

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, March 2, 2022  
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 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.*

*At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. 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, **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.**

9:00 AM

1. [20-11914](#)-B-13     **IN RE: ROSA GODOY**  
[RSW-4](#)

CONTINUED MOTION TO MODIFY PLAN  
12-17-2021    [\[65\]](#)

ROSA GODOY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:       Denied without prejudice.

ORDER:                The court will issue an order.

This matter was originally scheduled for February 2, 2022. Doc. #75.

Rosa Elena Huezo Godoy ("Debtor") sought an order confirming the Second Modified Chapter 13 Plan. Doc. #65.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #73. The plan proposes to resume payments in December 2021, but Trustee has not received the payment for September 2021 and will be unable to resume making payments as called for in the plan. *Id.*

Debtor did not reply. Doc. #75. The court continued the hearing and ordered Debtor to file and serve either a written response not later than February 16, 2022, or a modified plan not later than February 23, 2022, or the motion would be denied for the grounds stated in Trustee's opposition without further hearing. Doc. #76. Debtor did neither. Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Debtor will not be able to make all payments under the plan and comply with the plan as required by § 1325(a)(6).

2. [18-14322](#)-B-13     **IN RE: PATSY ALLEN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-13-2022    [\[87\]](#)

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

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

DISPOSITION:     Withdrawn; the hearing on this motion is dismissed.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on February 28, 2022. Doc. #97. Accordingly, the hearing on this motion is dismissed and will be dropped from calendar.

3. [18-11141](#)-B-13     **IN RE: ELENA HARPER**  
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-18-2021    [\[102\]](#)

FREEDOM MORTGAGE  
CORPORATION/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

This matter was originally heard on January 5, 2022. Doc. #117.

Freedom Mortgage Corporation ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) for cause with respect to real property located at 3017 McCall Avenue, Bakersfield, CA 93304 ("Property"). Doc. #102. Movant stated that Debtor had a post-petition delinquency of \$5,745.22, consisting of six payments of \$974.84 from June 2021 to November 2021. Doc. #104. Movant also sought waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

Chapter 13 trustee Michael H. Meyer ("Trustee") timely responded, indicating that no payments were made during the April to August 2021 forbearance period, but Trustee resumed making payments November 1, 2021, and has paid a total of \$24,053.25. Doc. #117. Trustee also represented that the delinquency could be cured by filing a modified plan. *Id.*

Elena Janel Harper ("Debtor") timely responded, contending that Debtor will soon file an amended plan to resolve the arrearage balance. Doc. #114. Alternatively, Debtor will file a motion to borrow or refinance the loan. Debtor objected to waiver of the 14-day stay under Rule 4001(a)(3).

At the January 5, 2022 hearing, the court determined that a bona fide dispute existed as to the amount owed for post-petition mortgage payments. Doc. #117. The court continued the motion to March 2, 2022 and, for good cause, ordered the automatic stay continued in effect under 11 U.S.C. § 362(e)(2)(B) pending resolution of the final hearing on this motion. Movant was ordered to file and serve any additional evidence or briefing by February 16, 2022. Doc. #118. Replies by Trustee and Debtor, if any, were to be filed and served not later than February 23, 2022.

Since the last hearing, no party has filed any additional opposition. Accordingly, there is no additional evidence or argument regarding the disputed amount of post-petition mortgage payments owed to Movant. This matter will be called as scheduled to inquire about the parties' positions.

4. [20-10444](#)-B-13     **IN RE: DAVID/LATUNJIA JOHNSON**  
[PK-10](#)

CONTINUED MOTION TO MODIFY PLAN  
12-12-2021    [[165](#)]

LATUNJIA JOHNSON/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Granted.

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

This motion was originally heard on February 2, 2022. Doc. #182.

David Deshawn Johnson and Latunjia Monia Johnson ("Debtors") sought an order confirming their Fourth Modified Chapter 13 Plan. Doc. #165.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because (1) the plan provides for payment of fees in excess of the fixed compensation allowed under Local Rule of Practice ("LBR") 2016-1(c); (2) the Debtors will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6); and (3) the plan was not proposed in good faith and/or the petition

was filed in bad faith in violation of § 1325(a)(3) and (a)(7).  
Doc. #178.

First, Trustee contested the plan's lack of disclosure regarding unspecified amounts of fees paid by unnamed creditors

Second, Trustee contended that Debtors will not be able to all payments due under the plan because Debtors were delinquent \$80.00 for November 2021, along with two full payments for December 2021 and January 2022.

Lastly, Trustee questioned whether the plan and case were proposed or filed in good faith. Though Debtors' household income decreased, they surrendered a Class 2 automobile after it was totaled. If Debtors payment merely remained the same, Debtors could afford a 100% distribution to unsecured creditors.

The court entered the defaults of all non-responding parties except Trustee and continued the hearing. Doc. #182. Debtors were ordered to file a written response with admissible evidence not later than February 16, 2022. Doc. #183.

Debtors responded on February 17, 2022, but it was not timely. Doc. #185. Patrick Kavanagh, Debtors' attorney, declares that his fees were fully paid by third parties, which is outlined and disclosed in his first fee application approved on February 3, 2021. Doc. #188; cf. Doc. #109. Mr. Kavanagh disclosed that he was holding \$2,000.00 from a settlement with WB Automotive (PK-3) and a \$1,000.00 settlement from Resurgent Capital (PK-2; PK-6). Docs. #118; #121.

Second, Mr. Kavanagh declares that the December 2021 payment was mailed after Christmas, so he cannot explain why there was a delay in its receipt. Doc. #188.

Lastly, Debtors declare that the petition and plan were filed in good. Docs. ##186-87. The plan payments have decreased because their circumstances have changed as follows:

- (a) Joint debtor David Johnson was several days into a new job as a delivery driver when the modified plan was filed in December. Doc. #186. This involved using the vehicle joint debtor Latunjia Johnson uses for work. Mr. Johnson no longer has that job, so he is now looking for new work and collecting unemployment. *Id.*
- (b) When the plan was filed, Debtors were collecting a monthly child tax credit. *Id.*; Doc. #187. This tax credit ceased in December, so Debtors income has decreased.
- (c) Also in December 2021, Debtors were receiving EBT. This terminated based on Debtors income and they are uncertain if they will receive it in the future. *Id.*

- (d) Debtors have lived in the same house since this case was filed. Debtors were offered an opportunity to defer rent due to the pandemic, which they accepted. The deferred rent is reflected in the \$920.00 monthly payment. *Id.*

In reply, Trustee withdrew his objection to plan confirmation. Doc. #191. Debtors have therefore resolved Trustee's objection.

Accordingly, this motion will be GRANTED. The confirmation order shall be approved as to form by Trustee, include the docket control number of the motion, and reference the plan by the date it was filed.

5. [21-12355](#)-B-13     **IN RE: MONICA RAMOS**  
[RSW-1](#)

MOTION TO AVOID LIEN OF CREDITORS ADJUSTMENT BUREAU, INC.  
1-13-2022    [\[26\]](#)

MONICA RAMOS/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.

Monica Marcella Ramos ("Debtor") seeks to avoid a judicial lien in favor of Creditors Adjustment Bureau, Inc. ("Creditor") in the sum of \$8,246.03 and encumbering residential real property located at 2201 Verdugo Lane, Bakersfield, CA 93312 ("Property").<sup>1</sup>

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that

they are entitled to the relief sought, which the movant has done here.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$8,246.03 on April 16, 2018. Doc. #29, *Ex. 4*. The abstract of judgment was issued on October 20, 2020 and recorded in Kern County on October 30, 2020. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Doc. #28.

As of the petition date, Property had an approximate value of \$351,300.00. Doc. #1, *Sched. A/B*. Property is encumbered by: (a) a \$185,134.00 first deed of trust in favor of Efrain Bobadillo; (b) a \$60,000.00 second deed of trust in favor of Abdul H. Ali & Nazil Abbas; and (c) a \$35,699.06 tax lien in favor of Kern County Tax Collector. *Id.*, *Sched. D*. Per the proofs of claim, the petition date balances were \$66,883.73 for the second deed of trust and \$38,905.22 for the tax lien. See Claims 7, 10.

Debtor claimed a "homestead" exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*.

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

Amount of Creditor's judicial lien	\$8,246.03
Total amount of unavoidable liens <sup>2</sup>	+ \$290,922.95
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$599,168.98
Value of Debtors' interest absent liens	- \$351,300.00
Amount Debtor's exemption impaired	= \$247,868.98

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373, B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$351,300.00
Total amount of unavoidable liens	- \$290,922.95
Remaining equity	= \$60,377.05
Debtor's homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$239,622.95)
Creditor's judgment lien	- \$8,246.03
Extent Debtor's exemption impaired	= (\$247,868.98)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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<sup>1</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Brian Mitteldorf, Creditor's CEO, CFO, Director, and registered agent for service of process, at 14226 Ventura Blvd., Sherman Oaks, CA 91423 by U.S. mail on January 13, 2022. Doc. #30; cf. *Stmt. of Info.* (Nov. 30, 2020), Doc. ID GM37003, <https://businesssearch.sos.ca.gov/> (Feb. 24, 2022). The court notes that after this motion was filed, Creditor changed its address to 4340 Fulton Ave., Third Floor, Sherman Oaks, CA 91423 on February 7, 2022. *Stmt. of Info.* (Feb. 7, 2022), Doc. ID H207246, <https://businesssearch.sos.ca.gov/> (Feb. 24, 2022).

<sup>2</sup> This amount consists of the two deeds of trust and one tax lien. Proof of claim values are used where available.

6. [21-12571](#)-B-13      **IN RE: SALLY BALLE**  
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS  
ATTORNEY(S)  
2-2-2022    [\[20\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Applicant"), attorney for Sally Balles ("Debtor"), seeks interim compensation in the sum of \$5,185.00 under 11 U.S.C. §§ 330 and 331. Doc. #20. This amount consists of \$4,760.00 in fees as



reasonable compensation and \$425.00 in actual, necessary expenses incurred for the benefit of the estate from October 20, 2021 through February 2, 2022. *Id.*

Debtor signed a statement of consent on February 2, 2022 indicating that Debtor has received and read the fee application and approves the same. *Id.*, at 5, § 9(7).

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

The original chapter 13 plan is the operative plan in this case. Docs. #3; #14. Section 3.05 indicates that Applicant was paid \$1,687.00 prior to filing the case and, subject to court approval, additional fees of \$15,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3. The *Disclosure of Attorney Compensation and Rights and Responsibilities*, Forms B2030 and EDC 3-096, respectively, indicate the same: Debtor paid \$1,687.00 prior to filing the case, plus a \$313.00 filing fee, for a total pre-petition payment of \$2,000.00. Docs. #1; #5.

This is Applicant's first interim request for compensation. The source of funds for payment of the fees will be \$3,185.00 from the chapter 13 trustee in conformance with the chapter 13 plan, after application of the \$2,000.00 pre-petition payment.

Applicant's firm provided 15.70 billable hours of legal services at the following rates, totaling **\$4,760.00** in fees:

Professional	Rate	Hours	Fees
N.S. Attorney	\$350	11.50	\$4,025.00
J.L. Paralegal	\$175	4.20	\$735.00
<b>Total Hours &amp; Fees</b>		15.70	<b>\$4,760.00</b>

Doc. #22, Ex. B. Applicant also incurred **\$425.00** in expenses:

Filing fee	\$313.00
Credit counseling course	+ \$25.00
Financial management course	+ \$25.00
Credit report	+ \$32.00
Postage	+ \$30.00
<b>Total Costs</b>	<b>= \$425.00</b>

*Ibid.* The combined fees and expenses total **\$5,185.00**.

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

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtor's financial information, the effects of exemptions, and value of assets; (3) gathering information and documents to prepare the petition; (4) preparing the petition, schedules, statements, and chapter 13 plan; (5) preparing and sending § 341 meeting documents to Trustee; (6) attending and completing the § 341 meeting of creditors; (7) confirming a chapter 13 plan; and (8) preparing and filing this fee application (NES-1).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,760.00 in fees and \$425.00 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. After application of the pre-petition payment of \$2,000.00, the chapter 13 trustee is authorized, in his discretion, to pay Applicant \$3,185.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from October 20, 2021 through February 2, 2022.

7. [19-10376](#)-B-13     **IN RE: CHRISTINA MARTINEZ**  
[RSW-3](#)

MOTION TO MODIFY PLAN  
1-10-2022    [[66](#)]

CHRISTINA MARTINEZ/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied.

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

Christina Martinez ("Debtor") seeks confirmation of the Third Modified Chapter 13 Plan. Doc. #66. Debtor wishes to extend the duration of the plan from 60 to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021 ("CBREA").

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects under 11 U.S.C. §§ 1325(a)(1) because the plan fails to comply with applicable provisions of the Bankruptcy Code. Specifically, Trustee objects because Debtor has not provided evidence of having experienced a material financial hardship due directly or indirectly to the COVID-19 pandemic as required § 1329(d)(1)(A).

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest, except Trustee, are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the enactment of the CBREA (March 27, 2021).

Debtor satisfies the prior plan confirmation requirement because the First Modified Plan was confirmed on April 15, 2020. Doc. #45. However, no evidence of material financial hardship due to the COVID-

19 pandemic is presented. Debtor's declaration states that in April 2020, her fiancé's work hours were cut to 20-25 hours per week due to COVID. Doc. #68. His hours returned to normal in December 2020. Additionally, Debtor had to spend \$900.00 to replace the water heater and also had other unexpected expenses for minor household repairs. *Id.* The repairs did not result in a material financial hardship due directly or indirectly from the COVID-19 pandemic on this record.

Trustee also opposes because Debtor's fiancé's reduction in work hours was over one year ago. Doc. #74. Since so much time has passed with Debtor maintaining payments during the reduced income, Ms. Martinez has not established whether this hardship is "material" within the meaning of § 1329(d).

Additionally, Trustee notes that the amended schedules do not show that Debtor's income has been impacted to justify extending the plan term to 84 months, and no documentation to support the claim of increased household expenses is provided. Trustee requests copies of the bills to demonstrate when these expenses were incurred, and a total amounts. *Id.* Since this case was filed in 2019, Ms. Martinez's monthly expenses have increased by \$264.00. But the monthly expenses have actually reduced by \$30.00 since the last modification in October 2021. Ms. Martinez's monthly income has remained constant.

The sunset on 11 U.S.C. § 1329(d) is March 27, 2022, so the requested relief will cease to be available after that date. See 117 P.L. 5, 135 Stat. 249. This matter will be called as scheduled. The court is inclined to DENY this motion since the debtor has not met her burden of proof to qualify for an extended plan period under § 1329(d).

8. [19-13088](#)-B-13     **IN RE: ARMANDO VARELA**  
[RSW-1](#)

MOTION TO APPROVE LOAN MODIFICATION  
1-24-2022    [[27](#)]

ARMANDO VARELA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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.

Armando Jose Varela ("Debtor") seeks authority to enter into a home loan modification agreement with Wells Fargo Home Mortgage ("Creditor"). Doc. #27.

This matter will be called and proceed as scheduled. The court is inclined to DENY WITHOUT PREJUDICE the motion due to inadequate information about the proposed refinance and failure to make a *prima facie* showing that the movant is entitled to the relief sought.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtor filed chapter 7 bankruptcy on July 21, 2019. Doc. #1. Debtor has interest in two parcels of real property: (a) a fee simple interest in 2519 Renegade Ave., Bakersfield, CA 93306 ("Residence") valued at \$200,000.00; and (b) an interest in a timeshare located at Westgate Resorts, 2801 Old Winter Garden Rd., Ocoee, FL 34761 ("Timeshare") valued at \$0.00. Doc. #15, *Am. Sched. A/B*.

Residence is encumbered by a \$92,090.00 deed of trust in favor of Creditor. Doc. #1, *Sched. D*. It appears that this may be the loan that Debtor seeks to refinance, but the motion and supporting documents are unclear. Timeshare is also encumbered by a mortgage in favor of Westgate Resorts in the amount of \$13,071.09. *Id.* The motion says that a copy of the loan modification agreement will be filed separately. Doc. #27. No such agreement has been filed.

The supporting declaration says that Debtor is seeking to refinance his "home loan" but the loan is not identified. Debtor also does not specify whether the refinance concerns a loan securing his personal residence, or whether said "home" is Residence or Timeshare. There is an inference that the modified loan agreement secures Residence because the refinance is with Creditor, which owns the security interest in Residence. Further, Debtor's amended schedules list the reduced \$664.37 monthly payment in the rental or home ownership expenses for residence category. Doc. #31, *Am. Sched. J*, at ¶ 4. Unless Debtor has permanently moved to Florida and is now living in Timeshare full time, it is unlikely that the Timeshare mortgage is being refinanced. However, it would be imprudent to assume which loan Debtor is seeking to refinance. The motion should have been clearer.

LBR 3015-1(h)(1)(C) allows a debtor, *ex parte* and with court approval, to refinance existing debts encumbering the debtor's residence if the written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an

ability to pay all future plan payments, projected living expenses, and the refinanced debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the only security for the new debt will be the debtor's existing residence; (vi) all creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the plan; and (vii) the monthly payment will not exceed the greater of the debtor's current monthly payments on the existing debt, or \$2,500.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection

(h)(1)(C), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Rule 2002 and LBR 9014-1.

Here, the only information provided by Debtor is:

- (a) The monthly payment will be lowered from \$737.00 to \$644.37;
- (b) Debtor can afford loan payments;
- (c) Debtor wants to accept the offer because "it will be beneficial" and Debtor is struggling to keep a balanced budget and make plan payments.

Doc. #29. While true that Debtor's updated *I* and *J* indicate an ability to pay both the loan and the plan payment, other information is lacking in detail.

Debtor has not established, as required under LBR 3015-1(h), whether (i) all plan payments are current; (ii) the plan is not in default; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering Debtor's residence; (v) the only security for the new debt will be Debtor's existing residence; (vi) all creditors with liens and security interests encumbering the residence will be paid in full, consistent with the plan, from the proceeds of the new debt. The third element, LBR 3015-1(h)(1)(C)(iii), is satisfied.

Additionally, no information about whether the refinance is in the best interests of Debtor, creditors, and the estate is provided. What is the interest rate of the loan? How long is the repayment period? When does the loan mature? What is the total loan amount? And as noted above, the loan modification documents were not filed separately as promised. Critical details about the proposed refinance are missing such as:

1. Which loan is Debtor proposing to refinance?
2. What are the terms of the refinance, including the proposed refinanced loan amount, loan term, and interest rate?
3. Whether the chapter 13 plan is current and not in default.
4. Is the new loan a single loan incurred only to refinance existing debt encumbering Debtor's residence?
5. Whether the only security for the new debt is Debtor's residence.

This information was not provided in the motion nor was the reason for failing to file a copy of the loan modification agreement. Accordingly, the court is inclined to DENY THE MOTION WITHOUT PREJUDICE for failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

9. [20-12990](#)-B-13     **IN RE: SIMPLICIO/SALUD SABERON**  
[RSW-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,  
CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY AS TO DEBTOR  
1-18-2022     [\[41\]](#)

SALUD SABERON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

On August 23, 2021, joint debtor Simplicio A. Saberon ("Decedent") passed away. He is survived by his wife, joint debtor Salud Pablo Saberon ("Debtor"). Doc. #41. Debtor seeks to (1) be substituted as the representative for or successor to Decedent for this joint chapter 13 case; (2) allow for the continued administration of the chapter 13 case after Decedent's death; and (3) waive the § 1328 certification requirements for entry of discharge with respect to Decedent. *Id.*

This motion will be DENIED WITHOUT PREJUDICE for failure to Comply with the Local Rules of Practice ("LBR").

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1)     Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);

- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death of the debtor. Doc. #41. The motion says that a copy of Decedent's redacted death certificate is attached. No redacted death certificate is attached nor is filed in this case.

Accordingly, the motion will be DENIED WITHOUT PREJUDICE.



10:00 AM

1. [21-10607](#)-B-7     **IN RE: AZRREL HERREJON**  
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
2-8-2022    [[62](#)]

PERITUS PORTFOLIO SERVICES II,  
LLC/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
REILLY WILKINSON/ATTY. FOR MV.  
DISCHARGED 2/15/22

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Peritus Portfolio Services II, LLC/Wollemi Acquisitions ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Toyota Avalon ("Vehicle").

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

The motion was filed on 28 days' notice (LBR 9014-1(f)(1)), but the language in the notice (Doc. #63) does not require written response within 14 days of the hearing. Therefore, the motion will be DENIED WITHOUT PREJUDICE.

The court notes that this is the movant's second motion. The first motion (RDW-2) was also denied for failure to comply with the LBR. Movant is urged to review the LBR before filing another motion. The court further notes the use of "via telephone or video conference" language used in the notice. The court allows appearances at this time by CourtCall only. No video conference is permitted for law and motion calendars.

The court further notes that the debtor received a discharge on February 15, 2022. Doc. #68. So, no relief would be granted as to the debtor under § 362(c)(2)(C).

2. [21-12637](#)-B-7     **IN RE: REYES/DOLORES DUARTE**  
[RSW-1](#)

MOTION TO AVOID LIEN OF TD BANK USA, N.A.  
2-8-2022    [\[27\]](#)

DOLORES DUARTE/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     The hearing is dismissed as moot.

ORDER:             The court will issue an order.

Reyes Duarte and Dolores Duarte ("Debtors") seek to avoid a judicial lien in favor of TD Bank USA, N.A. ("Creditor") in the sum of \$1,093.31 and encumbering residential real property located at 5106 Barley Harvest Dr., Bakersfield, CA 93313 ("Property"). Doc. #27. This is a duplicate motion of the original filed in matter #3 below. *Cf.* Doc. #22.

Since this motion is a duplicate of the one filed in matter #3 below, the hearing on this motion (Doc. #27) will be DISMISSED AS MOOT and dropped from calendar.

3. [21-12637](#)-B-7     **IN RE: REYES/DOLORES DUARTE**  
[RSW-1](#)

MOTION TO AVOID LIEN OF TD BANK USA, N.A.  
2-1-2022    [\[22\]](#)

DOLORES DUARTE/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.

Reyes Duarte, Jr., and Dolores Duarte ("Debtors") seek to avoid a judicial lien in favor of TD Bank USA, N.A. ("Creditor") in the sum of \$1,093.31 and encumbering residential real property located at 5106 Barley Harvest Dr., Bakersfield, CA 93313 ("Property").<sup>3</sup> Doc. #22. Debtor filed a duplicate of this motion in matter #2 above. Doc. #27.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$1,093.31 on November 9, 2017. Doc. #25, *Ex. 4*. The abstract of judgment was issued on January 14, 2019 and recorded in Kern County on February 8, 2019. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering property. Doc. #24.

As of the petition date, Property had an approximate value of \$394,100.00. Doc. #19, *Am. Sched. A/B*. Property is encumbered by a \$191,013.76 first deed of trust in favor of Specialized Loan Servicing. Doc. #1, *Sched. D*. Debtors claimed a "homestead" exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

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

Amount of Creditor's judicial lien	\$1,093.31
Total amount of unavoidable liens	+ \$191,013.76
Amount of exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$492,107.07
Value of Debtors' interest absent liens	- \$394,100.00
Amount Creditor's lien impairs exemption	= \$98,007.07

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373, B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by

going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$394,100.00
Total amount of unavoidable liens	- \$191,013.76
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$96,913.76)
Creditor's original judicial lien	- \$1,093.31
Extent Debtors' exemption impaired	= (\$98,007.07)

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 Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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<sup>3</sup> Debtors served "Greg Braca, President & CEO," the CEO of TD Bank, National Association ("Affiliate") by certified mail at 1701 Route 70 East, Cherry Hill, NJ 08003 and at 2035 Limestone Road, Wilmington, DE 19808. Doc. #26. Both Creditor and Affiliate share the same primary mailing address and no information about Creditor's leadership is on file with the California Secretary of State or readily available on Creditor/Affiliate's website. It appears that Debtors have exercised reasonable diligence in serving a named officer charged to accept service of process in compliance with Fed. R. Bankr. P. 7004(h).

4. [21-12581](#)-B-7     **IN RE: LARRY SCHALLOCK**  
[LKW-1](#)

MOTION FOR AUTHORITY TO WITHDRAW SPOUSAL WAIVER OF RIGHT TO  
CLAIM EXEMPTIONS  
2-8-2022    [\[18\]](#)

LARRY SCHALLOCK/MV  
LEONARD WELSH/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 hearing.

Larry Lee Schallock ("Debtor") moves for authority to withdraw a *Spousal Waiver of Right to Claim Exemptions Pursuant to California Code of Civil Procedure* ["C.C.P."] 703.140(a)(2) ("Spousal Waiver"). Doc. #18.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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.

Debtor filed bankruptcy on November 5, 2021. Doc. #1. Debtor resides in real property located at 7209 Wilford Court, Bakersfield, California ("Property"). In the schedules, Debtor did not claim an interest in Property because he believed that Property was his spouse's separate property and Debtor did not have any interest in Property. Doc. #20. Pursuant to this belief, Debtor and his non-filing spouse, Pamela Mossman-Schallock, executed the Spousal Waiver on November 16, 2021, which precludes use of the exemption scheme outlined in C.C.P. §§ 704.010-704.995 and requires Debtor to use exemptions under C.C.P. § 703.140(b) only. Doc. #21, *Ex. B*. The Spousal Waiver does not appear to have been filed with the court outside of the exhibit filed with this motion.

Debtor's attorney, Leonard K. Welsh, determined that he was incorrect and declares that Debtor actually has a community property interest in Property. Doc. #20. Now, Debtor and his wife wish to withdraw the Spousal Waiver so Debtor can amend his exemptions to claim his community property interest in Property as exempt under C.C.P. §§ 704.010, *et seq.*, and protect Property from sale by Trustee. As evidence, Debtor attaches a memorandum entered by the Honorable Fredrick E. Clement in *In re Amado Lara Gomez*, Case No. 14-12107-A-7. Doc. #21, *Ex. C*. This memorandum has been published. See *In re Gomez*, 530 B.R. 751 (Bankr. E.D. Cal. 2014).

First, Fed. R. Bankr. P. ("Rule") 1009(a) permits the debtor to amend his or her claim of exemptions in a bankruptcy case "as a matter of course at any time before the case is closed[.]" Though authorized under federal law, the scope and nature of the exemptions is determined by state law. *Gomez*, 530 B.R. at 756.

Second, three elements are required for a valid waiver under C.C.P. § 703.140(a)(2) to be effective: (1) both the debtor and the non-filing spouse waive the right to claim the regular exemptions; (2) each waiver must be effective; and (3) the waiver must arise from a written instrument. *Id.*, citing *In re Geisenheimer*, 530 B.R. 747

(Bankr. E.D. Cal. 2015). Each of these elements have been met.  
Doc. #21, Ex. B.

Third, if a waiver is valid, "absent relief for mistake (of fact or otherwise), inadvertence, surprise, or excusable neglect, or similar showing, a properly executed spousal waiver *may not* be withdrawn." *Gomez*, 530 B.R. at 757 (emphasis added), citing Cal. Civ. Code § 3513; *People v. Ventura Refining Co.*, 204 Cal. 286 (1928); *Faye v. Feldman*, 128 Cal.App.2d 319 (1954); *Cynthia C. v. Super. Ct.*, 72 Cal.App.4th 1196 (1999). However, a valid waiver may still be repudiated where the waiver was given under mistake of fact or waivers that are the product of mistake, inadvertence, surprise, or excusable neglect. *Id.*, citing C.C.P. § 473, *incorporated by* C.C.P. § 703.030(c); *Verdugo Canon Water Co. v. Verdugo*, 152 Cal. 655 (1908).

Rule 9024 incorporates Federal Rule of Civil Procedure ("Civ. Rule") 60. Civ. Rule 60(b) provides an avenue by which the court may grant relief from a final judgment, order, or proceeding based on mistake, inadvertence, surprise, or excusable neglect.

Courts are permitted to relieve a party or its legal representative from a final judgment, order, or proceeding caused by "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993). An attorney's error may be grounds for relief under Civ. Rule 60(b). *In re Sheehan*, 253 F.3d 507, 514 (9th Cir. 2001). This determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Pioneer*, 507 U.S. at 395. The factors to consider include:

- (1) Danger of prejudice to the debtors;
- (2) Length of delay and potential impact on judicial proceedings;
- (3) Reason for the delay including whether it was in the movant's control; and
- (4) Whether the party acted in good faith.

1. Danger of prejudice to the debtors: If Debtor is not allowed to withdraw the Spousal Waiver, his community property interest in Property will be subject to sale by Trustee. Rule 1009(a) permits a debtor to amend exemptions as a matter of course and maximize exemptions available to the debtor to help facilitate the debtor's fresh start in the bankruptcy case. *In re Kolich*, 328 F.3d 406, 408 (8th Cir. 2003); *Law v. Siegel*, 751 U.S. 415 (2014). Further, "homesteads are favorites of the law [and] we must give liberal construction to the constitutional and statutory provisions that protect homestead exemptions." *In re Bradley*, 960 F.2d 502, 507 (5th Cir. 1992). In short, Debtor will be prejudiced if withdrawal of the Spousal Waiver is not permitted.

2. Length of delay and impact on judicial proceedings: The Spousal Waiver was signed November 16, 2021. It does not appear to have been filed in this case. This motion was filed less than three months

later. Administration is ongoing and no motions to sell the Property have been filed. The length of delay is minimal and any impact on proceedings does not appear to be substantial.

3. Reason for delay including whether it was in the movant's control: The reason for the Spousal Waiver and any delays was Debtor's attorney's mistake. Doc. #20. Though within Debtor's control, Debtor's attorney believes that Property was solely separately owned real property that was outside of the bankruptcy estate. But for this mistaken belief, Debtor and his non-filing spouse would not have executed the Spousal Waiver.

4. Whether the party acted in good faith: There is nothing in the record suggesting that Debtor has acted in bad faith.

Written opposition was not required and may be presented at the hearing. This matter will be called as scheduled to inquire whether any parties in interest oppose permitting Debtor to withdraw the Spousal Waiver. In the absence of opposition at the hearing, this motion may be GRANTED.

5. [21-12697](#)-B-7     **IN RE: YESSENIA BRAVO**  
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-13-2022    [\[16\]](#)

CARVANA, LLC/MV  
DAVID CHUNG/ATTY. FOR DBT.  
CAREN CASTLE/ATTY. FOR MV.  
DISCHARGED 2/22/22

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.

Carvana, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Acura RLX Sedan ("Vehicle"). Doc. #16.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on February 22, 2022. Doc. #22. Therefore, the automatic stay terminated with respect to the debtor on February 22, 2022. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 4 complete payments. The movant has produced evidence that debtor is delinquent at least \$1,760.00. Docs. #18. #19.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$15,882.00 and debtor owes \$17,837.36. Docs. #16, #18.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

The request for attorney's fees will be denied pursuant to 11 U.S.C. §506(b). Debtor has no equity in the property.



6. [21-12398](#)-B-7     **IN RE: MARSHA KIPFER**  
[KEH-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-27-2022    [\[24\]](#)

BALBOA THRIFT & LOAN/MV  
R. BELL/ATTY. FOR DBT.  
KEITH HERRON/ATTY. FOR MV.  
DISCHARGED 2/8/22

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Balboa Thrift & Loan ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Mitsubishi Mirage ES Hatchback 4D ("Vehicle"). Doc. #27. Movant also requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rule 4001(a)(1) and the Local Rules of Practice ("LBR").

First, Chapter 7 trustee Jeffrey M. Vetter ("Trustee") was not properly served. Rule 4001(a)(1) requires a motion for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires a motion in a contested matter to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

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[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, The certificates of service say that parties were served by "United States mail, postage prepaid or by efilng/email." Docs. #17; #27 (emphasis added). Though Trustee's mailing address is listed, the certificates say that the documents were served via email. *Id.* In contrast, the certificates clearly state that Marsha D. Kipfer ("Debtor") and the United States Trustee were served by U.S. mail. Therefore, the implication is that Trustee was only served by email and not by U.S. mail. The court notes that Debtor's attorney, R. Scott Bell, was also served by email in compliance with Local Rule of Practice ("LBR") 7005-1, but this is permissible under Rule 7004(g).

Second, the exhibits were attached to the declaration. Doc. #26. LBR 9004-2(c)(1) requires that declarations, 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, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the declaration and exhibits were combined into one document and not filed separately. Further, the exhibits did not contain an index and were not consecutively numbered through the entire document, including any separator, cover, or divider sheets.

Accordingly, for the reasons stated above, this motion will be DENIED WITHOUT PREJUDICE.

7. [12-18358](#)-B-7     **IN RE: JOSEPH TATUM AND MARY SWEENEY-TATUM**  
[RLF-3](#)

MOTION TO AVOID LIEN OF YELLOW BOOK SALES AND DISTRIBUTION,  
INC AND HIBU INC.  
2-16-2022    [\[31\]](#)

MARY SWEENEY-TATUM/MV  
SHANE REICH/ATTY. FOR DBT.

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

Joseph Glen Tatum and Mary Johnelle Sweeney-Tatum ("Debtors") seek to avoid a judicial lien in favor of Hibu Inc. fka Yellowbook Inc. fka Yellow Book Sales and Distribution, Inc. ("Creditor") in the sum of \$17,028.65 and encumbering residential real property located at 5738 N. McCall Ave., Clovis, CA 93619 ("Property").<sup>4</sup> Doc. #31.

This motion will be DENIED AS MOOT because the judgment lien has expired, and Debtors have not proven that a valid lien impairing their exemption exists.

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

*Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Preferred Roofing, Inc., a suspended California Corporation, and both Debtors, individually and as co-obligors, in favor of Yellow Book Sales and Distribution Company, Inc. nka Hibu Inc. in the sum of \$17,028.65 on September 26, 2011. Doc. #34, Ex. 1. The abstract of judgment was issued on November 16, 2011 and recorded in Fresno County on December 2, 2011 as instrument no. 2011-0161696. *Id.* That lien attached to Debtors' interest in Property. Doc. #33. However, the judgment has now expired and is no longer enforceable.

California Code of Civil Procedure ("C.C.P.") 683.020 defines a 10-year period in which a judgment may be enforced:

[U]pon 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. The judgment was entered in favor of Creditor on September 26, 2011. Absent tolling, the judgment would have expired on September 26, 2021 – 3,653 days later.<sup>5</sup> However, on filing this bankruptcy, Debtors triggered the automatic stay, which prevented Creditor from renewing the judgment. 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect. *Spiertos v. Moreno (In re Spiertos)*, 221 F.3d 1079, 1080 (9th Cir. 2000); *see also*, *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 377-78 (2004) ("The suspension of a statute of limitations for a certain period is, in effect 'time taken out,' for that period and adds the same period of time to the limitation time provided in the statute.") (internal quotation omitted), citing *Schumacher v. Worcester*, 55 Cal. App. 4th 376, 380 (1997).

Section 108(c) preserves the period of renewal while the automatic stay is in effect and the bankruptcy case is pending:

[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case, or

(2) 30 days after the notice of termination or expiration of the stay under section 362 . . . with respect to such claim.

11 U.S.C. § 108(c).

The automatic stay ran for 368 days from September 26, 2011 until Debtors filed bankruptcy on September 28, 2012 (with 3,285 days remaining). The automatic stay remained in effect until 30 days after the case was closed or dismissed. See § 362(c)(1), (c)(2). The case was closed by final decree on January 11, 2013, so the stay continued to toll the renewal period until 30 days later, which is February 10, 2013 (135 days after the petition date). This extended the renewal period to February 8, 2022, which was the same date that Debtors' first attempt at avoiding this lien was heard. See RLF-2. However, the court denied that motion without prejudice because the deadline for Creditor to object to Debtors' claim of exemptions under Fed. R. Bankr. P. 4003(b)(1) had not expired. Docs. ##29-30. The court noted that unless Creditor renewed the lien that same day, the judgment would expire before Creditor's deadline to object to exemptions had passed, and further attempts at avoidance would be moot. Doc. #29.

No evidence of renewal of judgment has been presented, so the judgment lien appears to have expired. Therefore, Debtors have failed to prove that a valid lien impairing their exemption does in fact exist.

Accordingly, this motion will be DENIED AS MOOT.

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<sup>4</sup> Yellow Book Sales and Distribution Inc., a Delaware corporation, changed its name to Yellowbook Inc. on March 31, 2011, and then changed it again to Hibu Inc. on January 16, 2013. Doc. #34, Exs. 2-3. Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Kevin Jasper, Creditor's CEO, by regular mail at Creditor's business address on February 16, 2022. *Id.*, Ex. 4; Doc. #35.

<sup>5</sup> 3,653 days, rather than 3,650, to account for leap years in 2012, 2016, and 2020.