

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 6, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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.

11:00 AM

1. [21-12444](#)-B-7 **IN RE: JESSE/LISA ATILANO**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
12-21-2021 [[18](#)]

NO RULING.

2. [21-12080](#)-B-7 **IN RE: SHELLEY BRUSKI**

PRO SE REAFFIRMATION AGREEMENT WITH M&T BANK
12-1-2021 [[19](#)]

NO RULING.

1:30 PM

1. [21-12313](#)-B-7 **IN RE: SYLVIA PASILLAS**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-22-2021 [\[14\]](#)

SANTANDER CONSUMER USA INC./MV
BENNY BARCO/ATTY. FOR DBT.
JOHN KIM/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.

Santander Consumer USA Inc. DBA Chrysler Capital ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Chrysler 300 ("Vehicle"). Doc. #14.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 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 4.97 payments. The movant has produced evidence that debtor is delinquent at least \$3,779.46. Docs. #17, #19.

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 \$29,250.00 and debtor owes \$34,911.57. Doc. #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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 4.97 payments to Movant and Movant obtained possession of the Vehicle pre-petition on September 20, 2021. No other relief is awarded.

2. [20-11334](#)-B-7 **IN RE: RICK/LINDA MILLER**
[PFC-1](#)

TRUSTEE'S FINAL REPORT
11-9-2021 [\[101\]](#)

D. GARDNER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted. The report is approved.

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

Chapter 7 trustee Peter L. Fear ("Trustee") filed the *Final Report* and requests final statutory compensation in the total amount of \$44,138.79 under 11 U.S.C. §§ 326, 330. Doc. #101. This amount consists of \$44,006.44 as statutory fees for services rendered to the estate \$132.35 in expenses for actual, necessary services for the benefit of the estate from April 14, 2020 through December 3, 2021. *Id.*

The request for final compensation will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Rick Joe Miller and Linda Susan Miller ("Debtors") filed chapter 7 bankruptcy on April 6, 2020. Doc. #1. Jeffrey M. Vetter was appointed as interim trustee on that same day. Doc. #2. Mr. Vetter rejected appointment as trustee on April 13, 2020. Doc. #16. On April 14, 2020, Trustee was appointed as interim trustee. Doc. #17. Trustee became permanent trustee at the first § 341 meeting of creditors on May 18, 2020. See docket generally.

Trustee administered the estate and made disbursements totaling \$815,128.87. Doc. #102. On November 9, 2021, Trustee filed the *Final Report*, which included this request for statutory compensation. Doc. #101. The Clerk issued an *Order Fixing Deadline for Filing Objections to Trustee's Final Report and Applicants for Final Compensation* that same day. Doc. #104. No party in interest objected.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$38,256.44 (5%) of the next \$765,128.87.

Doc. #102, at 5. These percentages comply with the restrictions imposed by § 326(a) with respect to total disbursements of \$815,128.87, totaling **\$44,006.44**. Trustee also requests reimbursement for **\$132.35** in expenses:

Claims Register (4 @ \$0.50)	\$2.00
Distribution (61 @ \$1.00)	+ \$61.00
Postage, Copies, Service	+ \$21.60
Miscellaneous	+ \$47.75
Total Costs	= \$132.35

Ibid. These combined fees and expenses total **\$44,138.79**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) employing professionals and selling real property; (3) seeking turnover of non-exempt cash and bank account funds; (4) reviewing and reconciling financial records and administering the estate; and (5) preparing the final report. Doc. #102. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$44,006.44 in statutory fees and \$132.35 in expenses as final compensation pursuant to §§ 326, 330.

3. [21-11134](#)-B-7 **IN RE: LARRY/SUSAN HAMPTON**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
12-9-2021 [[31](#)]

GRISELDA TORRES/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), the attorney employed by chapter 7 trustee Peter L. Fear ("Trustee"), seeks final compensation in the sum of \$2,655.65 under 11 U.S.C. § 330. Doc. #31. This amount consists of \$2,655.65 in fees as reasonable compensation and \$130.65 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from July 5, 2021 and December 9, 2021. *Id.*

Trustee has reviewed the application and supporting documents and consents to the proposed payment. Doc. #34.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Larry Hampton and Susan Ferren Hampton ("Debtors") filed chapter 7 bankruptcy on April 30, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on June 1, 2021. Doc. #4. Trustee moved to employ Applicant on July 8, 2021 under 11 U.S.C. § 327. Doc. #12. The court approved employment on July 19, 2021, effective July 1, 2021. Doc. #17. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applicant's services here were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders.

This is Applicant's first and final fee application. Applicant performed 8.50 billable hours of legal services at the following rates, totaling **\$2,525.00**:

Professional	Rate	Hours	Fees
Gabriel J. Waddell (2021)	\$330	5.70	\$1,881.00
Katie Waddell (2021)	\$230	2.80	\$644.00
Total Hours & Fees		8.50	\$2,525.00

Doc. #35, *Exs. B, C*. Applicant also incurred **\$130.65** in expenses:

Copying	\$63.30
Postage	+ \$67.35
Total Costs	= \$130.65

Ibid. These combined fees and expenses total **\$2,655.65**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) conflict review, preparing, and filing the employment application (FW-1); reviewing bankruptcy filings and schedules, and analyzing recovery of a transfer of debtors' interest in real property; (3) preparing a settlement agreement memorializing the agreement between the estate and debtors; (4) preparing, filing, and prosecuting a motion to approve settlement agreement (FW-2); and (5) preparing and filing this fee application (FW-3). *Id.*, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #34.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,525.00 in fees and \$130.65 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant \$2,655.65 for services rendered to and costs incurred for the benefit of the estate from July 5, 2021 and December 9, 2021.

4. [20-12037](#)-B-7 **IN RE: GURDIAL SINGH**
[ADJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GURDEEP GURDIAL SINGH
11-17-2021 [\[49\]](#)

JAMES SALVEN/MV
MARK HANNON/ATTY. FOR DBT.
ANTHONY JOHNSTON/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 with the stipulation attached as an exhibit. A copy of the original stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Gurpreet Gurdial Singh ("Defendant"), the son of Gurdial Singh ("Debtor"), pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #49.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Debtor filed chapter 7 bankruptcy on June 15, 2020. Doc. #1. In his *Statement of Financial Affairs*, Debtor reported that he sold a 2014 Honda Pilot to Carmax for \$17,000.00. Doc. #18. Debtor deposited the \$17,000 in Defendant's bank account. Doc. #51. Defendant is Debtor's

son. Trustee says that Defendant's bank account statements indicate that the sale proceeds were spent for his benefit.

On March 30, 2021, Trustee filed Adversary Proceeding No. 21-01017 against Defendant alleging the transfer of the sale proceeds to Defendant was either a fraudulent transfer or a preference.

Trustee and Defendant have executed a settlement agreement to expeditiously resolve the issues raised by the transfer.

Under the terms of the settlement agreement,

- a. Defendant shall pay \$5,000.00 to Plaintiff in full satisfaction of any and all claims Plaintiff might have against Defendant with respect to the transfer of sale proceeds and for Plaintiff's dismissal of the adversary proceeding against Defendant with prejudice.
- b. The above payment shall be made as follows: (i) Defendant shall make a one-time payment to Plaintiff in the amount of \$2,500.00 within seven business days of executing the settlement agreement; (ii) Defendant shall make eleven payments of \$200 per month by the first day of each month, commencing October 1, 2021; and (iii) Defendant shall make a final payment for the remaining balance of \$300 no later than 30 days after the last installment payment.

Doc. #52, *Ex. A*. In Recital E, Defendant represents under penalty of perjury that his annual income is less than \$40,000. *Id.* This is supported by Defendant's 2020 tax returns and bank statements, which show that he has limited funds, no income from investments, and modest income that is consumed by his regular and reasonable expenses. *Id.* The agreement also contains default provisions, mutual release, waivers, general provisions, and is conditioned on court approval. *Id.* The agreement was executed by Trustee and Defendant on August 30, 2021. *Id.* Trustee now seeks approval of the settlement agreement. Doc. #49.

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Trustee believes that the estate would likely prevail in in the adversary proceeding. Doc. #49. The transfer of the sale proceeds to Defendant contains many "badges of a fraudulent transfer," such as Debtor's insolvency, the immediate filing of the petition, and the lack of consideration given by Defendant. Defendant has informally claimed that his father owed him money. Trustee claims that if the transfer of the proceeds was to satisfy an antecedent debt, then it was a preference made within five days of the petition date to an insider. This factor weighs against approval of the settlement.
2. If Trustee succeeds in litigation, collection will be very difficult. Trustee states that Defendant's financial documents coupled with his representations under penalty of perjury demonstrate that he has limited income and assets. *Id.* The enforcement of a \$17,000 judgment against Defendant would be difficult and costly to enforce relative to the amount in issue. Defendant is also a candidate to discharge this debt through a chapter 7 bankruptcy. This factor supports approval of the settlement.
3. The litigation is not particularly complex, but the estate has limited funds of \$3,500 on hand to finance litigation. Combined with difficulty in collection, litigating the adversary proceeding would cause additional expenses to the estate, and delay administration of the case and distribution to creditors.
4. Trustee declares that creditors would support the settlement because it is in the best interest of the estate and creditors. Doc. #51. The waiver of claims in exchange for \$5,000 is in the creditors' best interests because it avoids the risk and expense of trying a case while providing a guaranteed recovery for the estate. Doc. #49.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

The proposed order shall attach the stipulation as an exhibit. Since the stipulation is docketed as an exhibit, a copy of the original stipulation shall be filed separately and docketed as a stipulation.

5. [21-12239](#)-B-7 **IN RE: JOSE GONZALEZ OCHOA**
[TAA-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
12-3-2021 [[14](#)]

JOSE GONZALEZ OCHOA/MV
KEVIN TANG/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose Gonzalez Ochoa ("Debtor") seeks to avoid a judicial lien in favor of Wells Fargo Bank, N.A. ("Creditor") in the sum of \$10,641.72 and encumbering residential real property located at 1008 Aegean Ave., Bakersfield, CA 93307 ("Property").¹ Doc. #14.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

First, the *Notice of Hearing* has the wrong address for the court website. Doc. #15. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice sends respondents to www.caceb.uscourts.gov, which is an invalid URL. Doc. #15. Respondents will not be able to learn information about the case or locate the court's pre-hearing dispositions at this web address.

Second, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice here states that any party wishing to oppose "musty [sic] file a written response with the Court and serve upon Movant, the Chapter 7 Trustee, The. U.S. Trustee, and all parties listed on the Proof of Service," but does list the names and addresses to whom opposition must be served. Doc. #44. The names and addresses of the Debtor and the Chapter 7 Trustee, as representative of the estate, should have been included in the notice.

Third, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the

exhibit document was properly filed separately, but it omitted an exhibit index and consecutively numbered pages throughout the entire document, including any separator, cover, or divider sheets.

Fourth, the motion seeks to avoid liens in the wrong order of priority. Doc. #14. Property is subject to the following encumbrances with the following priorities:

1. Deed of Trust: Property is encumbered by a first priority deed of trust recorded June 21, 2013 in favor of Wells Fargo Home Mortgage. Doc. #17, Ex. 3. The balance was approximately \$73,450.18 as of September 2021. *Id.*, Ex. 5; Doc. #21.
2. Judgment lien: The judgment lien subject to this motion is second priority. A judgment in the sum of \$10,641.72 was entered against Debtor in favor of Creditor on April 24, 2018. Doc. #17, Ex. 6. It was recorded in Kern County on April 17, 2019. *Id.* The same judgment was recorded a second time in Kern County on July 10, 2019. *Id.*, Ex. 7.
3. Tax lien: The Internal Revenue Service ("IRS") obtained a \$23,250.54 involuntary lien for unpaid taxes for tax years 2016 through 2018. *Id.*, Ex. 8.
4. Judgment lien: In fourth priority is a lien in favor of Portfolio Recovery Associates, LLC ("PRA") in the sum of \$23,219.00. The PRA judgment was entered on September 11, 2020. *Id.*, Ex. 9. The abstract of judgment was issued on November 9, 2020 and recorded on November 18, 2020. *Ibid.*

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Since the two lien avoidance motions were filed separately, the court is unable to avoid Creditor's senior judgment lien before the junior PRA judgment lien. The PRA judgment must be avoided first. For this reason, Debtor has failed to make a *prima facie* showing that she is entitled to the relief sought. *Tracht Gut, LLC v. County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014).

The court notes that Debtor has a motion to avoid the PRA judgment lien set for hearing on January 25, 2022. TAA-2. However, due to the procedural issues described above, the court cannot simply continue this motion to that calendar. The related PRA motion appears to also suffer the same procedural infirmities as this motion. Debtor's counsel is advised to review the local rules available on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>, and ensure procedural compliance in all future matters, including the PRA motion.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

¹ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving Charles W. Scharf, Creditor's CEO & President, by certified mail at Creditor's mailing address on December 3, 2021. Doc. #18.

6. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[PFC-1](#)

TRUSTEE'S FINAL REPORT
11-16-2021 [\[111\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted. The report is approved.

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

Chapter 7 trustee Peter L. Fear ("Trustee") filed the *Final Report* and requests final statutory compensation in the total amount of \$19,394.64 under 11 U.S.C. §§ 326, 330. Doc. #111. This amount consists of \$19,312.53 as statutory fees for services rendered to the estate \$82.11 in expenses for actual, necessary services for the benefit of the estate from February 27, 2020 through December 3, 2021. *Id.*

The request for final compensation will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Jeffrey Lee Gibson and Elizabeth Gibson ("Debtors") filed chapter 7 bankruptcy on December 13, 2016. Doc. #1. Jeffrey M. Vetter was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on February 10, 2017. Doc. #2. Mr. Vetter filed a *Report of No Distribution* on February 11, 2017 (Doc. #12) and Debtors' discharge was entered April 17, 2017. Doc. #16. The case was closed on April 21, 2017.

Debtors reopened the case on April 30, 2018 to administer assets omitted from the bankruptcy. Doc. #23. Mr. Vetter continued acting as trustee and filed a *Notice of Assets* on May 14, 2018 and *Notice to File Proof of Claim* on May 15, 2018. Doc. #25. He also moved to employ special and general counsel on July 20, 2018 and sought approval of a settlement agreement that included fees for special counsel. LNH-1; LNH-2; LNH-3.

However, Mr. Vetter had not been reappointed as trustee after his duties were discharged and the case was closed. On November 17, 2019, U.S. Trustee Tracy Hope Davis ("UST") sought authority to appoint a successor trustee after it was determined that Mr. Vetter had not been reappointed as trustee and did not have authority to represent the estate. UST-1. The court authorized UST to appoint a new chapter 7 trustee on January 21, 2020. Doc. #57. UST proceeded to appoint Trustee Fear as successor trustee on February 27, 2020. Doc. #58.

Trustee administered the estate and made disbursements totaling \$321,250.65. Doc. #112. On November 16, 2021, Trustee filed the *Final Report*, which included this request for statutory compensation. Doc. #111. The Clerk issued an *Order Fixing Deadline for Filing Objections to Trustee's Final Report and Applicants for Final Compensation* that same day. Doc. #114. No party in interest objected.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$13,562.53 (5%) of the next \$271,250.65.

Doc. #112, at 4. These percentages comply with the restrictions imposed by § 326(a) with respect to total disbursements of \$815,128.87, totaling **\$19,312.53**. Trustee also requests reimbursement for **\$82.11** in expenses:

Claims Register (5 @ \$0.50)	\$2.50
Distribution	+ \$19.61
Noticing (48 @ \$1.00)	+ \$48.00
Postage	+ \$7.00
Submission of Signatures (1 @ \$5.00)	+ \$5.00
Total Costs	= \$82.11

Ibid. These combined fees and expenses total **\$19,394.64**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) employing counsel and settling the Debtors' undisclosed state court lawsuit; (3) preparing taxes and paying professionals; (4) reviewing and reconciling financial records and administering the estate; and (5) preparing the final report. Doc. #112. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$19,312.53 in statutory fees and \$82.11 in expenses as final compensation pursuant to §§ 326, 330.

7. [20-13049](#)-B-7 **IN RE: STEPHEN BRYANT**
[ADJ-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF
FORES-MACKO-JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEES
ATTORNEY(S)

11-4-2021 [\[57\]](#)

DAVID JENKINS/ATTY. FOR DBT.
ANTHONY JOHNSTON/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.

Anthony D. Johnston of Fores▪Macko▪Johnston, Inc. ("Applicant"), the attorney employed by chapter 7 trustee Irma C. Edmonds ("Trustee"), seeks final compensation in the sum of \$7,768.93 under 11 U.S.C. § 330. Doc. #57. This amount consists of \$7,637.50 in fees as reasonable compensation and \$131.43 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from October 21, 2020 through October 28, 2021. *Id.*

Trustee has reviewed the application and supporting documents and consents to the proposed payment. Doc. #59.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Stephen Duane Bryant ("Debtor") filed chapter 7 bankruptcy on September 23, 2020. Doc. #1. Trustee was appointed as interim trustee

on that same date and became permanent trustee at the first § 341(a) meeting of creditors on October 26, 2020. Doc. #2. Trustee moved to employ Applicant on October 28, 2020 under 11 U.S.C. § 327. Doc. #14. The court approved employment on November 5, 2020, effective October 21, 2020. Doc. #25. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applicant's services here were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders.

This is Applicant's first and final fee application. Applicant performed 23.5 billable hours of legal services at the rate of \$325.00 per hour, totaling **\$7,637.50**. Docs. #60; #61, Ex. A. Applicant also incurred **\$131.43** in expenses:

Copies (518 @ \$0.10)	\$51.80
Postage	+ \$57.13
CourtCall	+ \$22.50
Total Costs	= \$131.43

Id., Ex. C. These combined fees and expenses total **\$7,768.93**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) conflict review, preparing, and filing the employment application (ADJ-1); (2) reviewing bankruptcy filings and schedules, insurance and financial statements, and analyzing issues related to commingling of investment funds with insurance proceeds; (3) stipulating to and seeking approval of extensions of the time to file an objection to discharge (ADJ-2) and to objection to claim of exemptions (ADJ-3; ADJ-4; ADJ-5); (4) preparing a settlement agreement memorializing the agreement between the estate and debtors; (6) preparing, filing, and prosecuting a motion to approve settlement agreement (ADJ-6); and (5) preparing and filing this fee application (ADJ-7). Docs. #60; #61, Ex. A. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #59.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$7,637.50 in fees and \$131.43 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in her discretion, to pay Applicant \$7,768.93 for services rendered to and costs incurred for the benefit of the estate from October 21, 2020 through October 28, 2021.

8. [21-11754](#)-B-7 **IN RE: MICHAEL ANARADIAN**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO BANK, N.A.
12-8-2021 [\[27\]](#)

PETER FEAR/MV
LEONARD WELSH/ATTY. FOR DBT.
GABRIEL WADDELL/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 with the stipulation attached as an exhibit. A copy of the original stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the estate and Wells Fargo Bank, N.A. ("Creditor") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #27.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Michael Peter Anaradian ("Debtor") filed chapter 7 bankruptcy on July 14, 2021. Doc. #1. In his *Statement of Financial Affairs*, Debtor disclosed payments in the 90 days prior to filing in the amounts of \$19,028.99 to Wells Fargo Card Services for a credit card ("Credit Card Payments") and \$9,852.44 to Wells Fargo Bank for a line of credit

("Line of Credit Payments"). *Id.* Debtor's counsel provided statements documenting the payments to Trustee. Doc. #29.

Trustee's counsel analyzed those statements and determined that Creditor was the entity that received both the Credit Card Payments and the Line of Credit Payments. Doc. #30. Trustee's counsel determined the preferential payments in the 90 days prior to filing to be \$20,945.67 for the Credit Card Payments and \$9,914.97 for the Line of Credit Payments. *Id.*

Trustee's counsel sent a demand letter to Creditor, who responded by asserting a new value defense as to \$19,449.25 of the Credit Card Payments. *Id.* Based on the timing of the payments, Trustee disputed that assertion. As result, Creditor offered to reduce its claims of new value significantly and settle the Credit Card Payments claim for \$20,281.18. *Id.* Creditor also offered to settle the Line of Credit Payments for \$9,915.07. *Id.*

Trustee accepted to the settlement offers subject to court approval. Doc. #29. Trustee has already received the agreed-upon settlement amounts from Creditor. *Id.* Trustee now seeks approval of the settlement, and authorization to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement. Doc. #27.

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Trustee believes that that he would likely succeed in recovering the preference amounts agreed upon by Creditor. Doc. #29. Given Creditor's new value defense, Trustee does not believe he would be successful in recovering more than the amounts already paid under the settlement. *Id.* This factor weighs in favor of approving the settlement.
2. Collection is likely not a significant factor in recovery because Trustee already has the settlement payments in hand, eliminating any need for collection. *Id.* This factor weighs in favor of approving the settlement or is neutral.

3. Trustee does not believe the action to recover the preferences would be complex. *Id.* However, even a non-complex adversary proceeding would delay in recovery and increase expenses for the estate, which would reduce the distribution to general unsecured creditors. This factor weighs in favor of approving the settlement.
4. Trustee declares that the interests of creditors and the estate weigh in favor of approving the settlement. Doc. #29. Trustee anticipates that the settlement amount is what would be recovered in litigation, but with significantly reduced administrative expenses because no litigation is needed. This factor supports approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED. The settlement is approved, and Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement

Upon executing the settlement agreement, Trustee shall separately file the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

9. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROYALTY LENDING II LTD
12-17-2021 [\[80\]](#)

JEFFREY VETTER/MV
AHREN TILLER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date determined at the hearing.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order approving a settlement agreement between the estate and Royalty Lending II, Ltd. ("Royalty Lending") concerning certain oil and gas

mineral rights and overriding royalty interests ("Mineral") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #80. Under the terms of the settlement, Royalty Lending will (1) release its claims and interests to the Mineral Rights in exchange for 50% of the sale proceeds, up to \$100,000; (2) release and assign all royalty payments earned from the Mineral Rights accruing during the pendency of the bankruptcy case until July 31, 2021; and (3) have the right to credit bid 50% of any purchase price for the Mineral Rights, up to \$100,000. Doc. #83, *Ex. A*.

Though not required, creditor Michelle Brown ("Brown") opposes, arguing that it is inequitable and unfair to Brown and other creditors to give Royalty Lending credit or any other bidding advantage on the purchase of Mineral Rights as proposed in Trustee's companion motion to sell scheduled for January 11, 2022. See LNH-4.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Written opposition was not required and may be presented at the hearing. The motion will be CONTINUED to a date determined at the hearing.

Trustee contends that the factors outlined in *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986) and *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988) balance in favor of approving the compromise.

Doc. #80. Brown contests this assertion, arguing that Trustee has failed to provide any evidence that Royalty Lending can or will mount a successful defense should this matter proceed to litigation.

Doc. #86. Brown notes that Royalty Lending and the defendants failed to respond to the adversary proceeding, so they have defaulted, and Trustee should be able to obtain a default judgment. However, Royalty Lending was not named as a defendant in Trustee's adversary proceeding, so it was not required to file an answer or other responsive pleading.

Additionally, Brown contests Royalty Lending's ability to raise a valid bona fide purchase defense under 11 U.S.C. § 548(c). Because a reasonably prudent, bona fide purchaser would have checked the public records for any lawsuits against Debtor, pulled his credit, and evaluated his credit history, Brown asserts that Royalty Lending was not a bona fide purchaser of the Mineral Rights. Had Royalty Lending conducted this due diligence, it would have discovered Debtor's poor credit history, multiple lawsuits filed between 2015 and 2018 for fraud and misappropriation, judgments, and other recorded interests affecting title to the Mineral Rights. Docs. #87; #88, *Exs. 1-3*. Thus, since Royalty Lending was on notice of Debtor's insolvency and propensity to commit fraud, its defenses will fail, says Brown. Therefore, Brown argues it is patently unfair and inequitable to confer better rights on Royalty Lending over other creditors solely because it could cost the bankruptcy estate a speculative amount of attorney fees, especially when Royalty Lending does not have a valid bona fide purchaser defense.

The hearing on this motion will be called as scheduled to inquire whether any other parties in interest oppose, and then will proceed as a scheduling conference.

This matter is deemed to be a contested matter. Pursuant to Rule 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. Whether Royalty Lending had actual or constructive notice of Debtor's financial condition, and whether it may assert bona fide purchaser or relation back defenses.
2. The anticipated cost of litigation if approval of the settlement is denied.
3. The probability of Trustee's success in litigation.
4. Whether other creditors oppose approval of the settlement.

The legal issues appear to include:

1. Whether the *Woodson* and *A & C Properties* factors weigh in favor or against approval of the settlement.
2. If the settlement agreement is approved, should Royalty Lending receive credit for bidding or other advantages in Trustee's motion to sell the Mineral Rights?

10. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[21-1032](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-5-2021 [[1](#)]

VETTER V. PETROLEUM CAPITAL
INCOME PROPERTIES, LLC, A
LISA HOLDER/ATTY. FOR PL.

NO RULING.

11. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[21-1032](#) [LNH-5](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-14-2021 [\[37\]](#)

VETTER V. PETROLEUM CAPITAL
INCOME PROPERTIES, LLC, A
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee Jeffrey M. Vetter ("Plaintiff") seeks entry of a default judgment against debtor Kenneth Ray Hudson, individually ("Hudson"), and his limited liability companies, Petroleum Capital Income Properties, LLC, a Wyoming Limited Liability Company ("Wyoming LLC") and Petroleum Capital Income Properties, LLC, a California Limited Liability Company ("California LLC" or collectively, "Defendants"). Doc. #37.

There is no opposition from Defendants, but judgment was entered against Defendants on December 20, 2021. Doc. #58.

Plaintiff has a related motion to compromise controversy with third-party Royalty Lending II, Ltd. ("Royalty Lending") in matter #9 above, which is opposed by creditor Michelle Brown. See Bankr. Case No. 19-13374 ("Bankr") LNH-3. Though that settlement resolves the issues the court previously noted with respect to Royalty Lending, judgment is already entered against Defendants subject to the rights of Royalty Lending. Doc. #58.

Accordingly, this motion will be GRANTED.

Plaintiff's original motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. Defendants were properly served the summons and complaint on August 12, 2021 and this motion on October 14, 2021 in accordance with Fed. R. Bankr. P. ("Rules") 7004(b)(1) and (9). Docs. #9; #42.

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning administration of estate), (E) (orders to turn over property of the

estate), and (H) (proceedings to determine, avoid, or recover fraudulent conveyances). Venue is proper under 28 U.S.C. § 1409.

The court entered Defendants' defaults on September 14, 2021. Docs. #15; #19; #21. Plaintiff was directed to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. *Id.* Plaintiff properly applied for default judgment on October 14, 2021 and has complied with the order. As noted above, the court entered default judgment against Defendants on December 20, 2021. Doc. #58. The only outstanding issue that remains relates to Royalty Lending's interest.

BACKGROUND

Hudson is the 100% owner of California LLC and Wyoming LLC. Wyoming LLC was formed by Hudson sometime in 2017 and California LLC was formed on May 11, 2021.

Prior to filing chapter 7 bankruptcy, Hudson owned 2.2 million shares of Citadel Exploration, Inc. ("Citadel") stock. Doc. #1.

Plaintiff alleges that Hudson owned 2.2 million Citadel shares on the petition date, according to a transcript taken during a debtor examination on March 29, 2019, 130 days before the petition date. At the examination, Hudson was asked what assets he currently owns other than mineral rights, to which he testified, "I own 2.2 million shares of Citadel Exploration, and I own various overriding royalties that were part of the settlement agreement that you're probably already aware of." Doc. #41, Ex. B, at 11.

When Hudson filed bankruptcy on August 6, 2019, the 2.2 million Citadel shares were not listed in *Schedule A/B*. See Case No. 19-13374 ("Bankr.") Doc. #1, *Sched. A/B*. In his *Statement of Financial Affairs*, Hudson did not disclose any sale, trade, or transfer of the 2.2 million shares. *Id.*, Form 107, at ¶ 18. Hudson's amended schedules filed September 5, 2019, October 3, 2019, and November 14, 2019 also did not include an interest in the 2.2 million Citadel shares or describe any transfer. Docs. #13; #18; #24. Therefore, Plaintiff concludes that Hudson owned the 2.2 million shares on the petition date, which are property of the estate and must be turned over to Plaintiff under 11 U.S.C. § 542.

Additionally, Hudson had an interest in oil, gas, and other hydrocarbon substances produced under a parcel of land in Kern County, California ("Mineral Rights"), which is described in a Mineral, Oil, and Gas grant deed recorded on June 7, 2019. Doc. #41, Ex. A. These Mineral Rights were listed in Hudson's *Schedule A/B* filed on the petition date with a value of \$100,000.00. Bankr. Doc. #1, *Sched. A/B*, ¶ 1.1. No exemption was claimed with respect to the Mineral Rights. *Id.*, *Sched. C*. In *Schedule D*, Hudson scheduled a debt owed to third-party Royalty Lending in the amount of \$129,000.00 and secured by the

Mineral Rights. *Id.*, *Sched. D*. Per *Schedule I*, Hudson received \$613.86 per month as disbursement from the Mineral Rights. *Id.*, *Sched. I*.

In a different adversary proceeding initiated by Royalty Lending, Adv. Proc. No. 20-01027, Hudson filed a motion to compel Plaintiff to abandon the Mineral Rights. In support of that motion, Hudson declared:

On the date the bankruptcy case was filed, I owned the following sole proprietorship asset, with the following value, lien amounts, and exemptions claimed:

<u>Asset</u>	<u>Value</u>	<u>Lien</u>	<u>Exemption</u>	<u>Net Value</u>
Mineral	\$8,400.00	\$92,827.72	\$0.00	\$0.00

See Adv. Proc. No. 20-01027, Doc. #16, *Ex. B*. That adversary proceeding was ultimately dismissed when Royalty Lending filed a notice of dismissal without prejudice before the defendants had filed an answer. *Id.*, Doc. #20.

On June 7, 2019, Hudson recorded the Mineral Rights grant deed purporting to convey all Mineral Rights from "Kenneth R. Hudson, an individual" to "Petroleum Capital Income Properties." Doc. #1, *Ex. A*. That same date, Hudson signed as president of Petroleum Capital Income Properties, LLC, as grantor, and delivered a special warranty deed conveying the Mineral Rights to Royalty Lending II LTD, as grantee. *Id.*, *Ex. B*. In exchange for the special warranty deed, promissory notes, and other documents, Royalty Lending distributed \$89,712.52 to Hudson's Comerica Bank Account, which was held in the name of "Petroleum Capital Properties, LLC."

The funds were used to pay Hudson's personal expenses, including pre-paying four months of rent, making truck insurance payments, paying for groceries, gas, travel, restaurants, and withdrawing \$17,000 in cash in June 2019, \$42,000 in cash in July 2019, and \$1,600 in cash in August 2019 before filing his bankruptcy petition. Some of this cash - \$28,000 - was listed in *Schedule A/B*.

Plaintiff has received a \$40,000 offer for the Mineral Rights interests and therefore asserts that its fair market value is at least \$40,000.00.

As result, Plaintiff filed this adversary complaint and alleges six causes of action, seeking the following relief:

- (1) Compelling Hudson to turnover of 2.2 million shares of Citadel Exploration, Inc. to Plaintiff pursuant to 11 U.S.C. § 542(a);
- (2) Compelling Hudson to turnover mineral, oil, and gas interests by a deed of trust from "Petroleum Capital Income Properties" to Plaintiff pursuant to § 542(a);

- (3) Avoiding the fraudulent transfer of the mineral, oil, and gas interests of all Defendants pursuant to 11 U.S.C. § 548(a)(1)(A);
- (4) Avoiding the avoidable transfers of mineral, oil, and gas interests of all Defendants pursuant to § 548(a)(1)(B).
- (5) Imposing liability on the transferee of an avoided transfer of the mineral, oil, and gas interests of all Defendants pursuant to 11 U.S.C. § 550.
- (6) Preserving avoided transfers for the benefit of the bankruptcy estate under 11 U.S.C. § 551.

DISCUSSION

I. Default Judgment Standard

Fed. R. Civ. P. ("Civ. Rule") 55 (incorporated under Rule 7055) governs default judgments. "To obtain a default judgment of non-dischargeability of a loan debt, a two-step process is required: (1) entry of the party's default (normally by the clerk), and (2) entry of default judgment." *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006), citing *Brooks v. United States*, 29 F. Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F. Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

II. Turnover of Citadel Shares

Under 11 U.S.C. § 541(a), Hudson's chapter 7 petition filed August 6, 2019 created a bankruptcy estate. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Plaintiff, as trustee of Hudson's bankruptcy case, has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtor to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

III. Remaining Claims

Plaintiff's remaining causes of action involve the Defendants' Mineral Rights. Plaintiff alleges a fraudulent or avoidable transfer to "Petroleum Capital Income Properties," though it is unclear whether this refers to Wyoming LLC, California LLC, or another third-party registered in a different state. Neither Wyoming LLC nor California LLC are specifically named as a grantee, but Plaintiff contends that it must have been one of the two.

The court previously noted that the complaint says that the transferee pledged the Mineral Rights by Special Warranty Deed to Royalty Lending. Royalty Lending, meanwhile, has extended over \$90,000 in funds purportedly secured by these Mineral Rights and appears to be an immediate transferee from whomever the initial transferee was, either Wyoming LLC or California LLC. Per the complaint, Royalty Lending is either a recipient of a fraudulent transfer or the subsequent encumbrancer of a purportedly void transfer.

These issues were resolved by granting this motion and entering judgment subject to the rights and interests of Royalty Lending. Doc. #58, at 2, ¶ I(3). Further, Royalty Lending has consented to the judgment. *Id.*, at 5.

CONCLUSION

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion.

12. [21-11181](#)-B-7 **IN RE: ELISSA GARCIA**
[MAZ-4](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS AND/OR MOTION
TO AVOID LIEN OF NDS, LLC.
11-11-2021 [\[46\]](#)

ELISSA GARCIA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Elissa A. Garcia ("Debtor") seeks to avoid a judicial lien in favor of
NDS, LLC ("Creditor") in the renewed amount of \$8,669.74 and
encumbering residential real property located at 1219 E. Ferguson
Ave., Visalia, CA 93292 ("Property").² Doc. #46.

No party in interest timely filed written opposition. This motion will
be GRANTED.

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 amounts of damages). *Televideo Sys.,
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.

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

Here, a judgment was entered against Debtor in favor of Unifund CCR Partners ("Unifund") in the sum of \$4,394.34 on December 14, 2005. Doc. #49, *Ex. D*. The judgment was recorded in Tulare County on January 20, 2006. *Id.*

Creditor was assigned Unifund's interest. It then obtained an abstract of judgment on August 3, 2015, which was recorded in Tulare County on August 11, 2015. Doc. #54, *Ex. D*. That lien is the subject of matter #13 below. See MAZ-5.

Creditor then applied to renew the judgment in the amount of \$8,669.74 on August 10, 2015. The renewal was recorded in Tulare County on August 19, 2015. *Id.* That lien attached to Debtor's interest in Property and is the subject of this motion. Doc. #48. Thus, one of these is a duplicative judgment.

As of the petition date, Property had an approximate value of \$120,000.00. *Id.*; Doc. #1, *Sched. A/B*. The only unavoidable lien encumbering Property is a deed of trust in favor of Fifth Third Bank in the amount of \$59,058.41. *Id.*, *Sched. D*. Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Here, Property is encumbered by multiple judicial liens in favor of Creditor:

Judgment Creditor	Amount	Entered	Recorded	Status
1. Unifund	\$4,394.34	12/14/04	01/20/06	Renewed
<i>Renewed by Creditor</i>	Unknown	08/03/15	08/11/15	Matter #13 (MAZ-5)
<i>Renewed by Creditor</i>	\$8,669.74	08/10/15	08/19/15	This motion (MAZ-4)
2. Unifund	\$5,890.10	04/07/06	08/31/15	Renewed
<i>Renewed by Creditor</i>	\$11,606.05	11/09/15	12/03/15	Avoided (MAZ-3)

Both judgments were obtained by Unifund and assigned to Creditor, who applied for renewal. Creditor first obtained an abstract of judgment in matter #13 below on August 3, 2015, recorded August 11, 2015, but the judgment amount is omitted. See Doc. #54, *Ex. D*. Creditor renewed the same judgment a second time, this time specifying the amount of \$8,669.74. Both relate to the same underlying judgment entered December 14, 2004. Since the first renewal omitted a dollar amount,

the duplicative renewal of judgment here is more complete than the original renewal in matter #13 below, but both are avoidable.

The second and most junior judgment lien in favor of Creditor was originally entered on April 7, 2006, recorded August 31, 2015, renewed November 9, 2015, and the renewal was recorded on December 3, 2015. Doc. #43, *Ex. D*. The court avoided that lien on November 24, 2021, so the lien in this motion is now the most junior lien. Doc. #58.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$8,669.74
Total amount of unavoidable liens	+ \$59,058.41
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$367,728.15
Value of Debtor's interest absent liens	- \$120,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$247,728.15

Meyer, 373 B.R. at 91. The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$120,000.00
Total amount of unavoidable liens	- \$59,058.41
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$239,058.41)
Creditor's judicial lien	- \$8,669.74
Extent Debtor's exemption impaired	= (\$247,728.15)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). This motion will be GRANTED.

² Creditor is a limited liability company. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Michael David Schulman, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on November 11, 2021. Doc. #50.

13. [21-11181](#)-B-7 **IN RE: ELISSA GARCIA**
[MAZ-5](#)

MOTION TO AVOID LIEN OF NDS, LLC.
11-11-2021 [\[51\]](#)

ELISSA GARCIA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Elissa A. Garcia ("Debtor") seeks to avoid a judicial lien in favor of NDS, LLC ("Creditor") in the original amount of \$4,394.34, renewed with an unspecified amount, and encumbering residential real property located at 1219 E. Ferguson Ave., Visalia, CA 93292 ("Property").³ Doc. #51.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

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

Here, a judgment was entered against Debtor in favor of Unifund CCR Partners ("Unifund") in the sum of \$4,394.34 on December 14, 2005. Doc. #54, *Ex. D*. The judgment was recorded in Tulare County on January 20, 2006. *Id.*

Creditor was assigned Unifund's interest. It then obtained an abstract of judgment on August 3, 2015, which was recorded in Tulare County on August 11, 2015. Doc. #54, *Ex. D*. That lien attached to Debtor's interest in Property and is the subject of this motion. Doc. #53

Creditor then applied to renew the judgment in the amount of \$8,669.74 on August 10, 2015. The renewal was recorded in Tulare County on August 19, 2015. *Id.* That lien attached to Debtor's interest in Property and is the subject of matter #12 above. MAZ-4. Thus, one of these is a duplicative judgment.

As of the petition date, Property had an approximate value of \$120,000.00. *Id.*; Doc. #1, *Sched. A/B*. The only unavoidable lien encumbering Property is a deed of trust in favor of Fifth Third Bank in the amount of \$59,058.41. *Id.*, *Sched. D*. Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Here, Property is encumbered by multiple judicial liens in favor of Creditor:

Judgment Creditor	Amount	Entered	Recorded	Status
1. Unifund	\$4,394.34	12/14/04	01/20/06	Renewed
Renewed by Creditor	Unknown	08/03/15	08/11/15	This motion (MAZ-5)
Renewed by Creditor	\$8,669.74	08/10/15	08/19/15	Matter #12 (MAZ-4)
2. Unifund	\$5,890.10	04/07/06	08/31/15	Renewed
Renewed by Creditor	\$11,606.05	11/09/15	12/03/15	Avoided (MAZ-3)

Both judgments were obtained by Unifund and assigned to Creditor, who applied for renewal. Creditor first obtained the abstract of judgment subject to this motion on August 3, 2015, and recorded it on August 11, 2015, but the judgment amount is omitted. See Doc. #54, *Ex. D*. Creditor renewed the same judgment a second time, this time specifying the amount of \$8,669.74. Doc. #49, *Ex. D*. Both relate to the same underlying judgment entered December 14, 2004. Since the first renewal

omitted a dollar amount, the duplicative renewal of judgment here is more complete than the original renewal, but both are avoidable.

The second and most junior judgment lien in favor of Creditor was entered on April 7, 2006, recorded August 31, 2015, renewed November 9, 2015, and the renewal was recorded on December 3, 2015. Doc. #43, *Ex. D*. The court avoided that lien on November 24, 2021. Doc. #58. The court intends to avoid the duplicate lien in matter #12 above, so the lien in this motion is now the most junior lien. Doc. #58.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,394.34
Total amount of unavoidable liens	+ \$59,058.41
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
Sum	= \$363,452.75
Value of Debtor's interest absent liens	- \$120,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$243,452.75

Meyer, 373 B.R. at 91. The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$120,000.00
Total amount of unavoidable liens	- \$59,058.41
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$239,058.41)
Creditor's judicial lien	- \$4,394.34
Extent Debtor's exemption impaired	= (\$243,452.75)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). This motion will be GRANTED.

³ Creditor is a limited liability company. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Michael David Schulman, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on November 11, 2021. Doc. #55.

14. [21-10999](#)-B-7 **IN RE: ERIC/ROMANA JOHNSON**
[JES-3](#)

MOTION TO SELL
11-22-2021 [\[32\]](#)

JAMES SALVEN/MV
JOEL WINTER/ATTY. FOR DBT.

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

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 hearing.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to sell the estate's interest in a 2003 Ford F-250 truck ("Vehicle") to Eric Neal Johnson and Romana Hannah Johnson ("Debtors") for \$5,200.00, subject to higher and better bids. Doc. #32.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the

context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 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). This sale is to the Debtors. Vehicle is listed in the schedules as a 2003 Ford "F250 XLT Supercab" with 174,000 miles and valued at \$5,295.00. Doc. #19, *Am. Sched. A/B*, ¶ 3.2. Debtors claimed a \$5,295.00 exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.060, but Trustee objected to the exemption. *Id.*, *Am. Sched. C*; cf. JES-1. The objection was sustained September 7, 2021, so the sale will not include any exemption credit. Doc. #23. Vehicle does not appear to be encumbered by any liens or security interests. Doc. #1, *Sched. D*.

Trustee declares that the Debtors offered to purchase Vehicle for \$5,200.00, which he accepted subject to court approval and higher and better bids. Doc. #34. Trustee has not agreed to pay a commission to any party in connection with the sale and it is subject to any liens and encumbrances, known or unknown. *Id.* The sale amount was determined by estimating the fair market value of \$5,200 with no exemption credit, for a total net to the estate of \$5,200 absent any overbidders. Trustee believes the proposed sale is in the best interests of the creditors. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best results. There is no opposition to the sale.

Accordingly, this motion will be GRANTED. The hearing will proceed for higher and better bids only. Trustee is authorized to sale Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the property; it is being sold "as-is, where-is."