

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, February 23, 2022  
Place: Department A - Courtroom #11  
Fresno, California

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

1. [21-11814](#)-A-11    **IN RE: MARK FORREST**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
7-22-2021    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:        Continued to March 30, 2022, at 9:30 a.m.

ORDER:                The court will issue an order.

The status conference will be continued to March 30, 2022, at 9:30 a.m. to be heard in conjunction with the motion to confirm the modified Chapter 11 plan.

2. [21-11814](#)-A-11    **IN RE: MARK FORREST**  
[LKW-6](#)

CONTINUED MOTION TO CONFIRM CHAPTER 11 PLAN  
10-19-2021    [[66](#)]

MARK FORREST/MV  
LEONARD WELSH/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 15, 2022. Doc. #152.

11:00 AM

1. [21-12809](#)-A-7     **IN RE: XOCHITL HERNANDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECHNOLOGY FEDERAL  
CREDIT UNION  
1-26-2022     [[16](#)]

NO RULING.

1. [21-12611](#)-A-7     **IN RE: MONICA GUTIERREZ RICO**  
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-14-2022    [[13](#)]

JAMES SALVEN/MV  
TRAVIS POTEAT/ATTY. FOR DBT.

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

DISPOSITION:         Overruled as moot.

ORDER:                The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on February 9, 2022, to claim exemptions under California Code of Civil Procedure § 703.140(b). Doc. #22.

2. [19-12237](#)-A-7     **IN RE: MELISSA MCGEE**  
[MAZ-2](#)

MOTION TO AVOID LIEN OF CATHY IRENE COOPER  
1-21-2022    [[29](#)]

MELISSA MCGEE/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:         Granted.

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

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

Melissa A. McGee ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Cathy Irene Cooper, assigned to Kings Credit Services, a corporation ("Creditor"), on Debtor's residential real

property commonly referred to as 3081 Mission Dr., Hanford, CA 93230 (the "Property"). Doc. #29; Schedule C, Doc. #1.

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

Debtor filed the bankruptcy petition on May 28, 2019. A judgment was entered against Melissa Machado in the amount of \$83,924.42 in favor of Creditor on May 25, 2004 and renewed on March 14, 2014. Ex. D, Doc. #32. Debtor lists "Melissa Machado" as a name used by Debtor in the last eight years. Petition, Doc. #1. The abstract of judgment was recorded pre-petition in Kings County on June 16, 2014 as document number 1408527. Ex. D, Doc. #32. The lien attached to Debtor's interest in the Property located in Kings County. Doc. #21. The Property also is encumbered by a lien in favor of Chase Mortgage in the amount \$185,501.00. Am. Schedule D, Doc. #27. Debtor claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$247,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$83,924.42
Total amount of all other liens on the Property (excluding junior judicial liens)	+	185,501.00
Amount of Debtor's claim of exemption in the Property	+	100,000.00
		\$369,425.42
Value of Debtor's interest in the Property absent liens	-	247,000.00
Amount Creditor's lien impairs Debtor's exemption		\$122,425.42

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

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

3. [08-16938](#)-A-7     **IN RE: PAUL KLIMEK AND CHARLENE MARCUM**  
[FW-2](#)

MOTION TO EMPLOY MARIE IANNIELLO-OCCHIGROSSI AS SPECIAL COUNSEL  
AND/OR MOTION TO EMPLOY LAURA MULLINS AS SPECIAL COUNSEL  
1-18-2022    [[32](#)]

PETER FEAR/MV  
PETER SAUER/ATTY. FOR MV.

TENTATIVE RULING:           This matter will proceed as scheduled.

DISPOSITION:                Denied without prejudice.

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

This matter will be DENIED WITHOUT PREJUDICE for lack of notice.

Paul Gerald Klimek and Charlene Joan Marcum (together, "Debtors") filed a petition under chapter 7 of the Bankruptcy Code on October 29, 2008. Debtors are not represented by counsel in this bankruptcy case. Debtors obtained a chapter 7 discharge on February 9, 2009, and their case was closed on February 13, 2009. The United States Trustee moved to reopen Debtors' case on November 2, 2021, and the case was reopened. Doc. #19. Since then, Peter L. Fear ("Trustee") has been appointed to serve as chapter 7 trustee, a Notice of Assets was filed, along with a Notice to Creditors to File Proof of Claim. Doc. #23. Trustee employed general counsel, and now seeks to employ special purpose counsel.

On Debtors' voluntary petition filed on October 29, 2008, Debtors identified their mailing address as 56207 Manzanita Lake Drive, North Fork, CA 93643. Doc. #1. Debtors have not filed any document with this court since before their bankruptcy case was closed in 2009. Notice of the recent events in Debtors' case has been sent to Debtors at the North Fork address, and Debtors have not yet made an appearance in the re-opened bankruptcy case.

On December 27, 2021, before notice of this motion was served, the clerk filed an envelope marked "Return to Sender" that was originally sent to Debtors' North Fork address. Doc. #31. Included with the returned letter was a note from Paul DeLeon, the North Fork Postmaster, dated December 22, 2021, explaining that Debtors "moved approximately 5-6 years ago and there is no forwarding information on file." Doc. #31.

Presently before the court is Trustee's motion for an order authorizing the employment of Weitz & Luxenberg P.C. and The Pintas & Mullins Law Firm (collectively, "Special Purpose Counsel"), pursuant to 11 U.S.C. §§ 327 and 328. Doc. #32. Trustee seeks authority to employ Special Purpose Counsel on a contingent fee basis and unambiguously requests approval under § 328. Doc. #32.

Notice of Trustee's motion was sent to Debtors at the North Fork address. Based on the note from Mr. DeLeon in the court's file, it is highly likely that Debtors did not receive any notice of this motion based on service by mail to Debtors at the North Fork address. The court is inclined to deny Trustee's motion for lack of notice to Debtors notwithstanding the fact that Debtors have not filed a change of address with this court and the motion and related pleadings were served on Debtors at Debtors' current address on file with the

court because (1) Debtors are representing themselves in this bankruptcy case, (2) pre-approved contingent fee agreements authorized under § 328 are subject to limited subsequent review for reasonableness, and (3) based on the note from Mr. DeLeon in the court's files, Debtors may be entirely unaware of this motion.

The declarations submitted with Trustee's motion indicate that Debtors retained The Pintas & Mullins Law Firm in September 2019 to pursue a claim against a manufacturer of a toxic chemical. Decl. of Laura Mullins, Doc. #36. It is possible that Special Purpose Counsel or Trustee have communicated with Debtors about the current motion and Debtors have no opposition to the motion. If some evidence is filed with the court before the hearing, or is presented at the hearing, showing that Debtors have notice of this motion and do not oppose it, the court will grant this motion. Alternatively, the court will entertain arguments as to why notice sent to Debtors at the North Fork address is sufficient to provide notice to Debtors of this motion under the circumstances. Given that Debtors are pro se in their bankruptcy case, their bankruptcy case was closed nearly thirteen years ago, and there is evidence in the court's records that Debtors have not lived at the address to which notice of this motion was mailed for the last five or six years, the court is concerned that Debtors' due process rights with respect to notice of this motion and their opportunity to be heard have not been met.

Accordingly, this motion will be denied without prejudice for lack of notice.

4. [21-12841](#)-A-7     **IN RE: CHRISTINE LE**  
[ELP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-26-2022    [\[20\]](#)

CONSUMER PORTFOLIO SERVICES, INC./MV  
ERICA LOFTIS/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, Consumer Portfolio Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Kia Forte ("Vehicle"). Doc. #20.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,746.86. Doc. #22.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$22,250.00 and the debtor owes \$25,118.35. Doc. #22.

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

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

5. [20-11367-A-7](#) **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**  
[DMG-5](#)

MOTION TO SELL  
1-26-2022 [[378](#)]

JEFFREY VETTER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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. This matter will proceed as scheduled for higher and better offers.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Temblor Petroleum Company LLC ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property commonly known as Debtor's Oil and Gas Working Interest, Lynch Canyon Field, Monterey County, California ("Working Interest") to "Cal NRG" for the purchase price of \$20,000.00, subject to higher and better bids at the hearing. Doc. #378. The sale of the Working Interest is "as-is" and subject to any and all liens, encumbrances, charges, taxes, fees, and delinquencies attributed to Debtor's share of Lynch Canyon Field joint interest liabilities, which are currently estimated at \$538,801.83 as of January 13, 2022. Id.

While the motion and supporting declaration identify Cal NRG as the proposed purchaser, the proposed purchase terms set forth in Exhibit A to the motion identify Eagle Petroleum Monterey LLC ("EPM") as the acquiring entity. Doc. #380. It appears that Trustee uses "Cal NRG" to identify CalNRG Operating LLC ("CalNRG"). Doc. #381; Ex. A. Doc. #380. Based on the proposed purchase terms included with the motion, it appears that EPM is the majority working interest owner in the Lynch Canyon Field, and CalNRG is an affiliate of EPM and the current operator of that field. Doc. #378. Debtor is a non-operator party. Id. According to Trustee's declaration and the proposed purchase terms, the \$538,801.83 is owed by Debtor to CalNRG and represents Debtor's delinquent balance attributed to Debtor's share of the joint interest billings through October 2021. Ex. A, Doc. #380. Although not addressed by Trustee in the motion, it appears as though the sale of the Working Interest would resolve Debtor's delinquent balance owed to CalNRG.

Trustee also seeks authorization to pay a commission for the sale to Energy Advisors Group ("Broker"). Doc. #378.

#### Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #381. EPM tendered an offer of \$20,000, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Ex. A, Doc. #380. The sale is "as is, where is" with no warranties or representations of any nature and buyer is subject to any liens, encumbrances, charges, taxes, fees, and delinquencies attributed to Debtor's share of joint interest liabilities that

Trustee estimates to be \$538,801.83 as of January 13, 2022 and are owed to CalNRG. Id. EPM made an initial deposit of \$3,000. Id. Trustee, over the course of serving on the chapter 7 panel, as developed contacts in the oil and gas industry and circulated the sale opportunity to contacts but did not receive any interest in the Working Interest. Id. If the Working Interest is sold to a higher bidder at the hearing, the higher bidder will take the Working Interest as-is and subject to the delinquencies attributed to Debtor's non-operator interest in the Lynch Canyon Field. Id. Trustee expects to pay a \$10,000 commission to Broker. Id.

It appears that the sale of the Working Interest to EPM is in the best interests of the estate, the Working Interest will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Working Interest to EPM pursuant to 11 U.S.C. § 363(b) (1).

#### Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court authorized the employment of Broker on October 6, 2020. Doc. #175. The court authorized payment to Broker from proceeds received from the sale of the Working Interest, subject to approval under § 330 of the Bankruptcy Code.

Trustee seeks to pay Broker an amount not to exceed \$10,000 from the sale proceeds of the Working Interest for services rendered as the broker for the sale. Decl. of Trustee, Doc. #381. Section 330(a) (1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a) (1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a) (3). Broker was employed in 2020 and assisted with securing an offer for the sale of the Working Interests. Doc. #381. The Order Authorizing Employment stated that compensation to Broker will be paid from sale proceeds in the manner set forth in the Employment Agreement. Doc. #175. Although the cash price to be paid for the Working Interest is \$20,000, of which \$10,000 will be paid to Broker, EPM will assume any liens, encumbrances, charges, taxes, fees, and delinquencies attributed to Debtor's share of joint interest liabilities which Trustee estimates to be \$538,801.83 as of January 13, 2022, so the proposed compensation is less than 1.8% of the total value of the transaction to the estate. Doc. #381. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

#### Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Working Interest pursuant to 11 U.S.C. § 363(b) (1). Trustee is authorized to pay Broker for services as set forth in the motion.

6. [22-10072](#)-A-7 **IN RE: RUBEN LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-2-2022 [[16](#)]

VINCENT QUIGG/ATTY. FOR DBT.  
\$338.00 FEE PAID

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 full filing fees have been paid. The case shall remain pending.

7. [21-11483](#)-A-7 **IN RE: CARLOS/KIMBERLY JACQUES**  
[PSC-2](#)

MOTION TO AVOID LIEN OF CALVARY SPV I, LLC  
12-1-2021 [[32](#)]

KIMBERLY JACQUES/MV  
PATRICIA CARRILLO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the court notes that the motion was filed with the court on December 1, 2021, but a certificate of service was not filed until January 14, 2022. Doc. #45. Service of the motion was not made until January 14, 2022. Although the hearing date was calendared with ample time and no prejudice to any parties in interest has resulted from the delayed service, LBR 9014-1(e)(2) requires a proof of service to be filed within three days of filing a motion, which was not done in this case. The court encourages counsel to review the local rules.

Carlos V. Jacques and Kimberly A. Jacques (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Cavalry SPV I LLC ("Creditor") on Debtors' residential real property commonly referred

to as 5554 W. Everett, Fresno, CA 93722 (the "Property"). Doc. #32; Am. Schedule C, Doc. #12.

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 debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on June 8, 2021. A judgment was entered against Kimberly Jacques in the amount of \$7,567.77 in favor of Creditor on November 14, 2012. Ex. A, Doc. #35. The abstract of judgment was recorded pre-petition in Fresno County on December 23, 2020 as document number 2020-0186154. Ex. A, Doc. #35. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #35. The Property is encumbered by a senior judgment lien in favor of Citibank N.A. recorded in Fresno County on January 31, 2012 in the amount of \$2,759.16. Doc. #40. The Property also is encumbered by a deed of trust owing to Mr. Cooper in the amount of \$125,000. Schedule D, Doc. #1. Debtors claimed an exemption of \$255,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$380,000.00. Schedule A/B, Doc. #1.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,567.77
Total amount of all other liens on the Property (excluding junior judicial liens)	+	127,759.16
Amount of Debtors' claim of exemption in the Property	+	255,000.00
		\$390,326.93
Value of Debtors' interest in the Property absent liens	-	380,000
Amount Creditor's lien impairs Debtors' exemption		\$10,326.93

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

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

8. [21-11483](#)-A-7     **IN RE: CARLOS/KIMBERLY JACQUES**  
[PSC-3](#)

MOTION TO AVOID LIEN OF CITIBANK N.A.  
12-1-2021    [[37](#)]

KIMBERLY JACQUES/MV  
PATRICIA CARRILLO/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the court notes that the motion was filed with the court on December 1, 2021, but a certificate of service was not filed until January 14, 2022. Doc. #46. Service of the motion was not made until January 14, 2022. Although the hearing date was calendared with ample time and no prejudice to any parties in interest has resulted from the delayed service, LBR 9014-1(e)(2) requires a proof of service to be filed within three days of filing a motion, which was not done in this case. The court encourages counsel to review the local rules.

Carlos V. Jacques and Kimberly A. Jacques (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Citibank N.A. ("Creditor") on Debtors' residential real property commonly referred to as 5554 W. Everett, Fresno, CA 93722 (the "Property"). Doc. #37; Am. Schedule C, Doc. #12.

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 debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on June 8, 2021. A judgment was entered against Kimberly A. Jacques in the amount of \$2,759.16 in favor of Creditor on January 6, 2012. Ex. A, Doc. #40. The abstract of judgment was recorded pre-petition in Fresno County on January 31, 2012 as document number 2012-0013838. Ex. A, Doc. #40. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #40. The Property is encumbered by a junior judgment lien in favor of Cavalry SPV I LLC recorded in Fresno County on December 23, 2020 that is the subject of Debtors' other lien avoidance motion on this

calendar, matter number 7 above. Doc. #35. The Property also is encumbered by a deed of trust owing to Mr. Cooper in the amount of \$125,000. Schedule D, Doc. #1. Debtors claimed an exemption of \$255,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$380,000.00. Schedule A/B, Doc. #1.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f) (2) (B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Having removed the junior lien, matter number 7, above, the statutory formula applies as follows:

Amount of Creditor's judicial lien		\$2,759.16
Total amount of all other liens on the Property (excluding junior judicial liens)	+	125,000
Amount of Debtors' claim of exemption in the Property	+	255,000.00
		\$382,759.16
Value of Debtors' interest in the Property absent liens	-	380,000
Amount Creditor's lien impairs Debtors' exemption		\$2,759.16

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

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

9. [21-11988](#)-A-7 **IN RE: JOSE GONZALEZ**  
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
 1-14-2022 [25]

JAMES SALVEN/MV  
 TRAVIS POTEAT/ATTY. FOR DBT.  
 PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jose Fabela Gonzalez ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes arising from an alleged fraudulent transfer against Fabian Gonzales ("Gonzales"). Doc. #25.

Debtor filed the voluntary petition on August 13, 2021. Debtor's schedules revealed a transfer of the property located at 1799 W. Bane Avenue, Tulare, CA 93274 ("Property") to Gonzales, Debtor's son, on April 20, 2020. Doc. #27. Debtor stated the fair market value of the Property to be \$145,000. Doc. #27. Debtor received \$50,000 from Gonzales for the Property, which Trustee believes is the approximate amount owing on the mortgage at the time of the transfer. Doc. #27. Trustee believes that the transfer of the Property was fraudulent and could be avoided, but a preliminary title report revealed a number of issues associated with avoiding the transfer. Doc. #27. Trustee would be required to resolve community property issues in an adversary proceeding and would potentially have to pay off a \$145,000 loan secured by the Property. Doc. #27. To avoid the uncertainty and costs associated with litigating the transfer, Trustee and Gonzales have entered into a settlement agreement whereby Gonzales will pay \$30,000 to the estate and Trustee will release any and all claims relating to ownership or transfer of the Property. Doc. #25; Ex. A, Doc. #28. Trustee is in receipt of the \$30,000.

On a motion by the 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. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #27. The proposed settlement allows for a payment to the estate of \$30,000. Tr.'s Decl., Doc. #27. In return, Trustee will release claims relating to the ownership or transfer of the Property. Doc. #27. This will avoid costs to the estate associated with commencing and litigating an adversary proceeding. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #27. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. 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). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Gonzales is approved.

10. [21-11789](#)-A-7 **IN RE: ABDUL RAHMANI**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-14-2022 [[27](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DISCHARGED 11/02/2021

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on November 2, 2021. Doc. #18. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Motor Credit Corporation d/b/a Toyota Financial Services ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 Toyota Camry ("Vehicle"). Doc. #27.

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).



After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$855.40. Doc. ##29, 30. In addition, the moving papers show the collateral is a depreciating asset and there is lack of insurance.

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. No other relief is awarded.

11. [18-14099](#)-A-7 **IN RE: RONALD OSBURN**

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION  
2-2-2022 [[73](#)]

RONALD OSBURN/MV  
RONALD OSBURN/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

On February 2, 2022, Ronald Lou Osburn ("Debtor") filed a Motion for Sanctions for Violation of the Discharge Injunction ("Motion"). Doc. #73. Debtor is not represented by counsel. A number of defects must be corrected before the court can decide Debtor's Motion on the merits.

First, the Motion is filed as a single thirty-two-page document that includes the Notice of Hearing, Motion, Memorandum of Points and Authorities, and other documents. Local Rule of Practice ("LBR") 9004-2(c)(1) requires motions, exhibits, memoranda, declarations, proofs of service, and related papers to be filed as separate documents. LBR 9004-2(d) states that exhibits must be filed as a separate document from the document to which it relates and must include an exhibit index identifying each exhibit and the page number on which the exhibit can be found. Debtor must also include a Docket Control Number for the Motion and related papers. LBR 9014-1(c). Further, none of the exhibits are authenticated and, if the court were to consider the merits of the Motion, the Motion would not be supported by evidence.

Second, it does not appear that proper service of the Motion has been made on any party. The Certificate of Service (aka Proof of Service) must include all parties served and must identify by title each of the pleadings and documents served. LBR 9004-2(e); 7005-1(d). Further, proof of service must be made by the server's affidavit under Federal Rule of Bankruptcy Procedure ("Rule") 7004(1). Here, the papers indicating service filed with the Motion are not in the form of an affidavit and do not identify (a) the papers that were served, (b) the parties on whom service was made or (c) when the document(s) were mailed. Even if the Proof of Service was in the proper form, service of the Motion to the named respondents has not been shown to satisfy the notice requirements of Rule 7004. With respect to a domestic or foreign corporation or other unincorporated association, service under Rule 7004(b)(3) may be made by

mailing, first class prepaid, the required documents "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 7004(b)(3). None of the purported Certified Mail receipts filed with the court are addressed to the attention of an individual. Rule 7004(h) provides special rules for service on an insured depository institution, but again, none of the Certified Mail receipts indicate service was made on an officer of any institution in the manner required by Rule 7004(h).

Finally, the Notice of Hearing does not comply with the requirements set forth in LBR 9014-1(d)(3), which sets forth specific information that must be included in a Notice of Hearing.

In this case, the filing and service of the Motion does not satisfy the requirements of the local rules or Federal Rules of Bankruptcy Procedure. Most importantly, it does not appear that service of the Motion was properly made on any party. The court encourages Debtor to review the local rules and Federal Rules of Bankruptcy Procedure to ensure compliance in future matters.