

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, November 4, 2020
Place: Department B - 510 19th Street
Bakersfield, 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.

9:00 AM

1. [20-12104](#)-B-13 IN RE: ROBERT WEAVER AND VURLA WITTMAN
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-28-2020 [31]

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection 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 objection will be SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded as to the debtors on September 22, 2020 and the chapter 13 trustee ("Trustee") filed this objection on September 28, 2020, which is within the 30-day timeframe. Doc. #31.

The Eastern District has held that "the 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 [relevant California law] and the extent to which that exemption applies." *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

Trustee objects to the debtors' exemption for a 2010 Peterbuilt 379 ("Property") in the amount of \$8,725.00 claimed exempt under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(6). See Doc. #1, Schedule A/B at ¶ 3.3; Schedule C at ¶ 2.2. Trustee contends that the debtors' sole income is Social Security and pension or retirement income. *Id.*, Schedule I at ¶¶ 8e, 8g. No business income is scheduled. *Id.* at ¶ 8a. Trustee states that the debtors testified at the § 341 hearing on July 28, 2020 that they have not operated a business since 2019. Doc. #33.

C.C.P. § 703.140(b)(6) provides that the debtor may exempt "[t]he debtor's aggregate interest, not to exceed [\$8,725.00] in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor."

The burden of proof is on the debtor claiming the exemption. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-7 (B.A.P. 9th Cir. 2016); *In re Pashenee*, 531 B.R. at 839. The debtors did not file a response, which was due no later than October 21, 2020.

In the absence of any opposition or opposing evidence, the court finds that the Property is no longer necessary to carry out a business or trade because the debtors have not operated any business or trade since 2019. Therefore, this objection will be SUSTAINED.

2. [19-13907](#)-B-13 **IN RE: JAVIER JAIME AND LILIANA LUIS**
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 6
9-15-2020 [[91](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See C.C.P. §§ 312, 337(1), & 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) upon objection from a party in interest. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000). The last transaction on the account according to the evidence was on September 5, 2012, which is well past the four-year mark in the statute of limitations. See claim no. 6 at 6.

Therefore, claim no. 6 filed by Cavalry SPV I, LLC, will be disallowed in its entirety.

3. [20-10319](#)-B-13 **IN RE: OLGA AGUILAR**
[RSW-3](#)

MOTION TO SELL
10-14-2020 [\[88\]](#)

OLGA AGUILAR/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 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 concerns a proposed sale of property of the estate other than in the ordinary course of business, and therefore was properly set for hearing on at least 21 days' notice as required by Fed. R. Bankr. P. 2002(a)(2).

The debtor, Olga Aguilar ("Debtor"), asks this court for authorization to sell a parcel of residential real property located at 5731 Judd Street, Bakersfield, CA 93314 ("Property") to Raquel Garza ("Proposed Buyer").

This motion may be granted.

11 U.S.C. § 363(b)(1) allows the chapter 13 trustee 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 property of the estate 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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *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 [debtor]'s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he [debtor]'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); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016).

Here, Debtor wishes to sell Property to Proposed Buyer for \$300,000.00. Doc. #89. Property is encumbered by a deed of trust in favor of Nations Direct Mortgage ("Nations Direct") in the amount of approximately \$118,719.59. Doc. #90. Debtor listed the Property in her Schedule A/B with a value of \$275,000.00. Doc. #17, Schedule A/B at ¶ 1.2. Debtor exempted \$30,824.00 in equity under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5), along with \$1.00 in an interest in another property in Bakersfield. *Id.*, Schedule C. Nations Direct is listed on Schedule D. *Id.*, Schedule D at ¶ 2.5. Nations Direct filed a proof of claim in the amount of \$118,719.59 on March 9, 2020. See claim no. 6.

Proposed sale price of Property		\$300,000.00
Amount of first mortgage to be paid off	-	\$118,719.59
Amount of Debtor's claimed exemption in the Property under C.C.P. § 703.140(b)(5)	-	\$30,824.00
Broker Commission (estimated 6% of sale price)	-	\$18,000.00
Costs of sale	-	?
Net payable to the estate	<	~\$132,456.41

The sale of the Property appears to be in the best interests of the estate because it will provide cash flow to the trustee to satisfy claims of creditors. The sale appears to be supported by a valid business judgment and proposed in good faith because the proposed sale price is higher than the listed value for the Property at the time the bankruptcy was filed. See Doc. #17, Schedule A/B. Debtor's judgment appears to be reasonable and will be given deference.

However, it is unclear whether Proposed Buyer is an insider with respect to Debtor. Nothing in the record indicates that Proposed Buyer is an insider. Proposed Buyer does not appear to be a creditor of Debtor because she is not included on the master address list. Doc. #4. The court will inquire at the hearing whether Proposed Buyer is an insider and therefore subject to heightened scrutiny.

Additionally, the court will inquire about the proposed payout for this sale. The court notes that no motions to employ professionals have been filed in this case. The motion did not provide any information about whether brokers were employed, and if so, the amount of commission they would receive. The motion was silent on an estimate for costs of sale, tax withholding, or payout on Debtor's claimed exemption or on claims held by secured creditors, such as Nations Direct.

Presumably, if Proposed Buyer purchases the Property for \$300,000.00, Nations Direct might be paid to satisfy its claim from the proceeds and there could be \$181,280.41 remaining. Debtor claimed an exemption of \$30,824.00, brokers will expect commission, and there will be costs of sale. If brokers were employed for both Debtor and Proposed Buyer, and if they split a 6% commission on the sale price, 3% each, \$9,000.00 would go to each broker for a total of \$18,000.00. If Debtor's claimed exemption is also paid out, there may be \$132,456.41 remaining before costs of sale. What amount of net proceeds will be paid to the estate?

The court will inquire at the hearing about:

- (1) Whether Proposed Buyer has an insider relationship status with respect to Debtor;
- (2) Whether secured creditor Nations Direct's claim of \$118,719.59 will be paid from the sale proceeds;
- (3) Whether Debtor's exemption of \$30,824.00 will be paid from the sale proceeds;
- (4) Whether brokers or agents were used, and if so, the amount these brokers or agents will be compensated from the sale proceeds;
- (5) The amount of anticipated costs of sale to be paid from the sale proceeds; and
- (6) The amount of anticipated net sale proceeds to be paid to the estate.

If Debtor provides satisfactory clarification, then this motion will be GRANTED, and the sale will proceed subject to higher and better bids. If opposition is presented at the hearing, the court will consider the opposition, consider whether further hearing is proper, and continue if a further hearing is necessary.

Any order approving the sale will need to be signed by the Trustee. Further, the order will require the Trustee be given and approve a seller's final closing statement before the sale is completed.

Any party wishing to overbid must be present at the time of the hearing. No warranties or representations are included with the Property; it will be sold "as-is."

4. [19-13021](#)-B-13 **IN RE: ANNA SOLIS**
[RSW-1](#)

MOTION TO MODIFY PLAN
9-14-2020 [[55](#)]

ANNA SOLIS/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [19-12929](#)-B-13 **IN RE: HERBERT/CECILIA JUAREZ**
[RSW-2](#)

MOTION TO MODIFY PLAN
9-30-2020 [[56](#)]

HERBERT JUAREZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING BY TRUSTEE WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 chapter 13 trustee timely filed opposition but withdrew that opposition on October 8, 2020. See Doc. #64, #68.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. [17-14638](#)-B-13 **IN RE: TERESITA ERON**
[PK-2](#)

MOTION TO MODIFY PLAN
9-8-2020 [[57](#)]

TERESITA ERON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Continued to December 2, 2020 at 9:00 a.m.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") timely opposed the debtor's fully noticed motion to modify a chapter 13 plan. Doc. #64. Trustee contends that the plan: (1) provides for payments more than 7 years after the time that the first payment was due; (2) fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured claim at least in the amount that would have been paid under chapter 7; and (3) the debtor will not be able to make all plan payments based on Schedules I and J that were filed in December 2017. *Id.*

The debtor, Teresita Eron ("Debtor"), responded stating that the plan: (1) proposes to pay one creditor by month 77 and does not exceed 7 years; (2) does fail to provide for each allowed unsecured claim in at least the amount that would have been paid under chapter 7 and therefore proposes to extend the plan from 77 months to 82 months; and (3) is feasible because Debtor's amended Schedules I and J reflect an ability to afford the proposed plan payments. Doc. #67.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve any further response supported by admissible evidence not later than November 18, 2020. Trustee shall file and serve a reply, if any, by November 25, 2020.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing any further response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 25, 2020. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [20-12861](#)-B-13 **IN RE: TODD/TINA ROTH**
[ALG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING
LLC
10-14-2020 [[27](#)]

LAKEVIEW LOAN SERVICING LLC/MV
D. GARDNER/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Creditor LakeView Loan Servicing, LLC ("Creditor"), objects to plan confirmation on grounds that it fails to provide for the payment of post-petition monthly installments to Creditor. Doc. #27.

This objection will be OVERRULED for failure to comply with the Local Rules of Practice ("LBR") and independently, on the merits.

LBR 3015-1 provides, in relevant part:

Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, debtor's attorney, and the trustee within **seven (7)** days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). . .

LBR 3015-1(c)(4) (*emphasis added*).

The first meeting of creditors was held and concluded as to the debtors on October 6, 2020. See Doc. #18. This objection was filed on October 14, 2020. Doc. #27. October 14, 2020 is 8 days after October 6, 2020.

Fed. R. Bankr. P. 9006(a)(1) contains the rules for computing any time period specified in these rules, the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute silent as to the method of computed time. The LBR are silent as to how time is computed and therefore Fed. R. Bankr. P. 9006(a) applies.

When the period of time is stated in days or longer, the method for computing time deadlines is as follows:

- (A) exclude the day of the event that triggers the period;
- (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

- (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Fed. R. Bankr. P. 9006(a)(1). Here, there was a legal holiday on October 12, 2020 (Columbus Day, federally). However, the last day to file a LBR 3015-1(c)(4) objection was October 13, 2020. Under Fed. R. Bankr. P. 9006(a)(1)(B), October 12, 2020 is an "intermediate legal holiday," and so Fed. R. Bankr. P. 9006(a)(1)(C) does not apply. Therefore, this objection was not timely filed within the 7-day window imposed by LBR 3015-1(c)(4).

Additionally, Creditor asserts that the plan fails to provide for post-petition monthly installments as required under its note and deed of trust. Creditor is secured by a parcel of residential real property located at 15420 Lake Berryessa Court, Bakersfield, CA 93314 ("Property"). Doc. #29. Property is properly listed on Schedule A/B. Doc. #25. However, Schedule D lists Arvest Central Mortgage Company, presumably Creditor's predecessor in interest, as the creditor holding a secured claim on Property. Doc. #1. Creditor filed claim no. 6 in the amount of \$320,530.66 on October 29, 2020. See Claim no. 6.

A secured creditor's claim need not be "provided for" by the plan. If a claim is provided for by the plan, § 1325(a)(5) governs its treatment. There is nothing in §§ 1322 or 1325 requiring that a secured creditor's claim be "provided for" in the plan.

Second, section 3.11(b) of the plan states that a secured creditor whose claim is not provided for may seek stay relief. See Doc. #15.

Third, section 3.01 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount to be repaid under the plan. *Id.* If the plan is confirmed, Creditor may still obtain stay relief.

For the foregoing reasons, this objection will be OVERRULED.

8. [18-10575](#)-B-13 **IN RE: NORMA FERNANDEZ**
[RSW-4](#)

MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR
9-23-2020 [[120](#)]

NORMA FERNANDEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice to filing a motion augmenting the record.

ORDER: The court will issue the order.

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)

On August 28, 2020, Debtor Norma Fernandez died without a will or trust and is survived by two children. Doc. #122.

Debtor's daughter, Andrea Fernandez ("Movant"), asks this court to be substituted as successor of Debtor's estate, allow administration of the case to proceed, and waiver of filing a post-petition financial education certificate under § 1328(g) and a certification that the requirements of § 1328(a)-(f) have been met. Doc. #120.

This motion will be DENIED.

LBR 1016-1 states:

(a) In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

The Notice of Death may be combined with the single motion permitted by paragraph (b) of this Rule. . .

. . .

(b) When the debtor has died or has become incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P. 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bankr. P. 1016];
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

LBR 1016-1. Pursuant to LBR 1016-1, Movant and Debtor's counsel ask the court to substitute Movant in for Debtor as the representative or successor to the deceased and to allow for continued administration of this chapter 13 case. Doc. #120. Movant also asks for waiver of the post-petition financial education requirement for entry of discharge under 11 U.S.C. § 1328(g) and waiver of the certification requirements for entry of discharge required by § 1328(a)-(f). *Id.*

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016. Here, Debtor filed under chapter 13 on February 22, 2018. Doc. #1. The chapter 13 plan was confirmed on March 1, 2019 and provided for 60 months of payments. Doc. #107. Movant filed a declaration requesting to substitute as Debtor's successor and to allow for continued administration of the case. Doc. #122.

No party in interest has filed opposition to this motion. But the court cannot grant the relief requested because Movant has failed to make the necessary factual showing.

Fed. R. Bankr. P. 1016 states that if a debtor dies during a chapter 13 case, then the case may be dismissed. The case may continue if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best interest of the parties.

There is no evidence supporting this motion other than Debtor died, one of the debtor's surviving daughters wants to be substituted as a successor, and requests that the court waive the post-filing education and § 1328 certification requirements. There is no record supporting that further administration is possible and that it would be in the best interest of all parties.

The real question is: why not dismiss the case?

This motion will be DENIED WITHOUT PREJUDICE.

9. [18-10876](#)-B-13 **IN RE: RODNEY/TRACI JONES**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
10-14-2020 [[36](#)]

PATRICK KAVANAGH/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.

The motion will be GRANTED. Debtors' counsel, The Law Office of Patrick Kavanagh ("Movant"), requests fees of \$960.00 and costs of \$0.00 for a total of \$960.00 for services rendered from March 22, 2020 through November 4, 2020. This is Movant's second and final fee application. Movant previously requested interim compensation (PK-1) in the amount of \$5,070.00, of which \$1,000.00 was paid by a retainer and \$4,070.00 was paid through the plan. See Doc. #35.

The chapter 13 plan reserved \$7,000.00 for attorney's fees to be paid through the plan. Doc. #6 at ¶ 3.05. With approval of this final fee application, Movant's fees will total \$6,030.00 for completion of this case, which is less than the allocated attorney's fees of \$7,000.00 in the plan.

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) Discharge and case closing; (2) Case administration; and
(3) Preparation of this fee application. Doc. #36. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

This motion will be GRANTED. Movant shall be awarded \$960.00 in fees and \$0.00 in costs. The court also finds the total compensation awarded counsel in this case to be reasonable and necessary.

10. [19-10588](#)-B-13 **IN RE: RUBEN/MARIA GARCIA**
[PK-3](#)

MOTION TO AVOID LIEN OF J & J SPORTS PRODUCTIONS, INC.
9-10-2020 [[39](#)]

RUBEN GARCIA/MV
PATRICK KAVANAGH/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 debtors, Ruben and Maria Garcia ("Debtors"), filed this motion to avoid a judicial lien encumbering residential real property located at 457 Franklin Street, Arvin, CA 93203 ("Property") in favor of J & J Sports Productions, Inc. ("Creditor"), in the sum of \$3,300.00. Doc. #39.

This motion will be GRANTED.

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

A judgment was entered against Debtors in favor of Creditor in the sum of \$3,300.00 on September 15, 2017. Doc. #43, Ex. D. The

abstract of judgment was recorded with Kern County on October 11, 2017 and attached to Property. *Id.*

On the petition date, Property had an approximate value of \$145,000.00. Doc. #43, Ex. A at ¶ 1.1. The unavoidable liens encumbering Property totaled \$73,613.00 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage (Doc. #1, Schedule D at ¶ 2.3) and a second deed of trust in favor of Keep Your Home California (Doc. #1, Schedule D at ¶ 2.2). Debtors claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730(a)(3) in the amount of \$71,387.00. Doc. #43, Ex. B at ¶ 2.

Fair Market Value of the Property on the date of filing		\$145,000.00
Total amount of all other liens on the Property on the date of filing (excluding judicial liens)	-	\$73,613.00
Amount of Equity Available in Property	=	\$71,387.00
Amount of Debtor's claimed exemption in the Property under C.C.P. § 704.730	-	\$71,387.00
Amount of Creditor's Judicial Lien	-	\$3,300.00
Extent of impairment of Debtor's exemption in the Property	=	(\$3,300.00)

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 Debtors' exemption of the real property and it will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

The court notes that Debtors' memorandum of points and authorities (Doc. #42) incorrectly states the value of the Property is \$190,000.00. Also, Debtors' motion (Doc. #39) does not mention the second deed of trust in favor of Keep Your Home California. The court relied on the evidence submitted (Doc. #1, #41, #43) and not the evidently erroneous statements of counsel, which, fortunately here, are not evidence. If the value of Property were in fact \$190,000.00 or if the second mortgage did not exist, there would be equity available for Creditor to attach its lien such that Debtors' exemption would not be impaired, and this judicial lien would not be avoidable.

11. [19-10588](#)-B-13 **IN RE: RUBEN/MARIA GARCIA**
[PK-4](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
9-10-2020 [[45](#)]

RUBEN GARCIA/MV
PATRICK KAVANAGH/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 debtors, Ruben and Maria Garcia ("Debtors"), filed this motion to avoid a judicial lien encumbering residential real property located at 457 Franklin Street, Arvin, CA 93203 ("Property") in favor of Capital One Bank (USA), N.A. ("Creditor"), in the sum of \$6,185.31. Doc. #45.

This motion will be GRANTED.

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

A judgment was entered against Debtors in favor of Creditor in the sum of \$6,185.31 on August 14, 2018. Doc. #49, Ex. D. The abstract

of judgment was recorded with Kern County on August 27, 2018 and attached to Property. *Id.*

On the petition date, Property had an approximate value of \$145,000.00. Doc. #49, Ex. A at ¶ 1.1. The unavoidable liens encumbering Property totaled \$73,613.00 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage (Doc. #1, Schedule D at ¶ 2.3) and a second deed of trust in favor of Keep Your Home California (Doc. #1, Schedule D at ¶ 2.2). Debtors claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730(a)(3) in the amount of \$71,387.00. Doc. #49, Ex. B at ¶ 2.

Fair Market Value of the Property on the date of filing		\$145,000.00
Total amount of all other liens on the Property on the date of filing (excluding judicial liens)	-	\$73,613.00
Amount of Equity Available in Property	=	\$71,387.00
Amount of Debtor's claimed exemption in the Property under C.C.P. § 704.730	-	\$71,387.00
Amount of Creditor's Judicial Lien	-	\$6,185.31
Extent of impairment of Debtor's exemption in the Property	=	(\$6,185.31)

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 Debtors' exemption of the real property and it will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

The court notes that Debtors' memorandum of points and authorities (Doc. #48) incorrectly states the value of the Property is \$190,000.00. The court relied on the evidence submitted (Doc. #1, #47, #49) and not the evidently erroneous statements of counsel, which, fortunately here, are not evidence. If the value of Property were in fact \$190,000.00, there would be equity available for Creditor to attach its lien such that Debtors' exemption would not be impaired, and this judicial lien would not be avoidable.

12. [20-12688](#)-B-13 **IN RE: MARY HELEN BARRO**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
9-16-2020 [[22](#)]

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection was filed and served pursuant to Local Rule of
Practice ("LBR") 3015-1(c)(4).

Wilmington Savings Fund, FSB, as trustee for Secured Creditor BCAT
2018-20TT, as serviced by Fay Servicing, LLC ("Creditor"), filed
this objection because the plan fails to provide for the curing of
the default on Creditor's claim and the plan is not feasible. Doc.
#22. Creditor filed a proof of claim on September 8, 2020. See Claim
no. 3.

Debtor Mary Helen Barro ("Debtor") timely responded stating that the
plan provides for payments in 2 categories, post-petition monthly
payments and an arrearage dividend. Doc. #33. The plan provides for
payment of \$1,363.91 plus \$406.50, respectively, per month. Doc. #8.
Debtor contends that this payment throughout the plan will be
sufficient to pay the amounts listed in Creditor's proof of claim.
Doc. #33.

Since this objection was filed, Debtor's plan was confirmed on
October 9, 2020. See Doc. #39. Dane Exnowski, attorney for Creditor,
appears to have consented to the chapter 13 plan. *Id.* at 3.

Accordingly, this objection will be OVERRULED AS MOOT because the
plan has already been confirmed and Creditor consented to the plan.

10:00 AM

1. [20-11701](#)-B-7 **IN RE: BRENDA PARKER**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-2020 [[17](#)]

SANTANDER CONSUMER USA INC./MV
WILLIAM OLCOTT/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 9/15/20

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

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

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 movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2013 Nissan Maxima ("Vehicle"). Doc. #17.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted as to any act other than as to property of the estate. The debtor's discharge was entered on September 15, 2020. Doc. #15. Therefore, the automatic stay terminated with respect to the debtor on September 15, 2020. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 6 complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent at least \$3,432.47. Doc. #20.

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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$8,825.00 and debtor owes \$17,221.19. Doc. #20, #22.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset, and the debtor has indicated in her Statement of Intention an intent to surrender the Vehicle.

2. [20-12343](#)-B-7 **IN RE: DARYL SOWERS**
[RSW-1](#)

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA
10-7-2020 [[13](#)]

DARYL SOWERS/MV
ROBERT WILLIAMS/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 debtor, Daryl Sowers ("Debtor"), filed this motion to avoid a judicial lien encumbering residential real property located at 1904 Kinross Court, Bakersfield, CA 93309 ("Property") in favor of First National Bank of Omaha, N.A. ("Creditor"), in the sum of \$14,071.95. Doc. #13.

This motion will be GRANTED.

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

A judgment was entered against Debtor in favor of Creditor in the sum of \$14,071.95 on August 18, 2016. Doc. #16, Ex. D. The abstract of judgment was recorded with Kern County on September 20, 2016 and attached to Property. *Id.*

On the petition date, Property had an approximate value of \$268,701.00. Doc. #16, Ex. A at ¶ 1.1. The unavoidable liens encumbering Property totaled \$146,284.00 on that same date, consisting of a first deed of trust in favor of AltaOne FCU. Doc. #16, Ex. C at ¶ 2.1. Debtor claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730(a)(3) in the amount of \$175,000.00. Doc. #16, Ex. B at ¶ 2.

Fair Market Value of the Property on the date of filing		\$268,701.00
Total amount of all other liens on the Property on the date of filing (excluding judicial liens)	-	\$146,284.00
Amount of Equity Available in Property	=	\$122,417.00
Amount of Debtor's claimed exemption in the Property under C.C.P. § 704.730	-	\$175,000.00
Amount of Creditor's Judicial Lien	-	\$14,071.95
Extent of impairment of Debtor's exemption in the Property	=	(\$66,654.95)

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 Debtor's exemption of the real property and it will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

The court notes that the motion (Doc. #13) incorrectly stated that Debtor exempted the Property pursuant to C.C.P. § 703.140(b)(5). Schedule C clarified that the actual claimed exemption was under C.C.P. § 704.730(a)(3). Doc. #16, Ex. B. If Debtor claimed an exemption under § 703.140 instead of § 704.730, there would be equity available for Creditor to attach its lien such that Debtor's exemption would not be impaired, and this judicial lien would not be avoidable.

3. [20-12955](#)-B-7 **IN RE: EDNA VAN TASSEL**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2020 [[11](#)]

FORD MOTOR CREDIT COMPANY
LLC/MV
R. BELL/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Ford C-Max ("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 an 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 debtor has failed to make at least 2 pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$786.30. Doc. #14, #17.

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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$14,250.00 and debtor owes \$14,973.30. Doc. #14, #15, #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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 debtor has failed to make at least two pre-petition payments to Movant and the Vehicle was surrendered to Movant on July 27, 2020.

4. [19-13976](#)-B-7 **IN RE: JOHNNY RODRIGUEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-1-2020 [[30](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
SUSAN SALEHI/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 2/11/20

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

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

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 movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Malibu ("Vehicle"). Doc. #30.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted as to any act other than as to property of the estate. The debtor's discharge was entered on February 11, 2020. Doc. #20. Therefore, the automatic stay terminated with respect to the debtor on February 11, 2020. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 8.36 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$3,897.70, with a partial payment made December 29, 2019 and no regular payments made from January 29, 2020 through August 29, 2020. Last payment received from debtor was May 21, 2020. Doc. #32. The court notes that debtor entered into a Reaffirmation Agreement with Movant on December 20, 2019. Doc. #17.

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 debtor is in chapter 7. The Vehicle is valued at \$16,900.00 and debtor owes \$27,613.85. Doc. #30, #32, #33.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset, and the debtor has failed to make at least 8.36 post-petition payments.

11:00 AM

1. [11-63503](#)-B-7 **IN RE: FRANK/ALICIA ITALIANE**
[12-1053](#) [FLI-2](#)

MOTION TO EXTEND TIME TO APPEAL JUDGMENT
10-8-2020 [[214](#)]

JEFFREY CATANZARITE FAMILY
LIMITED PARTNERSHIP ET V. LANE
GILAD BERKOWITZ/ATTY. FOR MV.
OST 10/9/20

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 court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Debtor and Defendant Frank Lane Italiane, Jr. ("Defendant"), filed this motion seeking an extension of time to appeal the judgment in this adversary proceeding because excusable neglect prevented him from filing a notice of appeal or request for extension of time. Doc. #214. Defendant requests that the court enter an order granting an extension of time until October 22, 2020 to file a notice of appeal. Doc. #220. Defendant filed his notice of appeal on October 8, 2020, which was modified on October 13, 2020. See Doc. #216, #230.

This motion was filed with an order shortening time, which provided for notice to be served on all parties in interest by close of business on October 13, 2020. See FLI-1; Doc. #228.

The first notice of hearing incorrectly uses the wrong hearing location and states that written opposition must be filed and served at least fourteen days before the hearing and failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of that untimely opposition. Doc. #215. The amended notice of hearing still uses the wrong hearing location, but states that opposition may be presented at the hearing. Doc. #243. The order shortening time states that opposition may be presented at the hearing. Doc. #228. Opposition will be permitted at the hearing and will not be precluded if it was not filed or served before the hearing. Though here, opposition was filed and served.

Plaintiffs and Creditors Eron Martin, Jeffrey Catanzarite Family Limited Partnership, Wolfgang Greinke as Trustee of the Greinke

Family Trust, Wesley Larsen, Brian Hicks as Trustee of the Hicks Family Trust UDT 10/01/2001, Steven Nazaroff, individually and as Trustee of the Steven Nazaroff Retirement Trust, The Nazaroff Family Partnership, Tricia Prentice, Robert Strohbach as Trustee of the Strohbach Living Trust, Cathy Galie-Lewis, Leason V. "Chet" Leeds as Trustee of the Leason V. Leeds Trust, Lynae Arnold, and Liz Malone as Trustee of the Malone Family Trust (collectively "Plaintiffs") filed an objection contending that Defendant fails to establish that his delay satisfies the elements of excusable neglect. Doc. #245.

On September 17, 2020, this court entered judgment against Defendant after granting Plaintiffs' motion for summary judgment. See Doc. #207, #208. Under Fed. R. Bankr. P. 8002(a)(1), the deadline to file the notice of appeal was October 1, 2020 because it is 14 days after September 17, 2020.

Defendant determined that he wished to appeal the judgment against him, but he no longer could afford to be represented by counsel and intended to represent himself in the appeal. Doc. #219. The court notes that Defendant's counsel, Gilad Berkowitz, has a pending motion to withdraw as attorney, which is scheduled to be heard on November 12, 2020. See GRB-1; Doc. #222.

Defendant prepared his own notice of appeal and fee waiver application. Doc. #219. Defendant states that he believed he would be able to file the appeal documents on his own because he had previously filed state court documents through a filing service, OneLegal. *Id.* During his attempt to file the documents using the service, Defendant learned that OneLegal could not be used to file documents with the bankruptcy court. *Id.* Next, Defendant attempted to log on to the court's electronic filing system to file the notice of appeal on October 1, 2020 but discovered that he was unable to file documents electronically directly with the bankruptcy court. *Id.* Finally, Defendant attempted to mail the documents, but "it was too late in the day" for mail to be out by close of business October 1, 2020. *Id.* at ¶ 7. Defendant now seeks additional time to file a notice of appeal and asserts excusable neglect.

A party seeking to appeal a bankruptcy court judgment must file a notice of appeal within 14 days after the entry of judgment. Fed. R. Bankr. P. 8002(a)(1). The notice of appeal must be filed with the bankruptcy court clerk. Fed. R. Bankr. P. 8003(a)(1). A party may ask the bankruptcy court to extend the time of filing a notice of appeal by filing a motion within that same 14-day period after entry of judgment. Fed. R. Bankr. P. 8002(d)(1)(A). If neither a notice of appeal nor a motion extending the time is filed during that 14-day period, a party may obtain an extension of the deadline by filing a motion within 21 days after the 14-day time period for appeal, provided the movant can show excusable neglect for missing the original 14-day deadline. Fed. R. Bankr. P. 8002(d)(1)(B).

The Supreme Court has stated that a determination on the types of neglect which are excusable is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). These include "the danger of prejudice to the debtor,

the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

"The Ninth Circuit specifically has held that the *Pioneer* standard for Rule 9006(b)(1) is used in applying Rule 8002(d)(1)(B)." *In re Ateco Inc.*, 529 B.R. 298, 301 (Bankr. C.D. Cal. 2015) (citing *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004); *ZiLOG v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996 (9th Cir. 2006)).

When a party fails to meet a deadline, courts can determine whether there is "excusable neglect" using a four-factor equitable test: "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *In re Ateco Inc.*, 529 B.R. at 301 (citing *Pioneer*, 507 U.S. 395). The court is permitted to take "account of all relevant circumstances surrounding the party's omission." *Id.* The moving party has the burden to establish excusable neglect. *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627, 631 (B.A.P. 9th Cir. 1995).

Under the *Pioneer* factors, Defendant contends: (1) Plaintiffs will not be prejudiced by the extension; (2) the delay will be minimal because the notice of appeal was filed on October 8, 2020; (3) the reason for the delay was that Defendant has filed documents in California Superior Court on multiple occasions and it did not occur to him that filing in federal bankruptcy court would have different rules preventing him from using the same filing methodology that previously worked in state court; and (4) Defendant acted in good faith. Doc. #220. Defendant contends that he is not "trying to play games or gain some tactical advantage by seeking an extension or delay." *Id.* Defendant is not a sophisticated, trained attorney that simply ignored or misunderstood a rule, he is a *pro se* defendant who properly prepared a notice of appeal, but was "tripped up by the complicated nuances between electronic filing procedures between the state and federal courts." *Id.*

On the other hand, Plaintiffs argue that the *Pioneer* factors weigh against Defendant and therefore this motion should be denied. Doc. #245. First, Plaintiffs contend that they will be prejudiced because Defendant's motion was filed seven days after the deadline to appeal and after the adversary proceeding was closed. Plaintiffs were provided a final accounting by their attorneys and were ready to move onto other matters. Plaintiffs did not appreciate that they were not contacted by Defendant via phone or email on the day he knew he missed the deadline to file a notice of appeal, and described the discovery that he had filed the notice of appeal a week later as "emotional whiplash." *Id.* at 9.

Plaintiffs contend the litigation has already been resolved on the merits: retrying the same issues when there is a well-developed record establishing Defendant's agreement to the settlement terms and the stipulated judgment is wasteful and would prejudice Plaintiffs because it subjects them to "duplicative litigation." *Id.*

But Plaintiffs primary argument is focused on the third element: the reason for the delay. Plaintiffs allege that Defendant should not be excused from his neglect because he did not reasonably misinterpret a rule or statute, "he simply did not read the Court's procedures for filing pleadings at all." *Id.* at 7. Plaintiffs cite the Court's website frequently asked questions ("FAQ") and the answer to question 16, "How do I 'file' a document with the court?" The FAQ states: "[u]nrepresented persons, also referred to as *pro se* litigants or as persons appearing in *propria persona*, are excepted from electronic filing and must file and serve paper documents instead." See www.caeb.uscourts.gov/FAQ.aspx. Plaintiffs argue that Defendant waited until the last day of the deadline to try to file his notice of appeal and had he not procrastinated, he would have known in advance that he could not file documents with the bankruptcy court electronically. Doc. #245.

Plaintiffs claim that Defendant was well aware of the ruling entered on September 10, 2020, the judgment entered on September 17, 2020, and the October 1, 2020 deadline to file the appeal, but that he waited until the last minute to attempt to file and so there was no excusable neglect. *Id.*

The two primary cases relied upon by Plaintiffs involve situations where a party's procrastination barred a finding of excusable neglect: *In re Ateco, Inc.*, 529 B.R. at 300 (finding reason for delay favored denial of extension of appeal deadline when movant's procrastination until day before deadline was real reason for missing deadline, not the issue he discovered upon taking action); *In re Chin Kun An*, 526 B.R. 24, 30-31 (Bankr. C.D. Cal. 2015)(finding no excusable neglect in a one-day late filing when counsel waited until the last day of a court-ordered deadline to file pleadings and then could not figure out how to electronically file, thereby missing deadline).

But Plaintiffs' examples involve cases where parties are represented by counsel. In *Ateco*, although not discussed in the published case, the procrastinating party seeking an extension of time to file a notice of appeal is the Debtor's former counsel, the Law Offices of John F.L. Hebb. See *Ateco, Inc. v. Hebb (In re Ateco, Inc.)*, 2014 Bankr. LEXIS 1553 at **2-3 (Bankr. C.D. Cal. Apr. 9, 2014). Likewise, in *In re Chin Kun An*, the procrastinating party was also represented by a trained and licensed attorney familiar with the local rules and filing procedures. *In re Chin Kun An*, 526 B.R. at 29-30. Here, although Defendant's counsel has not fully withdrawn yet, the motion is pending, set to be heard on November 12, 2020, and Defendant is "on his own" with respect to this appeal.

Plaintiffs note two other instances where Defendant filed documents while *pro se*: Defendant's Answer to the Complaint, filed on August 28, 2012; and a Status Conference Statement, filed on November 14, 2016. See Doc. #12, #26. While both documents were filed without the assistance of counsel, a lot has changed in four years and it is not unreasonable for Defendant to anticipate changes to the court's electronic filing procedure. Considering COVID-19 and state-wide shelter-in-place orders, much of our economy has recently transitioned to "work from home" and remote "teleworking." Given

District Court General Order 618 restricting "in court" appearances and "in person" document filing, it would seem reasonable for a layperson to expect to be able to file documents electronically from home. The concept of solely having to "file by mail" could seem almost archaic as a concept in the year 2020.

Lastly, Plaintiffs allege that Defendant is not acting in good faith, even suggesting that his motive for waiting until the last minute to file the appeal was to cause Plaintiffs uncertainty. Doc. #245 at n.3. Plaintiffs additionally cite Defendant's failure to follow proper procedures, such as failure to reopen the adversary proceeding after it has been closed; filing the motion *pro se* while represented because his counsel's motion to withdraw has not yet been adjudicated; stating incorrect hearing locations on the notice of hearing; purposefully causing confusion by filing this motion with an order shortening time while still setting it for at least 28 days' notice; and filing separate letters to the court without docket control numbers (Doc. #242), among other things. Plaintiffs describe Defendant as engaging in "procedural gymnastics" and posit that the litigation should have concluded in 2015. *Id.*

However, as to this element, Plaintiffs have not submitted sufficient evidence for this court to make a finding of bad faith. The Defendant's notice of motion was wrong—it contained the wrong hearing location. That does not equate to bad faith since at present, no hearings are conducted "live." All hearings are conducted by telephone unless otherwise ordered. No bad faith or prejudice is involved there.

Nor does failure to reopen the adversary proceeding equate to bad faith. No procedural significance is occasioned by "closing" the adversary proceeding. Had an appeal been pending, the closing of the adversary proceeding would not prevent the appellate court from ruling.

Ill-advised filing of a letter and submitting an order shortening time show unfamiliarity with certain procedures but not bad faith. Defendant is not benefitting with a "tactical advantage" by either of these mistakes. Quite simply, Defendant's appeal remaining pending does not amount to bad faith or prejudice. The court, not Defendant, set this hearing upon defendant's application for the order shortening time and provided Plaintiff an opportunity to respond. The request to permit the late filing of the appeal occurred after the expiration of the deadline. Plaintiff should be, and has been, heard on the issue. No prejudice or bad faith results.

Defendant's counsel's pending motion to be relieved as counsel was scheduled for hearing by Defendant's counsel. Defendant had no control over scheduling that hearing. That is not bad faith.

The court finds that Defendant's failure to timely file the notice of appeal was due to excusable neglect. Plaintiffs will not be prejudiced by this short extension of time because the delay is minimal. Defendant made a good faith effort to properly file the notice of appeal by the 14-day deadline. However, as Defendant has recently become unrepresented, he did not anticipate that he would

be unable to file the documents electronically. Defendant should not be permanently precluded from appellate review because he did not understand the court's electronic filing procedure.

As Judge Berzon explained in his concurring opinion in *Pincay*:

[W]hether neglect is "excusable" is the conclusion one reaches after considering the pertinent factors, not an independent element with moral content. *Pioneer* thus indicates that a district court may find neglect "excusable" if it is caught quickly, hurts no one, and is a real mistake, rather than one feigned for some tactical reason - even if no decent lawyer would have made that error. There is no linguistic flaw in terming such errors "excusable," meaning nothing more than "appropriate to excuse."

Pincay, 389 F.3d at 860 (Berzon, J., concurring) (emphasis in original). Here, Defendant provided a reason for his mistake. It was caught quickly, hurt no one, and appears to be a genuine mistake caused by Defendant's confusion as to the court's filing procedure. This court has discretion to excuse his mistake, which it will exercise.

Accordingly, due to Defendant's excusable neglect, the requested relief will be GRANTED pursuant to Fed. R. Bankr. P. 8002(d)(1)(B). The deadline to file the notice of appeal will be extended from October 1, 2020 to October 22, 2020. The notice of appeal (Doc. #216) filed on October 8, 2020 was filed within the extension period. It was filed with a motion to extend the 14-day deadline after entry of a judgment and within 21 days after the 14-day time period for appeal ended under Fed. R. Bankr. P. 8002(d)(1)(B).

2. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

FURTHER INTERIM PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.