UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, May 25, 2021
Place: Department B – Courtroom #13
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. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-2-2020 [1]

ALEXANDER LEE/ATTY. FOR DBT.
RENO FERNANDEZ/ATTY. FOR MV.

NO RULING.

2. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
MF-14

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR 4-S RANCH PARTNERS, LLC
3-15-2021 [394]

ALEXANDER LEE/ATTY. FOR DBT.
RENO FERNANDEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. 19-10423-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
FW-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
4-26-2021 [277]

DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

Kulwinder Singh and Binder Kaur's ("Debtors") co-counsel, Fear Waddell, P.C. ("Movant"), requests fees of $31,093.00 and costs of $546.05 for a total of $31,639.05 for services rendered from January 1, 2020 through December 31, 2020. Doc. #277. Debtors filed a supporting declaration stating that they have reviewed the fee application and have no objections. Doc. #280. No party in interest timely filed written opposition.

This motion will be GRANTED.

The court approved Movant's employment effective June 8, 2019 subject to 11 U.S.C. §§ 327, 329-331 on July 9, 2019. Doc. #133. The order provided that no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Interim compensation under § 331 was permitted if the combined fees and expenses exceeded $5,000.00. *Id.*

This is Movant's second fee application. The court previously approved interim fees of $30,683.00 and expenses of $375.60 on February 26, 2020. *See* Doc. #206; FW-4. Movant states that $4,500.00 was paid on February 27, 2020 and the remainder of fees will be paid through the plan. Doc. #277, ¶ 3.

Movant indicates that his firm spent 98.60 billable hours totaling $31,093.00 in fees as follows:

Timekeeper	Hours	Hourly Rate	Total Amount
Peter L. Fear	48.1	$400.00	$19,240.00
Gabriel J. Waddell	1.1	$320.00	$352.00
Peter A. Sauer	46.2	$235.00	$10,857.00
Katie Waddell	2.7	$220.00	$594.00
Kayla Schlaak	0.5	$100.00	$50.00
Total	**98.6**		**$31,093.00**

Id., at 3, ¶ 4; Doc. #281, Ex. B. Movant also incurred the following expenses:

Copying	$300.60
Postage	$109.45
Online Research	$13.00
Court Fees	$123.00
Total Costs	**$546.05**

Ibid.; Doc. #277, at 3, ¶ 5.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) corresponding with secured creditors and the trustee regarding insurance and administrative matters; (2) preparing and filing a response to the trustee's motion to dismiss (MHM-1); (3) preparing and filing fee and employment applications (FW-4); and (4) preparing, filing, and prosecuting a motion to modify plan (FW-5), which was approved. Doc. #281, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded $31,093.00 in fees and $546.05 in costs on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330.

4. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-4

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM NUMBER 197
7-1-2019 [1512]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This matter will proceed as a status conference to inquire whether the parties seek further briefing.

11:00 AM

1. 21-10320-B-7 **IN RE: MARIA CARRILLO**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
4-27-2021 [17]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments. No evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims fewer expenses (or that she has filed on all of her debt and can afford the payment) but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

2. 21-10527-B-7 **IN RE: ALFONSO VENEGAS**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION CREDIT UNION
4-19-2021 [17]

MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a

declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. Therefore, the hearing on the reaffirmation agreement with Nuvision Credit Union will be dropped from calendar.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

3. 21-10154-B-7 **IN RE: JOSE LOPEZ-OCHOA**

PRO SE REAFFIRMATION AGREEMENT WITH FLAGSHIP CREDIT ACCEPTANCE
4-30-2021 [18]

NO RULING.

4. 21-10296-B-7 **IN RE: RENE/DEANNA CARDONA**

REAFFIRMATION AGREEMENT WITH ALLY BANK
4-20-2021 [15]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The Reaffirmation Agreement with Ally Bank will be DENIED.

1:30 PM

1. 21-10103-B-7 **IN RE: PAUL/MONIQUE PADILLA**
UST-1

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
4-8-2021 [15]

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Tracy Hope Davis, United States Trustee for Region 17 ("UST"), moves the court to approve this Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge ("Stipulation"). Doc. #15. No party in interest timely filed written opposition.

This motion will be GRANTED.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause," including three enumerated causes 11 U.S.C. § 707(a) states, in relevant part:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and

> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). These statutorily enumerated grounds are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. *See* 11 U.S.C. §§ 707(b)(1), (b)(2), and (b)(3).

Here, the UST is prepared to file a motion to dismiss under 11 U.S.C. §§ 707(b)(2) and (b)(3), along with an objection to discharge under § 727, but the debtors stipulated to dismissal without entry of discharge on April 7, 2021. *See* Doc. #17. The debtors filed bankruptcy on January 16, 2021. Doc. #1. The § 341 meeting of creditors was held on March 6, 2021, continued to April 9, 2021, and continued again to April 23, 2021. No creditors objected to this motion and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

This motion to approve the stipulation to dismiss the debtor's chapter 7 case without entry of discharge will be GRANTED.

2. 20-12404-B-7 **IN RE: WILLIAM LOPEZ**
IF-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-8-2021 [56]

ERYKA COHEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
IGOR FRADKIN/ATTY. FOR MV.
DISCHARGED 10/22/20

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

DISPOSITION: Granted in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the

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

Mikeiash Dshae Hargrett and Eryka Cohen ("Movants") seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) to proceed with litigation to final judgment in a Kern County Superior Court action entitled *Mikeiash Dshae Hargrett, et al. v. William Gustavo Lopez, et al.*, case no. 20CV-01569. Doc. #56. No party in interest timely filed written opposition.

The court notes that William Gustavo Lopez's ("Debtor") discharge was entered on October 22, 2020. Doc. #15. The motion will be GRANTED IN PART for cause shown as to chapter 7 trustee David M. Sousa ("Trustee").

PROCEDURAL ISSUES

First, the notice of hearing (Doc. #57) and amended notice of hearing (Doc. #64) do not satisfy the notice requirements set forth in LBR 9014-1(d)(3)(B) and (f).

For motions set on at least 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify the respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date or continued date of the hearing.

LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition.

LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking 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 notes that all of the required language is included in the motion (Doc. #56), rather than the notices (Docs. #57; #64). Although the motion and original notice had the wrong hearing date, Movants filed an amended notice with the corrected date on April 9, 2021, which is still more than 28 days before the hearing. Doc. #64. This amended notice still has the wrong notice language. However, the certificate of service concurrently filed with it states that Movants served all motion documents on William Gustavo Lopez ("Debtor"), his attorneys, Trustee, and the U.S. Trustee. Doc. #65.

Since the necessary parties were served the amended notice with the motion, which did include the correct LBR 9014-1 language, Movants'

error is *de minimis* in this instance. Further, LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Because this is Movants' fourth attempt at stay relief, no party in interest opposed this motion or any of the previous attempts, and the error is *de minimis*, the court will exercise its discretion under LBR 1001-1(f) to overlook counsel's failure in this instance. Any future violations of the local rules will result in denial without prejudice for failure to comply with the local rules.

DISCUSSION

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).

Movants seek relief from the stay for cause based on permissive abstention under 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). Movants state that the claim is insured. Doc. #58. Movants will seek recovery from applicable insurance only and waives any deficiency or other claim against the Debtor and estate. Doc. #56.

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167, quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Further, when a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "*Curtis* factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

> 1. Whether the relief will result in a partial or complete resolution of the issues;
>
> 2. The lack of any connection with or interference with the bankruptcy case;
>
> 3. Whether the foreign proceeding involves the debtor as a fiduciary;
>
> 4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
>
> 5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
>
> 6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
>
> 7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
>
> 8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
>
> 9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
>
> 10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
>
> 11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
>
> 12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004) citing *In re Curtis*, 40 B.R. 795, 799-800; *see also Kronemyer*, 405 B.R. at 921.

Relief from the stay may result in complete resolution of the issues and will not affect administration of the estate. The matter in state courts is unrelated to this bankruptcy. Movants have stated

that they will only recover from the insurance proceeds and not property of Debtor or the estate. Movants have waived any deficiency or other claims against Debtor and the estate. The interests of other creditors will not be prejudiced. The state court action is a personal injury tort action, and not a matter the bankruptcy court can hear.

The *Tucson Estates* and *Curtis* factors weigh in favor of this court abstaining from exercising its jurisdiction over the motor vehicle accident claim between Movants and Debtor that have been subject to ongoing state court litigation since May 4, 2020. The court finds that cause exists to modify the automatic stay to permit Movants to take necessary actions to finalize the lawsuit and recover insurance proceeds and not property of Debtor or the estate. The claim has been pending in Kern County Superior Court since May 20, 2020.

Since Debtor's discharge was entered on October 22, 2020, the motion is moot with respect to the Debtor. The automatic stay is replaced by the discharge injunction under § 524. This motion will be GRANTED IN PART as to Trustee and the estate for the limited purpose of finalizing the state action to liquidate the claim and seek relief against the insurance policy, only.

The order submitted shall provide the motion is denied as moot as to the debtor.

3. 21-10342-B-7 **IN RE: VIRGIL ANDERSON**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-22-2021 [19]

FIFTH THIRD BANK/MV
PATRICIA CARRILLO/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be

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

The movant, Fifth Third Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Bayliner VR5, plus its add-on: 2018 MerCruiser 4.5L Sterndrive and 2018 Karavan Single 1 trailer ("Vehicle"). Doc. #19.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 3 complete payments. The movant has produced evidence that debtor is delinquent at least $730.50. Doc. #21, #23.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at $25,220.00 and debtor owes $25,510.57. Doc. #21, #23.

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

4. 17-13869-B-7 **IN RE: CHARLES JOHNSON**
DMG-4

MOTION TO AVOID LIEN OF CACH, LLC.
5-6-2021 [49]

CHARLES JOHNSON/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Charles Johnson ("Debtor") seeks to avoid a judicial lien in favor of CACH, LLC ("Creditor") and encumbering residential real property located at 3517 El Hogar Court, Bakersfield, CA ("Property"). Doc. #49.

In the absence of opposition, the court is inclined to GRANT this motion.

But first, the notice of hearing (Doc. #50) did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking 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.

Here, the notice of hearing directed respondents to find the tentative rulings at "www.cae.uscourts.gov" after 4:00 p.m. the day before the hearing. Doc. #50. This is not the correct URL for the court's domain name and respondents will not be able to locate pre-hearing dispositions at this address. A similar mistake occurred in Debtor's previous notice of hearing, though the correct URL was used in the Debtor's first attempt. Doc. #42; *cf.* #34.

This is Debtor's third attempt at this lien avoidance motion. The first motion filed by Debtor was withdrawn on April 21, 2021. Doc. #39. The second was denied on May 5, 2021 because of this mistake and insufficient evidence of the judgment having been recorded. *See* Docs. #47; #48. Debtor corrected that error, but still provided the wrong web address here.

Typically, this error would result in the motion being denied without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Because continued dismissal of the motion for failure by counsel to comply with the local rules will only harm the Debtor, the court will exercise its discretion under LBR 1001-1(f) to overlook counsel's failure in this instance. Any future violations of the local rules will result in denial without prejudice for failure to comply with the local rules.

To avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be

listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of $17802.38 on April 28, 2017. Doc. #52, Ex. A. The abstract of judgment was issued on July 17, 2017 and recorded in Kern County on July 24, 2017. *Id.* That lien attached to Debtor's interest in Property. Doc. #51. As of the petition date, Property had an approximate value of $206,000.00. *Id.*; Doc. #1, Schedule A/B, ¶ 1.1. The unavoidable liens totaled $205,000.00 on that same date, consisting of a deed of trust in favor of Bank of America. *Id.*, Schedule D, ¶ 2.1. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 703.140(b)(1) in the amount of $26,800.00. *Id.*, Schedule C. Property's encumbrances can be described as follows:

Fair Market Value of Property on petition date		$206,000.00
Total amount of unavoidable liens	-	$205,000.00
Remaining available equity	=	$1,000.00
Debtor's homestead exemption	-	$26,800.00
Creditor's judicial lien	-	$17,802.38
Extent Debtors' exemption impaired	=	($43,602.38)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

5. 17-13570-B-7 **IN RE: JUANITA GIBSON**
DMG-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH OLAF A. LANDSGAARD
4-27-2021 [59]

JEFFREY VETTER/MV
OLAF LANDSGAARD/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed this motion to settle the estate's interest in a state court lawsuit against Mairet Sandoval and other third parties in the amount of $20,000.00. Doc. #59. Trustee also requests approval to pay $8,000.00 to the estate of Olaf A. Landsgaard, now deceased, who was special counsel for the estate in this state court litigation. No party in interest timely filed written opposition.

This motion will be GRANTED.

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. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The Trustee requests approval of a settlement agreement between the bankruptcy estate and Mairet Sandoval, Carmen Cooper, G3 Global Investments, Inc. ("G3"), and Crown Partners, Inc. ("Crown") (collectively "Defendants"). Doc. #59.

Juanita Gibson ("Debtor") filed bankruptcy on September 18, 2017. Doc. #1. Among the assets listed in the schedules are claims against Defendants alleging quiet title, cancellation, fraud, and negligent misrepresentation concerning real property located at 2749 Cold Creek Avenue, Rosamond, CA ("Property"). This action was pending in Kern County Superior Court, case no. BCV-17-101476 and entitled *Juanita Gibson v. Mairet Sandoval, et al.* Doc. #1, Schedule A/B, ¶ 33.

On June 21, 2018, the court approved Mr. Landsgaard's employment to represent the estate's interest in the state court litigation pursuant to 11 U.S.C. § 327, 329-31. Doc. #62; PWG-2. No compensation was permitted except upon court order following application under §§ 330(a), 331, and was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Prior to Mr. Landsgaard's passing, the estate settled the claim with Defendants in April 2019. Doc. #62, Ex. B. The court notes that the page containing Trustee's and Timothy Doolin's signatures is nearly illegible. *Id.*, at 15.

Under the terms of the compromise, in exchange for settlement and release of claims, the parties agree:

(a) $20,000.00 total will be paid to Trustee;
(b) Amounts on deposit with the Kern County Court will be released to G3;
(c) The $20,000 payment will be made to Trustee as follows:
    i. $6,000 from Cooper,
    ii. $7,850 from G3,
    iii. $3,650 from Sandoval,
    iv. $2,500 from Crown,
(d) After Debtor vacates Property, G3 will pay Debtor $2,000, which consists of a $500 contribution from Crown and $1,500 contribution from G3;
(e) Debtor shall vacate Property on or before July 1, 2019 and make it available for pictures and inspection by G3 on 48 hours' notice; and
(f) Crown will pay $500 to G3 before April 1, 2019.

Id., 8, at ¶ 4. The settlement was achieved during mandatory settlement conferences conducted by the Honorable Gary T. Freidman. Doc. #61.

Trustee states that he has considered *Woodson* and *A & C* factors, which weigh in favor of approving the settlement. That is: (1) the probability of success is far from assured as all parties have vigorously disclaimed all liability. (2) Trustee has already received and is in possession of the $20,000 that was paid by Defendants. *Id.*, ¶ 13. If Trustee were to proceed with litigation in an attempt to collect more, it is unclear whether any additional amount would be difficult to collect. (3) Litigation would be complex and lengthy, which will decrease the net to the estate due to additional legal fees. (4) Creditors will greatly benefit from the net to the estate which can be used to pay allowed unsecured claims. The settlement appears to be fair and equitable. Accordingly, the compromise under Fed. R. Bankr. P. 9019 is a reasonable exercise of the Trustee's business judgment.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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.*

Trustee also seeks to pay attorney fees of $8,000 – representing a 40% contingency fee of the settlement proceeds – to the estate of Mr. Landsgaard for his services prior to his passing, which resulted in this settlement. Doc. #59.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Mr. Landsgaard's services included, without limitation: (1) prosecuting the state court action; (2) participating in settlement negotiations; (3) settling and resolving the estate's claims against Defendants in the amount of $20,000. Doc. #61. The court finds the services reasonable and necessary.

Accordingly, this motion will be GRANTED. The estate of Olaf A. Landsgaard will be paid $8,000 for legal services performed by Mr. Landsgaard before his passing. The settlement between the estate and Defendants will be approved.

6. 18-13174-B-7 **IN RE: EFRAIN MACIAS-CHAVEZ AND NORMA MACIAS**
JSP-2

MOTION TO AVOID LIEN OF CALIFORNIA SERVICE BUREAU, INC.
4-8-2021 [27]

NORMA MACIAS/MV
JOSEPH PEARL/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 for failure to comply with local, state, and federal procedural rules.

First, no certificate of service was filed with this motion. The debtors must serve the moving papers on California Service Bureau, Inc. ("Creditor"), chapter 7 trustee Jeffrey M. Vetter ("Trustee"), and the United States Trustee ("UST").

Local Rule of Practice ("LBR") 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed. The certificate of service should be filed separately from all other documents. LBR 9004-2(c)(1), (e)(1).

Fed. R. Bankr. P. ("Rule") 4003(d) requires proceeding under § 522(f) to avoid a lien "shall be commenced by motion in the manner provided by Rule 9014." Rule 9014(b) requires motions in contested

matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes. Electronic service under Rule 9036 is precluded here because it "does not apply to any pleading or other paper required to be served in accordance with Rule 7004."

Rule 7004 allows service upon a domestic or foreign corporation "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. Rule 7004(b)(3). It is also sufficient if service is performed "by the law of the state in which service is made" or "to an agent of such defendant authorized by appointment or law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession[.]" Rule 7004(b)(8).

Meanwhile, Cal. Code Civ. Proc. ("C.C.P.") § 416.10 specifies service requirements for corporations doing business in California and provides:

> A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:
>
> (a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code . . .
>
> (b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer a controller or chief financial officer, a general manager or other person authorized by the corporation to receive such service of process.
>
> . . .
>
> (d) If authorized by any provision of Section 1701, 1702, 2110, 2111 of the Corporations Code . . . , as provided by that provision.

C.C.P. § 416.10. Thus, Debtor's next attempt should include a certificate of service that complies with the local rules, Rule 4003(d), 7004, 9014, and C.C.P. § 416.10. Creditor's most recent Statement of Information was filed with the state on February 11, 2021. It can be found by searching "California Service Bureau Inc." on the California Secretary of State business search website, (https://businesssearch.sos.ca.gov). The Statement of Information lists the following parties that could have been served to comply with C.C.P. § 416.10:

Agent for Service of Process:

> David Kaminski
> Carlson & Messer LLP
> 5901 W. Century Blvd #1200
> Los Angeles, CA 90045

Chief Executive Officer, Secretary, Chief Financial Officer, and Director:

Tod Dillon
700 Longwater Drive
Norwell, MA 02061

Only one named officer or agent for service of process needs to be served, but at least one must be served to comply with Rule 7004 and C.C.P. § 416.10.

Additionally, because this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

Further, UST may raise, appear, and be heard on any issue in any case under § 307 and should also be served or notified. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient so long as the certificate of service lists UST's email address as required by LBR 7005-1(d).

Second, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an index, and contain consecutively numbered exhibit pages. Here, the exhibits are filed as a separate document and include an index, but the pages are not consecutively numbered throughout the document.

Third, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses of the persons who must be served with any written opposition.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

7. 21-10481-B-7 **IN RE: DANIEL THOMPSON**
KR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-29-2021 [18]

YAMAHA MOTOR FINANCE CORP./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Yamaha Motor Finance Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Yamaha XT250 and 2017 Yamaha Kodiak 700 EPS ("Vehicles"). Doc. #18, #22.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is 13 payments past due in the amount of $7,157.00. Doc. #22, #23.

The court also finds that the debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because debtor is in chapter 7. Movant's combined value of the Vehicles is $11,490.00 and the amount owed to Movant for both Vehicles is $18,499.06. Doc. #22, #23.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 13 payments and the Vehicles are a depreciating asset.

8. 21-10594-B-7 **IN RE: GURKAMAL SINGH**
PBB-1

MOTION TO AVOID LIEN OF MERCEDES-BENZ FINANCIAL USA, LLC
4-14-2021 [21]

GURKAMAL SINGH/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 the creditors, chapter 7 trustee, U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of Mercedes-Benz Financial USA, LLC ("Creditor") and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, California 93722 ("Property"). Doc. #21. No party in interest timely filed written opposition.

This motion will be GRANTED.

First, the court notes that Fed. R. Bankr. P. 4003(b)(1) allows a party in interest to object to a claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after an amended Schedule C has been filed, whichever is later. Here, Debtor amended Schedule C on April 14, 2021 so the 30-day deadline to object was on May 14, 2021. Doc. #19. No parties in interest objected to Debtor's claimed exemptions.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of $83,108.28 on February 21, 2020. Doc. #24, Ex. E. The abstract of judgment was issued on September 4, 2020 and recorded in Fresno County on September 25, 2020. *Ibid.* That lien attached to Debtor's interest in Property. Doc. #23. As of the petition date, Property had an approximate value of $325,000.00. *Id.*; Doc. #19, Schedule A/B, ¶ 1.1. The unavoidable liens totaled $66,419.00 on that same date, consisting of a deed of trust in favor of Wells

Fargo Home Mortgage. Doc. #1, Schedule D. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $300,000.00. Doc. #19, Schedule C. Property's encumbrances can be described as follows:

Fair Market Value of Property on petition date		$325,000.00
Total amount of unavoidable liens	-	$66,419.00
Remaining available equity	=	$258,581.00
Debtor's homestead exemption	-	$300,000.00
Creditor's judicial lien	-	$83,108.28
Extent Debtors' exemption impaired	=	($124,527.28)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.