 U.S.C. § 1112(b)(1), and dismissal of this case is in the best interests of creditors and the estate. Accordingly, the court is inclined to grant this motion conditioned on Debtor being current in the filing of her MORs.

11:00 AM

1. [21-10013](#)-A-7 **IN RE: JOSE MARTINEZ TORRES AND CARMEN GONZALEZ**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
2-3-2021 [\[12\]](#)

NO RULING.

2. [20-13852](#)-A-7 **IN RE: ANDREW HUNTER AND VANESSA SOTO-HUNTER**

PRO SE REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT UNION
2-3-2021 [\[19\]](#)

NO RULING.

1. 20-12900-A-7 **IN RE: SEAN/JOANNA FRANCO**
JES-3

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
1-27-2021 [60]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James E. Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Sean Anthony Franco and Joanna Salas Franco (together, "Debtors"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) authorizing the sale of a (i) 2003 Toyota Corolla LPN 5BWP577, (ii) 2007 Honda Pilot LPN 5ZZV840, (iii) 2009 Toyota Rav4 LPN 6HCS482, (iv) 2010 Toyota Tundra LPN 8S08268, (v) single axle utility trailer LPN 4RM1449, and (vi) Smith & Wesson 45 serial number BDJ5422 (together, the "Property") at public auction on or after March 2, 2021 at Auctioneer's location at 1328N. Sierra Vista, Suite B, Fresno, California; and (3) authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #60.

Pursuant to 11 U.S.C. §363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under §363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under §363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and

whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #62. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #62. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. §327(a). The trustee may, with the court's approval, employ an auctioneer on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

11 U.S.C. §328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under §328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. §101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #63. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #62. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$750.00. Doc. #62. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to §328. Doc. #60; Doc. #62.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. §328.

2. [18-14106](#)-A-7 **IN RE: JAIME HIGGINS**
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
2-10-2021 [[19](#)]

JAIME HIGGINS/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 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.

Jaime Joan Higgins ("Debtor"), the debtor in this Chapter 7 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 Capital One Bank (USA), N.A. ("Creditor") on Debtor's residential real property commonly referred to as 8701 Worrell Court, Bakersfield, CA 93311 (the "Property"). Doc. #19; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under 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 Jaime J Higgins in the amount of \$5,252.23 in favor of Creditor on May 17, 2018. Ex. 4, Doc. #22. The abstract of judgment was recorded pre-petition in Kern County on October 2, 2018. Ex. 4, Doc. #22; Doc. #1. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #22. The Property also was encumbered by a lien in favor of South Shore Bank in the amount \$204,733.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$14,667.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$219,400.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$5,252.23
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$204,733.00
Amount of Debtor's claim of exemption in the Property	+	\$14,667.00
	sum	\$224,652.23
Value of Debtor's interest in the Property absent liens	-	\$219,400.00
Extent of impairment of Debtor's exemption	=	\$5,252.23

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.

3. [17-11618](#)-A-7 **IN RE: JOE/NATALIE NINO**
[PFT-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CHARLES LONG AND SHERRY LONG, MOTION FOR
COMPENSATION FOR THORNTON DAVIDSON, SPECIAL COUNSEL(S)
1-27-2021 [57]

PETER FEAR/MV
PETER BUNTING/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 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.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Joe Elias Nino and Natalie Valentino Nino (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with Charles Long and Sherry Long ("Defendants") relating to Debtors' purchase of Defendants'

business. Doc. #57. Thornton Davidson, P.C. ("Litigation Counsel") represented Trustee in the action against Defendants. See Order, Doc. #47. Trustee also requests authorization of final compensation for Litigation Counsel pursuant to 11 U.S.C. § 330(a) as required by the Order Granting Authorization to Employ. Doc. #57; Order, Doc. #47.

Settlement Agreement

Among the assets of the estate is a claim against Defendants for fraud in connection with the transfer of Defendants' business to Debtors. Ex. B, Doc. #61. Debtors' claims and disputes with Defendants involve a complex matter dealing with the loan obtained by Debtors, the value of the business, alleged off-the-books actions and the operation of the business post-sale. Doc. #57. Debtors and the Trustee have agreed to settle the claim against Defendants for a payment of \$3,250.00 by Defendants to the estate. Decl., Doc. #59. Defendants have paid this amount to Litigation Counsel. Doc. #57.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #57. Trustee believes the probability of success in the litigation is low and in accordance with the value of the settlement agreement, based in part on facts learned during discovery that were previously unknown to Litigation Counsel or Trustee. Mot., Doc. #57; Decl., Doc. #59. Defendants have already tendered the settlement amount to Litigation Counsel, but it is uncertain if Defendants would be able to come up with a significantly larger sum were litigation to continue. Mot., Doc. #57. The settlement does not provide the estate with any money to distribute to creditors because the fee agreement with Litigation Counsel provides for a contingency fee of 33.33% of the gross settlement plus payment of all costs. Decl. of Thornton Davidson, Doc. #60. Litigation Counsel incurred costs in excess of the proposed settlement amount. Decl., Doc. #60. The entire amount of the settlement is intended to go to Litigation Counsel. Doc. #57. However, Trustee does not believe a distribution to creditors would occur were the litigation to continue. Doc. #57. Trustee believes that settlement is in the best interests of creditors of the estate. Decl., Doc. #59. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement between Trustee and Debtors and Defendants is approved.

Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Litigation Counsel for services rendered in connection with the action against Defendants. Doc. #57. Trustee was authorized to employ Litigation Counsel on a contingency basis whereby Litigation Counsel would receive 33.33% of any recovery, settlement, or judgment prior to trial subject to approval by the court under § 330(a). Order, Doc. #47; Ex. A, Doc. #45. Litigation Counsel incurred costs totaling \$5,071.54 and negotiated a settlement amount prior to trial of \$3,250.00. Decl., Doc. #60. Trustee seeks authorization for Litigation Counsel's compensation of \$3,250.00. Doc. #57.

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).

Litigation Counsel's services included, without limitation: (1) pre-litigation negotiations; (2) preparing and reviewing pleadings; (3) engaging in discovery; and (4) reaching a final settlement agreement. Exs. A and B, Doc. #61; Decl., Doc. #60. Although the original fee agreement between Trustee and Litigation Counsel called for a 33.33% contingency fee, the total amount of Litigation Counsel's costs exceeds the amount of recovery, and Trustee believes the full settlement amount represents reasonable compensation for the actual and necessary services and costs rendered by Litigation Counsel. Decl., Doc. #59. The court finds the compensation and reimbursement sought is reasonable, actual, and necessary.

Trustee's motion under § 330(a) GRANTED on a final basis. The court allows final compensation to Litigation Counsel in the amount of \$3,250.00.

Accordingly, Trustee's motion is GRANTED.

4. [20-13218](#)-A-7 **IN RE: F & J FARMS - DELANO**

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2021 [[11](#)]

CALIFORNIA LIVESTOCK PRODUCERS, INC/MV
JUSTIN HARRIS/ATTY. FOR DBT.
MARCUS HALL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failing to comply with the Local Rules of Practice ("LBR"). LBR 9014-1(c) requires a Docket Control Number to be included on all pleadings and other documents. The motion and other documents filed with the motion do not contain a Docket Control Number. LBR 9014-1(d)(3) sets out the component parts to be filed with a motion, including the Notice of Hearing, and LBR 9014-1(d)(4) generally requires each of the component parts to be filed as separate documents. The motion and other documents filed by the

moving party are not filed separately and do not satisfy the Notice of Hearing requirements. LBR 9014-1(e) requires a proof of service to be filed concurrently or within three days after the filing of a motion. No proof of service has been filed in connection with this motion.

The court urges counsel to review the local rules to ensure compliance in future matters. The rules can be accessed on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

5. [19-15321](#)-A-7 **IN RE: MARIA RAMIREZ**
[THA-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARIA DEL R RAMIREZ AND FERNANDO RAMIREZ
1-19-2021 [[33](#)]

PETER FEAR/MV
KELSEY SEIB/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Maria Del R Ramirez ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes against Maria Del R Ramirez and Fernando Ramirez (together, "Defendants"). Doc. #33.

Trustee commenced Adversary Proceeding 20-01037 against Defendants seeking authority from the court to sell co-owned real property pursuant to 11 U.S.C. § 363(h). A Notice of Pendency of Action was recorded in Merced County on June 16, 2020, and Defendants filed their answer on July 7, 2020. Doc. #33. Trustee and Defendants have crafted a settlement of the Adversary Proceeding that will allow for payment in full of all claims and costs of administration of Debtor's bankruptcy case. Doc. #33. The settlement calls for Defendants to pay \$30,000.00 to Trustee, of which \$15,000 has already been tendered to Trustee. Doc. #33.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #33. The proposed settlement allows for payment in full of all claims and costs of administration of Debtor's bankruptcy the case. Tr.'s Decl., Doc. #35. In return, Trustee will move to dismiss the Adversary Proceeding with prejudice. Doc. #35. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #35. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

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

Accordingly, the motion is GRANTED, and the settlement between Trustee and Defendants is approved. Defendants are authorized, but not required, to execute any and all documents necessary to effectuate refinance and close of escrow to satisfy the terms of the proposed settlement agreement.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

6. [20-13783](#)-A-7 **IN RE: PEDRO PEREZ**
[PWG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2021 [[13](#)]

FELICIA THOMAS/MV
JOSEPH PEARL/ATTY. FOR DBT.
PHILLIP GILLET/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 court will issue an order.

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.

The movant, Felicia Thomas ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) with respect to residential real property located at 29 Irene Street, Bakersfield, CA 93305 ("Property"). Doc. #13. Movant is the owner of the Property, but Pedro E. Perez ("Debtor") had an interest in the Property at the time of commencing his Chapter 7 case stemming from a month-to-month residential lease agreement between Movant and Debtor. Ex. C, Doc. #16.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay. Debtor breached the lease agreement with Movant on November 19, 2019 by failing to make monthly rental payments, and repeatedly failing to make the monthly rental payments prior to the filing of Debtor's bankruptcy petition. Decl. of Felicia Thomas, Doc. #17. The total pre-petition unpaid rent owed by Debtor is \$19,000.00. Decl., Doc. #17. Debtor also has failed to make post-petition monthly rental payments, and the post-petition unpaid rent as of the date this motion was filed was \$3,200.00. Decl., Doc. #17. Pre-petition, Movant commenced an unlawful detainer against Debtor in the Superior Court of California, Kern County, Case Number BCL-20011305, which has been stayed because of the automatic stay. Ex. A, Doc. #16. Movant requests relief from the automatic stay to pursue the unlawful detainer action in state court and allow Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #13.

To the extent that Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4), such relief is not granted. Section 362(d)(4) allows the court to grant relief from the stay as to a creditor whose claim is secured by an interest in real property if the court finds that the filing of the bankruptcy petition was "part of a scheme to delay, hinder, or defraud creditors," and that involved a transfer of ownership or other interest in such real property or multiple bankruptcy filings affecting such real property. 11 U.S.C. § 362(d)(4). Movant has made no showing that relief under § 362(d)(4) is warranted.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to pursue the unlawful detainer action currently pending in California Superior Court, Kern County and proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property should Movant prevail in the unlawful detainer action.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit the state court proceeding to continue.

MOTION TO AVOID LIEN OF CITIBANK, N.A.
1-22-2021 [28]

DEREK LOTZ/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 28 days' notice as required by 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 non-responding parties in interest are entered. However, 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.

Derek Matthew Lotz ("Debtor"), the debtor in this Chapter 7 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 Capital One Bank (USA), N.A. ("Creditor") on residential real property located at 5810 Oneida Falls Drive, Bakersfield, CA 93312 (the "Property"). Doc. #28; Am. Schedule C, Doc. #16.

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

Here, the Property is not listed on Debtor's amended schedules as exempt. Amended Schedule C, filed January 21, 2021, does not claim an exemption in the Property. Am. Schedule C, Doc. #25. Although Debtor does claim an exemption for "any additional asset not known at the time of filing," the Property was known at the time of filing, as indicated by Debtor's inclusion of the Property in Debtor's original schedules as well as elsewhere in Debtor's amended schedules filed on January 21, 2021. Doc. #1, 25. The Property's exclusion from the "additional asset" exemption is further indicated by the reference to Line 34.1 from Schedule A/B, which refers specifically to the debtor's financial

interests in "other contingent and unliquidated claims of every nature," but not real property. Am. Schedule A/B and Am. Schedule C, Doc. #25. Moreover, California Code of Civil Procedure § 703.140(b)(5), as that statute existed at the time Debtor filed his Chapter 7 bankruptcy case, allows a debtor to exempt the aggregate interest up to \$1,425.00, plus any unused amount of the homestead exemption under § 703.140(b)(1) in the amount of \$26,800.00, in any property, for a maximum exemption of \$28,225.00 under § 703.140(b)(5). Goswami, 304 B.R. at 391-92 ("the critical date for determining exemption rights is the petition date"). Debtor's claimed exemptions under § 703.140(b)(5) as set forth in Amended Schedule C includes: (a) \$27,065.00 for "any additional asset not known;" (b) \$1,010.00 for a 2014 Jeep Cherokee, and \$150.00 for a wheelchair, totaling \$28,225.00 in § 703.140(b)(5) exemptions, leaving no room for any exemption in the Property. Because Debtor does not claim an exemption in the Property, Debtor has not established the second element required to avoid a lien and is not entitled to lien avoidance under § 522(f).

Notwithstanding the foregoing, Debtor's original Schedule C did claim an exemption of \$4,880.00 in the Property, which was not claimed in the amended Schedule C. Schedule C, Doc. #1. Even if the court were able to include this exemption in the calculation required by § 522(f), Debtor is not able to avoid the lien as requested in the motion. The court notes that Debtor's amended schedules reflect that, like other 11 U.S.C. § 522(f)(1) lien avoidance matters that have come before the court, Debtor includes the cost of a hypothetical sale to reduce the value of his interest in the Property. In Amended Schedule A/B, Debtor asserts a market value for the Property of \$274,870.00 but deducts an estimated 8% costs of a hypothetical sale leaving the value of his interest in the Property at \$252,880.00 on his schedules and for this motion. Doc. #25.

However, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows, in which 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." Case No. 17-24195-A-7, 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal. Dec. 20, 2017) (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.

Therefore, were the court to consider the statutory calculation of § 522(f), the court would first eliminate Debtor's deduction of the 8% estimated cost of sale in determining the market value of the Property. A judicial lien in favor of Creditor was recorded in Kern County on August 27, 2018 and is valued at \$8,815.79. Ex. D, Doc. #33. The lien attached to Debtor's Property in Kern County. The Property also is encumbered by a lien in favor of LoanCare in an amount of \$248,000.00. Am. Schedule D, Doc. #25. Assuming, *arguendo*, Debtor's entitlement to a \$4,880.00 exemption in the Property, the lien does not impair Debtor's exemption:

Amount of Creditor's judicial lien		\$8,815.79
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$248,000.00
Amount of Debtor's claim of exemption in the Property	+	\$4,880.00
	sum	\$261,695.79
Value of Debtor's interest in the Property absent liens	-	\$274,870.00
Extent of impairment of Debtor's exemption	=	(\$13,174.21)

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

This motion is DENIED because Debtor has not claimed an exemption in the Property. Moreover, the computations conducted by the court demonstrate that the motion also would have been denied had Debtor alleged in his amended schedules the exemption in the Property claimed in his original schedules.