

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, May 25, 2022
Place: Department A - Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-10010](#)-A-11 IN RE: EDUARDO/AMALIA GARCIA
[JCP-1](#)

MOTION BY L. PETER RYAN TO WITHDRAW AS ATTORNEY
4-22-2022 [[981](#)]

LEONARD WELSH/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.

L. Peter Ryan, Jack Praetzellis, and Fox Rothschild LLP (collectively, "Counsel"), counsel for creditors Platinum Farm Services LLC and Nino Global LLC (together, "Creditors"), move to withdraw as Creditors' attorney of record. Doc. #981. Creditors have breached the engagement letter with Counsel and have failed to cure the breaches despite repeated promises to do so. Decl. of L. Peter Ryan, Doc. #983. Counsel requested Creditors identify substitute counsel to substitute in as counsel of record in this case, but Creditors have not identified other counsel. Id.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Withdrawal is governed by the California Rules of Professional Conduct. Id.

Counsel has conformed with the Local Rules. Counsel testifies as to Creditors' current or last known address. Doc. #983. Counsel notified Creditors of the repeated breaches of the engagement letter and requested Creditors engage substitute counsel. Id. Counsel confirmed Creditors' recent mailing address and email the day prior to filing the motion. Id. The certificate of service filed with this motion shows that Creditors received notice via electronic mail and U.S. mail. Doc. #984. Service was also made upon the debtors, counsel for the

debtors, the United States trustee, and those parties in interest requesting special notice. Doc. #984.

Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Counsel submits that Creditors breached the attorney representation agreement, Creditors were repeatedly notified of the breaches of the representation agreement, Creditors failed to cure the breaches, and Creditors were instructed to identify substitute counsel. Ryan Decl., Doc. #983. Counsel further testifies that the continued breaches of the representation agreement have made it unreasonably difficult to continue with the representation. Id. Counsel intends to comply with California Rule of Professional Conduct 1.16(e), which requires Counsel to turn over any client materials and refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. Doc. #981. It appears that Counsel has demonstrated cause for withdrawal.

Accordingly, this motion is GRANTED.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

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

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 29, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The hearing on the motion to confirm the Chapter 11 plan was continued to June 29, 2022 at 9:30 a.m. Doc. #191. Therefore, the status conference will be continued to coincide with the hearing on the motion to confirm the plan.

3. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-13](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
3-23-2022 [\[165\]](#)

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
CONT'D TO 6/29/22 PER ECF ORDER #191

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

DISPOSITION: Continued to June 29, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

On April 29, 2022, the court issued an order continuing the hearing on the motion to confirm the plan to June 29, 2022 at 9:30 a.m. Doc. #191.

11:00 AM

1. [22-10338](#)-A-7 **IN RE: MELISSA NAVA**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
4-28-2022 [[21](#)]

NO RULING.

1. [20-13808](#)-A-7 **IN RE: YULIANA TEJEDA**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-11-2022 [[62](#)]

JAMES SALVEN/MV
SUSAN HEMB/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, the compensation awarded will be reduced
by \$168.00.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

James Salven ("Movant"), certified public accountant for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from March 15, 2022 through April 8, 2022. Doc. #62; Exs., Doc. #65; Order, Doc. #69. Movant provided accounting services valued at \$1,680.00, and requests compensation for that amount. Doc. #62. Movant requests reimbursement for expenses in the amount of \$282.99. Doc. #62. This is Movant's first and final fee application.

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).

The court notes that the Order Authorizing Employment of Accountant James E. Salven CPA authorized Movant's employment for services rendered on or after March 15, 2022, yet Movant billed some time on November 9, 2021. Order, Doc. #69; Ex. A, Doc. #65. Professionals who perform services for a chapter 7 trustee "cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order." Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 973 (9th Cir. 1995). Because services rendered prior to March 15, 2022 were not authorized by the bankruptcy court, the court will reduce the award of compensation by the amount billed to the estate prior to March 15, 2022, a total of \$168.00. Ex. A, Doc. #65.

Movant's authorized services included, without limitation: (1) inputting tax data and processing tax returns; (2) finalizing tax returns and prompt determination letters; and (3) preparing and filing the fee application. Exs. A & B, Doc. #65. Trustee has no objection. Doc. #64. Subject to the reduction of \$168.00, the court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion will be GRANTED on a final basis. The court will allow final compensation in the amount of \$1,512.00 and reimbursement for expenses in the amount of \$282.99. Trustee is authorized to make a combined payment of \$1,794.99, 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.

2. [22-10308](#)-A-7 **IN RE: LEO AGUILAR**
[JES-1](#)

AMENDED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
3-25-2022 [\[19\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for May 26, 2022 at 11:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

3. [22-10116](#)-A-7 **IN RE: DANIEL CALOTE**
[ADJ-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-6-2022 [\[22\]](#)

IRMA EDMONDS/MV
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on May 10, 2022. Doc. #31. The chapter 7 trustee replied on May 18, 2022. Doc. #48. 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). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Irma C. Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Daniel Anthony Calote ("Debtor"), objects to Debtor's claim of an exemption in proceeds from a wrongful death annuity claimed pursuant to California Code of Civil Procedure ("C.C.P.") § 704.150. Doc. #22. Debtor opposes Trustee's objection. Doc. #31.

Debtor married his first wife Pamela Calote in 1970, and the couple had two children, Jeffrey and Jennifer. Decl. of Debtor, Doc. #44. Pamela died in a car accident caused by a manufacturing defect. Id. Debtor sued for wrongful death, as did Debtor's children. Id. Debtor's lawsuit and that of his children were filed separately, but the cases were consolidated in Fresno County Superior Court as Action Number 338522-6. Id.; Ex. G, Doc. #39. A settlement was reached in the lawsuit that resulted in an annuity payment being made monthly to both of Debtor's children, and to be paid to their estates should either child die prior to 2039. Id.; Ex. H, Doc. #40. Jeffrey would receive monthly annuity payments of \$1,500 beginning September 1999 through August 2039 (the "Annuity"). Decl. of Trustee, Doc. #24.

In 1990, Jeffrey passed away in a fatal motor vehicle accident. Id.; Debtor's Decl., Doc. #44. Since then, Debtor has received the monthly Annuity payments as the sole heir to Jeffrey's estate. Debtor's Decl., Doc. #44. Debtor testifies that his only income is the Annuity payment and \$1,264 from social security. Id. Debtor testifies that he has little leftover after paying his mortgage and other bills, which is the reason he filed bankruptcy in the first place. Id.

Debtor filed the voluntary chapter 7 bankruptcy petition on January 29, 2022. Doc. #1. Debtor's Schedule C describes the Annuity as "Structured Settlements Administration - \$1500 monthly until 2039", values the Annuity at \$1,500, and

claims a \$1,500 exemption in the Annuity under C.C.P. § 704.150. Schedule C, Doc. #1. California Code of Civil Procedure § 704.150(b) and (c) state:

- (b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.
- (c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 [Wage Garnishment Law].

C.C.P. § 704.150(b), (c).

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure . . . and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Trustee contends that the claimed exemption is improper because Debtor received the Annuity as an inheritance from his late son and not pursuant to Debtor's own settlement of a wrongful death claim. Doc. #22. There is no case law directly on point. However, Trustee draws a comparison with the United States Supreme Court case Clark v. Rameker, 573 U.S. 122 (2014) (per curiam). Doc. #22.

Trustee analogizes Clark with this case by suggesting that, in Clark, "the United States Supreme Court held that while an individual retirement account is exempt in a bankruptcy case, an inherited individual retirement account is not." Tr.'s Obj., Doc. #22. Trustee states that the "Court reasoned that an inherited individual retirement account does not have the same legal characteristics or purposes as a regular individual retirement account. Likewise, in the instant matter the same legal characteristics or purposes are not present as to Jeffrey Calote's wrongful death settlement and his father's subsequent inheritance of the settlement rights." Id. The court is unconvinced.

As an initial matter, the question presented in Clark was "whether funds contained in an inherited individual retirement account (IRA) qualify as 'retirement funds' within the meaning of [11 U.S.C. § 522(b)(3)(C)]. The Court held] that they do not." Clark, 573 U.S. at 124. Two distinctions with respect to Clark appear immediately to this court: first, Debtor has not attempted to exempt retirement funds contained in an IRA; second, Debtor claims the exemption under California law.

The Supreme Court did not decide Clark based on the meaning or use of the word "inherited". The Supreme Court was confronted with determining whether funds held in an inherited IRA were "retirement funds" within the meaning of 11 U.S.C. § 522(b)(3)(C). Id. at 127. The Bankruptcy Code did not provide a definition of "retirement funds" for the Supreme Court to rely on, so the

Supreme Court gave "the term its ordinary meaning[:] sums of money set aside for the day an individual stops working." Id.

Having defined "retirement funds", the Supreme Court went on to state that "in deciding whether a given set of funds falls within this definition, the inquiry must be an objective one" Id. The court should "look to the legal characteristics of the account" to determine "whether, as an objective matter," the account matches the definition applicable to the claimed exemption. Id.

In conducting this analysis, the Supreme Court explained "[t]hree legal characteristics of inherited IRAs lead [the Supreme Court] to conclude that funds held in such [inherited IRA] accounts are not objectively set aside for the purpose of retirement." Clark, 573 U.S. at 128. Absent among the three characteristics was that the IRA was inherited.

First, the Supreme Court reasoned that inherited IRAs are unlike traditional and Roth IRAs because "the holder of an inherited IRA may never invest additional money into the account." Id. Second, the Supreme Court explained that "holders of inherited IRAs are required to withdraw money," which "is hardly a feature one would expect of an account set aside for retirement." Id. Third, the Supreme Court acknowledged that "the holder of an inherited IRA may withdraw the entire balance of the account at any time—and for any purpose—without penalty." Id. This feature renders funds in an inherited IRA "not funds objectively set aside for one's retirement." Id. at 129.

That funds in an inherited IRA are different from funds in traditional and Roth IRAs, and therefore not properly considered "retirement funds" for the purpose of exemptions under the Bankruptcy Code, had nothing at all to do with the funds actually being inherited. Rather, it was the objective legal characteristics that created the distinction.

Trustee's objection asks the court to focus on the fact that Debtor inherited the Annuity. In the reply, Trustee contends that the death of a wrongful death annuity claimant changes the character of the remaining periodic payments. However, Trustee provides no argument or legal authority explaining how the Annuity, or the funds therein, objectively and legally changed in nature upon Jeffrey's death and Debtor's subsequent "inheritance".

When analyzing a statute, the court is to begin with the statutory language. As the Ninth Circuit has explained, "[t]he preeminent canon of statutory interpretation requires us to presume that [the] legislature says in a statute what it means and means in a statute what it says there. Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 951 (9th Cir. 2009) (citation omitted).

The plain language of C.C.P. § 704.150(b) states that an award of damages or a settlement arising out of the wrongful death of the debtor's spouse is exempt to the extent reasonably necessary for support of the debtor and the debtor's dependents. C.C.P. § 704.150(b); 2 Goldsmith et al., Matthew Bender Practice Guide: California Debt Collection and Enforcement of Judgments, 16:37. C.C.P. § 704.150(b) makes no distinction between the original payee of an award or settlement and any subsequent heir, and the plain language of C.C.P. § 704.150(b) does not limit use of the exemption to the original payee of the award. Rather, C.C.P. § 704.150(b) exempts an award or settlement arising out of the wrongful death of the debtor's spouse if the amount exempted is reasonably necessary for support of the debtor and the debtor's dependents.

Here, there is no genuine dispute that the Annuity was the result of a settlement arising out of the wrongful death of Debtor's spouse. In the reply, Trustee seems to argue that the settlement agreement establishing the Annuity was not a settlement arising from a wrongful death action. Doc. #48. This argument is unpersuasive. The complaints filed by Debtor and Debtor's children clearly indicate they are complaints for, *inter alia*, wrongful death. Exs. E & F, Doc. ##37-38. The lawsuits were consolidated into Action Number 338522-6. Ex. G, Doc. #39. The settlement agreement Trustee refers to clearly defines the matter being settled as "Court Action No. 338522-6", the consolidated action. See Exhibit A to Ex. H, Doc. #40. The settlement agreement Trustee refers to states that all causes of action contained in the consolidated action will be released in consideration of periodic monthly payments. Id. The Annuity is the result of a settlement arising out of the wrongful death of Debtor's spouse.

Regarding the necessity of the Annuity to Debtor, Debtor testifies that the Annuity payment makes up over 50% of his income, which is largely depleted after paying the monthly mortgage and other bills. Debtor has satisfied the requirements of C.C.P. § 704.150(b).

Further, Debtor testifies that the Annuity may be fully exempt under § 704.150(c) because there is no amount of the Annuity that may be withheld under California's wage garnishment law. Doc. #31; Debtor's Decl., Doc. #44.

Debtor has demonstrated his entitlement to the claimed exemption under C.C.P. § 704.150. Accordingly, the objection will be OVERRULED.

4. [22-10619](#)-A-7 **IN RE: PANG CHANG**
[ADR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR, MOTION FOR
ADEQUATE PROTECTION
5-4-2022 [\[20\]](#)

LUIS MOLINA/MV
ANTHONY ROWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative

ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. 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 movant, Luis Molina ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to residential real property located at 1263 West Santa Fe Avenue, Merced, CA 95340 ("Property"). Doc. #20. Movant is the owner of the Property and obtained a judgment for unlawful detainer against the debtor Pang Chang ("Debtor") prior to the commencement of this chapter 7 case. Decl. of Luis Molina, Doc. #24; Ex. 1, Doc. #25. Movant seeks an order granting relief from the automatic stay permitting Movant to proceed to prosecute eviction proceedings against Debtor to obtain possession of the Property. Doc. #20.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay. Movant initiated an unlawful detainer action against Debtor pre-petition and obtained a judgment for unlawful detainer against Debtor on March 24, 2022. Ex. 1, Doc. #25. Debtor has not vacated the Property despite the judgment of unlawful detainer. Movant's Decl., Doc. #24. Movant requests relief from the automatic stay to pursue eviction proceedings and allow Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #24.

Moreover, it appears that the automatic stay under § 362(a)(3) terminated on May 11, 2022 pursuant to § 362(b)(22). Movant obtained a judgment for unlawful detainer against Debtor pre-petition and, while Debtor filed a pleading entitled "Initial Statement About an Eviction Judgment Against You" with his bankruptcy petition (Doc. #9), Debtor has not taken the subsequent step of depositing with the clerk of court any rent that would become due in the 30-day period after the filing of Debtor's bankruptcy petition. 11 U.S.C. § 362(1)(3). At a minimum, it appears that the automatic stay under § 362(a)(3) terminated on May 11, 2022 pursuant to § 362(b)(22), and so cause exists to lift the stay pursuant to the motion. See In re Furtado, 2011 Bankr. LEXIS 5667, *1 (Bankr. E.D. Cal. Dec. 29, 2011).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because it appears that there is no automatic stay under § 362(a)(3) pursuant to § 362(b)(22).

5. [21-12820](#)-A-7 **IN RE: CLYDE/HEATHER DUNN**
[PK-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
5-2-2022 [\[32\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion improperly lists the courtroom for the hearing as courtroom 13, not courtroom 11. A calendar memo was issued by the court on May 3, 2022, requesting that an amended notice be served to reflect the correct courtroom. Doc. #37. No amended notice has been filed with the court.

Clyde N. Dunn III and Heather L. Dunn (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #32.

Bankruptcy Code § 706(a) authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtors filed a voluntary petition under chapter 7 on December 20, 2021. Doc. #1. On February 28, 2022, the United States Trustee filed a statement of presumed abuse pursuant under 11 U.S.C. § 707(b). Doc. #15. Shortly thereafter, on March 30, 2022, the United States Trustee filed a motion to dismiss the case pursuant to § 707(b). Doc. ##25-31. On May 2, 2022, Debtors filed this motion to convert their case to chapter 13. Doc. #32. The United States Trustee and the chapter 7 trustee were duly, timely, and properly served with the motion to convert. Doc. #36.

Debtors assert they each have a regular income and their combined income is sufficient to fund the proposed plan payments. Decl. of Heather L. Dunn, Doc. #34; Decl. of Clyde N. Dunn III, Doc. #35. Moreover, this case has not been previously converted under section 1112, 1208, or 1307.

Accordingly, pending any opposition presented at the hearing, this motion will be GRANTED.

6. [21-12820](#)-A-7 **IN RE: CLYDE/HEATHER DUNN**
[UST-1](#)

CONTINUED MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
3-30-2022 [[25](#)]

TRACY DAVIS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

NO RULING.

7. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[DMG-3](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH ABLP PROPERTIES, VISALIA LLC AND ABLP REIT LLC, MOTION TO SELL,
MOTION TO APPROVE CORPORATE DISSOLUTIONS
3-2-2022 [[81](#)]

JAMES SALVEN/MV
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was originally set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). On March 16, 2022, the parties
stipulated to continue the hearing to April 27, 2022 at 1:30 p.m., requiring
written opposition to be filed no later than April 13, 2022, and any replies to
be filed no later than April 20, 2022. Order, Doc. #92. The debtor timely filed
written opposition on April 13, 2022. Doc. #94. Timely replies were filed on
April 20, 2022 by the chapter 7 trustee ("Trustee") and one of the parties
settling with the chapter 7 estate. Doc. ##98, 100.

The court posted its pre-hearing disposition prior to the April 27, 2022
hearing, indicating the court would deny the motion. At the hearing, Trustee
requested a continuance. After considering the statements made by all parties
at the hearing, the court continued the hearing to May 25, 2022 at 1:30 p.m.
Order, Doc. #117. Supplemental papers could be submitted by Trustee no later
than May 11, 2022; the debtor could respond no later than May 18, 2022; and any
party wishing to overbid must qualify no later than May 23, 2022. Order,
Doc. #117.

On May 11, 2022, Trustee submitted a supplemental declaration, a revised
settlement agreement, and a revised stipulated judgment addressing the concerns
raised by the debtor and the court at the April 27, 2022 hearing. Doc. ##123-
124. The debtor did not file a supplemental response.

Trustee, as chapter 7 trustee of the bankruptcy estate of Esperanza Hansen Gonzalez ("Debtor"), moves to approve the compromise of claims and interests in state court litigation, sell the estate's assets in property, and approve corporate dissolutions. Doc. #81. Debtor opposes Trustee's motion. Doc. #94. The amended compromise and settlement agreement for which Trustee seeks approval is filed as Exhibit G, Docket No. 124 (the "Settlement Agreement"). Ex. G, Doc. #124.

After reviewing the supplemental papers, the court is inclined to GRANT the motion.

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

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

Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 23, 2021. Doc. #1. Debtor scheduled a 100% ownership interest in The Magnolia Group, Inc., a Delaware corporation ("Magnolia Group"), valued at \$0. Schedule A/B, Doc. #21. Debtor scheduled a 100% ownership interest in Magnolia Park, a Nevada corporation, valued at \$0.¹ Id. Debtor also scheduled, as a contingent and unliquidated claim, a lawsuit against ABLP REIT LLC ("ABLP REIT"), ABLP Properties Visalia LLC ("ABLP Properties") (together, the "ABLP Entities"), and others pending in Tulare County Superior Court as case number VCU284145, valued at \$5 million ("State Court Litigation"). Id. Debtor did not exempt the lawsuit. Schedule C, Doc. #21.

Debtor scheduled ABLP REIT as having a disputed unsecured claim of \$3.2 million in connection with the State Court Litigation and scheduled ABLP Properties as having a disputed unsecured claim also in connection with the State Court Litigation, but valued ABLP Properties' claim at \$0. Schedule E/F, Doc. #21. On October 19, 2021, ABLP Properties filed a proof of claim asserting a claim of

¹ Debtor scheduled Magnolia Park as a Nevada corporation while Trustee's motion identifies Magnolia Park as an LLC. It does not appear that the specific corporate structure is at issue.

\$3,657,906.89 in connection with an adversary proceeding filed by ABLP Properties to determine certain of Debtor's debts to be nondischargeable under 11 U.S.C. § 523(a)(2). Claim 7. The non-dischargeability complaint filed by ABLP Properties against Debtor is pending before this court as Adversary Proceeding No. 21-01031 (the "Adversary Proceeding").

Trustee testifies that Magnolia Group's business consisted of the ownership of real properties located at 2948 and 2950 East Douglas Ave., Visalia, CA, and 1331 Lewis Lane, Tulare, CA. Tr. Decl. ¶ 9, Doc. #83. Trustee testifies that the East Douglas property was foreclosed on in November 2019, and the Lewis Lane property was foreclosed on June 30, 2020. Id. Trustee states that Magnolia Group has no assets and no value. Id. ¶¶ 3, 11.

Trustee further testifies that the business operation of Magnolia Park consists of a nursing home and is presently under receivership since the appointment of a receiver on September 30, 2021. Id. ¶ 11. Trustee states that the effect of executing and performing under the Settlement Agreement will result in the receiver of Magnolia Park conducting a UCC sale to dispose of the personal property assets of Magnolia Park. Id. Otherwise, Trustee does not believe Magnolia Park has any value. Id. ¶ 3.

The Settlement Agreement involves the State Court Litigation and the cross-complaint filed by the ABLP Entities against Debtor, Magnolia Group, Magnolia Park, and Debtor's husband Arnulfo Gonzalez. Decl. of Trustee ¶ 8, Doc. #83.

Trustee states that the main points of the settlement agreement are:

- a. Payment of \$30,000 to the estate. Tr. Decl., p. 4, ¶ 12.a, Doc. #83. The court initially raised the question of what entity would pay the amount to the estate, but the revised Settlement Agreement states that the ABLP Entities will pay \$30,000 to Trustee. See Ex. G, Doc. #124.
- b. A stipulated judgment on the cross-complaint in favor of the ABLP Entities. Tr. Decl., p. 4, ¶ 12.b, Doc. #83. The court initially raised concern because the original proposed settlement agreement stated that the stipulated judgment on the ABLP Entities' cross-complaint in the State Court Litigation would be against Debtor, Magnolia Park, and Magnolia Group, jointly and severally. Ex. E, page 2, ¶ 3.b, Doc. #84; see also Ex. F, Doc. #87. However, the revised Settlement Agreement and stipulated judgment have excluded Debtor from the relevant provisions. Ex. G, Doc. #124; Ex. H, Doc. #124.
- c. A UCC foreclosure on the personal property owned by Magnolia Park. Tr. Decl., p. 4, ¶ 12.c, Doc. #83. Trustee supplemented his original testimony to explain that the UCC sale is necessary to allow the ABLP Entities to transfer the operating nursing home business to an operational entity that will operate and maintain the business. Tr.'s Suppl. Decl. ¶ 5, Doc. #123.
- d. ABLP Properties and ABLP REIT shall have judgments against Debtor, Magnolia Group, and Magnolia Park, but will waive any claim against the chapter 7 estate. Tr. Decl., p. 4, ¶ 12.d, Doc. #83. The court raised issue with this statement because the original settlement agreement stated that the pre-petition general unsecured claim of ABLP [undefined] against the bankruptcy estate would be retained as a claim in the bankruptcy case. Ex. E, p. 3, ¶ 7, Doc. 84. However, the revised Settlement Agreement now states that the ABLP Entities

waive all claims against Trustee and the estate, including the proof of claim filed by ABLP Properties. Ex. G, Doc. #124. Additionally, Debtor has been removed from the provisions identifying the parties against whom judgment will be entered. Id.

- e. Trustee will step into the shoes of Debtor as the sole shareholder, or sole member, of Magnolia Park and Magnolia Group and will wind up and dissolve those entities and file certificates of dissolution in Nevada and Delaware. Tr. Decl., p. 5, ¶ 12, Doc. #83. The Settlement Agreement does not specifically require this, but the recitals to the Settlement Agreement state that Trustee became or will become president of Magnolia Group and Magnolia Park and that Trustee is authorized to enter into the Settlement Agreement as president of those entities. Ex. G, Doc. #124.

Trustee proposes to sell the estate's interest in the State Court Litigation to ABLP Entities for \$30,000 subject to higher and better offers made at the hearing. Doc. #81. Absent higher offers, the ABLP Entities will purchase the estate's interest in the State Court Litigation as part of the Settlement Agreement. Doc. #81; Tr.'s Suppl. Decl., Doc. #123; Ex. G, Doc. #124.

A & C Properties Analysis

As stated above, approval of a compromise must be based upon considerations of fairness and equity. A & C Properties, 784 F.2d at 1381. The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson, 839 F.2d at 620.

Probability of success. Trustee testifies that the facts giving rise to the State Court Litigation are complicated and span several years in time. Tr. Decl. ¶ 14(a), Doc. #83. By the supplemental declaration, Trustee testifies in more detail that he consulted with two experienced attorneys and a fellow chapter 7 trustee about finding representation but was unable to find any attorneys willing to take the case. Tr.'s Suppl. Decl. ¶ 4, Doc. #123. Further, ABLP Properties had successfully completed two non-judicial foreclosures which would need to be set aside in order for Trustee to succeed on the merits in the State Court Litigation, and Trustee's experience, as well as the experience of those he spoke with, indicates that would create a heavy evidentiary burden. Id. ¶ 4.b. Additionally, Debtor would be Trustee's primary witness in any litigation undertaken on behalf of the estate, and Trustee has substantial concerns about Debtor's credibility as a witness given a state-led investigation into Debtor's accounting of funds received by Debtor from potential assisted living or elderly nursing care residents. Id. ¶ 4.c.

Difficulties of collection. Trustee testifies that collection would not be difficult were he to prevail. Tr. Decl. ¶ 14(b), Doc. #83.

Complexity of the litigation. Trustee "view[s] the litigation to be difficult involving multiple witnesses, transactions and documentation to present at the time of trial." Tr. Decl. ¶ 14(c), Doc. #83. As stated above, the ABLP Entities have successfully completed two non-judicial foreclosures that would need to be set aside, which would be fact intensive and burdensome to prove. Tr.'s Suppl. Decl. ¶ 4.b, Doc. #123.

Interest of the creditors. Trustee believes "that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees that would be paid out as administrative expenses." Tr. Decl. ¶ 14(d), Doc. #83. Trustee is unaware of any contingency fee attorneys who would not require the payment of costs in the event of losing the State Court Litigation, which Trustee believes is likely. Tr.'s Suppl. Decl. ¶ 4(a), Doc. #123. Trustee does not believe the estate should risk the approximately \$20,000 in funds available to the estate to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. ABLP Properties will waive its proof of claim filed against the estate. Ex. G, Doc. #124.

The court is satisfied with Trustee's supplemental declaration and supporting evidence and is inclined to find that Trustee has demonstrated that the compromise is fair and equitable under A & C Properties. Trustee adequately explains his attempts to find competent counsel to represent the estate, the difficulties in succeeding on the merits of the State Court Litigation and the high probability of failure. Trustee also explains why the settlement is in the best interests of creditors and the estate.

Debtor's Opposition

Debtor's opposition, filed on April 13, 2022, set forth several discreet objections to Trustee's motion. Debtor's Opp'n, Doc. #94. First, Debtor contends that the ABLP Entities are not entitled to have a judgment entered against Debtor with respect to the cross-complaint. Id. Debtor's opposition states: "Contrary to the Trustee's Motion and proposed settlement agreement between the Trustee and the ABLP Defendants, there can be no judgment entered against Debtor in connection with the ABLP Defendants' Cross-Complaint in the State Court [Litigation because they] dismissed Debtor as a Cross-Defendant in the State Court [Litigation] on or about August 19, 2021." Debtor's Opp'n 2:19-27, Doc. #94. This first objection has been resolved by the removal of Debtor from the offending provisions of the revised Settlement Agreement and proposed stipulated judgment. Exs. G & H, Doc. #124.

Debtor next argues that the judgment against Magnolia Park and Magnolia Group should not be entered as originally proposed because the original settlement agreement was silent as to (a) a specific dollar amount of the judgment to be stipulated to and (b) specific amounts provided for reasonable attorneys' fees. Debtor's Opp'n, 3:3-17, Doc. #94.

This objection also is resolved by the revised Settlement Agreement and proposed stipulated judgment. The revised stipulated judgment states that ABLP REIT will obtain a judgment against Magnolia Group and Magnolia Park, jointly and severally, in the sum of \$5,364,351, inclusive of attorneys' fees, costs, and receiver fees and costs. Ex. H, Doc. #124.

Debtor further objected that the Trustee's motion and the original settlement agreement were contradictory as to what claims were being released or waived by the respective parties to the original settlement agreement. Debtor's Opp'n, Doc. #94. Debtor's opposition highlighted the contradiction in Trustee's motion stating that the ABLP Entities will waive any claim against the chapter 7 estate and the original settlement agreement language stating that the ABLP Entities did not waive their pre-petition unsecured claim. Compare Ex. E page 3 ¶ 7, Doc. #84 with Tr. Decl. ¶¶ 12, 14(d), Doc. #83. Again, the revised Settlement Agreement resolves this issue by stating that ABLP Entities waive all claims against Trustee and the bankruptcy estate, including the proof of claim. Ex. G, Doc. #124.

Debtor's next objection states that, as presently pleaded, Trustee's motion effectively leaves Debtor with nothing, apart from an exemption related to her home. Debtor's Opp'n, Doc. #94. Debtor objects because the Settlement Agreement leaves Debtor no chance of continuing to operate Magnolia Park Assisted Living as she once did. Debtor's Opp'n 4:5-13, Doc. #94. Debtor wants the Adversary Proceeding against her dismissed as part of the compromise. Id. By the reply, Trustee states that Trustee "cannot control or leverage ABLP to release the Debtor from a non-dischargeability action. This should not be grounds for keeping the settlement from going forward." Tr. Reply 2:13-16, Doc. #98. Similarly, ABLP Properties, in its reply, states that the Settlement Agreement between the estate and the chapter 7 trustee is not related to the Adversary Proceeding. ABLP Reply, Doc. #100. The court agrees with Trustee and ABLP Properties that there is no basis upon which this court should deny approval of this compromise simply because Debtor is not released from the non-dischargeability complaint as part of the compromise. Trustee has no authority to require such a condition in the estate's settlement with the ABLP Entities.

Finally, Debtor objects to the motion on the grounds that dissolution of Magnolia Park and Magnolia Group is unnecessary and adds nothing to the proposed settlement with the ABLP Entities. Debtor's Opp'n, Doc. #94. Debtor correctly stated that Trustee initially made no mention of the reason or justification for the proposed dissolution of Magnolia Park and Magnolia Group, which Trustee states have no value. Debtor states that Magnolia Park and Magnolia Group may have tax attributes for Debtor and asks that the compromise between Trustee and the ABLP Entities exclude the dissolution of Magnolia Park and Magnolia Group as unnecessary. Debtor's Opp'n 4:14-24, Doc. #94.

In its reply, ABLP Properties stated that the dissolution of Magnolia Park and Magnolia Group are material terms to the proposed Settlement Agreement. ABLP Reply 3:23-4:7, Doc. #100. By the supplemental declaration, Trustee testifies that the judgment entered in the State Court Litigation must confirm that neither Debtor, Magnolia Park, nor Magnolia Group have any possessory right to the real or personal property so that the ABLP Entities may move to terminate the receivership and maintain the business operations under a distinct operational entity. Tr.'s Suppl. Decl. ¶ 5, Doc. #123. Here, Trustee has provided sufficient justification for dissolving Magnolia Park and Magnolia Group as a material term of the compromise given Debtor's opposition.

By the written opposition submitted April 13, 2022, Debtor signaled that she will submit a bid at the hearing. Debtor's Opp'n, Doc. #94. ABLP Properties requested Debtor be prohibited from overbidding at the hearing because Debtor had failed to qualify to overbid. At the hearing, Debtor was provided instruction on submitting an overbid, and the court instructed any party interested in submitting an overbid to do so prior to close of business on May 23, 2022. Order, Doc. #117. If Debtor is able to qualify under the overbid procedure, her bid will not be disallowed.

Conclusion

It appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

It appears that the sale of the estate's interest in the State Court Litigation is in the best interests of the estate, the sale at auction will be for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the State Court Litigation to the ABLP Entities on the terms set forth in the motion and revised Settlement Agreement. See Ex. G & H, Doc. #124.

8. [22-10335](#)-A-7 **IN RE: JAIME CASTORENA**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
4-15-2022 [[13](#)]

MOTION WITHDRAWN BY TRUSTEE

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to dismiss the case on May 4, 2022. Doc. #19.

9. [21-12650](#)-A-7 **IN RE: RODOLFO ALVAREZ-GOMEZ AND GABRIELA ALVAREZ GOMEZ**
[PBB-1](#)

MOTION TO COMPEL ABANDONMENT
4-12-2022 [[22](#)]

RODOLFO ALVAREZ-GOMEZ/MV
PETER BUNTING/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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Rodolfo Alvarez-Gomez and Gabriela Alvarez Gomez (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the trustee to abandon

real property of the estate located at 4526 East Booker Avenue, Fresno, CA 93725 (the "Property"). Doc. #22. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #22. No opposition has been filed in response to this motion.

Section 554(b) of the Bankruptcy Code 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 & Tool Co., 816 F.2d at 246)).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #22. Therefore, Debtors 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. Debtors' Property is valued at \$297,815.00 and is encumbered by a first deed of trust totaling \$107,631. Schedule D, Doc. #1; Decl. of Rodolfo Alvarez-Gomez, Doc. #25. Under California Civil Procedure Code § 704.730, Debtors claimed a \$300,000.00 exemption in the Property. Am. Schedule C, Doc. #17; Decl., Doc. #25. The court finds that Debtors have met their 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.

10. [22-10453-A-7](#) **IN RE: FRANCISCA CONTRERAS**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
4-15-2022 [[18](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for May 26, 2022 at 12:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for

abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

11. [21-12699](#)-A-7 **IN RE: RAMON ARAMBULA-PAEZ**
[RA-1](#)

MOTION TO AVOID LIEN OF LOBEL FINANCIAL CORP.
4-20-2022 [[31](#)]

RAMON ARAMBULA-PAEZ/MV
RALPH AVILA/ATTY. FOR DBT.

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 after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Ramon Olipio Arambula-Paez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Lobel Financial Corp. ("Creditor") on the residential real property commonly referred to as 6533 E. Michigan Ave., Fresno, CA 93727 (the "Property"). Doc. #31; Schedules C and D, Doc. #1.

On the day Debtor filed the instant motion, Debtor submitted three other motions to avoid liens under § 522(f). See Doc. ##31, 38, 45, 52. The motions all involve the Property, and all seek to avoid different judicial liens. None of the motions mention the analysis required when a debtor seeks to avoid multiple judicial liens. None of the motions refer to the other judicial liens in any manner whatsoever. The only relevant liens referred to by the motion and supporting declaration are the first deed of trust and the judicial lien that is the subject of that specific motion.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority.

Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C.

§ 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtor filed the bankruptcy petition on November 24, 2021. A judgment was entered against Ramon Olipio Arambula Paez individually and DBA Bestbuymotorz in the amount of \$5,977.66 in favor of Creditor on November 13, 2019. Ex. D, Doc. #36. The abstract of judgment was recorded pre-petition in Fresno County on January 21, 2020 as document number 2020-0007403. Ex. D, Doc. #36. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #34. The Property also is encumbered by a first deed of trust in favor of Loan Care in the amount \$215,000. Schedule D, Doc. #1; Doc. #34. Debtor claims an exemption of \$5,000 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$355,000. Schedule A/B, Doc. #1. There appears to be one senior judicial lien on the Property. Doc. #57. The senior judgment lien was recorded in Fresno County on July 3, 2019 with respect to a judgment of \$7,311.89. Doc. #57.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$5,977.66
Total amount of all other liens on the Property (excluding junior judicial liens)	+	222,311.89
Amount of Debtor's claim of exemption in the Property	+	5,000.00
		\$233,289.55
Value of Debtor's interest in the Property absent liens	-	355,000.00
Amount Creditor's lien impairs Debtor's exemption		(\$121,710.45)

Application of the arithmetical formula required by § 522(f)(2)(A) shows sufficient equity in the Property to support Creditor's lien. Creditor's judicial lien does not impair Debtor's exemption in the Property.

The court recognizes that under the California Code of Civil Procedure, Debtor may be able to claim an exemption in an amount greater than \$5,000, but those are not the facts currently before the court.

Accordingly, this motion will be DENIED.

MOTION TO AVOID LIEN OF AFC CAL, LLC
4-20-2022 [\[38\]](#)

RAMON ARAMBULA-PAEZ/MV
RALPH AVILA/ATTY. FOR DBT.

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 after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Ramon Olipio Arambula-Paez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of AFC CAL LLC ("Creditor") on the residential real property commonly referred to as 6533 E. Michigan Ave., Fresno, CA 93727 (the "Property"). Doc. #38; Schedules C and D, Doc. #1.

On the day Debtor filed the instant motion, Debtor submitted three other motions to avoid liens under § 522(f). See Doc. ##31, 38, 45, 52. The motions all involve the Property, and all seek to avoid different judicial liens. None of the motions mention the analysis required when a debtor seeks to avoid multiple judicial liens. None of the motions refer to the other judicial liens in any manner whatsoever. The only relevant liens referred to by the motion and supporting declaration are the first deed of trust and the judicial lien that is the subject of that specific motion.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the

line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtor filed the bankruptcy petition on November 24, 2021. A judgment was entered against Ramon Olipio Arambula Paez individually and DBA Bestbuymotorz in the amount of \$20,349.13 in favor of Creditor on November 19, 2020. Ex. D, Doc. #43. The abstract of judgment was recorded pre-petition in Fresno County on March 5, 2021 as document number 2021-0037672. Ex. D, Doc. #43. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #41. The Property also is encumbered by a first deed of trust in favor of Loan Care in the amount \$215,000. Schedule D, Doc. #1; Doc. #41. Debtor claims an exemption of \$5,000 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$355,000. Schedule A/B, Doc. #1. There appear to be two senior judicial liens on the Property. Doc. #57; Doc. #36. The first was recorded in Fresno County on July 3, 2019 with respect to a judgment of \$7,311.89. Doc. #57. The other was recorded in Fresno County on January 21, 2020 with respect to a judgment of \$5,977.66. Doc. #36.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$20,349.13
Total amount of all other liens on the Property (excluding junior judicial liens)	+	228,289.55
Amount of Debtor's claim of exemption in the Property	+	5,000.00
		\$253,638.68
Value of Debtor's interest in the Property absent liens	-	355,000.00
Amount Creditor's lien impairs Debtor's exemption		(\$101,361.32)

Application of the arithmetical formula required by § 522(f)(2)(A) shows sufficient equity in the Property to support Creditor's lien. Creditor's judicial lien does not impair Debtor's exemption in the Property.

The court recognizes that under the California Code of Civil Procedure, Debtor may be able to claim an exemption in an amount greater than \$5,000, but those are not the facts currently before the court.

Accordingly, this motion will be DENIED.

13. [21-12699](#)-A-7 **IN RE: RAMON ARAMBULA-PAEZ**
[RA-3](#)

MOTION TO AVOID LIEN OF PHILADELPHIA INDEMNITY INSURANCE COMPANY
4-20-2022 [45]

RAMON ARAMBULA-PAEZ/MV
RALPH AVILA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Ramon Olipio Arambula-Paez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Philadelphia Indemnity Insurance Company ("Creditor") on the residential real property commonly referred to as 6533 E. Michigan Ave., Fresno, CA 93727 (the "Property"). Doc. #45; Schedules C and D, Doc. #1.

On the day Debtor filed the instant motion, Debtor submitted three other motions to avoid liens under § 522(f). See Doc. ##31, 38, 45, 52. The motions all involve the Property, and all seek to avoid different judicial liens. None of the motions mention the analysis required when a debtor seeks to avoid multiple judicial liens. None of the motions refer to the other judicial liens in any manner whatsoever. The only relevant liens referred to by the motion and supporting declaration are the first deed of trust and the judicial lien that is the subject of that specific motion.

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

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

Debtor filed the bankruptcy petition on November 24, 2021. A judgment was entered against Ramon Olipio Arambula Paez in the amount of \$68,012.56 in favor of Creditor on February 5, 2021. Ex. D, Doc. #50. The abstract of judgment was recorded pre-petition in Fresno County on May 19, 2021 as document number 2021-0082720. Ex. D, Doc. #50. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #41. The Property also is encumbered by a first deed of trust in favor of Loan Care in the amount \$215,000. Schedule D, Doc. #1; Doc. #48. Debtor claims an exemption of \$5,000 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$355,000. Schedule A/B, Doc. #1. There appear to be three senior judicial liens on the Property. Doc. #57; Doc. #36; Doc. #43. The first was recorded in Fresno County on July 3, 2019 with respect to a judgment of \$7,311.89. Doc. #57. The second

was recorded in Fresno County on January 21, 2020 with respect to a judgment of \$5,977.66. Doc. #36. The third was recorded in Fresno County on March 5, 2021 with respect to a judgment of \$20,349.13. Doc. #43.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$68,012.56
Total amount of all other liens on the Property (excluding junior judicial liens)	+	248,638.68
Amount of Debtor's claim of exemption in the Property	+	5,000.00
		\$321,651,24
Value of Debtor's interest in the Property absent liens	-	355,000.00
Amount Creditor's lien impairs Debtor's exemption		(\$33,348.76)

Application of the arithmetical formula required by § 522(f)(2)(A) shows sufficient equity in the Property to partially support Creditor's lien. Creditor's judicial lien does not fully impair Debtor's exemption in the Property.

The court recognizes that under the California Code of Civil Procedure, Debtor may be able to claim an exemption in an amount greater than \$5,000, but those are not the facts currently before the court.

Accordingly, this motion will be GRANTED in part and Creditor's judicial lien will be partially avoided and reduced in the amount of \$33,348.76.

14. [21-12699](#)-A-7 **IN RE: RAMON ARAMBULA-PAEZ**
[RA-4](#)

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA
4-20-2022 [[52](#)]

RAMON ARAMBULA-PAEZ/MV
RALPH AVILA/ATTY. FOR DBT.

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 after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Ramon Olipio Arambula-Paez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditors Bureau USA ("Creditor") on the residential real property commonly referred to as

6533 E. Michigan Ave., Fresno, CA 93727 (the "Property"). Doc. #52; Schedules C and D, Doc. #1.

On the day Debtor filed the instant motion, Debtor submitted three other motions to avoid liens under § 522(f). See Doc. ##31, 38, 45, 52. The motions all involve the Property, and all seek to avoid different judicial liens. None of the motions mention the analysis required when a debtor seeks to avoid multiple judicial liens. None of the motions refer to the other judicial liens in any manner whatsoever. The only relevant liens referred to by the motion and supporting declaration are the first deed of trust and the judicial lien that is the subject of that specific motion.

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

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

Debtor filed the bankruptcy petition on November 24, 2021. A judgment was entered against Ramon Arambula aka Ramon P. Arambula aka Ramon Paez aka Ramon Arambula Paez in the amount of \$7,311.89 in favor of Creditor on June 19, 2019. Ex. D, Doc. #57. The abstract of judgment was recorded pre-petition in Fresno County on July 3, 2019 as document number 2019-0073337. Ex. D, Doc. #57. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #55. The Property also is encumbered by a first deed of trust in favor of Loan Care in the amount \$215,000. Schedule D, Doc. #1; Doc. #55. Debtor claims an exemption of \$5,000 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$355,000. Schedule A/B, Doc. #1. There does not appear to be any senior judicial liens.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,311.89
Total amount of all other liens on the Property (excluding junior judicial liens)	+	215,000.00
Amount of Debtor's claim of exemption in the Property	+	5,000.00
		\$263,311.89
Value of Debtor's interest in the Property absent liens	-	355,000.00
Amount Creditor's lien impairs Debtor's exemption		(\$91,688.11)

Application of the arithmetical formula required by § 522(f)(2)(A) shows insufficient equity in the Property to support Creditor's lien. Creditor's judicial lien does not impair Debtor's exemption in the Property.

The court recognizes that under the California Code of Civil Procedure, Debtor may be able to claim an exemption in an amount greater than \$5,000, but those are not the facts currently before the court.

Accordingly, this motion will be DENIED.