

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, June 23, 2020
Place: Department B - Courtroom #13
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.

9:30 AM

1. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

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

RENO FERNANDEZ/ATTY. FOR DBT.

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

DISPOSITION: This Status Conference will be continued to July 14,
2020 at 9:30 am.

ORDER: The court will issue the order.

The court has reviewed the status report filed by the debtor-in-possession. A Plan and Disclosure Statement were filed. The hearing on approval of the Disclosure Statement is scheduled for July 14, 2020 at 9:30 am. This Status Conference will be continued to that date and time.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

The court has received and reviewed the Status Report filed by the debtor-in-possession. No Plan and Disclosure Statement has been filed though the debtor-in-possession represents a Plan and Disclosure Statement will be filed on or before June 30, 2020. The Status Conference will be heard to, among other things, discuss future scheduling.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-20](#)

CONTINUED OBJECTION TO CLAIM OF WELLS FARGO VENDOR FINANCIAL,
CLAIM NUMBER 162 AND/OR OBJECTION TO CLAIM OF WELLS FARGO VENDOR
FINANCIAL, CLAIM NUMBER 163
1-8-2020 [[1794](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #2182.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-4](#)

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
4-10-2020 [[2126](#)]

DEPARTMENT OF HEALTH CARE SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.
CONTINUED TO 7/14/20 PER ECF ORDER #2205

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

DISPOSITION: Continued to July 14, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2205.

11:00 AM

1. [20-10423](#)-B-7 IN RE: GRICELDA DEL RIO

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
5-21-2020 [[16](#)]

MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [20-10423](#)-B-7 IN RE: GRICELDA DEL RIO

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
5-21-2020 [[17](#)]

MARK HANNON/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 which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

3. [20-10829](#)-B-7 **IN RE: MANUEL VALDES AND ALMA URIAS**

REAFFIRMATION AGREEMENT WITH REGIONAL ACCEPTANCE CORPORATION
5-29-2020 [\[17\]](#)

MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtor was represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), “‘if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor’s attorney’ attesting to the referenced items before the agreement will have legal effect.” *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor’s attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. [11-17909](#)-B-7 **IN RE: VIRGINIA VASQUEZ**
[SLL-3](#)

MOTION TO AVOID LIEN OF CITIBANK
6-8-2020 [[37](#)]

VIRGINIA VASQUEZ/MV
STEPHEN LABIAK/ATTY. FOR DBT.
OST 6/9/20

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 will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #42) 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 is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Citibank (South Dakota) N.A. in the sum of \$9,945.42 on December 9, 2010. Doc. #40. The abstract of judgment was recorded with Tulare County on February 1, 2011. Id. That lien attached to the debtor's interest in a residential real property in Visalia, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$213,000.00 as of the petition date. Doc. #35, 39. The unavoidable liens totaled \$145,381.18 on that same date, consisting of a first deed of trust in favor of California Reconveyance Company and a second deed of trust in favor of Washington Mutual Bank JP Morgan Chase (successor). Doc. #35. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00. Doc. #1.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, PC FOR
PETER L. FEAR, TRUSTEES ATTORNEY(S)
5-22-2020 [[129](#)]

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

The motion will be GRANTED. Trustee's special counsel, The Law Office of Fear Waddell, PC for Peter Fear, requests fees of \$46,468.00 and costs of \$1,764.40 for a total of \$48,232.40 for services rendered from March 19, 2019 through May 21, 2020.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Disposing of two parcels of real property, (2) Defending against a stay relief motion to preserve the estate's interest in the real property, (3) Preparing and filing fee and employment applications, and (4) Preparing, filing and negotiating on an adversary

proceeding. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$46,468.00 in fees and \$1,764.40 in costs.

3. [10-18132](#)-B-7 **IN RE: DEBRA WATERS**
[MHR-2](#)

MOTION TO COMPEL ABANDONMENT
5-13-2020 [[34](#)]

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir.

1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest, if any, in debtor's award on a vaginal mesh claim ("Claim"). Doc. #24. The award is \$9,174.27 and debtor has appeared to fully exempt that amount on amended schedules. See doc. #21.

No party has opposed this motion, nor objected to amended schedule C. The court finds that the Claim, to the extent it is estate property, is fully exempt and of inconsequential value and benefit to the estate. The Claim was accurately scheduled and exempted in its entirety. Therefore, this motion is GRANTED.

The order shall include a specific description of the property abandoned.

4. [20-10437](#)-B-7 **IN RE: JOEY LOPEZ**
[JES-1](#)

MOTION TO SELL
5-19-2020 [[17](#)]

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

TENTATIVE RULING: This matter will proceed for higher and better bids only.

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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed as scheduled for higher and better bids only. 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 that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee (Trustee") asks this court for authorization to sell a 2012 Chevrolet Cruze ("Vehicle") back to the debtor, subject to higher and better bids at the hearing, for \$1,448.00. Doc. #17. No party has opposed this motion. Trustee is in receipt of the payment.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

5. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[KAS-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH SUPER TRUCK LINES INC., PRITPAL SANDHU, AND SUPER TRANSPORT
COMPANY, INC.

5-22-2020 [[288](#)]

JAMES SALVEN/MV
THOMAS HOGAN/ATTY. FOR DBT.
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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

This motion is GRANTED. It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate, debtor, and Super Transport Company, Inc. ("Transport"). Both the debtor and Transport share a company president: Pritpal Sandhu ("Sandhu").

Under the terms of the compromise, The trustee, debtor, Sandhu, and Transport have agreed to resolve the disputes arising from pre-petition transfers for a total of \$64,714.03. Doc. #288. Debtor transferred approximately 20 long-haul trucks and trailers ("Equipment") for no consideration to Transport. Then, Transport encumbered the Equipment. Doc. #288. The trustee believes that the transfer can be avoided, but to avoid the cost and uncertainty of litigation, the parties have agreed to settle the matter.

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. 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. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the trustee believes that the probability of success is very high, but after successful completion of the litigation there would be nothing to collect after legal fees; collection would not be very easy if this matter went to litigation due to the COVID-19 pandemic and the fact that the Equipment is fully encumbered and the profitability of Transport is unknown; the litigation is not terribly complex but factually intensive and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

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

6. [20-10655](#)-B-7 **IN RE: RONALD/ELVA SUMABAT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-28-2020 [[28](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.
\$31.00 FILING FEE PAID 6/1/20

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee was paid on June 1, 2020. Therefore, the OSC will be vacated.

7. [19-10462](#)-B-13 **IN RE: DAVID/DIXIE LACROIX**
[TCS-7](#)

MOTION TO SELL
6-3-2020 [[55](#)]

DAVID LACROIX/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
OST 6/5/20

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 will submit a proposed order after hearing conforming with the ruling.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #64) 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 chapter 13 matter is specially set on this calendar under the order shortening time.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the debtors in possession ("DIP") to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell estate property under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin &

Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The DIP asks this court for authorization to sell real property located at 2975 McKee Road in Merced, CA 95340 ("Property"), subject to higher and better bids at the hearing, for \$260,000.00 to Cornellis Duarte (Buyer"). Doc. #55. The sale proceeds will pay all unsecured creditors in full.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Unless opposition is presented at the hearing, the motion is GRANTED.

The Chapter 13 Trustee shall approve the order. The order may include language concerning execution of escrow documents.

8. [12-17575](#)-B-7 **IN RE: DANIEL/DIANE GOMES**
[KDG-6](#)

MOTION TO AVOID LIEN OF PENNY NEWMAN GRAIN CO.
5-28-2020 [[111](#)]

DANIEL GOMES/MV
JACOB EATON/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 will submit a proposed order after hearing.

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

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Penny Newman Grain Co. in the sum of \$13,850.06 on February 27, 2012. Doc. #114. The abstract of judgment was recorded with Tulare County on April 10, 2012. Id. That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$248,500.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$228,397.00 on that same date, consisting of a first deed of trust in favor of Union Bank NA, a second deed of trust in favor of Union Bank NA, and a third deed of trust in favor of Union Bank, NA. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$20,103.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. [12-19380](#)-B-7 **IN RE: JUAN DIAZ**
[JJD-4](#)

MOTION TO AVOID LIEN OF EQUABLE ASCENT FINANCIAL, LLC
5-29-2020 [[29](#)]

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Equitable Ascent Financial, LLC et al in the sum of \$9,829.20 on October 17, 2011. Doc. #32. The abstract of judgment was recorded with Madera County on January 30, 2012. Id. That lien attached to the debtor's interest in a residential real property in Chowchilla, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$115,740.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$336,445.00 on that same date, consisting of a first deed of trust in favor of Chase. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. [12-19380](#)-B-7 **IN RE: JUAN DIAZ**
[JJD-7](#)

MOTION TO AVOID LIEN OF CACH LLC
5-29-2020 [\[34\]](#)

JUAN DIAZ/MV
JUSTIN ALLEN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE for failure to properly serve the motion and accompanying papers on respondent.

Federal Rule of Bankruptcy Procedure 7004(b)(3) requires that service upon a domestic corporation must be made to the attention of an officer at the corporation or upon an agent for service of process.

The certificate of service for this motion shows that the chapter 7 trustee, the office of the United States Trustee, the respondent, one Miguel Zapien, and the law firm listed on the abstract of judgment were served. However, service on the respondent was not made "to the attention of an officer," nor upon an agent for service of process. Corporations generally receive large amounts of mail every day and this rule, among other things, preserves a respondent's due process rights and ensures that a respondent has the opportunity to oppose at a hearing where their property rights may be affected.

For the above reasons, this motion is DENIED WITHOUT PREJUDICE.

11. [20-10283](#)-B-7 **IN RE: CATHY CRENSHAW**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
5-1-2020 [[21](#)]

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee

to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor, who is self-employed in insurance sales, asks this court to compel the chapter 7 trustee to abandon the estate's interest in one printer and one tablet debtor uses in the business.

The court finds that the tablet and printer are of inconsequential value and benefit to the estate. The tablet and printer were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

12. [20-10958](#)-B-7 **IN RE: SHELIA SOUTHERN**
[ICE-1](#)

**OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-19-2020 [18]**

**JERRY LOWE/ATTY. FOR DBT.
DISMISSED 06/15/2020**

NO RULING.