UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, June 30, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court will begin in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. 20-11606-A-11 **IN RE: MICHAEL PENA**
HLF-6

MOTION TO DISMISS CASE
6-9-2021 [132]

MICHAEL PENA/MV
JUSTIN HARRIS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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 21 days' notice prior to the hearing date pursuant to Federal Rules of Bankruptcy Procedure 1017 and 2002 and 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 conditioned upon the debtor filing all monthly operating reports due as of the date of dismissal. 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.

Michael Anthony Pena ("Debtor") moves the court to dismiss Debtor's chapter 11 bankruptcy case for cause pursuant to 11 U.S.C. § 1112(b). Doc. #132.

Any party in interest, including the debtor, may move to dismiss a chapter 11 bankruptcy case. 11 U.S.C. § 1112(b)(1). After notice and a hearing, the court may dismiss a chapter 11 case for "cause" unless the court finds "unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1), (2).

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. For Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

The court finds that cause exists to dismiss Debtor's chapter 11 case. Debtor states that there is not a reasonable likelihood of rehabilitation through chapter 11. Decl. of Debtor ¶ 11, Doc. #134. Debtor lost his job with Signature Commercial Solutions, resulting in a decrease in monthly net income of $6,000 to $7,000. Decl. of Debtor ¶ 7, Doc. #134. Debtor has been unable to secure additional employment or otherwise fund a plan and the proposed plan is no longer feasible. Decl. of Debtor ¶¶ 7-11, Doc. #134. Accordingly, cause exists

to dismiss Debtor's chapter 11 case pursuant to § 1112(b) of the Bankruptcy Code.

The court also finds that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Debtor believes that the best shot for paying creditors is outside of bankruptcy. Decl. of Debtor ¶ 11, Doc. #134. Debtor's residence is the primary asset of the estate. Decl. of Debtor ¶ 12, Doc. #134; Schedule A/B, Doc. #1. Debtor's liquidation analysis shows that there would be no distribution to unsecured creditors in the event of a sale following conversion to chapter 7. Decl. of Debtor ¶ 12, Doc. #134. Debtor's liquidation analysis also excludes accrued interest and attorney's fees. Decl. of Debtor ¶ 12, Doc. #134.

LBR 2015-1(a)(1) and (c) require chapter 11 debtors to file monthly operating reports "not later than the fourteenth (14th) day of the month following the month of the reported period. Reports shall be filed for the portion of a calendar month from the date of filing, and monthly thereafter through the month in which an order of confirmation, conversion or dismissal is entered." LBR 2015-1(c). Debtor's last monthly operating report covered the month of May and was filed June 24, 2021. Doc. #146.

The court is inclined to permit dismissal of Debtor's case conditioned on Debtor filing all monthly operating reports due as of the time Debtor's bankruptcy case is dismissed.

2. 21-10445-A-11 **IN RE: HARDEEP KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
2-23-2021 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

3. 21-10445-A-11 **IN RE: HARDEEP KAUR**
LKW-3

MOTION TO CONFIRM CHAPTER 11 PLAN
5-18-2021 [36]

HARDEEP KAUR/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirm the plan as modified.

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.

Hardeep Kaur ("Debtor"), the Subchapter V Chapter 11 debtor in this case, moves the court for confirmation of Debtor's Plan of Reorganization dated May 18, 2021 as Modified (the "Plan"). Doc. ##36-41, 76-85. Debtor transmitted the

original plan, ballots, and notice of the confirmation hearing to all parties in interest on May 18, 2021 without uploading a proposed Order Setting Confirmation Hearing and Related Deadlines (for Use Only in Cases Under Subchapter V of Chapter 11) using the current EDC Official Order Form 6-202 as ordered in paragraph 4 of the Order Setting Subchapter V Chapter 11 Status conference Date; Claims Bar Date; and Other Deadlines filed in this case on February 26, 2021. Doc. #9. Notwithstanding the failure of Debtor to upload a proposed order setting confirmation hearing and related deadlines, the court finds it would cause unnecessary and undue delay in confirmation of the Plan to require Debtor to submit a proposed order setting confirmation hearing and related deadlines and re-solicit a plan of reorganization. Accordingly, the court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##41, 85. No objections to confirmation of the Plan have been filed.

The Plan does not meet the requirements of 11 U.S.C. § 1129(8) because two classes of impaired claims did not return ballots accepting the Plan. Debtor's Mem., Doc. #80. Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court finds that the Plan complies with the requirements for confirmation under Bankruptcy Code § 1191(b).

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

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

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

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

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

(1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). Claims are classified in Class One through Class Thirteen.

(2) Specifies the classes that are not impaired under the Plan as required by § 1123(a)(2).

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

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

(5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).

(6) The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.

(7) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

(8) The provisions of § 1123(a)(8) does not apply in a Subchapter V case. 11 U.S.C. § 1181.

(9) Provides for the assumption of all executory contracts not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

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

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

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

The Plan provides that Debtor will manage her financial affairs and implement the Plan, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

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

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case.

Section 1129(a)(8) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code § 507(a)(8).

Section 1129(a)(10) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b). However, the Plan has been accepted by at least one impaired class who are not insiders. Specifically, Classes Two, Three, Four, Five, Six, Seven, Nine and Ten have accepted the Plan and are not insiders.

Regarding § 1129(a)(11), the court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

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

Sections 1129(a)(13)-(15) are not applicable to this case.

Pursuant to § 1129(a)(16), all transfers of property contemplated under the Plan have been or will be made in compliance with applicable non-bankruptcy law.

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

Because Class One, which consists of priority claims, are unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the three to five years of the plan be applied to make payments under the plan. Here, the amended plan projections all projected disposable income received by Debtor during the term of the Plan are applied to make payments under the Plan.

With respect to § 1191(c)(3)(A), the court finds there is a reasonable likelihood Debtor will be able to make all payments under the Plan.

With respect to § 1191(c)(3)(B), section 9.01 of the Plan provides (a) that property of the estate includes all property acquired by Debtor post-petition and post-confirmation until Debtor’s case is closed dismissed or converted, and (b) “Debtor’s assets shall remain property of the estate if Debtor’s case is converted to Chapter 7 at any time after confirmation of the [Plan] and before the court enters a Final Decree.” The court finds that these two provisions satisfy § 1191(c)(3)(B).

Accordingly, confirmation of the Plan is proper under 11 U.S.C. § 1191(b), and the Plan is confirmed.

4. 21-10445-A-11 **IN RE: HARDEEP KAUR**
LKW-4

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
6-3-2021 [46]

LEONARD WELSH/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Law Offices of Leonard K. Welsh ("Movant"), attorney for Hardeep Kaur ("DIP"), requests allowance of interim compensation and reimbursement for expenses for services rendered from February 23, 2021 through May 31, 2021. Doc. #46. Movant provided legal services valued at $12,230.00, and requests compensation for that amount. Ex. C, Doc. #50. Movant requests reimbursement for expenses in the amount of $171.57. Ex. B, Doc. #50.

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 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #32. 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).

Movant's services included, without limitation: (1) preparing and filing DIP's chapter 11 plan; (2) advising DIP and creditors on the treatment of claims held by secured and unsecured creditors; (3) preparing and filing employment applications; (4) preparing for and participating in the meeting of the creditors; and (5) providing general case administration. Ex. C, Doc. #50; Doc. #46. 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 $12,230.00 and reimbursement for expenses in the amount of $171.57. 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. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is

administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

5. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
DL-1

MOTION FOR COMPENSATION FOR WALTER R. DAHL, CHAPTER 11 TRUSTEE(S)
6-3-2021 [326]

WALTER DAHL/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
WALTER DAHL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Walter R. Dahl ("Trustee"), the subchapter V trustee appointed in this case, requests allowance of final compensation for services rendered from October 13, 2020 through June 30, 2021. Doc. #326. Trustee requests compensation in the amount of $5,089.50 and reimbursement for expenses of $237.50. Doc. #326. Trustee has not filed any prior motions for compensation.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a trustee under chapter 11, 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).

Trustee's services included, without limitation: (1) conferring with counsel for the debtor regarding the subchapter V case, business operations, financing, and first day motions; (2) conferring with counsel for the United States Trustee and counsel for the debtor regarding debtor in possession accounts and cash management procedures; (3) conferring with counsel for the debtor regarding assumption of leases and approval of new leases; (4) attending hearings and status conferences; and (5) preparing and prosecuting the fee application. Ex. A, Doc. #328; Decl. of Trustee, Doc. #329. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows on a final basis compensation in the amount of $5,089.50 and reimbursement for expenses in the amount of $237.50.

11:00 AM

1. 21-10751-A-7 **IN RE: PEDRO SALDANA RAMIREZ**

REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
5-28-2021 [17]

MARK ZIMMERMAN/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, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims that they have filed on all of their debt and can afford the payment but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with U.S. Bank National Association will be DENIED.

1:30 PM

1. 18-12912-A-7 **IN RE: FRANK/ANGIE WOODS**
VC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-28-2021 [74]

FLAGSHIP CREDIT ACCEPTANCE/MV
PETER BUNTING/ATTY. FOR DBT.
MICHAEL VANLOCHEM/ATTY. FOR MV.
NON-OPPOSITION

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). On June 9, 2021, the debtors filed written non-opposition. Doc. #82. 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Flagship Credit Acceptance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Volkswagen Passat ("Vehicle"). Doc. #74.

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 21 complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $7,973.28. Doc. #76, 78.

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 $12,155.00 wholesale and $13,724.00 retail, and the debtors owe $14,681.46. Doc. #76. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #67. The court notes that the debtors filed a non-opposition to this motion on June 9, 2021. Doc. #82.

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 21 post-petition payments to Movant and the Vehicle is a depreciating asset.

2. 15-12213-A-7 **IN RE: GARY/DEBORAH POST**
RSW-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.,
6-16-2021 [31]

DEBORAH POST/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.

Gary Lee Post and Deborah Jean Post (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 Capital One Bank (USA), N.A. ("Creditor") on their residential real property commonly referred to as 17439 S. Union Ave., Bakersfield, CA 93307 (the "Property"). Doc. #31; Schedules C and D, 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 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)).

Debtors filed their chapter 7 case on May 31, 2015. Doc. #1. A judgment was entered against Gary Post in the amount of $3,014.42 in favor of Creditor on July 3, 2014. Ex. 4, Doc. #34. The abstract of judgment was recorded pre-petition in Kern County on May 1, 2015. Doc. #33; Ex. 4, Doc. #34. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #34. The Property also is encumbered by a lien in favor of Kern Schools Federal Credit Union in the amount $234,554.00. Schedule D, Doc. #1. Debtors claimed an exemption of $19,124.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $253,678.00. Schedule A, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$3,014.42
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$234,554.00
Amount of Debtors' claim of exemption in the Property	+	$19,124.00
	sum	$256,692.42
Value of Debtors' interest in the Property absent liens	-	$253,678.00
Amount Creditor's lien impairs Debtors' exemption	=	$3,014.42

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.

3. 21-11123-A-7 **IN RE: SIDNEY MOORE**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-28-2021 [11]

VW CREDIT, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/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 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, VW Credit, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Volkswagen Jetta ("Vehicle"). Doc. #11.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have 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 debtor has failed to make at least eight complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $3,389.14. Doc. #13, 15.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Id. The Vehicle is valued at $13,125.00 and the debtor owes $15,200.88. Doc. #13.

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 debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

4. 21-10035-A-7 **IN RE: JASWINDER BHANGOO**

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-26-2021 [18]

ENGS COMMERCIAL FINANCE CO./MV
D. GARDNER/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Objection sustained.

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 objection was first set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed timely opposition prior to the hearing. Doc. #27. Prior to the hearing, the court posted a tentative ruling. At the hearing on May 12, 2021, the parties agreed to submit additional pleadings to address the limited issue of whether the debtor "continuously resided" at the subject property thereby entitling the debtor to claim a homestead exemption under California Code of Civil Procedure ("C.C.P.") § 704.730. Civil Minutes, Doc. #33; Order, Doc. #34. The court continued the hearing on this objection to June 30, 2021, at 1:30 p.m. and set a schedule for the filing of supplemental pleadings. Order, Doc. #34. Pursuant to LBR 9014-1(f)(1)(B) and (g), the parties have consented to resolution of this matter on the basis of the written record without live testimony.

Engs Commercial Finance Co. ("Creditor"), a judgment creditor of Jaswinder Singh Bhangoo ("Debtor"), objects to Debtor's claim of a $300,000 exemption in Debtor's real property located at 6907 Wild Rogue Court, Bakersfield, California (the "Property"). Obj., Doc. #18; see Schedule C, Doc. #1. Debtor claims an automatic homestead exemption in the Property under C.C.P. § 704.730. Schedule C, Doc. #1. Creditor's objection is joined by Ascentium Capital LLC ("Ascentium"), although Ascentium did not file any additional pleadings after the first hearing. Doc. #23.

Creditor initially objected to Debtor's claimed homestead exemption on two grounds: (1) Debtor did not reside in the Property at the time of filing his bankruptcy petition so he cannot claim his homestead exemption, and (2) Debtor did not continuously reside in the Property from the date Creditor's judicial lien attached to the Property. Obj., Doc. #18.

Debtor opposed the objection, arguing that California law does not require physical occupancy of the claimed homestead property as a condition to claim the homestead exemption. Doc. #27. Debtor conceded that physical occupancy of the homestead was a factor to consider in determining continuous residency, but more important than physical occupancy is the intent of the exemption claimant to occupy the property as a homestead. Doc. #27. Under California law, Debtor argued, temporary absences from the claimed homestead do not deprive a judgment debtor of claiming California's homestead exemption if the judgment debtor intended to retain the property as a homestead. Doc. #27.

At the first hearing on May 12, 2021, the court agreed that under California law there is no strict requirement that Debtor physically occupy the Property to claim the homestead exemption under C.C.P. § 704.730. Civil Minutes, Doc. #33. However, Creditor's objection and Debtor's initial response focused primarily on Debtor's intent to reside in the Property on the petition date. Relying on C.C.P. § 704.710(c) and Elliott v. Weil (In re Elliot), 523 B.R. 188 (B.A.P. 9th Cir. 2014), this court determined that Debtor's homestead exemption did not turn only on Debtor's intent on the petition date but rather whether Debtor continuously resided in the Property from the date Creditor's and Ascentium's judicial liens attached to the Property. Civil Minutes, Doc. #33. In other words, Debtor would be entitled to his claimed homestead exemption, notwithstanding his physical absence, if Debtor intended to reside in the Property as his principal dwelling from the date the judgment liens attached to the Property to the date the Property is determined a homestead. See C.C.P. § 704.710(c).

It is undisputed that Debtor occupied the Property when Creditor's and Ascentium's judgment liens attached to the Property. It also is undisputed that Debtor has not continuously physically occupied the Property since the judgment liens attached to Debtor's Property and that Debtor did not physically occupy the Property on the date Debtor filed his bankruptcy petition. The sole issue

is whether Debtor intended to maintain the Property as his principal dwelling despite his physical absence, thereby satisfying the continuous residency requirement of C.C.P. § 704.710(c) that defines "homestead" for purposes of C.C.P. § 704.730.

Facts

Debtor purchased the Property in 2011 and lived there for seven years. First Decl. of Debtor ("First Decl.") ¶ 3, Doc. #28. In 2015, Creditor recorded an abstract of judgment that attached to the Property. First Decl. ¶ 9, Doc. #28. In 2016, Ascentium recorded an abstract of judgment that attached to the Property. Joinder, Doc. #23; First Decl. ¶ 9, Doc. #28. Debtor resided in the Property when the judgment liens of Creditor and Ascentium were recorded. First Decl. ¶ 9, Doc. #28.

At some time after 2016, Debtor decided to rent the Property. First Decl. ¶ 3, Doc. #28. In 2018, Debtor and his wife moved out of the Property and rented a house at 4408 Cimarron Ridge Drive, Bakersfield, California ("Cimarron Ridge"). First Decl. ¶¶ 3-4, Doc. #28; Suppl. Decl. of Debtor ("Suppl. Decl.") ¶ 3, Doc. #36. Debtor's wife's parents ("In-laws") moved into Cimarron Ridge with Debtor's family. Suppl. Decl. ¶ 3, Doc. #36. The Property would not have been large enough for Debtor's family and In-laws, but Cimarron Ridge was spacious enough for everyone. Suppl. Decl. ¶ 3, Doc. #36. At the time Debtor's In-laws moved into Cimarron Ridge, it was understood that the In-laws would be living with Debtor and his family at Cimarron Ridge temporarily. Suppl. Decl. ¶ 3, Doc. #36. Debtor's In-laws did not contribute to the household expenses while living at Cimarron Ridge. Suppl. Decl. ¶ 3, Doc. #36. At some undisclosed time, the In-laws moved out of Cimarron Ridge. Suppl. Decl. ¶ 3, Doc. #36.

At the same time Debtor moved to Cimarron Ridge, Debtor rented out the Property, first to an unnamed tenant who lived in the Property for one year, then to a tenant named Tameka Brown ("Brown"). First Decl. ¶ 3, Doc. #28; Suppl. Decl. ¶ 3, Doc. #36. Debtor entered into a one-year lease agreement with Brown on September 12, 2019. First Decl. ¶ 7, Doc. #28; Ex. D, Doc. #29. A few months into the one-year lease agreement Debtor initiated an unlawful detainer action against Brown, who had defaulted on the lease. First Decl. ¶¶ 3, 7, Doc. #28; Ex. D, Doc. #29. Although Debtor initiated the unlawful detainer action on February 10, 2020, a judgment in favor of Debtor was not entered until December 11, 2020. Ex. D, Doc. #29. Brown was locked out of the Property by the sheriff at the end of February 2021. First Decl. ¶ 7, Doc. #28. Debtor moved back into the Property on April 5, 2021. First Decl. ¶ 8, Doc. #28. Debtor filed his bankruptcy petition on January 8, 2021. Doc. #1

During the time that the Property was rented to tenants, Debtor paid the property taxes, the mortgage, paid for a gardener, provided maintenance, installed a new dishwasher and microwave, and replaced the sprinkler system, among other things. Suppl. Decl. ¶¶ 4-6, Doc. #36. Debtor always maintained his driver's license address as the Property address. Suppl. Decl. ¶ 7, Doc. #36.

While Brown was living in the Property, Debtor determined that Cimarron Ridge was unaffordable because the rent was too high. First Decl. ¶ 4, Doc. #28. It was Debtor's specific intent to return to the Property when Brown defaulted on the lease. First Decl. ¶ 4, Doc. #28. Debtor would have moved back to the Property prior to filing the bankruptcy petition but was delayed in prosecuting the unlawful detainer action due to the COVID-19 pandemic. First Decl. ¶ 4, Doc. #28. Debtor viewed his move out of the Property as a temporary solution to housing Debtor's In-laws. Suppl. Decl. ¶ 7, Doc. #36.

Burden of Proof

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, [Fed. R. Bankr. P.] 4003(c) does not change that allocation.").

California's Automatic Homestead Exemption

California has opted out of the federal exemption scheme. C.C.P. § 703.130; Philips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018). "As a result, '[t]he bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law.'" Gilman, 887 F.3d at 964 (quoting Diaz, 547 B.R. at 334). In considering California's homestead legislation, "the duty of the federal court is to ascertain and apply the existing California law." Klingebiel v. Lockheed Aircraft Corp., 494 F.2d 345, 346 (9th Cir. 1974); see also Fortuna v. Naval Weapons Ctr. Fed. Credit Union (In re La Fortuna), 652 F.2d 842, 846 (9th Cir. 1981). The court is "mindful of the California authorities which admonish that 'the homestead statutes are to be construed liberally on behalf of the homesteader.'" Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson), 824 F.2d 754, 759 (9th Cir. 1987) (quoting Ingebretsen v. McNamer, 137 Cal. App. 3d 957, 960 (1982)). "But liberal construction in favor of the debtor does not give us license to rewrite the California legislature's scheme for homestead protection." Id.

Debtor claims an exemption in the Property under California's Article 4 homestead exemption, which provides for an automatic homestead exemption that protects a debtor who resides in a homestead property at the time of filing a forced judicial sale of the dwelling. C.C.P. § 704.720(a); Gilman, 887 F.3d at 964; Diaz, 547 B.R. at 334. "The filing of a bankruptcy petition constitutes a forced sale for the purposes of the automatic homestead exemption." Diaz, 547 B.R. at 334.

The property to which the claimed homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). California Code of Civil Procedure section 704.710(c) defines homestead as follows:

> "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "This [definition] requires only that the judgment debtor *reside* in the property as his or her principal dwelling at the time the judgment creditor's lien attaches and continuously thereafter until the court determines the dwelling is a homestead." Gilman, 887 F.3d at 965 (quoting Elliott, 523 B.R. at 196) (emphasis in original).

Continuous residency does not require continuous physical occupation of the property. In 1983, C.C.P. § 704.710 was amended to delete the word "actually", which appeared before "resides" or "resided", "to avoid a possible construction that a person temporarily absent (such as a person on vacation or in the hospital) could not claim" the automatic homestead exemption "merely because

the person is temporarily absent, even though the dwelling is the person's principal dwelling and residence." 17 Cal. L. Rev. Comm. Reports 854 (1983); Diaz, 547 B.R. at 334; see also Catsiftes v. Catsiftes, 29 Cal. App. 2d 207, 209 (1938) (determining that "it is clearly evident that [the defendant's] intention was to return . . . at some future time" when the husband regained his health); Harper v. Forbes, 15 Cal. 202, 204 (1860) (retaining a homestead requires "that the removal was temporary in its nature, made for a specific purpose, with the intention of reoccupying the premises").

In Michelman v. Frye, 238 Cal. App. 2d 698 (1965), the defendant claimed a homestead exemption in the family home from which she was physically absent. Michelman, 238 Cal. App. 2d at 703. The defendant fled the home with her children to escape her violent husband. Id. At the time the defendant fled, the home was in escrow. Id. The court determined that, but for the husband's abuse, the defendant would have remained in the family home until the sale was finalized, and she sought to remove her husband and return to the family home when the sale fell through. Id. The court found "defendant's physical exclusion and absence from the family home, forced upon her by the wrongful conduct of her husband, were not voluntary on her part and only temporary in nature." Id. The appellate court concluded that the defendant "intend[ed] to return" to the family home and "los[t] no right during her compelled temporary absence therefrom." Id. at 706.

In In re Dodge, 138 B.R. 602 (Bankr. E.D. Cal. 1992), a case not cited by either party, the debtors were a married couple with a claimed homestead in Sacramento, California. Dodge, 138 B.R. at 604. One debtor started working in Salinas, California, returning to the homestead property in Sacramento on the weekends to see her spouse. Id. at 605. Eventually the debtors rented a two-bedroom apartment in Salinas so the debtors could spend more time together, motivated in part by the spouse's emphysema. Id. The bankruptcy court concluded that the debtors' claim of a homestead exemption in the Sacramento property was valid, reasoning that "[a] temporary absence of a few days at a time for employment away from home seems to fit" within California's homestead definition. Dodge, 138 B.R. at 607.

Similarly, in In re Pham, 177 B.R. 914 (Bankr. C.D. Cal. 1994), a case also not cited by either party, the debtors were a married couple with a claimed homestead in Bakersfield, California. Pham, 177 B.R. at 915. Prior to moving to Bakersfield, and before claiming the homestead, the debtors lived in Los Angeles. Id. at 916. The debtors moved into the Bakersfield property but continued to work in Los Angeles, commuting daily from Bakersfield to Los Angeles. Id. The debtors eventually rented a small apartment in Los Angeles to ease their commute and returned to the Bakersfield property on weekends and holidays where one of their children lived full-time rent free. Id. Most of the debtors' furniture and possessions were in the Bakersfield property, and the Bakersfield property was not rented to a tenant. Id. The bankruptcy court concluded that the debtors' claim of a homestead exemption in the Bakersfield property was valid because the debtors maintained their residence at the Bakersfield property, finding that the debtors' absence from the Bakersfield property was only temporary. Id. at 919.

However, California's homestead statute does not necessarily protect all residential real property owned by the debtor. For example, in Anderson, another case not cited by the parties, the debtors moved away from the homestead property and leased it to renters so that one of the debtors could be closer to the college, which he was attending. Anderson, 824 F.2d at 755. The debtors purchased and moved into a second home. Id. The debtors filed for bankruptcy four months later, but, having little or no equity in the second home, scheduled a homestead exemption on the homestead property. Id. The Ninth

Circuit held that the debtors were not entitled to the homestead exemption because they did not reside in the homestead property. Id. at 756-57. The court reasoned that the debtors did not occupy the homestead property and had "moved their household" to the second property. Id. at 756. Such conduct "could not be construed as a temporary absence like a vacation or hospital stay which the homestead statutes are designed to excuse." Id. (citing Legislative Committee Comment to am. C.C.P. § 704.710).

In Cal. Coastal Comm'n v. Allen, 167 Cal. App. 4th 322 (2008), the debtor rented out the subject property to tenants, reserving for himself the right to use a one-car garage on the property and a small apartment above the garage. Allen, 167 Cal. App. 4th at 330. The rental agreement was for a period of two years, during which time the debtor left the country to start a business in Australia. Id. Although the debtor stated that the property was his sole home and residence, the appellate court found that the debtor "was not 'temporarily absent' while retaining the property as his principal dwelling." Id. at 331. The debtor "was not absent from the property for work or vacation; he apparently resided elsewhere," which "does not meet the continuous residence requirement for a principal dwelling under section 704.710." Id.

Debtor is not entitled California's automatic homestead exemption

Under applicable authority, Debtor did not continuously reside in the Property and is not entitled to claim the Property as a homestead. In Michelman, the defendant returned to the homestead property once the condition causing her absence was removed. In this case, while Debtor may have initially left the Property to accommodate the In-laws, there is no evidence to suggest that Debtor intended to, or attempted to, return to the Property when the In-laws ceased residing at Cimarron Ridge. Debtor's In-laws did not contribute to the household expenses while living at Cimarron Ridge, so maintaining Debtor's residence at Cimarron Ridge was not dependent on whether the In-laws resided there. Moreover, Debtor entered into two consecutive one-year lease agreements of the Property with tenants, demonstrating no immediate desire to return to the Property. This is in contrast to Pham, where the debtors leased out another property for themselves but regularly returned to the homestead property on weekends and holidays and permitted their child to live at the homestead property rent-free while leaving their furniture and possessions in the homestead. Here, Debtor states that he intended to return to the Property when Brown defaulted, but the facts do not demonstrate that Debtor intended to return to the Property before Brown defaulted. Unlike Dodge and Pham, where the debtors rented an apartment away from the homestead residence for employment purposes and regularly returned to the homestead, Debtor did not occupy the Property for at least two years.

Like the debtors in Anderson and Allen, Debtor moved his household to Cimarron Ridge. Neither Debtor, his spouse, nor any family member resided in the Property during Debtor's absence. Debtor was not temporarily absent from the Property; he rented out the Property for two consecutive one-year terms. Debtor's expenses for improvements and maintenance of the Property, while demonstrating ownership of the Property, are no different than expenses regularly required of a lessor who would perform the same tasks without any intent to maintain the property as his principal dwelling or residence. In Allen, the debtor was not entitled to claim a homestead in property leased to tenants for a two-year term even though the debtor retained for himself the exclusive use and access to a part of the property. Here, Debtor contracted away his rights to reside on or occupy the entire Property, but kept the Property address on his driver's license. The court finds that, under the facts of this case, Debtor was not temporarily absent while maintaining the Property as his principal dwelling.

Because Debtor did not continuously reside in the Property from the date Creditor's and Ascentium's judgment liens attached to the Property, Debtor does not meet the continuous residence requirement for a homestead under C.C.P. § 704.710.

Accordingly, this objection to Debtor's claimed homestead exemption is SUSTAINED.

5. 12-11548-A-7 **IN RE: DANIEL/ELISAVET MERCADO**
SDM-2

MOTION TO AVOID LIEN OF DISCOVER BANK
4-27-2021 [25]

ELISAVET MERCADO/MV
SCOTT MITCHELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Daniel Lorenzo Mercado and Elisavet Carranza Mercado (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 9107 Goodheart Ave., Delhi, CA 95315 (the "Property"). Doc. #25; Am. Schedule C, Doc. #23.

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)).

Debtors filed their chapter 7 case on February 24, 2012. Doc. #1. A judgment was entered against Elisavet C. Mercado in the amount of $10,175.90 in favor of Creditor on September 16, 2011. Ex. 4, Doc. #28. The abstract of judgment was recorded pre-petition in Merced County on January 12, 2012. Ex. 4, Doc. #28. The lien attached to Debtors' interest in the Property located in Merced County. Doc. #28. The Property also is encumbered by a lien in favor of Merced School Employees Federal Credit Union in the amount $260,955.00. Schedule D, Doc. #1. Debtors claimed an exemption of $1.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #23. Debtors assert a market value for the Property as of the petition date at $137,400.00. Schedule A, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$10,175.90
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$260,955.00
Amount of Debtors' claim of exemption in the Property	+	$1.00
	sum	$271,131.90
Value of Debtors' interest in the Property absent liens	-	$137,400.00
Amount Creditor's lien impairs Debtors' exemption	=	$133,731.90

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

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

6. 21-10748-A-7 **IN RE: JAMES/PATRICIA FORRESTER**
RPZ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-20-2021 [17]

BANK OF AMERICA, N.A./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
NON-OPPOSITION

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). On May 25, 2021, the debtors filed written non-opposition to the motion. Doc. #24. 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Bank of America, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2000 Allegro Bus 37' 3 S/O ("Vehicle"). Doc. #17. The debtors do not oppose the motion. Doc. #24.

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 eight complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $8,396.96. Doc. #19.

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 $29,890.00 and the debtors owe $32,214.71. Doc. #19.

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.

7. 21-10949-A-7 **IN RE: GOBINDER/HARINDER AUJLA**
UST-1

MOTION TO DISMISS CASE
5-17-2021 [14]

TRACY DAVIS/MV
PETER BUNTING/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
DISMISSED 5/28/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on May 28, 2021. Doc. #36. The motion will be DENIED AS MOOT.

8. 21-10949-A-7 **IN RE: GOBINDER/HARINDER AUJLA**
UST-2

MOTION FOR REVIEW OF FEES AND/OR MOTION TO DISGORGE FEES
5-17-2021 [18]

TRACY DAVIS/MV
PETER BUNTING/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
DISMISSED 5/28/21; RESPONSIVE PLEADING

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). Counsel for the debtors timely filed written opposition on June 16, 2021. Doc. #39. The failure of creditors 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.

Gobinder Singh Aujla and Harinder Aujla (together, "Debtors"), with the assistance of bankruptcy counsel Peter Bunting, filed for relief under chapter 7 of the Bankruptcy Code on April 16, 2021. Doc. #1. Prior to the filing of the bankruptcy petition, Debtors paid Mr. Bunting $3,500 in return for legal services for all aspects of the bankruptcy case excluding adversary proceedings (the "Pre-Petition Retainer"). Disclosure of Compensation, Doc. #1. In preparing the bankruptcy petition, Mr. Bunting failed to confirm that Debtors had taken the required credit counseling course. Decl. of Peter B. Bunting ¶ 4, Doc. #40. Because Debtors had not completed the financial counseling course, they were ineligible to be debtors under the Bankruptcy Code. See 11 U.S.C. § 109(h).

Debtors' ineligibility for relief under the Bankruptcy Code prompted the United States Trustee ("UST") to move to dismiss Debtors' case. Tr.'s Mot. to Dismiss, Doc. #14. UST also moved the court to review and disgorge the Pre-Petition Retainer based on Mr. Bunting's failure to adequately review and verify the information contained in Debtors' bankruptcy petition. Tr.'s Disgorgement Mot., Doc. #18. However, the court granted Debtors' motion to dismiss their chapter 7 case before the date set for hearing on UST's motions. Order, Doc. #36. Although Debtors' case was dismissed, the court reserved jurisdiction to consider UST's motion to review and disgorge attorney's fees. Order, Doc. #36.

Mr. Bunting opposes UST's motion to disgorge fees, arguing that Debtors, still represented by Mr. Bunting, are now eligible debtors under the Bankruptcy Code and have filed a subsequent chapter 7 case in the Eastern District of California, case no. 21-11445 (the "Subsequent Case"). Decl. of Peter B. Bunting ¶ 10, Doc. #40. Mr. Bunting has not, and will not, request additional fees from Debtors in excess of the Pre-Petition Retainer, except for fees earned in the defense of an adversary proceeding. Decl. of Peter B. Bunting ¶ 13, Doc. #40.

Federal Rule of Bankruptcy Procedure ("Rule") 2017 provides that the UST may file a motion to determine whether any payment of fees by the debtor to bankruptcy counsel is excessive. In re Alvarado, 496 B.R. 200, 215 (N.D. Cal. 2013); Rule 2017(a). "If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive[.]" 11 U.S.C. § 329(b). These provisions of the Bankruptcy Code are designed to protect the debtor. In re Lewis, 113 F.3d 1040, 1045 (9th Cir. 1997). The decision to order an attorney to disgorge fees is left to the discretion of the bankruptcy court. Alvarado, 496 B.R. at 210-11.

Fees paid to bankruptcy counsel may be unreasonable, and the disgorgement of fees therefore appropriate, when bankruptcy counsel accepts a pre-petition retainer but fails to ensure the debtors are qualified debtors under the Bankruptcy Code, ultimately leading to the dismissal of the debtors' bankruptcy case. Alvarado, 496 B.R. at 212. In Alvarado, the bankruptcy court ordered the disgorgement of attorney's fees pursuant to § 329 and Rule 2017 after the debtors' attorney filed bankruptcy petitions without first securing the debtors' credit counseling certificates. Id. at 204-05. In that case, the bankruptcy court determined that the debtors were not benefitting from the fees paid and that at least one of the debtors needed the disgorged pre-petition retainer to hire another lawyer to assist with a subsequent bankruptcy. Id. On appeal, the district court determined that the bankruptcy court did not abuse its discretion by disgorging the attorney's fees. Id. at 213.

In the present case, Debtors wish to retain Mr. Bunting in the Subsequent Case. Decl. of Harinder Aujla ¶ 7, Doc. #41. Debtors have not paid Mr. Bunting any additional fees in connection with the Subsequent Case, and Mr. Bunting states

that no additional fees or costs from Debtors will be requested or accepted except for the defense of an adversary proceeding should one be filed against Debtors. Aujla Decl. ¶ 8, Doc. #41; Decl. of Peter B. Bunting ¶ 13, Doc. #40.

Mr. Bunting continues to represent Debtors in the Subsequent Case without receiving any additional payment from Debtors, and the court finds that the fees paid by Debtors to Mr. Bunting are reasonable.

Accordingly, this motion will be DENIED.

9. 09-11355-A-7 **IN RE: LONA CRAMER**
FW-2

MOTION TO EMPLOY CAROLINE MAIDA AS SPECIAL COUNSEL AND/OR MOTION TO EMPLOY KURT ARNOLD AS SPECIAL COUNSEL, MOTION TO EMPLOY AVRAM BLAIR AS SPECIAL COUNSEL
6-2-2021 [30]

JAMES SALVEN/MV
TIMOTHY SPRINGER/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). 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 in part.

LBR 2014-1(b)(2) states that "[a]ll requests for retroactive authorization for employment exceeding 30 days duration must be set for hearing, must show exceptional circumstances, must satisfactorily explain the applicant's failure to receive prior judicial approval, and must demonstrate that the applicant's services benefited the bankruptcy estate in a significant manner."

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Lona Mae Cramer ("Debtor"), moves the court for an order authorizing the retroactive employment of Meyer Blair LLP, The Mostyn Law Firm, and Arnold & Itkin LLP (collectively, "Special Purpose Counsel"). Doc. #30.

Trustee contends that an order authorizing the retroactive employment of an attorney for a specified special purpose when the attorney has represented the debtor is permissible under In re Grant, 507 B.R. 306 (Bankr. E.D. Cal. 2014). Doc. #30. Attorneys who perform services for a specified special purpose for a chapter 7 debtor cannot recover fees for services rendered to the estate unless

those services have been previously authorized by the bankruptcy court. 11 U.S.C. § 327(e).

In the Ninth Circuit, bankruptcy courts "possess the equitable power to approve retroactively a professional's valuable but unauthorized services." Grant, 507 B.R. at 309 (quoting Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 973 (9th Cir. 1995)). Such awards should be limited to exceptional circumstances where an applicant can show both (1) a satisfactory explanation for the failure to receive prior judicial approval and (2) that he or she has benefited the bankruptcy estate in some significant manner. E.g., Atkins, 69 F.3d at 975-76; In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). These two factors must be met in order for a professional to establish exceptional circumstances, while additional factors may, but need not, be considered by the court in exercising its discretion. Atkins, 69 F.3d at 976.

The court finds that Trustee has established the existence of exceptional circumstances.

On July 7, 2013, Debtor retained Special Purpose Counsel to prosecute a defective medical device claim stemming from a surgically implanted device that Debtor received on April 4, 2005 (the "Claim"). Decl. of Caroline Maida, Doc. #33. Special Purpose Counsel has represented Debtor for many years, is familiar with the Claim, and principally litigates claims involving insurance companies and medical device manufacturers. Decl. of James Salven, Doc. #32; Decl. of Caroline Maida, Doc. #33.

Trustee did not request prior judicial approval to employ Special Purpose Counsel because Debtor did not disclose the Claim in the bankruptcy petition or schedules. Schedule B. Doc. #1; Mot., Doc. #30. Special Purpose Counsel never notified Trustee of the Claim because Debtor did not inform them of the bankruptcy filing. Decl. of Kurt Arnold, Doc. #34; Decl. of Avram Blair, Doc. #35. Trustee was notified of the pending litigation by the settlement administrator when the device manufacturer made an offer of $55,000 to resolve the Claim (the "Offer"). Doc. #33. Once notified of the Claim, Trustee moved to re-open the case. Doc. #33. The Offer has not been accepted and remains subject to lien clearance. Doc. #33. Trustee requests retroactive employment for Special Purpose Counsel allowing Special Purpose Counsel to search for and resolve any medical liens before accepting the Offer. Decl. of James Salven, Doc. #32. The bankruptcy estate will net an estimated $24,236.29 from settlement proceeds. Mot., Doc. #30.

This court finds that Trustee's explanation for the delay in filing the initial employment application establishes the existence of exceptional circumstances, particularly since Trustee was not aware of the Claim and Special Purpose Counsel was not aware of Debtor's chapter 7 bankruptcy. Further, Special Purpose Counsel's settlement of the Claim will benefit the bankruptcy estate by bringing in an estimated $24,236.29.

Accordingly, this motion is GRANTED.

10. 12-19058-A-7 **IN RE: VALERIE LOMBRANA**
FW-2

MOTION TO AVOID LIEN OF CITIBANK, (SOUTH DAKOTA) NA
6-1-2021 [27]

VALERIE LOMBRANA/MV
GABRIEL WADDELL/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.

Valerie Susan Lombrana ("Debtor"), the chapter 7 debtor, 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 Citibank (South Dakota) N.A. ("Creditor") on Debtor's residential real property commonly referred to as 6570 N. Fruit Ave., Fresno, CA 93711 (the "Property"). Doc. #27; Am. Schedule C, Doc. #23.

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)).

Debtor filed the chapter 7 case on October 29, 2012. Doc. #1. A judgment was entered against Valerie S. Lombrana in the amount of $13,077.93 in favor of Creditor on October 3, 2011. Ex. A, Doc. #30. The abstract of judgment was recorded pre-petition in Fresno County on January 9, 2012. Ex. A, Doc. #30. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #30. The Property also is encumbered by two senior liens, two deeds of trust recorded on May 10, 2007 in favor of Countywide Home Loans, Inc. in the amounts of $267,410.00 and $74,332.00. Schedule D, Doc. #1; Decl. of Debtor, Doc. #29. Debtor claimed an exemption of $100.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #23.

Debtor asserts a market value for the Property as of the petition date at $228,365.00. Schedule A, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$13,077.93
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$341,742.00
Amount of Debtor's claim of exemption in the Property	+	$100.00
	sum	$354,919.93
Value of Debtor's interest in the Property absent liens	-	$228,365.00
Amount Creditor's lien impairs Debtor's exemption	=	$126,554.93

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.