

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 9, 2020
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WJH-6](#)

CONTINUED OBJECTION TO CLAIM OF JESSIE C. JAUREGUI, CLAIM
NUMBER 102
9-25-2019 [[399](#)]

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #476.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-12](#)

OMNIBUS OBJECTION TO CLAIMS
11-22-2019 [[1722](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/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 is 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 (9th Cir. BAP 2000).

Movant Tulare Local Healthcare District objects to the priority status of the claims identified in exhibit A attached to the motion because only 11 U.S.C. § 507(a)(2) is incorporated into chapter 9 by 11 U.S.C. § 901(a). No claimant opposed this objection.

This objection is SUSTAINED and the claims shall not be entitled to priority status. But the claims will be allowed as general unsecured claims.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-13](#)

OMNIBUS OBJECTION TO CLAIMS
11-22-2019 [\[1718\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled

DISPOSITION: Sustained in part.

ORDER: The court's minutes will be the findings and conclusions of the hearing as to the sustained objections. The Objecting 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). Therefore, the defaults of the above-mentioned parties in interest, except for Locumtenens.com, are entered. 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 as to all claimants except as set forth below since one claimant has responded and a second claimant may have responded.

The court notes the debtor filed a reply to an apparent response by claimant, Logixhealthcare, Inc. The court could not locate a filed response to the objection to allowance of this claim. At the hearing, counsel for Logixhealthcare, Inc. and counsel for the debtor should address this.

This objection is SUSTAINED as to all responding parties except Locumtenens.com.

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 (9th Cir. BAP 2000).

Movant Tulare Local Healthcare District objects to the claims identified in exhibit A attached to the objection because the claims were filed after the April 10, 2018 bar date and therefore late. Locumtenens.com opposed, stating that they did not receive adequate notice of the bar date. Doc. #1748. The hearing will be a scheduling conference to determine the procedure for resolution of this claim. The issues to be developed include: why claimant's lockbox address should not be deemed a controlling address for notice; claimant's delay between their admitted knowledge of the bankruptcy case and filing their proof of claim; and whether claimant has met its burden of proof to meet the "receipt of a validly mailed notice" presumption. In re Bucknum, 951 F.2d 204 (9th Cir. 1991).

The court will not grant relief to Locumtenens.com on its request for leave to file a late claim as there is no motion for that relief pending.

This objection is SUSTAINED as to all non-responding parties and the claims are disallowed except for the claim of Locumtenens.com.

Evidentiary Objections

The court makes the following rulings on debtor's evidentiary objections to Adwoa Awotwi's declaration (doc. # 1749).

- 1) Foundation - Sustained; Inaccurate statement - Overruled, not an appropriate objection and constitutes argument; Hearsay - Sustained.
- 2) Relevance - Overruled; Foundation - Sustained; Hearsay - Sustained; Misstates content - overruled, argument not an objection; Incomplete copy of agreement - Overruled since it goes to weight not admissibility.
- 3) Relevance - Overruled; Foundation - Overruled.
- 4) Relevance - Overruled; Foundation - Overruled; Hearsay - Sustained; Not accurate statement - Overruled, argument not an objection.
- 5) Relevance - Overruled; Foundation - Overruled; Hearsay - Overruled; Not accurate statement - Overruled, argument not an objection.
- 6) Relevance - Overruled; Foundation - Sustained; Relevance - Overruled.

11:00 AM

1. [19-14202](#)-B-7 **IN RE: ANTONIO GALVAN AND REYNA DE GALVAN**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
12-18-2019 [\[15\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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

2. [19-14705](#)-B-7 **IN RE: JASON/MICHELLE ROBERSON**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
12-11-2019 [\[10\]](#)

NO RULING.

3. [19-14206](#)-B-7 **IN RE: JUAN VALLEJO AND CARLOTA MEZA**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
12-18-2019 [\[14\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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

4. [19-14229](#)-B-7 **IN RE: DANIEL COUTO**

AMENDED REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
12-19-2019 [\[29\]](#)

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

DISPOSITION: Approved.

ORDER: The court will issue an order.

At the hearing held on December 12, 2019, the court continued the matter for hearing on January 9, 2020 to allow the debtor to go back to Onemain Financial Group, LLC to work out a better interest rate. The debtor filed an amended reaffirmation agreement on December 19, 2019, signed by the creditor, with a reduced interest rate from 35.99% to 10%. Therefore, the reaffirmation agreement with Onemain Financial Group, LLC, for the 2010 Chevrolet Impala, Document No. 29, will be approved. No appearance is necessary.

5. [19-13960](#)-B-7 **IN RE: DAVID/PAMELA SHANK**

PRO SE REAFFIRMATION AGREEMENT WITH TUCOEMAS FEDERAL CREDIT UNION
12-18-2019 [\[35\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [11-62719](#)-B-7 **IN RE: KARNAIL SINDHER**
[BDB-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK, N.A.
12-6-2019 [\[23\]](#)

KARNAIL SINDHER/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of Capital One Bank, N.A. in the sum of \$3,204.56 on November 16, 2011. Doc. #26. The abstract of judgment was recorded with Fresno County on August 16, 2011. Id. That lien attached to the debtor's interest in a residential real property in Selma, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had

an approximate value of \$139,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$178,703. on that same date, consisting of a first deed of trust in favor of Citimortgage Inc. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00. Doc. #21.

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

2. [18-10419](#)-B-7 **IN RE: JARED NEIDLINGER**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
AND/OR MOTION FOR COMPENSATION FOR ANDREW JONES, SPECIAL
COUNSEL(S)
12-12-2019 [\[64\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally Granted.

ORDER: Order preparation determined at the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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).

It appears from the moving papers that the chapter 7 trustee ("Trustee") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

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

There is no opposition to approval of the compromise. Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate and a defendant. The underlying facts of the claim are agreed by the parties to be confidential.

Under the terms of the compromise, Trustee is to dismiss the pending civil claim. The remainder of the terms are agreed between the parties to be confidential.

The problem for the movant here is a failure to support the need for confidentiality of the settlement, the amount to be paid to the estate, the claims at issue, the identity of the parties and other particulars. The Trustee and his counsel appear to have considered the relevant considerations supporting a compromise. But those considerations are separate from the need for confidentiality.

First, no motion to seal records was presented to the court. See Fed. R. Bankr. P. 9018; LBR 9018-1.

Second, facts supporting confidentiality have not been completely presented. 11 U.S.C. § 107 controls the public's right to access to filed documents in a bankruptcy proceeding. Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop), 661 F.3d 417, 431 (9th Cir. 2011). Generally, a proponent of sealing documents must show:

- evidence of particularized harm resulting from disclosure;
- the bankruptcy court must determine whether the balance of public and private interests weighed in favor of the interest of the party requesting confidentiality; and
- the court must determine whether redaction addresses the needs of the parties. Id. at 426-27.

The facts to make these determinations have not been presented.

Third, the justifications for confidentiality if appropriate in this motion – it is not – do not support the request. The parties agreement to keep matters confidential does not bind the court. Motors Liquidation Co. Avoidance Action Tr. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.), 561 B.R. 36, 43 (Bankr. S.D.N.Y. 2016). Also, tort claimant settlements do not rise to the level of giving an unfair advantage to competitors. In re Alterra Healthcare Corp., 353 B.R. 66, 76 (Bankr. D. Del. 2006). The interest of a litigant's advantage vis-à-vis other claimants who may be pursuing similar claims does not justify confidentiality. Movant has provided no authority that it should.

The court will now analyze the relevant factors for approval of the settlement and will allow movant to address resolution of the confidentiality issue at the hearing.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is not assured as there remains a considerable dispute between the estate and the defendant regarding the availability and amount of damages at issue; collection, while not certain due to the confidentiality, is likely to not be a problem because the defendant is also paying other similarly situated defendants similar amounts; the litigation is not complex, but the maze of regulatory and statutory schemes would increase litigation costs and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist. The settlement is equitable and fair since the Trustee has testified in his declaration that, if approved, the settlement funds will pay all allowed claims and administrative claims in full.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

3. [19-14319](#)-B-7 **IN RE: CELESTE TAPIA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-6-2019 [\[18\]](#)

TD AUTO FINANCE LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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 for relief from stay was fully noticed in compliance with the Local Rules of Practice. The debtor filed non-opposition on December 17, 2019 (Doc. #26). The trustee's default will be entered.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2015 Ford Fusion. Doc. #24. The collateral has a value of \$11,150.00 and debtor owes \$19,468.95. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's possession.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding, then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

4. [16-10521](#)-B-7 **IN RE: ALAN ENGLE**
[FW-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C
FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
11-27-2019 [[304](#)]

SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Trustee's counsel, The Law Office of Fear Waddell, P.C. for Gabriel Waddell, requests fees of \$10,979.00 and costs of \$245.98 for services rendered from October 1, 2017 through November 25, 2019.

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) Preparation of employment and fee applications for various professionals, (2) Finalizing the motion for interim distribution, (3) Worked with the auctioneer to liquidate estate property, and (4) Administering claims against the estate. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$10,979.00 in fees and \$245.98 in costs.

5. [19-14740](#)-B-7 **IN RE: SISSY VALENCIA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
11-12-2019 [\[5\]](#)

SISSY VALENCIA/MV
\$335.00 FILING FEE PAID 12/19/19, RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The filing fee has been paid in its entirety.

6. [19-14273](#)-B-7 **IN RE: ALBERTO MELENA RAMIREZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-18-2019 [\[16\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for February 3, 2020 at 12:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

7. [18-13678](#)-B-7 **IN RE: VERSA MARKETING, INC.**
[RAC-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR
RONALD A. CLIFFORD, CREDITOR COMM. ATY(S)
12-3-2019 [\[542\]](#)

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. The former counsel for the Official Committee of Unsecured Creditors, Blakely LLP, requests fees of \$12,067.00 and costs of \$147.65 for services rendered from April 27, 2019 through November 15, 2019.

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) Preparation of employment and fee applications for various professionals, (2) Reviewed monthly operating reports, (3) Appeared at status conferences, reviewed tentative rulings, and discussed conversion with debtor's counsel, and (4) performed general case management. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$12,067.00 in fees and \$147.65 in costs. The claim will be paid in accordance with priorities provided under the Bankruptcy Code.

8. [19-13980](#)-B-7 **IN RE: OZINVESTING LLC**
[DAR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-19-2019 [\[28\]](#)

REITLESS SERIES 3, LLC/MV
DAVID ROBERTS/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case was dismissed on January 7, 2020. Doc. #37.

9. [10-16687](#)-B-7 **IN RE: ADELA NOLAZCO**
[TCS-3](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A. AND
CITIBANK, N.A.
12-12-2019 [\[28\]](#)

ADELA NOLAZCO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

A judgment was entered against the debtor in favor of Citibank (South Dakota) N.A. in the sum of \$1,460.85 on March 2, 2010. Doc. #31. The abstract of judgment was recorded with Fresno County on April 14, 2010. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$57,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$57,221.00 on that same date, consisting of a first deed of trust in favor of Citimortgage Inc. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00. Id.

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

10. [19-13690](#)-B-7 **IN RE: PATRICIE LOPEZ**
[UST-1](#)

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
12-6-2019 [\[23\]](#)

TRACY DAVIS/MV
TREVOR FEHR/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.