

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 3, 2021
Place: Department B - 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [20-12600](#)-B-13 IN RE: FERNANDO/OLGA DIAZ
[LMF-1](#)

MOTION TO CONFIRM PLAN
12-7-2020 [[35](#)]

FERNANDO DIAZ/MV
LAUREN FOLEY/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Fernando Diaz and Olga Diaz ("Debtors") filed this motion to confirm plan on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Federal Rule of Bankruptcy Procedure ("Rule") 2002(b) and the local rules.

Rule 2002(b) requires at least 28 days' notice by mail of the time for the hearing to consider confirmation of a chapter 13 plan.¹ Rule 2002(k) extends that notice requirement to the United States Trustee ("UST"). Here, the original motion documents were filed on December 7, 2020 and set for hearing on February 4, 2021. Doc. ##35-38; #40. This court does not have any scheduled hearings on February 4, 2021. Doc. #39.

An amended notice of hearing was filed on December 9, 2020 and set for hearing on February 3, 2021. Doc. #41. The amended notice's certificate of service indicates that the following parties were served:

Chapter 13 Trustee, Michael H. Meyer
PO Box 28950
Fresno, CA 93729-8950

Hon. Rene Lastreto II
2500 Tulare St., Ste. 2501

¹ Although Rule 2002(b) only requires 28 days' notice, LBR 3015-1(d)(1) requires 35 days' notice for plan confirmation.

Fresno, CA 93721

All Parties Listed on the List Attached Hereto as Exhibit
"A"

Doc. #42. But no Exhibit "A" is attached to the certificate of service. *Id.* Thus, it does not appear that UST or any other parties in interest were properly served the amended notice of hearing 35 days before the hearing as required by LBR 3015-1(d)(1) or received notice 28 days before the hearing pursuant to Rule 2002(b).

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

The court notes that this motion was an improvement over the last because it contained an unused docket control number. Doc. #33.

2. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-7](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-13-2021 [[109](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order in conformance with the ruling below.

This motion was filed on 21 days' notice pursuant to Fed. R. Bankr. P. 2002(a)(6) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

David Deshawn and Latunjia Monia Johnson's ("Debtors") counsel, Patrick Kavanagh of the Law Office of Patrick Kavanagh ("Movant"), requests attorney fees of \$7,999.95 and costs of \$335.65 for a total of \$8,335.60 for services rendered between January 6, 2020 and January 12, 2021. Doc. #109. Debtors jointly filed a signed statement indicating that they reviewed the fee application and approve the same. Doc. #115. No written opposition was required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

First, the court notes that LBR 9014-1(e)(1) requires service of all pleadings and documents filed in support of or opposition to a motion to be made on or before the date they are filed with the court. The certificates of service indicate only the motion and notice were served on the parties. Doc. #111; #112. Debtors' joint statement was filed in support of the motion on January 20, 2021, but it does not appear to have been served on any of the parties as required by LBR 9014-1(e)(1). Doc. #115.

Second, LBR 9004-2(a)(3) requires all petitions, pleadings, motions, briefs, and other papers submitted for filing to be prepared using a "clearly legible process." LBR 9004-2(a)(1) states that electronic and paper documents shall be formatted for white, letter size paper with black colored ink or font. Debtors' statement appears to be a photograph of the original document that was converted to black and white and filed with the Court. It is nearly illegible and arguably fails to comply with the general formatting requirements of the local rules.

Given that this statement does not substantively modify the contents of the fee application and is used solely to inform the court whether the Debtors have reviewed and consent to the fee application, these violations are *de minimis* in this case. Similar violations of the rules in other matters may result in the motion being denied without prejudice.

This is Movant's first fee application. Debtors previously objected to allowance of a claim and Movant requested attorney fees as part of that objection. PK-6; see also PK-2. This objection was resolved by stipulation (Doc. #100) and Movant was instructed to hold the funds in trust subject to further order of the court. Doc. #104.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$610.00 prior to filing the case and additional fees of \$5,390.00 shall be paid through the plan subject to court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3, ¶ 3.05; #4.

Movant indicates that his firm spent 49.90 billable hours at a rate of \$300.00 per hour, for a total of \$14,730.00. Doc. #109, ¶¶ 5, 7. However, Movant has limited his fees to \$7,999.95. *Ibid.* Movant also incurred the following expenses:

Postage	\$49.90
Reproduction	\$218.25
CourtCall Fees	\$67.50
Total	\$335.65

Ibid. Movant also states that he currently holds \$3,100.00 in his client's trust account from settlements in addition to a \$610.00 retainer. *Id.*, Ex. A. Movant previously obtained a \$2,000.00 settlement from WB Automotive (PK-3) and a \$1,100.00 settlement from Resurgent Capital (PK-2; PK-6). In total, Movant is requesting to

apply \$3,710.00 from the client's trust account to outstanding fees and to authorize chapter 13 trustee Michael H. Meyer ("Trustee") to pay Movant \$4,625.60 through the plan, for a total of \$8,335.60. Doc. #109, Ex. A.

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) preparing and filing Debtors' chapter 13 petition; (2) filing and confirming a chapter 13 plan; (3) objecting to Resurgent Capital's claim, settling the objection, and obtaining attorney fees (PK-2; PK-6); (4) prosecuting a violation of the automatic stay (PK-1), arranging for the return of Debtors' vehicle, and obtaining a settlement for attorney fees as result of the violation (PK-3); and (5) responding to an order to show cause for missing a filing fee installment payment. *Ibid.* The court finds the services reasonable and necessary and the expenses requested actual and necessary.

In the absence of opposition, this motion will be GRANTED. Movant shall be awarded \$7,999.95 in fees and \$335.65 in costs. Movant may apply the \$3,710.00 held in trust to his fees and Trustee will be authorized to pay Movant \$4,625.60 in accordance with the plan.

3. [20-13245](#)-B-13 **IN RE: MARIA BARAJAS**
[MHM-2](#)

MOTION TO DISMISS CASE
12-11-2020 [[21](#)]

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.
DISMISSED 1/6/2021

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on January 6, 2021. Doc. #28. Therefore, this motion will be DENIED AS MOOT.

4. [18-11964](#)-B-13 **IN RE: PAUL/MICHELLE ESPARZA**
[RSW-2](#)

MOTION TO MODIFY PLAN
12-22-2020 [[53](#)]

PAUL ESPARZA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

5. [15-12775](#)-B-13 **IN RE: TERRI MALAMMA**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
1-6-2021 [[48](#)]

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

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

DISPOSITION: Granted.

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

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

Chapter 13 trustee Michael H. Meyer ("Trustee") filed this motion seeking an order determining that (1) Terri Malamma ("Debtor") has cured the default with respect to a January 15, 2014 promissory note secured by a deed of trust encumbering real property located at 2420 Sandy Lane, Bakersfield, CA 93306 ("Property") in favor of Karpe Real Estate Center ("Creditor") and (2) all post-petition payments due and owing from August 2015 through July 2020 have been paid. Doc. #48.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required post-petition amounts.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments to the same through July 2020. Doc. #50. Trustee indicates that his office has paid a total of \$36,890.40 toward the ongoing mortgage payment, \$6,406.10 towards the pre-petition arrearage claim, and \$19.20 in late fees. *Id.*

Accordingly, this motion will be GRANTED. Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the Notice of Final Cure pursuant to Rule 3002.1(i). Debtor has cured the default and is current on mortgage payments through July 2020.

6. [20-12688](#)-B-13 **IN RE: MARY HELEN BARRO**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-13-2021 [[50](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
will submit a proposed order in conformance
with the ruling below.

This motion was filed on 21 days' notice pursuant to Fed. R. Bankr. P. 2002(a)(6) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Mary Helen Barro's ("Debtor") counsel, Patrick Kavanagh of the Law Office of Patrick Kavanagh ("Movant"), requests attorney fees of \$5,000.00 for services rendered between March 20, 2020 and January 12, 2021. Doc. #50. Debtor filed a signed statement indicating that she reviewed the fee application and approves the same. Doc. #54. No written opposition was required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

First, the court notes that LBR 9014-1(e)(1) requires service of all pleadings and documents filed in support of or opposition to a motion to be made on or before the date they are filed with the court. The certificates of service indicate only the motion and notice were served on the parties. Doc. #52; #53. Debtor's statement was filed in support of the motion on January 18, 2021, but it does not appear to have been served on any of the parties as required by LBR 9014-1(e)(1). Doc. #54.

Given that this statement does not substantively modify the contents of the fee application and is used solely to inform the court whether Debtor has reviewed and consents to the fee application, this violation is *de minimis* in this case. Similar violations of the rules in other matters may result in the motion being denied without prejudice.

This is Movant's first fee application.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$1,000.00 prior to the filing of the case and additional fees of \$5,000.00 shall be paid through the plan subject to court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #8, ¶ 3.05; #3.

Movant indicates that his firm spent 20.70 billable hours at a rate of \$300.00 per hour, for a total of \$6,210.00. Doc. #50, ¶¶ 5, 7. However, Movant has limited his fees to \$5,000.00. *Ibid.* Movant also waived all expenses. *Ibid.*

Movant is requesting to authorize chapter 13 trustee Michael H. Meyer ("Trustee") to pay \$5,000.00 in accordance with the chapter 13 plan. *Id.*, ¶ 1(f).

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) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, reviewing Debtor's financial information, the effects of exemptions, repossession, and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to Trustee and preparing responses to an order to show cause; (5) attending and completing the § 341 meeting of creditors; (6) resolving objections to and confirming a chapter 13 plan. *Id.*, Ex. A and B. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

In the absence of opposition, this motion will be GRANTED. Movant shall be awarded \$5,000.00 in fees. Trustee will be authorized to pay Movant \$5,000.00 in accordance with the plan.

7. [19-14193](#)-B-13 **IN RE: ELIZABETH VILLA**
[RSW-3](#)

MOTION TO MODIFY PLAN
12-17-2020 [[99](#)]

ELIZABETH VILLA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other

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

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

10:00 AM

1. [20-13806](#)-B-7 **IN RE: MARIA/ISIDRO GARCIA**
[DMG-1](#)

MOTION TO AVOID LIEN OF ACCESS CAPITAL SERVICES, INC.
12-29-2020 [9]

MARIA GARCIA/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1). Maria Garcia and Isidro Garcia ("Debtors") filed this motion seeking to avoid a judicial lien in favor of Access Capital Services, Inc. ("Creditor"), and encumbering residential real property located at 2226 Norwalk St., Delano, CA 93215 ("Property"). Doc. #9.

This motion will be DENIED because Debtors have failed to make a *prima facie* showing that they are entitled to the relief sought. The moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

A judgment in the amount of \$6,859.14 was entered against Debtors in favor of Creditor on March 5, 2009. Doc. #12, Ex. A. On March 19, 2009, an abstract of judgment was issued, and then recorded in Kern County on March 30, 2009. *Ibid.* This abstract was derived from case number L-1504-CL-5652 and filed as instrument number 0209044619. *Ibid.* The named defendants under this judgment are Isidro Garcia and Guadalupe Garcia, also known as Guadalupe Perez Garcia and Guadalupe Perez. *Ibid.*

Debtors contend that this judgment was renewed and now totals approximately \$54,000.00. Doc. #9. However, it appears that the evidence submitted by Debtors is for the renewal of a different judgment and hence judicial lien than the lien identified in this motion.

As an exhibit, Debtors submitted an Application for and Renewal of Judgment, which was filed on April 26, 2019 in Kern County Superior Court by Financial Credit Network, Inc ("FCN"). Doc. #12, Ex. B. According to the application, the original judgment was entered on July 6, 2009 and pertained to case number S-1500-CL22746. *Ibid.* FCN's judgment lien was recorded in Kern County on September 30, 2009 and FCN's original abstract of judgment bore instrument number 0209143284, which is different from Creditor's judgment lien

recorded March 30, 2009 and bearing instrument number 0209044619. *Ibid.* Moreover, FCN's original judgment lien was in the amount of \$23,503.43—much larger than Creditor's \$6,859.14 judgment. FCN's judgment was entered against Maria O Garcia, also known as Maria Enciso, and Isidro S Garcia Sr. *Ibid.*

Thus, it appears that these are two separate judgments, and this motion seeks to avoid a judgment lien that expired pre-petition.

California Code of Civil Procedure ("C.C.P.") § 683.020 states:

Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished."

C.C.P. § 683.020. C.C.P. §§ 683.110 through 683.160 state that a judgment is renewable and provides the procedures for renewal.

Under C.C.P. § 683.020, Creditor's judgment expired on March 5, 2019. This case was filed on December 7, 2020 and therefore 11 U.S.C. §§ 108(c), 362(a), 362(c)(1) do not apply because the period for renewing Creditor's judgment expired before the case was filed. Doc. #1. No evidence that this judgment was ever renewed is presented.

Therefore, under the Ninth Circuit's holding in *Spirtos v. Moreno (In re Spirtos)*, 221 F.3d 1079, 1080 (9th Cir. 2000), the 10-year expiration date for judgments under California law has passed. The bankruptcy case was filed 11 years, nine months, and two days after the date of entry of the judgment. The amount of time that has passed is beyond the 10 years for effectiveness of judgments.

The court notes that Schedule D only indicates two creditors secured by the Property: Bank of America's first deed of trust and FCN's judicial lien. Doc. #1, Schedule D, ¶¶ 2.1, 2.2. Creditor does not appear to be listed on Schedule E/F. Debtors will need to amend their schedules to account for this discrepancy. If Creditor was not included in the schedules because creditor's judgment expired pre-petition, then this motion is moot.

This motion will be DENIED.

2. [20-13338](#)-B-7 **IN RE: JENNIFER PINEDA**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2020 [[19](#)]

LAKEVIEW LOAN SERVICING,
LLC./MV
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 603 Kirklees Ct., Bakersfield, CA ("Property"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

On May 19, 2017, Jennifer Pineda ("Debtor") and non-filing third party Francisco Alfaro Maldonado ("Co-Debtor") executed a promissory note secured by a deed of trust encumbering Property in favor of JPMorgan Chase Bank, N.A., in the amount of \$167,322.00. Doc. #22, Ex. 2. The promissory note provided for interest at a rate of 3.875% and monthly payments of \$786.82 through June 1, 2047. *Id.*, Ex. 1. This deed of trust was assigned to Movant on August 18, 2017. *Id.*, Ex. 3.

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.

Here, Movant contends that Debtor and Co-Debtor are delinquent on payments for the loan in the months of November 1, 2019 through November 2020. Doc. #21, ¶ 7. This includes seven monthly payments at \$1,182.15 (October 2019 – May 2020) and six monthly payments at \$1,207.70 (June 2020 – November 2020), for a total of \$15,521.25. *Ibid.* As of November 1, 2020, Movant claims that Debtor and Co-Debtor are indebted \$173,249.12, which consists of \$159,899.30 in unpaid principal, \$6,712.42 in accrued interest, \$71.68 in pro rata mortgage insurance premiums and private mortgage insurance, \$4,779.56 for “Escrow Advance Balance,” \$94.41 in accrued late charges, and \$1,691.75 in “Other Fees.” *Id.*, ¶ 8. No information is provided for these other fees, but Movant does state that it has incurred attorney fees and costs totaling \$1,131.00 seeking relief from stay in this proceeding. *Id.*, ¶ 7.

Meanwhile, Debtor’s schedules indicate that the Property was worth \$185,000.00 on the date of the petition. Doc. #1, Schedule A/B, ¶ 1.1. Moreover, Debtor’s *Statement of Intentions*, Form 108, indicates that Debtor intends to surrender possession of Property. *Id.*, Form 108. On this valuation, Movant seeks relief from the automatic stay for “cause” under § 362(d)(1) because Debtor and Co-Debtor are delinquent at least \$15,521.25. Additionally, Movant seeks relief under § 362(d)(2) because Debtor has “minimal equity or no equity” in Property and it is not necessary for an effective reorganization. Doc. #21, ¶ 11; #19 citing *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

After review of the included evidence, the court finds that “cause” exists to lift the stay because Debtor and Co-Debtor have failed to make at least 13 complete pre-petition payments and three post-petition payments. Movant has produced evidence that Debtor is delinquent at least \$15,521.25.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$11,750.88 in equity. Doc. #23, ¶ 5. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting “Other Fees.” In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is “cause” to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit 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 is delinquent at least \$15,521.25 and said in her schedules she intends to surrender possession of Property.

3. [20-12851](#)-B-7 **IN RE: DANIEL GARCIA MARTINEZ**
[APN-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2021 [[36](#)]

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Nissan Motor Acceptance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Nissan Altima ("Vehicle"). Doc. #36.

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 is 3 pre-petition payments past due and at least 1 post-petition payment past due in the amount of \$2,212.79, including late fees. Doc. #40.

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. Debtor values the Vehicle at \$11,200.00 and the amount owed to Movant is \$18,227.16. Doc. #38, #40.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

4. [20-10259](#)-B-7 **IN RE: JOSE URIBE RIZO AND LORENZA URIBE**
[ORS-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-21-2020 [\[28\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). Jose Jaime Uribe Rizo and Lorenza Uribe ("Debtors") filed this motion to convert the case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #28. The court previously denied a similar motion without prejudice for procedural defects.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

LBR 9004-2(c)(1) requires motions, declarations, and other specified pleadings to be filed as separate documents. Here, the motion and declaration were combined into one document and not filed separately. Doc. #28.

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

The court notes that in this motion, the notice and certificate of service were separately filed, and movant used a unique docket control number. This was an improvement over the last motion. Multiple documents and pleadings related to the same matter and bearing the same docket control number may be included in one proof of service. LBR 9004-2(e)(3).

5. [12-11969](#)-B-7 **IN RE: DAMON SMOTHERS**
[RSW-4](#)

MOTION TO AVOID LIEN OF MISSION BANK
1-13-2021 [\[61\]](#)

DAMON SMOTHERS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Damon Baird Smothers ("Debtor") filed this motion seeking to avoid a judicial lien in favor of Mission Bank ("Creditor") and encumbering residential real property located at 8812 Crowningshield Dr., Bakersfield, CA 93311 ("Property"). Doc. #61.

This motion will be 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 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal.1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against Debtor in favor of Creditor in the sum of \$58,637.88 on January 24, 2011. Doc. #64, Ex. 4. The abstract of judgment was issued on February 17, 2011 and recorded in Kern County on February 23, 2011. *Ibid*. That lien attached to Debtor's interest in Property. Doc. #63. Creditor's lien was properly listed in Schedule D with a value of \$63,650.00. *Id.*, Ex. 3, ¶ 2.5.

As of the petition date, Property had an approximate value of \$142,000.00. *Id.*, Ex. 1. The unavoidable liens totaled \$289,089.00 on that same date, consisting of a first and second deed of trust in favor of Bank of America in the amounts of \$237,000.00 and \$52,089.00, respectively. *Id.*, Ex. 3. Debtor claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 703.140(b)(5) in the amount of \$1.00. *Id.*, Ex. 2. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$142,000.00
Total amount of unavoidable liens	-	\$289,089.00
Remaining equity available in Property	=	(\$147,089.00)
Value of Debtor's exemption	-	\$1.00
Creditor's judicial lien	-	\$63,650.00
Extent Debtors' exemption impaired	=	(\$210,740.00)

Doc. #63. The court notes that the 10-year statute of limitations under C.C.P. § 683.020 would have lapsed but for the bankruptcy filing on March 6, 2012. 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect. See *In re Spirtos*, 221 F.3d 1079, 1080 (9th Cir. 2000). Thus, the tolling for this 10-year period is halted until 30 days after notice of the

termination or expiration of the stay under 11 U.S.C. § 108(c). Debtor received a discharge on August 3, 2012 and the case was closed on August 10, 2012. Doc. #34; #36.

The stay in this case expired on August 10, 2012, the date which the case was closed. See 11 U.S.C. § 362(c)(2)(C). "Reopening does not bring property back into the estate nor does it cause the automatic stay to be revived." *In re Lopez*, 283 B.R. 22, 32 (B.A.P. 9th Cir. 2002).

The bankruptcy case was filed one year, one month, and 11 days (407 days) after the date of entry of the judgment (the time from January 24, 2011 to March 6, 2012). The expiration of the judgment was therefore stayed until September 10, 2012 (because September 10, 2012 is the date 30 days after the automatic stay expired; see § 108(c)). The time then began to run again on September 10, 2012. From that date until the date of this hearing is eight years, four months, and 24 days (3,068 days). The total amount of days elapsed for the purposes of C.C.P. § 683.020 is 3,475, a little over nine years and six months. Thus, the amount of time that has passed pursuant to 11 U.S.C. § 108(c) is less than the requisite 10 years for expiration of judgments.

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). Therefore, in the absence of opposition, this motion will be GRANTED.

6. [12-11969](#)-B-7 **IN RE: DAMON SMOTHERS**
[RSW-5](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
1-13-2021 [[66](#)]

DAMON SMOTHERS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Damon Baird Smothers ("Debtor") filed this motion seeking to avoid a judicial lien in favor of American Express Bank, FSB ("Creditor"), and encumbering residential real property located at 8812 Crowningshield Dr., Bakersfield, CA 93311 ("Property"). Doc. #66.

This motion will be 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 (B.A.P. 9th Cir. 2003), quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against Debtor in favor of Creditor in the sum of \$1,754.67 on November 4, 2011. Doc. #69, Ex. 4. The abstract of judgment was issued on February 28, 2012 and recorded in Kern County on March 14, 2012. *Ibid.* However, Debtor filed his chapter 7 petition on March 6, 2012, which triggered the automatic stay of 11 U.S.C. § 362(a). Doc. #1. This judgment lien would therefore be avoidable as a post-petition transaction under § 549 or void under § 362 as it occurred during the automatic stay. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992), *superseded on other grounds.*

Section 522(h) allows the debtor to avoid the transfer of property to the extent that the debtor could have exempted such property under subsection (g)(1)—such transfer was not a voluntarily made by the debtor and the debtor did not conceal such property—if the trustee had exercised avoidance powers for avoidable transfers under § 549 and no attempt to avoid was made.

Section 549(a) allows the debtor, by virtue of § 522(h), to avoid an unauthorized transfer of property of the estate that occurs after the commencement of the case. However, § 549(d) requires these actions to be commenced before the earlier of (1) two years after the date of the transaction, or (2) the time the case is closed or dismissed. Both of these dates have expired, which would hinder Debtor's ability to avoid the lien under § 549.

A Northern District of California bankruptcy court found that a judicial lien recorded after the petition date may be avoided under § 522(f). *In re Feathers*, 2015 Bankr. LEXIS 1141 (Bankr. N.D. Cal. Apr. 7, 2015). "Reviewed in the context of § 522 as a whole, other provisions 'set forth limitations as to when exemptions may or may not trump a creditor's claim or lien rights, but they focus on the nature and timing of the claim, rather than the time when the lien affixed.'" *Id.*, at *4 quoting *Bank of Cushing v. Vaughan (In re Vaughan)*, 311 B.R. 573, 578 (B.A.P. 10th Cir. 2004).

The *Feathers* court followed *Vaughan's* reasoning under § 522(c), which provides that "property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before commencement of the case," unless the case is dismissed or the debt falls into one of four exceptions. § 522(c). Here, as in those cases, none of these exceptions apply.

"Thus, § 522(c) performs both a protection function, by preserving the exemption if nondischargeable claims other than those specifically excepted by § 522(c) are sought to be enforced against exempt property, and a limiting function, by denying the exemption protections for certain kinds of nondischargeable claims and unavoids liens.'" *Vaughan*, 311 B.R. at 579 quoting *S & C Home Loans v. Farr (In re Farr)*, 278 B.R. 171, 177 (B.A.P. 9th Cir. 2002). On this basis, *Feathers* and *Vaughan* found no impediments to avoiding a post-petition lien derived from a creditor's pre-petition debt under § 522(f). *Feathers*, 2015 LEXIS 1141 at *5; *Vaughan*, 311 B.R. at 580; see also *Rosenberg v. Corio (In re Corio)*, 371 F. App'x. 352 (3d Cir. 2010).

Although Creditor's lien did not attach pre-petition, Creditor's claim is listed in amended Schedule D in the amount of \$12,266.00 despite having previously been listed in Schedule F in the amount of \$1,826.00. Doc. #46, Schedule D., ¶ 2.1; cf. Doc. #17, at 3.

As of the petition date, Property had an approximate value of \$142,000.00. Doc. #69, Ex. 1. The unavoidable liens totaled \$289,089.00 on that same date, consisting of a first and second deed of trust in favor of Bank of America in the amounts of \$237,000.00 and \$52,089.00, respectively. *Id.*, Ex. 3. Debtor claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 703.140(b)(5) in the amount of \$1.00. *Id.*, Ex. 2. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$142,000.00
Total amount of unavoidable liens	-	\$289,089.00
Remaining equity available in Property	=	(\$147,089.00)
Value of Debtor's exemption	-	\$1.00
Creditor's judicial lien	-	\$12,266.00
Extent Debtors' exemption impaired	=	(\$159,356.00)

Doc. #68.

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). Therefore, in the absence of opposition, this motion will be GRANTED.

7. [19-10973](#)-B-7 **IN RE: CVC ENVIRONMENTAL, INC.**
[JMV-1](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
1-6-2021 [[79](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
VINCENT GORSKI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests fees of \$24,992.73 and costs of \$234.73 for a total of \$25,227.46 as statutory compensation and reimbursement for actual and necessary expenses. Doc. #79.

This motion will be GRANTED.

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).

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).

Here, Trustee made total disbursements of \$434,854.63 to creditors. Doc. #82, Ex. A. Trustee has requested:

- (1) \$1,250.00 (25%) of the first \$5,000.00;
- (2) \$4,500.00 (10%) of the next \$45,000.00; and,
- (3) \$19,242.73 (5%) of the next \$384,854.63.

Ibid. These percentages comply with the percentage restrictions imposed by § 326(a) and total \$24,992.73. These fees were incurred by Trustee during the course of this case, in which Trustee conducted the meeting of creditors, sold property of the estate, reviewed and reconciled financial records, made disbursements totaling \$434,854.63 to creditors, and prepared the final report. Trustee also incurred the following expenses:

Travel (66.6 miles at \$0.58/mile)	\$38.63
Copies (400 copies at \$0.17/copy)	\$68.00
Postage	\$113.10
UCC Search	\$15.00
Total Costs:	\$234.73

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). There is no objection to the fee request. This motion will be GRANTED, and Trustee will be awarded the requested fees and costs.

8. [20-13981](#)-B-7 **IN RE: NICOLAS/CHRISTINA ZAPIAIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2021 [[12](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.
FILING FEE PAID \$338.00

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee of \$338.00 was paid on January 21, 2021. Accordingly, the Order to Show Cause will be vacated.

9. [20-13489](#)-B-7 **IN RE: ESTELA MUNOZ**
[RSW-1](#)

MOTION TO AVOID LIEN OF CACH, LLC
12-30-2020 [\[14\]](#)

ESTELA MUNOZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1).² Estela Munoz ("Debtor") filed this motion seeking to avoid a judicial lien in favor of Cach, LLC ("Creditor") and encumbering residential real property located at 3605 Shellmacher Ave., Bakersfield, CA 93307 ("Property"). Doc. #12.

This motion will be DENIED for failure to comply with the local and federal rules.

First, the certificate of service indicates that chapter 7 trustee Jeffrey M. Vetter ("Trustee") was served by email. Rule 4003(d) provides:

A proceeding under § 522(f) to avoid a lien . . . of property exempt under the Code shall be commenced by motion in the same manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint.

Rule 4003(d). Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule

² Unless otherwise indicated, references to "LBR" are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" are to the Federal Rules of Bankruptcy Procedure; "Civil Rule" are to the Federal Rules of Civil Procedure; and all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 9036. Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Property is listed in the schedules and is therefore property of the estate. Doc. #1, Schedule A/B, ¶ 1.1. Because this motion affects property of the estate, Trustee must be served as its representative in accordance with Rule 7004 and cannot be served electronically. Because relief is not being sought against the United States trustee, electronic notice is sufficient in this instance.

Second, LBR 9004-2(c)(1) requires that motions, exhibits, and other specified pleadings are to be filed as separate documents. LBR 9004-2(d) requires exhibits to be filed as a separate document, contain an index, and include consecutively numbered exhibit pages. Here, the exhibits are attached to the motion and are not filed separately, consecutively numbered, nor contain an index. Doc. #14.

Third, Debtor was not entitled to the exemption when the motion was filed. The meeting of creditors in this case was held and concluded December 18, 2020. The Trustee filed a Notice of Assets one day later. This motion was filed December 30, 2020—less than 30 days after the conclusion of the creditor's meeting. Rule 4003(b)(1). Creditors had almost two weeks to object to exemptions when this motion was filed.

Some might argue a creditor's right to object to exemptions when faced with an avoidance motion under § 522(f) provides necessary protection from "early" avoidance motions. See Rule 4003(d). But there is no response here and Debtor must establish all elements to obtain relief.

For the foregoing reasons, this motion will be DENIED.

10. [20-13491](#)-B-7 **IN RE: DAVID RICHARDSON**
[RSW-1](#)

MOTION TO AVOID LIEN OF CALIFORNIA CAPITAL INSURANCE COMPANY
1-5-2021 [[12](#)]

DAVID RICHARDSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1). David Richardson ("Debtor") filed this motion seeking to avoid a judicial lien in favor of California Capital Insurance Company ("Creditor") and encumbering residential real property located at 6610 Betty St., Bakersfield, CA 93307 ("Property"). Doc. #12. Debtor owns a one-half interest in Property with his sister. Doc. #1; #15. Debtor alleges the value of the fee interest in Property is \$131,289.00—his interest's value is alleged to be \$65,644.50. Debtor claims an exemption of \$75,000.00 under Cal. Civ. Proc. Code §704.730.

This motion will be DENIED because Debtor has failed to make a *prima facie* showing that he is entitled to the relief sought. The moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The motion appears to be properly served but does not establish the requisite facts necessary for the relief requested.

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 (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).

Though at first blush this motion appears to support the relief requested, the facts before the court do not support the motion. This is true for two reasons.

First, the declaration (Doc. #14) establishes the lien at issue is not avoidable under §522(f). The declaration states Debtor's interest in Property is subject to a "first deed of trust." A deed of trust is neither a judicial lien nor a "nonpossessory,

nonpurchase-money security interest" in the type of property for which relief is available.

True enough, Debtor's Schedule D and exhibits to the motion reference the judgment lien asserted by Creditor. Doc. #15, Ex. 3, ¶ 2.1. So, either the declaration or schedule is wrong. The Debtor fails to meet his burden here.

Second, Debtor was not entitled to the exemption when the motion was filed. The meeting of creditors in this case was held and concluded December 18, 2020. The Trustee filed a Report of No Distribution one day later. This motion was filed January 5, 2021—less than 30 days after the conclusion of the creditor's meeting. Fed. R. Bankr. P. 4003(b)(1). Creditors had almost two weeks to object to exemptions when this motion was filed.

Some might argue a creditor's right to object to exemptions when faced with an avoidance motion under § 522(f) provides necessary protection from "early" avoidance motions. See Fed. R. Bankr. P. 4003(d). But there is no response here and Debtor must establish all elements to obtain relief.

The motion will be DENIED.

11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

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

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

NO RULING.

2. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[20-1059](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-7-2020 [[1](#)]

ATCHLEY ET AL V. DHILLON
WILLIAM ALEXANDER/ATTY. FOR PL.
DISMISSED 12/21/20. CLOSED 1/8/21.

FINAL RULING: There will be no hearing on this status conference.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On December 3, 2020, the court issued an order dismissing the first cause of action without leave to amend. The plaintiff had 14 days to amend the second and third causes of action. No amended complaint was filed and on December 21, 2020, the court issued an order dismissing the case. Doc. #34. Accordingly, this status conference will be dropped from calendar because the case was dismissed on December 21, 2020 and closed on January 8, 2021.

3. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[20-1065](#)

STATUS CONFERENCE RE: COMPLAINT
12-9-2020 [[1](#)]

ATCHLEY ET AL V. DHILLON
WILLIAM ALEXANDER/ATTY. FOR PL.

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

DISPOSITION: Continued to March 3, 2021 at 11:00 a.m.

ORDER: The court will issue the order.

Defendant filed a Motion to Dismiss, for Summary Judgment, and for More Definite Statement on January 26, 2021. Docs. ##8-12. The hearing is scheduled for March 3, 2021 at 11:00 a.m. at the Bakersfield Session of this court. This conference will be continued to that date and time.