

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, May 12, 2021
Place: Department A - Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, 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.

9:30 AM

1. [20-11606](#)-A-11 **IN RE: MICHAEL PENA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-4-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

1. [21-10415](#)-A-7 **IN RE: FABIAN CERVANTEZ**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST CALIFORNIA FEDERAL
CREDIT UNION
4-19-2021 [[16](#)]

NO RULING.

2. [21-10759](#)-A-7 **IN RE: MICHELLE MENDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH CIG FINANCIAL, LLC
4-15-2021 [[11](#)]

NO RULING.

3. [21-10562](#)-A-7 **IN RE: DONALD/PEARL MORGAN**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY LLC
4-16-2021 [[15](#)]

NO RULING.

1. 15-13008-A-7 **IN RE: ROY/WENDY MCSWEENEY**
JSP-2

MOTION TO AVOID LIEN OF JONATHAN NEIL & ASSOCIATES, INC. AND/OR
MOTION TO AVOID LIEN OF WELLS FARGO BANK, NATIONAL ASSOCIATION
4-8-2021 [26]

WENDY MCSWEENEY/MV
JOSEPH PEARL/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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The local rules may be accessed at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

Roy F. McSweeney and Wendy J. McSweeney (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 liens of Jonathan Neil & Associates, Inc. ("Jonathan Neil") and Wells Fargo Bank, N.A. ("Wells Fargo") on Debtors' residential real property commonly referred to as 14917 Dobbs Avenue, Bakersfield, Kern County, CA 93314 (the "Property"). Doc. #26; Schedule C, Doc. #14. Debtors filed their bankruptcy case on July 30, 2015.

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 debtors 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)).

Where the movant seeks to avoid multiple liens as impairing the debtors' 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).

Wells Fargo holds the junior judicial lien, which was recorded in Kern County on August 1, 2013. Ex. B, Doc. #30. The judgment was entered against Roy F. McSweeney in the amount of \$72,574.83 in favor of Wells Fargo in 2013. Ex. B, Doc. #30. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #30. The Property is further encumbered by a senior judicial lien in favor of Jonathan Neil recorded on December 18, 2012 for \$15,118.41. Ex. A, Doc. #29. According to Debtors' schedules, the Property also is encumbered by a Deed of Trust held by Bank of America for \$315,093.00. Schedule D, Doc. #14. Debtors claimed an exemption of \$99,907.00.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #14. Debtors valued their interest in the Property as of the petition date at \$415,000.00. Schedule A, Doc. #14.

Applying the statutory formula to Wells Fargo's judicial lien first:

Amount of Wells Fargo's judicial lien		\$72,574.83
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$330,211.41
Amount of Debtors' claim of exemption in the Property	+	\$99,907.00
	sum	\$502,693.24
Value of Debtors' interest in the Property absent liens	-	\$415,000.00
Amount Wells Fargo's lien impairs Debtors' exemption	=	\$72,574.83

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

Continuing in reverse order of priority:

Amount of Jonathan Neil's judicial lien		\$15,118.41
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$315,093.00
Amount of Debtors' claim of exemption in the Property	+	\$99,907.00
	sum	\$430,118.41
Value of Debtors' interest in the Property absent liens	-	\$415,000.00
Amount Jonathan Neil's lien impairs Debtors' exemption	=	\$15,118.41

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Jonathan Neil'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 both judicial liens under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

2. [21-10718](#)-A-7 **IN RE: MARY ESPINOLA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
3-26-2021 [\[3\]](#)

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The debtor filed a motion to waive the filing fee on March 26, 2021 to which the chapter 7 trustee objected. Doc. #3, Doc. #9. On April 25, 2021, the debtor filed a motion to pay the filing fees in installments. Doc. #18. On April 27, 2021, an order granting debtor's motion to pay installments was granted. Doc. #19. Therefore, this motion for waiver of the chapter 7 filing fee will be denied as moot.

3. [19-15321](#)-A-7 **IN RE: MARIA RAMIREZ**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-7-2021 [\[45\]](#)

JAMES SALVEN/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 E. Salven ("Movant"), accountant for chapter 7 trustee Peter L. Fear ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered from March 15, 2021 through April 2, 2021. Doc. #45. Movant provided accounting services valued at \$1,250.00, and requests compensation for that amount. Doc. #45. Movant requests reimbursement for

expenses in the amount of \$225.81. Doc. #45. Movant has not requested any prior compensation.

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).

Movant's services included, without limitation: (1) determining the acquisition date and basis of settlement property; (2) processing tax returns; and (3) transmitting determination letters. Exs. A, B Doc. #48. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,250.00 and reimbursement for expenses in the amount of \$225.81. Trustee is authorized to make a combined payment of \$1,475.81, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

4. [21-10623](#)-A-7 **IN RE: MARY UCLARAY**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-6-2021 [\[16\]](#)

TOYOTA LEASE TRUST/MV
SUSAN SALEHI/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

The movant, Toyota Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Lexus IS 200t ("Vehicle"). Doc. #16.

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 four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,100.84 plus \$78.78 in late fees. Doc. #18. Movant also has been unable to verify that the debtor has insurance coverage on the Vehicle and believes that the debtor may be operating the Vehicle without having any insurance coverage thereon. Doc. #18.

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. Id. The debtor's possession of the Vehicle stems from a lease agreement with Movant that matured on April 21, 2021, according to which the debtor does not own the Vehicle. Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

5. [21-10035](#)-A-7 **IN RE: JASWINDER BHANGOO**

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-26-2021 [\[18\]](#)

ENGs COMMERCIAL FINANCE CO./MV
D. GARDNER/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue hearing to permit parties to supplement the record.

ORDER: The court will issue an 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 debtor filed timely opposition. Doc. #27. No response to the debtor's opposition has been filed. This matter will proceed as scheduled.

Engs Commercial Finance Co. ("Creditor"), a judgment creditor of Jaswinder Singh Bhangoo ("Debtor"), objects to Debtor's claim of a \$300,000.00 exemption

in Debtor's real property located at 6907 Wild Rogue Court, Bakersfield, California (the "Property"). Obj., Doc. #18; see Schedule C, Doc. #1. Debtor claims an exemption in the Property under California Code of Civil Procedure ("C.C.P.") § 704.730. Schedule C, Doc. #1. Creditor's objection is joined by Ascentium Capital LLC ("Ascentium"), also a judgment creditor of Debtor. Doc. #23.

Facts

Debtor purchased the Property in 2011 and lived there for seven years. Debtor's Decl. ¶ 3, Doc. #28. In 2015, Creditor recorded an abstract of judgment that attached to the Property. Obj., Doc. #18. In 2016, Ascentium recorded an abstract of judgment that attached to the Property. Joinder, Doc. #23. Debtor resided in the Property when the judgment liens of Creditor and Ascentium were recorded. Debtor's Decl. ¶ 9, Doc. #28.

At some time after 2016, Debtor decided to rent the Property. Debtor's Decl. ¶ 3, Doc. #28. Debtor first leased the Property to a tenant who stayed in the Property for one year, and then leased the Property to a tenant named Tameka Brown. Id. Ms. Brown stopped paying rent, and, in February 2020, Debtor initiated an unlawful detainer against Ms. Brown. Id.; Ex. D, Doc. #29.

While Debtor rented out the Property, Debtor leased and lived in a property at 4408 Cimarron Ridge Drive, Bakersfield, California (the "Cimarron Property"). Debtor's Decl. ¶ 4, Doc. #28. At some unspecified time, Debtor determined that rent at the Cimarron Property was too high and Debtor could no longer afford to live in the Cimarron Property. Id. When Ms. Brown defaulted on her lease of the Property, Debtor intended to return to the Property to live. Id.

Debtor's unlawful detainer action against Ms. Brown, commenced in February 2020, was delayed due to COVID-19. Debtor's Decl. ¶ 4, Doc. #28; Ex. D, Doc. #29. In December 2020, Debtor obtained a judgment against Ms. Brown that authorized the issuance of a writ of possession. Ex. D, Doc. #29. Debtor filed his bankruptcy petition on January 8, 2021. Doc. #1. Ms. Brown was locked out of the Property by the Sheriff and "finally gone" at the end of February 2021. Debtor's Decl. ¶ 7, Doc. #28. After Ms. Brown's eviction, the Property was in serious disrepair and Debtor did not move back into the Property until April 5, 2021. Debtor's Decl. ¶ 8, Doc. #28.

Based on the facts before this court, it is undisputed that Debtor did not physically occupy the Property on the date he filed his bankruptcy petition. It also is undisputed that Debtor has not continually physically occupied the Property since the judgment liens of Creditor and Ascentium attached to Debtor's Property.

Legal Analysis

Debtor first requests that Creditor's objection be overruled for failing to comply with this court's Local Rules of Practice. As a procedural matter, the objection and related papers as filed do not comply with LBR 9014-1(c)(1), (d)(3)(B), or (d)(3)(D). These defects normally would be enough to cause the court to overrule the objection without prejudice. However, because the timeframe set forth in Federal Rule of Bankruptcy Procedure ("Rule") 4003(b) has expired, Creditor would be barred from reasserting this objection if it were overruled on procedural grounds. Accordingly, the court will consider Creditor's objection on its merits notwithstanding the failure of Creditor to comply with this court's Local Rules of Practice.

Debtor next asserts that Creditor has the burden of persuasion with respect to its objection to Debtor's claimed homestead exemption, citing Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999). However, Debtor's opposition does not address the impact of Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15 (2000), on the burden of persuasion analysis in Carter. In Raleigh, "the Supreme Court held that the burden of proof is a substantive aspect of a claim, so in the absence of a federal interest requiring a different result, the state law allocation of the burden should apply in an objection to the claim in bankruptcy." Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 336-37 (B.A.P. 9th Cir. 2016). California mandates the use of state exemptions in bankruptcy and has placed the burden of proof with respect to claiming an automatic homestead exemption on the debtor. C.C.P. §§ 703.508(b), 704.780(a)(1); Diaz, 547 B.R. at 337. As the Diaz court explained:

In re Carter, was decided prior to Raleigh, and there is no subsequent Ninth Circuit authority addressing the burden of proof with respect to an exemption objection. We are persuaded by the reasoning in In re Tallerico[], 532 B.R. 774 (Bankr. E.D. Cal. 2015) (Klein, J.)] and conclude that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.

Diaz, 547 B.R. at 337. The court finds the legal analysis in Diaz persuasive. Accordingly, although Creditor did not file any supporting evidence, it is Debtor who has the burden of establishing entitlement to his claim to an automatic homestead exemption by a preponderance of the evidence.

Turning to the substance of Creditor's objection, Creditor objects to Debtor's claimed exemption on two grounds: (1) Debtor did not reside in the Property at the time of filing his bankruptcy petition so he cannot claim his homestead exemption, and (2) Debtor did not continuously reside in the Property from the date Creditor's judicial lien attached to the Property. Obj., Doc. #18.

California provides for an automatic homestead exemption that protects a debtor who resides in a homestead property at the time of filing a forced judicial sale of the dwelling. Cal. Civ. Proc. Code § 704.720(a); Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Diaz, 547 B.R. at 334. "The filing of a bankruptcy petition constitutes a forced sale for the purposes of the automatic homestead exemption." Diaz, 547 B.R. at 334.

California Code of Civil Procedure section 704.710(c) defines homestead as follows:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "This requires only that the judgment debtor *reside* in the property as his or her principal dwelling at the time the judgment creditor's lien attaches and continuously thereafter until the court determines the dwelling is a homestead." Gilman, 887 F.3d at 965 (quotations omitted) (emphasis in original).

Debtor correctly contends that there is no strict requirement that Debtor physically occupy the Property to claim a homestead exemption under C.C.P. § 704.730. Doc. #27. "To determine whether a debtor resides in a property for

homestead purposes, courts consider the debtor's physical occupancy of the property and the intent to reside there." Gilman, 887 F.3d at 965. "[W]hether the debtor physically occupies the property or not, the debtor must have an intention to reside there." Diaz, 547 B.R. at 336.

In providing evidence of intent, Debtor assumes his claimed homestead exemption is to be determined based solely on Debtor's intent with respect to the Property as of the petition date. This assumption is consistent with Diaz, where there were no judicial liens filed against the debtor's homestead prior to the bankruptcy filing. As the Ninth Circuit Bankruptcy Appellate Panel ("BAP") stated:

In a case where the filing of the petition serves as the hypothetical levy, a debtor will always satisfy the continuous occupancy requirement of the California automatic homestead exemption because the date of attachment and the date of the court determination that the exemption applies occur simultaneously. Therefore, [the debtor] is entitled to claim the exemption only if he resided in the Property on the petition date.

Diaz, 547 B.R. at 335. However, those are not the facts in this case. Here, the judicial liens in Debtor's case did not attach on the petition date as a hypothetical levy. Rather, the judicial liens of Creditor and Ascentium attached to the Property years before Debtor filed his bankruptcy petition.

Creditor asserts that "[a]n essential requirement of the dwelling exemption is that the claimant resided on the property on the date of the attachment of the creditor's lien and continuously thereafter." Obj. at 2:9-10, Doc. #18. This is consistent with the express language of C.C.P. § 704.710(c) and the analysis of the BAP in Elliott v. Weil (In re Elliott), 523 B.R. 188 (B.A.P. 9th Cir. 2014), in which the BAP stated in relevant part:

Neither [the debtor] nor Trustee directly addressed before the bankruptcy court, or address on appeal, whether [the debtor's] alleged residency at the Buckingham Property is sufficient to satisfy the continuous residency requirement to qualify for the automatic homestead exemption. . . . [N]othing in the record confirms whether (1) [the debtor] resided at the Buckingham Property at the time the Judgment Creditors' lien(s) attached and continued to reside there with the intent of retaining it as his principal dwelling, and (2) whether he resided there on the petition date.

Elliott, 523 B.R. at 196-97.

Thus, it appears that in order for Debtor to prevail on his claimed homestead exemption in the Property, Debtor must demonstrate not only that he resided in the Property on the date he filed his bankruptcy petition, but also that he continuously resided in the Property from the date Creditor and Ascentium's judicial liens attached to the Property.

Because the court's legal analysis includes legal authority not cited by either party, the court is inclined to CONTINUE the hearing on this objection to permit the parties to supplement the record to address the issues raised in this tentative ruling. At the hearing on May 12, the parties should be prepared to propose dates for when supplemental pleadings should be filed and served and for when a continued hearing on the objection should be held.

6. [12-11548](#)-A-7 **IN RE: DANIEL/ELISAVET MERCADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-15-2021 [\[21\]](#)

SCOTT MITCHELL/ATTY. FOR DBT.
\$260.00 FILING FEE PAID 4/15/21

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 reopening fee was paid in full on April 15, 2021. Therefore, the OSC will be vacated and the case shall remain pending.

7. [21-10362](#)-A-7 **IN RE: JACK/PATRICIA MENDONSA**
[DVW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2021 [\[16\]](#)

21ST MORTGAGE CORPORATION/MV
JUSTIN HARRIS/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [21-10568](#)-A-7 **IN RE: JUAN ARIAS**
[LEH-1](#)

MOTION TO DISMISS CASE
3-30-2021 [\[12\]](#)

JUAN ARIAS/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE. The motion and related pleadings as filed do not comply with Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(4) or Local Rule of Practice ("LBR") 9004-2(e). Rule 2002(a)(4) requires service by mail to "the debtor, the trustee, all creditors and indenture trustees" of a chapter 7 hearing on the dismissal of the case. The proofs of service filed here show that only the chapter 7 trustee was served with notice of this motion, which is insufficient under Rule 2002(a)(4). Further, LBR 9004-2(e) requires the proof of service for any documents to be filed as a separate document. Here, both the motion and the notice of hearing

included a proof of service pertaining to that particular document, but no separate proof of service was filed. The court urges counsel to review the federal and local rules in order to be compliant in future matters. The local rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

9. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[FW-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, PC
FOR GABRIEL J WADELL, TRUSTEES ATTORNEY(S)
4-9-2021 [[279](#)]

JEFFREY ROWE/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 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.

Fear Waddell, P.C. ("Movant"), special counsel for original chapter 7 trustee Kevin Kubie and general counsel for chapter 7 trustee James Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered May 31, 2016 through April 5, 2021. Doc. #279. Movant provided legal services valued at \$541,551.50, and requests compensation for that amount. Doc. #279. Movant requests reimbursement for expenses in the amount of \$15,477.02. Doc. #279. Movant has not requested any prior compensation. Movant is willing to agree to a pro rata reduction in payment of fees awarded to legal professionals employed by the estate, if necessary, to allow unsecured creditors to receive at least a total of \$50,000 from the bankruptcy estate. Doc. #279.

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). Among the factors a court may consider are the time spent on such services and whether the services were necessary to the administration of, or beneficial at

the time the service was rendered toward the completion of the bankruptcy case.
11 U.S.C. § 330(a)(3)(A), (C).

Movant was employed in this matter twice, in two separate capacities: as special counsel while the case was pending in the District of Colorado, and subsequently as general counsel when the case was transferred to the Eastern District of California. Ex. A, Doc. #283. Although the debtor initially filed bankruptcy in Colorado, Movant was hired as special counsel because the assets, witnesses, governing law, and opposing parties were primarily located in the Eastern District of California. Ex. A, Doc. #283. Movant was employed by the estate when the debtor's bankruptcy case was transferred to this court. Ex. A, Doc. #283. Movant's services in this case were taken to ensure a large recovery on behalf of creditors. Ex. A, Doc. #283. Movant's services, along with the services of others, resulted in a recovery of over \$850,000 on behalf of the estate in addition to the waiver of the debtor's discharge. Ex. A, Doc. #283.

As special counsel while the debtor's case was in Colorado, Movant provided general counsel with research and advice regarding California law and provided local support for depositions and examinations. Ex. A, Doc. #283. As special counsel, Movant also conducted extensive research and recorded lis pendens to preserve the estate's interest in properties located in California once the Colorado trustee initiated adversary proceedings. Ex. A, Doc. #283.

After the case was transferred to this court, Movant was employed as general counsel for the bankruptcy estate. Ex. A, Doc. #283. In addition to responsibilities stemming from the main bankruptcy case, Movant was engaged in two adversary proceedings: one against the debtor for denial of his discharge, and the other against the debtor's putative ex-spouse for recovery of property and fraudulent transfers, among other things. Ex. A, Doc. #283. Movant also assisted in securing discovery from a recalcitrant financial institution. Ex. A, Doc. #283.

The adversary proceeding against the debtor's putative ex-spouse and others contained multiple causes of action and extensive motions practice. Ex. A, Doc. #283. Movant participated in responding to and defeating multiple motions to dismiss, a motion for abstention, and a motion to expunge the estate's lis pendens. Ex. A, Doc. #283. Movant further engaged in significant meet and confer efforts before filing multiple motions to compel discovery, including for sanctions under Fed. R. Civ. P. 37. Ex. A, Doc. #283. Discovery also included multiple depositions conducted by Movant. Ex. A, Doc. #283. After discovery, Movant successfully opposed summary judgment motions while prevailing on a motion for summary adjudication on behalf of the estate. Ex. A, Doc. #283. Movant was subsequently able to negotiate a settlement of \$750,000 after substantial litigation in this adversary proceeding. Ex. A, Doc. #283.

Throughout the bankruptcy case, Movant also worked closely with Trustee to analyze relevant property values, make sense of liens encumbering properties, and to obtain an accurate appraisal of the estate. Ex. A, Doc. #283.

The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$541,551.50 and reimbursement for expenses in the amount of \$15,477.02. Trustee is authorized to make a combined payment of \$556,998.52, representing compensation and reimbursement, to Movant subject to the following conditions. First, Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code. Second,

pursuant to Movant's agreement, the fees awarded to Movant shall be reduced on a pro rata basis with all fees awarded to legal professionals employed by the estate, if necessary, to allow unsecured creditors to receive at least a total of \$50,000 from the bankruptcy estate.

10. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[HK-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KRAMER LAW LLC
FOR HARVEY L KRAMER, SPECIAL COUNSEL(S)
4-9-2021 [\[286\]](#)

HARVEY KRAMER/MV
JEFFREY ROWE/ATTY. FOR DBT.
HARVEY KRAMER/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.

Kramer Law LLC ("Movant"), counsel for original chapter 7 trustee Kevin Kubie and special counsel for chapter 7 trustee James Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered March 30, 2016 through January 27, 2021. Doc. #286. Movant provided legal services valued at \$102,210.00, and requests compensation for that amount. Doc. #286. Movant requests reimbursement for expenses in the amount of \$9,651.25. Doc. #286. Movant has not requested any prior compensation. Movant is willing to agree to a pro rata reduction in payment of fees awarded to legal professionals employed by the estate, if necessary, to allow unsecured creditors to receive at least a total of \$50,000 from the bankruptcy estate. Doc. #286.

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). Among the factors a court may consider are the time spent on such services and

whether the services were necessary to the administration of, or beneficial at the time the service was rendered toward the completion of the bankruptcy case. 11 U.S.C. § 330(a)(3)(A), (C).

Movant was initially employed in this matter as general counsel for the original chapter 7 trustee when this case was filed in March 2016 in the District of Colorado. Ex. A, Doc. #291. Movant was then hired as special counsel upon the transfer of the debtor's bankruptcy case to the Eastern District of California. Ex. A, Doc. #291.

Much of Movant's services surrounded fraudulent transfer claims and adversary proceedings involving the debtor, the debtor's putative ex-spouse, and certain agricultural properties. Ex. A, Doc. #291. Movant made a number of inquiries regarding title transfers, real estate records, and business records in the course of investigating fraudulent transfer claims. Ex. A, Doc. #291. Movant settled at least one claim, but ultimately prepared and issued subpoenas for production against no less than four distinct entities, many of which had leased or sold property to the debtor immediately before the bankruptcy. Ex. A, Doc. #291. Movant also engaged in other discovery, ultimately moving to compel production. Ex. A, Doc. #291. Movant participated in responding to and defeating multiple motions to dismiss, a motion for abstention, and a motion to expunge the estate's lis pendens. Ex. A, Doc. #291. Movant also assisted in defending against objections to the discovery motions. Ex. A, Doc. #291. During the course of Movant's investigations, the debtor refused to provide candid disclosures and productions, ultimately requiring Movant to conduct examinations and subpoena documents from third parties. Ex. A, Doc. #291. During the course of discovery, Movant conducted multiple telephonic and in person depositions. Ex. A, Doc. #291.

As special counsel after the case was transferred, Movant continued to be engaged in two adversary proceedings: one against the debtor for denial of his discharge, and the other against the debtor's putative ex-spouse for recovery of property and fraudulent transfers, among other things. Ex. A, Doc. #291. Movant continued to assist with prosecuting the actions. Ex. A, Doc. #291. Movant's services, along with the services of others, resulted in a recovery of over \$850,000 on behalf of the estate in addition to the waiver of the debtor's discharge. Ex. A, Doc. #283.

The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$102,210.00 and reimbursement for expenses in the amount of \$9,651.25. Trustee is authorized to make a combined payment of \$111,861.25, representing compensation and reimbursement, to Movant subject to the following conditions. First, Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code. Second, pursuant to Movant's agreement, the fees awarded to Movant shall be reduced on a pro rata basis with all fees awarded to legal professionals employed by the estate, if necessary, to allow unsecured creditors to receive at least a total of \$50,000 from the bankruptcy estate.

11. [21-10582](#)-A-7 **IN RE: KEITH/ADRIANA ROSS**
[JRL-1](#)

MOTION TO AVOID LIEN OF MAIN STREET ACQUISITION CORP.
4-9-2021 [\[16\]](#)

ADRIANA ROSS/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

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 debtors would be entitled under section 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 section 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)).

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, the meeting of creditors has not concluded, and the continued meeting of creditors is to be held on May 17, 2021. Because parties in interest can still object to the debtors' claimed exemptions under Rule 4003, the debtors cannot yet establish that they are entitled to the scheduled exemption the debtors assert is impaired by the lien. This motion is therefore premature and not ripe for hearing because the debtors cannot satisfy the first element required to avoid a lien under § 522(f)(1) at this time.

12. [21-10483](#)-A-7 **IN RE: TAYLOR PHILLIPS**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
4-12-2021 [\[17\]](#)

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

Taylor Phillips ("Debtor"), the chapter 7 debtor in this case, moves the court to order the trustee to abandon property of the estate identified as "Bank of America Business Checking" with a value of \$564.76 (the "Property"). Doc. #17. Debtor asserts that the Property is fully exempt and therefore has no value to the bankruptcy estate. Doc. #17. No opposition has been filed in response to this motion.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine, 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Mot., Doc. #17. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$564.76. Schedule A/B, Doc. #1; Decl. of Taylor Phillips, Doc. #19. Under California Civil Procedure Code § 703.140(b)(5), Debtor claimed a \$564.76 exemption in the Property. Schedule C, Doc. #1; Phillips Decl., Doc. #19. The court finds that Debtor has met the burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.